

IN THE DISTRICT COURT OF COAL COUNTY  
STATE OF OKLAHOMA

CHIEFTAIN ROYALTY COMPANY, )  
)  
Plaintiff, )  
)  
v. )  
)  
XTO ENERGY, INC. (including predecessors, )  
successors and affiliates), )  
)  
Defendant. )

**FILED**  
IN DISTRICT COURT  
COAL COUNTY, OKLAHOMA  
DEC 17 2010  
RACHEL FULLER, COURT CLERK  
DEPUTY

Case No. CJ-2010-54

**PETITION**

COMES NOW the Plaintiff, Chieftain Royalty Company ("Plaintiff"), for itself and all others similarly situated (hereinafter Plaintiff and the putative Class members are collectively referred to as the "Class"), and for their cause of action against defendants XTO Energy, Inc., including predecessors, successors and affiliates ("XTO") allege and state as follows:

**VENUE AND JURISDICTION ALLEGATIONS**

1. Chieftain Royalty Company is an Oklahoma corporation with its principal place of business in the State of Oklahoma.
2. XTO is a foreign corporation with its principal place of business in Oklahoma.
3. The named Plaintiff and the remaining Class members are residents of various states, including the State of Oklahoma. Their claims arose in various counties in Oklahoma.
4. Plaintiff is without sufficient knowledge to quantify the amount of damages attributable to the Class exclusive of interest and costs and therefore cannot allege that such aggregate amount meets or exceeds the federal jurisdictional amount for diversity; however, the claims of the named Plaintiff are less than \$75,000.00.
5. Pursuant to 12 O.S. §137 and 52 O.S. §570.14, as well as other Oklahoma Statutes, venue and jurisdiction are properly laid in the District Court of Coal County, State of Oklahoma

since XTO owns property and operates wells in this county from which some of the Class claims arise.

### CLASS ACTION ALLEGATIONS

The Allegations set forth above are incorporated herein by reference.

6. Plaintiff brings this action as the representative of a Class pursuant to 12 O.S.

§2023(b)(3). The "Class" is comprised of:

All non-excluded persons or entities who are or were royalty owners in Oklahoma wells where XTO, including its predecessors or affiliates, is or was the operator (or, as a non-operator, XTO separately marketed gas). The Class Claims relate only to payment for gas and its constituents (helium, residue gas, natural gas liquids, nitrogen and condensate) produced from the wells. The Class does not include overriding royalty owners or other owners who derive their interest through the oil and gas lessee.

The persons or entities excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America and the State of Oklahoma; (2) publicly traded oil and gas exploration companies and their affiliates; (3) the claims of royalty owners in XTO wells gathered by Timberland and processed at the Tyrone Plant which are presently the subject of the action styled *Fankouser, etal v XTO Energy, Inc*, Case No. CIV-07-798-L USDC WD OK (formerly *Beer etal v XTO*); (4) the claims of royalty owners to the extent previously released by settlement in the case styled *Booth v Cross Timbers Oil Co*, Case No. CJ-98-016, District Court for Dewey County, OK; and (5) persons or entities that Plaintiffs' counsel is, or may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional conduct.

7. The Class numbers more than a thousand members; the members reside in several different states; and the Class is so numerous and spread out across the United States that joinder of all members is impracticable.

8. XTO is or was an owner of extensive oil and gas leasehold interests within the State of Oklahoma, and operates or has operated many wells in the State of Oklahoma (the "Oklahoma Wells").

9. The averments of fact and questions of law herein are common to the Class.

10. Plaintiff is a mineral interest owner in Oklahoma Wells where XTO was the operator or where XTO, as a non-operator, separately marketed production from wells. Plaintiffs' claims are typical of the Class' claims.

11. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiffs' interests do not conflict with the interests of the Class. Plaintiff is represented by counsel both skilled and experienced in oil and gas accounting and complex civil litigation matters, including oil and gas class actions. Plaintiffs' counsel is accustomed to handling substantial litigation matters.

