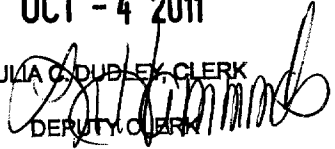


CLERK'S OFFICE U.S. DIST. COURT  
AT ABINGDON, VA  
FILED

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

**OCT - 4 2011**

JULIA C. DUBLEY, CLERK  
BY:   
DEPUTY CLERK

SHARON B. HEALY, Individually and )  
on Behalf of All Others Similarly )  
Situating, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHESAPEAKE APPALACHIA, LLC, )  
NiSOURCE INC., and COLUMBIA )  
ENERGY GROUP, )  
 )  
Defendants. )

Case No. 1:10-cv-23

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**FINAL JUDGMENT AND ORDER OF DISMISSAL**

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THIS MATTER comes before the Court upon the unopposed "Motion for Final Approval of the Class Settlement" filed by Plaintiff. The Court, being fully advised of the premises of the Motion, FINDS:

1. On May 3, 2010, Plaintiff Sharon B. Healy ("Plaintiff" or "Healy") filed in this Court a class action complaint (Doc. 1) against Chesapeake Appalachia, LLC, NiSource Inc., and Columbia Energy Group ("Defendants"). On August 18, 2010, Plaintiff filed an amended class action complaint (Doc. 46) against Defendants. On September 17, 2010, Defendants filed a motion to dismiss Plaintiff's amended complaint (Doc. 52), and the parties submitted various briefs in regard thereto. (Docs. 53, 64, 72, 79, 81, 102, 110, 116, 118, 119, 120). On January 5, 2011, the Magistrate Judge issued a Report and Recommendation (Doc. 99) in which the Magistrate Judge

recommended that Defendants' motion to dismiss be denied in part and granted in part. Defendants filed objections to the Magistrate Judge's Report on January 19, 2011. (Doc. 102). On January, 31, 2011, Plaintiff filed her Motion for Class Certification and supporting brief. (Docs. 103 & 104).

2. Plaintiff's counsel and Defendants' counsel have engaged in exchanges of information for the purpose of clarifying the factual and legal issues, including class certification and the merits of Plaintiff's claims, and have engaged in numerous discussions regarding the litigation and the possibility of a class settlement.

3. On March 2, 2011, the parties filed a joint notice (Doc. 121) informing the Court that they had reached agreement in principle to settle all claims in this case, and they moved to stay all pending deadlines in the case to allow the parties to finalize the settlement documents and to submit a motion for preliminary approval of the settlement pursuant to Federal Rule of Procedure 23(e). On March 3, 2011, the Court granted the parties' request, and ordered them to file settlement papers by April 15, 2011. (Doc. 122). The Court subsequently extended the due date for the filing of settlement papers by the parties.

4. On June 15, 2011, Plaintiff filed a Motion for Preliminary Approval of Settlement (the "Preliminary Motion") (Doc. No. 133) seeking preliminary approval of a Settlement Agreement that resolves the claims of the Settlement Class against the Defendants based on the calculation, payment, and/or reporting of royalty payments by Chesapeake Appalachia, LLC and its predecessors Columbia Natural Resources, LLC, Columbia Energy Resources, LLC, Columbia Natural Resources, Inc., Columbia Energy Resources, Inc., Triana Energy Holdings, Inc., Triana Energy Inc., Triana Acquisition,

LLC, Triana Finance, LLC, and Triana Energy Leases, Inc. (the "Producers") during the Class Period (January 1, 1999 through December 31, 2010) on Gas produced by the Producers in Virginia, and any and all claims and causes of action during the Class Period that were alleged and/or made in the amended class action complaint (Doc. 46). The Settlement Class, as defined in the parties' Class Action Settlement Agreement (Ex. 1 at 1.31) (the "Agreement"), includes the following:

All individuals and entities to whom the Producers paid royalties during the Class Period on Gas produced by the Producers from a well(s) located in Virginia, according to the business records maintained by Defendants, and the successors-in-interest of all such individuals and entities. The Settlement Class excludes (i) the Defendants and their respective predecessors and successors; (ii) any person or entity who operates a gas well in Virginia; (iii) those persons or entities who have previously released Defendants from liability concerning or encompassing any or all claims that are the subject of the *Healy* case; (iv) the federal government; (v) legally-recognized Indian Tribes; and (vi) any person who serves as a judge in this civil action and his/her spouse.