12. The averments of fact and questions of law herein which are common to the members of the Class predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

(a) The questions of law and fact are so uniform across the Class that there is no reason why individual Class members would want to control the prosecution of their own actions, at their own expense;

(b) To Plaintiffs' knowledge, there is no pending litigation against XTO that incorporates the statewide claims of improper deductions from mineral interest proceeds related to the Class wells other than the case styled *Roderick et al v. XTO Energy, Inc.* Case No. 08-CV-01330-JTM-KMH D.C. KS;

(c) The interests of all parties and the judiciary in resolving these matters in one forum without the need for a multiplicity of actions are great;

(d) The difficulties in managing this class action will be slight in relation to the potential benefits to be achieved on behalf of each and every Class member, and not just those who can afford to bring their own actions; and,

(e) XTO has fraudulently concealed its actions which give rise to the Class members' cause of action. Many of the Class members may never discover the wrongful acts of XTO. Thus in the

absence of a class action, XTO, through its concealment, may successfully be unjustly enriched to the detriment of the unknowing Class members.

#### **BACKGROUND FACTS AND CLAIMS**

13. Based on information and belief, XTO used its position as operator and as an oil and gas working interest owner to secretly underpay royalty due Class members on production of gas and its constituents from the Oklahoma Wells. XTO accomplished this by various improper deductions and reductions from royalty payments including, but not limited to, the following: (1) deducting direct and indirect fees for marketing, gathering, compression, dehydration, processing, treatment, and other similar services; (2) not paying royalty on wellhead gas that was used off the lease premises or in the manufacture of products; and (3) not paying royalty on condensate that dropped out of the gas stream (hereinafter referred to as "Fees"). These Fees were incurred to transform raw wellhead gas into marketable condition for sale.

14. The relationship between XTO and the Class is such that the Class members have reasonably placed trust and confidence in XTO to properly pay royalty.

15. XTO has superior access to the information relating to the claims herein.

16. XTO is or was in a fiduciary or quasi-fiduciary relationship with the Class created by orders of the Oklahoma Corporation Commission and actions of XTO.

17. As a fiduciary or quasi-fiduciary, XTO is: (1) held accountable to the Class, (2) held to a high degree of good faith in its dealings, and (3) not permitted to make or use of its position to realize unauthorized benefits for its own personal interests at the expense of the Class. XTO has never repudiated its fiduciary or quasi-fiduciary duty and the Class has never had any reason to know that XTO was not abiding by its duty.

18. XTO has used its position as an operator and as an oil and gas working interest owner to wrongfully deduct Fees from royalty payments due on the Oklahoma Wells.

19. The Fees were for services incurred to place the raw wellhead gas produced from the Oklahoma Wells into marketable condition; and/or the Fees did not enhance the value of an already marketable product; and/or the Fees were not reasonable and did not increase the royalties due the Class proportionately to the Fees.

20. Based on information and belief, the Fees were deducted from the gross value of the gas and its constituents prior to production proceeds being paid to the Class. Based on information and belief, the Fees and other royalty underpayments were fraudulently concealed from the Class by falsely reporting the gross value and price of the gas sold on the Class members' check counter-foils and by using said counter-foils to deceive the Class into believing that all royalties had been properly paid and that XTO was properly accounting to the Class for royalty owed.

21. Based on information and belief, in violation of the implied covenant to market contained in the oil and gas leases, and in violation of its duties, XTO has failed to make diligent efforts to secure the best term available for the sale of gas and its constituents from the Oklahoma Wells, and the Class has received reduced production proceeds from the Oklahoma Wells as a result thereof.

22. XTO has maintained an open account with the Class members by making prior period adjustments to royalty payments which further led Class members to believe that XTO had, or would, make proper payment of royalty in compliance with its obligations.

23. Based on information and belief, XTO and other unnamed individuals and companies conspired to deprive the Class of production proceeds by the fraudulent schemes, and continued to fraudulently and deceptively conceal these schemes by falsely reporting information, or failing to report information, to the Class.