5. Attached as Exhibit "1" to the Preliminary Approval Motion is the Agreement describing the claims that are being settled on behalf of the Class (defined as the "Settled Claims"), setting forth the terms of the Parties' settlement, and incorporating the terms of this Final Judgment And Order of Dismissal (the "Final Judgment"). The Agreement is attached hereto as Exhibit 1 and its terms, including the definitions, are incorporated into this Final Judgment as if fully set forth herein. The Agreement and Final Judgment shall be referred to collectively herein as the "Settlement."

6. After a hearing on the Parties' Preliminary Approval Motion, this Court entered an Order dated June 22, 2011 (the "Preliminary Approval Order") (Doc. No.

138) preliminarily approving the Settlement and directing that notice of the proposed Settlement be mailed to the Settlement Class. The Court also set a hearing for October 4, 2011, to determine whether the proposed Settlement should be approved as fair, reasonable and adequate.

7. In accordance with the Court's Preliminary Approval Order, the Settlement Administrator caused to be mailed to potential members of the Settlement Class (for whom Defendants had addresses available from their accounting records) a notice (the "Settlement Notice") in the form approved by the Court in the Preliminary Approval Order. Attached as Exhibit 1 to the Supplemental Memorandum in Support of Plaintiff's Unopposed Motion for Final Approval of Class Settlement ("Supplemental Final Approval Memorandum") is the Affidavit of Kimberly K. Ness, which provides additional information concerning the mailing of notice. The Court finds that the Settlement Notice provided to potential members of the Settlement Class constituted the best and most practicable notice under the circumstances and included individual notice to all members of the Settlement Class who could be identified by reasonable efforts, thereby complying fully with due process and Rule 23 of the Federal Rules of Civil Procedure.

8. The Defendants caused to be mailed to the appropriate federal and state officials the materials required to be submitted by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* ("CAFA"). The actions taken to comply with CAFA's notice requirements are more particularly described in the Declaration of Ragan Naresh, attached as Exhibit 2 to the Supplemental Final Approval Memorandum. Accordingly, the Court finds that CAFA's notice requirements have been satisfied.

9. On October 4, 2011, the Court held a hearing on the proposed Settlement, at which time all interested persons were given an opportunity to be heard. Furthermore, the Court has read and considered all submissions in connection with the Settlement. Having done so, the Court has determined that approval of the Settlement will bestow a substantial economic benefit on the Settlement Class, result in substantial savings in time and money to the litigants and the Court and will further the interests of justice, and that the Settlement is the product of good-faith arm's length negotiations between the Parties.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

10. The Agreement, including all of the terms defined therein including but not limited to the definitions of "Settled Claims," is incorporated herein. Any terms used in this Final Judgment are governed by their definitions in the Agreement. The Court has jurisdiction over the subject matter of this litigation and all parties to this litigation, including all members of the Settlement Class.

11. The certified Settlement Class is defined for purposes of the Agreement and this Final Judgment as set forth in Paragraph 4 above.

12. The Settlement was made in good faith and its terms are fair, reasonable, and adequate as to the Settlement Class. Therefore, the Settlement is approved in all respects, and shall be binding upon, and inure to the benefit of, all members of the Settlement Class.

13. The Settlement Class Excluded Entities are not bound by either the Agreement or this Final Judgment. The persons and entities identified on Exhibit A to

this Final Judgment are Settlement Class Excluded Entities. The Settlement Class Excluded Entities may pursue their own individual remedies, if any, as to any of the Settled Claims.

14. Releases.

Release by Plaintiff and the Class Members.

a. As of the Effective Date, Plaintiff and the Settlement Class Members, and each of them, for themselves and their respective heirs, agents, officers, directors, shareholders, employees, consultants, joint venturers, partners, members, legal representatives, successors and assigns, shall fully and forever release and discharge the Defendants, and their respective parents, subsidiaries, affiliated entities, predecessors, successors and assigns and each of their present, former and future officers, directors, employees, agents, any third party payment processors, independent contractors, successors, assigns, attorneys and legal representatives (collectively, "Defendant Releasees") from any and all of the Settled Claims, except for the rights and obligations created by the Agreement, and shall not commence, participate in, prosecute or cause to be commenced or prosecuted against the Defendant Releasees any action or other proceeding based upon any of the Settled Claims released pursuant to the Agreement. The relief afforded under the Agreement fully and completely satisfies the Settlement Class Members' claims for relief in this case. This Release also covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members or by Plaintiff or the Settlement Class Members, or any of them, in connection with or related in any manner to this case, the settlement of this case, the

administration of this Settlement and/or the Settled Claims except to the extent otherwise specified in the Agreement.