24. XTO is fully aware of the duties and obligations incumbent upon it. XTO is fully aware that it is in breach of these duties and obligations. Nevertheless, XTO has taken no action to cure these violations of the law.

25. The acts of XTO go far beyond simple breach of contract and amount to independent torts resulting in damages to the Class and unjust enrichment to XTO.

26. The tortious breach of contract, fraud, deceit and other torts described herein served to financially benefit XTO through the reduction of value the Class received for their share of production from the Oklahoma Wells.

27. Based on information and belief, XTO has been unjustly enriched as a result of its improper actions. XTO should not be allowed to retain any portion of its ill-gotten gains, or profits on those ill-gotten gains. XTO should be required to disgorge, and pay as additional damages, all such gains, and profits on such gains.

28. The tortious acts of XTO were done intentionally, maliciously and with utter disregard for the rights of the Class. XTO should be required to pay punitive damages as punishment for its wrongdoing and as an example to deter others who might act in a similar manner.

29. To the extent that XTO relies on any statute of limitation as a defense, the Class claims that under the facts the doctrine of equitable tolling, open account, discovery rule and other defenses apply to toll the running of the statute of limitation.

#### **BREACH OF CONTRACT**

The allegations set forth above are incorporated herein by reference. This claim is made both cumulatively and in the alternative to each of the other claims made.

30. XTO has breached the implied covenant to market contained in each oil and gas lease and has otherwise breached its duties to properly pay royalty.

31. The Class has been damaged.

32. Additionally, Class claims are based on an open account beginning with the initial royalty payments and still continuing on each Oklahoma Well.

33. XTO has been unjustly enriched as a result of its improper underpayment of royalty.

### **TORTIOUS BREACH OF CONTRACT**

The allegations set forth above are incorporated herein by reference. This claim is made both cumulatively and in the alternative to each of the other claims made.

34. XTO actions amount to much more than a simple breach of contract. Implied into every contract is the duty to deal honestly and fairly.

35. XTO is guilty of tortious breach of contract resulting in damages to the Class.

36. XTO should pay, in addition to actual damages, punitive damages as a method of punishing XTO and setting an example for others.

### **BREACH OF FIDUCIARY OR QUASI-FIDUCIARY DUTY**

The allegations set forth above are incorporated herein by reference. This claim is made both cumulatively and in the alternative to each of the other claims made.

37. XTO, as the operator of Oklahoma Wells subject to orders of the Oklahoma Corporation Commission which pool royalty, owed a fiduciary or quasi-fiduciary duty to the Class to properly pay royalty.

38. XTO has never repudiated its fiduciary or quasi-fiduciary duty to the Class. In fact, XTO's actions have reinforced the existence of such a duty since it totally controlled royalty payments and the Class was forced to put faith and trust in XTO. XTO knew very well that the Class had no option but to trust XTO to account for and pay royalty properly.

39. The Class has been damaged and XTO has been unjustly enriched.

40. XTO should pay, in addition to actual damages, punitive damages as a method of punishing XTO and setting an example for others.

### **FRAUD (ACTUAL AND CONSTRUCTIVE) AND DECEIT**

The allegations set forth above are incorporated herein by reference. This claim is made both cumulatively and in the alternative to each of the other claims made.

41. XTO secretly and knowingly underpaid royalties on Oklahoma Wells without the knowledge of the Class.

42. XTO sent out false and misleading statements monthly to Class members on check counter-foils with the intent to have Class members rely on those false statements. XTO knew that Class member had no choice but to rely on the false statements of XTO. Under such circumstances reliance of the Class is presumed in law and in fact.

43. The Class has been damaged and XTO has been unjustly enriched.

44. XTO should pay, in addition to actual damages, punitive damages as a method of punishing XTO and setting an example for others.

#### CONVERSION

The allegations set forth above are incorporated herein by reference. This claim is made both cumulatively and in the alternative to each of the other claims made.

45. Under Oklahoma law “all proceeds from the sale of production shall be regarded as separate and distinct from all other funds of any person receiving or holding the same until such time as such proceeds are paid to the owners legally entitled thereto. Any person holding revenue or proceeds from the sale of production shall hold such revenue or proceeds for the benefit of the owners legally entitled thereto.” 52 O.S. Sec. 570.10(a).

46. XTO held proceeds from the sale of production from Oklahoma Wells that belonged to the Class. Instead of paying over those proceeds to the Class as required by law, XTO secretly deducted the Fees from proceeds and converted that money to its own use and benefit.

47. The Class has been damaged and XTO has been unjustly enriched.

48. XTO should pay, in addition to actual damages, punitive damages as a method of punishing XTO and setting an example for others.



### **CONSPIRACY**

The allegations set forth above are incorporated herein by reference. This claim is made both cumulatively and in the alternative to each of the other claims made.

49. One or more persons have joined with and aided XTO in defrauding the Class.

50. XTO, and the others joining with it, have conspired to underpay royalty due the Class.

51. The Class has been damaged. XTO and its co-conspirators have been unjustly enriched.

Under Oklahoma law the Class may recover all of its damages from one or more of the co-conspirators.

52. XTO (and its co-conspirators) should pay, in addition to actual damages, punitive damages as a method of punishing them and setting an example for others.

### **ACCOUNTING**

The allegations set forth above are incorporated herein by reference.

53. XTO has a duty to timely disclose to the Class the full and true value of the production from the Oklahoma Wells. XTO has breached that duty.

54. XTO has: (1) failed to account to the Class for their proper royalty share of production from the Oklahoma Wells; (2) failed to fully account for the full value of the production from the Oklahoma Wells; and (3) failed to fully account for all deductions and reductions from the value of the production. Plaintiff requests an order of this Court requiring XTO to provide a full and complete accounting for all production proceeds and deductions or reductions from the date XTO acquired its working interest until the date of trial in the matter on each Oklahoma Well.

### **INJUNCTION**

The allegations set forth above are incorporated herein by reference.

55. Class members are by and large unsophisticated and without the resources of XTO.

56. XTO must be restrained from contacting any putative Class member concerning any issue herein, unless the Court is specifically advised of the proposed communication and approves the content and form of such communication. This judicial scrutiny is necessary to prevent the potential for

inadequate, misleading, incomplete, or erroneous representation and communication and to prevent any intimidation, annoyance, harassment, or undue influence.

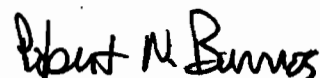
57. This Court has discretion to so restrain XTO pursuant to 12 O.S. §2023(d)(2), which generally provides the Court with authority to enter appropriate orders for the protection of putative members of the Class and for the fair conduct of the action.

58. XTO maintains files containing the names and addresses of the putative Class members. If XTO is allowed to contact the putative Class members in an attempt to settle the above claims for inadequate consideration, the damage to the putative Class members would be irreparable and monetary damages would be insufficient or simply unavailable to compensate them. The Class members do not have another plain, adequate and speedy remedy at law to protect their interests.

59. In view of the fact that XTO has concealed its actions from the Class members, no detriment will result to XTO from such an order. The putative Class members would receive the protection of 12 O.S. §2023(e) which requires that no compromise of any claims be made without approval of the Court upon appropriate notice to all Class members.

**WHEREFORE**, the Plaintiff seeks: (1) an order of this Court allowing this case to proceed as a class action; and (2) judgment for damages as alleged herein against XTO comprised of: (a) an accounting; (b) damages based on all of the claims made herein; (c) punitive damages; (d) interest; (e) attorney's fees; (f) expert and litigation costs; (g) court costs; (h) an order temporarily restraining XTO, its agents, servants, employees and attorneys, or persons acting for or on XTO's behalf from contacting any putative Class member concerning the issues in this action until entry of an order refusing to certify the Class; and (i) such other relief as the Plaintiff and putative class may be entitled to by law or in equity.

**JURY TRIAL DEMANDED  
ATTORNEY'S LIEN CLAIMED**



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