b. Release by Defendants. As of the Effective Date, the Defendants, and each of them, for themselves and their respective parents, subsidiaries, affiliated entities, predecessors, successors and assigns and each of its present, former and future officers, directors, employees, agents, any third party payment processors, independent contractors, successors, assigns, attorneys and legal representatives, fully and forever release and discharge Plaintiff and the Settlement Class Members, and each of them, and their respective parents, subsidiaries, affiliated entities, predecessors, successors and assigns and each of their present, former and future officers, directors, employees, agents, independent contractors, successors, assigns, attorneys and legal representatives (collectively, "Class Releasees") from the Settled Claims, except for the rights and obligations created by the Agreement, and shall not commence, participate in, prosecute or cause to be commenced or prosecuted against the Class Releasees any action or other proceeding based upon any of the Settled Claims released pursuant to the Agreement. This Release also covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by counsel representing the Defendants or by the Defendants, or any of them, in connection with or related in any manner to this case, the settlement of this case, the administration of this Settlement and/or the Settled Claims except to the extent otherwise specified in the Agreement.

c. No Release of Non-Parties. The Final Judgment shall not operate or be construed to release any claims the Parties may have against any person or entity

who is not a Party to the Agreement except as provided for in Paragraphs 14(a) and 14(b), above.

15. All Settled Claims are dismissed with prejudice. All claims that are not Settled Claims are dismissed without prejudice.

16. Neither this Final Judgment, the Agreement nor any document referred to herein nor any action taken pursuant to—or to carry out—the Settlement may be used as an admission by or against the Defendants of any fact, claim, assertion, matter, contention, fault, culpability, obligation, wrongdoing or liability whatsoever.

17. The Plan of Administration attached as Exhibit E to the Agreement, including the plans for allocation and distribution set forth therein, is hereby approved and shall be implemented by using the best reasonably available data and using the most practicable method under the circumstances.

18. The Court has, by separate order, granted Class Counsel's "Motion for an Award of Attorneys' Fees and Expenses and for an Incentive Award Payment to Class Representatives." The amount of attorneys' fees, Litigation Expenses, and Administrative Costs awarded to Class Counsel shall be distributed to Class Counsel from the Escrow Account pursuant to the terms of the Escrow Agreement and within seven calendar days after the date of this Final Judgment. If this Final Judgment is reversed on appeal, Class Counsel shall be jointly and severally obligated to refund to the Defendants the amount of attorneys' fees and Litigation Expenses paid, with statutory interest, within 10 days of the date of such reversal. If the amount of attorneys' fees or Litigation Expenses is reduced on appeal, the Defendants shall have no liability to the Settlement Class Members or Class Counsel to pay any funds in



addition to the Settlement Funds, and Class Counsel and their law firms shall be jointly and severally obligated to refund to the Escrow Account the difference between the amount paid to them pursuant to this paragraph and the amount ultimately awarded, with statutory interest, within 30 days of the date of the order or decision reducing the amount of fees or expenses awarded.

19. The Court reserves jurisdiction over this matter, the Parties, and all counsel herein, without affecting the finality of this Final Judgment, including over (a) implementing, administering and enforcing this Settlement and any award or distribution from the Settlement Funds; (b) disposition of the Settlement Funds; and (c) other matters related or ancillary to the foregoing.

20. Nothing set forth in this Final Judgment shall be construed to modify or limit the terms of the Agreement, but rather, the Agreement and this Final Judgment are to be construed together as one Settlement between the Parties.

21. The Settlement and this Final Judgment shall have no *res judicata*, collateral estoppel, or other preclusive effect as to any claims other than the Settled Claims.

Dated: October 4, 2011.

BY THE COURT:

  
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JAMES P. JONES  
United States District Court Judge

**Exhibit A**

**Settlement Class Excluded Entities**

1. Leon Owens
2. Arnold Bailey
3. Robert Sutherland