

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,

Plaintiff,

v.

XTO ENERGY INC.,

Defendant.

Case No. 6:11-cv-00029-KEW

(Removed from District Court, Coal
County, Oklahoma)

Case No. CJ-2010-54)

DECLARATION OF MEDIATOR GARY A. FEESS

I, GARY A. FEESS, upon personal knowledge and pursuant to 28 U.S.C. § 1746,
declare as follows:

1. I was selected by the parties to mediate the above-entitled action and did so as
an independent mediator. The mediation led to a settlement.

2. While the mediation process is confidential, the parties have authorized me to
inform the Court of the matters set forth below, to be used in support of Plaintiff's Motion for
Final Approval of Class Settlement.

3. My statements and those of the parties during the mediation are subject to a
confidentiality agreement and Federal Rule of Civil Procedure 408, and I do not intend to waive
that agreement or the protections of Rule 408. I make this Declaration based on personal
knowledge and am competent to so testify.

QUALIFICATIONS

4. I am a former United States Attorney, served as a Los Angeles County Superior
Court Judge, and as a United States District Judge for the Central District of California for more
than 15 years, presiding over between 150 and 200 trials and more than 6,000 civil lawsuits.
After retiring from the federal bench, I joined Phillips ADR's mediation and arbitration team,

located at 2101 East Coast Hwy, Suite 250, Corona Del Mar, CA 92625. Over the last 3 years, I have mediated approximately 65 matters and arbitrated 3 disputes. Prior to my career on the state and federal bench, I litigated commercial cases for 10 years, most notably as a partner with Jones Day LA, where I was the head of litigation in 1990-91, and Quinn, Emanuel Urquhart & Oliver. I am a graduate of the UCLA School of Law, where I graduated Order of the Coif and was a member of the Law Review.

5. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

6. As explained herein, based on my experience as a mediator and arbitrator, it is my opinion that the Settlement in this case is fair, reasonable, and adequate.

THE SETTLEMENT PROCESS WAS THOROUGH, FAIR, AND ARMS' LENGTH

7. The parties first formally mediated on September 1, 2016 under the supervision of former federal judge, Layn Phillips, an experienced and highly respected mediator and colleague at Phillips ADR. Judge Phillips previously served as a District Judge in the Western District of Oklahoma, where he presided over at least 140 trials. For over 20 years, Judge Phillips has successfully mediated high-stakes civil disputes for Fortune 500 companies nationwide and is considered one of the leading mediators in the resolution of multi-party matters, some involving as many as 150 parties. Judge Phillips has successfully mediated a number of royalty owner class actions. Prior to this session, the parties submitted extensive mediation briefs to Judge Phillips outlining their respective positions on liability, damages, and the strengths and weaknesses of their respective cases. After a full day of mediation and discussions with Judge Phillips, the parties were unable to reach an agreement. However, in the months following the mediation session, the parties continued to discuss settlement negotiations through Judge Phillips. It is my understanding that the parties also continued to have settlement discussions with each other and held informal meetings with their experts.

8. The parties formally mediated for a second time on June 22, 2017. Before the mediation, the parties provided to me and exchanged with each other extensive, confidential legal briefing regarding class certification and merits issues, supported by evidence and expert opinions. Based on these submissions and discussions during the mediation, I concluded that Class Counsel had performed a thorough examination of the factual discovery and royalty payment data and, with the aid of experts, analyzed it to determine appropriate case valuations. Class Counsel was current and well informed on the law and provided legal research and analysis of Oklahoma law, federal law, and the law of other states. And, Defendant was cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case, and counsel for Defendant had performed considerable work in preparation for the mediation.

9. The second mediation occurred at Phillips ADR's offices in Corona Del Mar, CA on June 22, 2017. Plaintiff and Class Representative, Chieftain Royalty Company, attended in-person, along with his counsel, Bradley E. Beckworth, Lisa P. Baldwin, Michael Burrage, Robert Barnes and Patranell Lewis. Defendant attended through counsel Jeff King, Marla Broaddus, and Chris Brown, and through its corporate counsel, Neal Nobles.

10. At the beginning of the mediation session, I asked detailed questions of both sides to expose their strengths and weaknesses, as well as to clarify where substantial disputes on class certification, liability, damages, and certain defenses still existed. The parties were cooperative and professional throughout this process.

11. After approximately 9 hours of mediation discussions with the parties both together and separate, the parties failed to reach an agreement to settle this action, however the parties continued discussions and negotiations over the following week when they were able to reach a settlement in principal. On July 4, 2017, the parties reduced the salient terms to writing.

12. After presiding over the mediation process in this case, I am convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiations conducted in good faith. There was no collusion between the parties.

THE \$80 MILLION SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

13. The parties exchanged massive amounts of data for experts to analyze. However, considerable differences continued to exist between the parties on liability, damages, and statute of limitations.

14. For example, the parties disputed the precise scope of Defendant's royalty payment obligations under Oklahoma oil and gas law, which raised legitimate questions of fact and law including when a particular well's gas became marketable in the past such that Defendant would be legally permitted to share costs with Class Members. The parties also disagreed about whether and to what extent the statute of limitations applies to the Litigation. Due to these disputes and other uncertainties associated with litigation of this type, the value of the Settlement far outweighs the mere possibility of future relief after long, expensive litigation, including inevitable summary judgment motions, an intricate trial, and appeals.

15. Moreover, prior to the Settlement, there were numerous pending litigation issues, including substantial outstanding discovery that would have long-delayed the resolution of the case. And, the dispute settled after Defendant obtained reversal of the district court's order granting Class Representative's motion for class certification and prior to a determination on class certification on remand, which was a substantial hurdle for Class Representative. Further, following certification, Class Representative and the Class Counsel would still have been required to file, respond to, and win motions for summary judgment and ultimately succeed at trial—all for an unknowable amount of money, if any, to be awarded by an unknown jury. Given all of these procedural and legal complexities and uncertainties, it is my opinion

that the Settlement is in the best interests of the Class.

16. Throughout the mediation process, I developed an understanding of the dispute, the respective positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal. Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and at the mediation, the rigor of the negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits achieved in the settlement, I believe that the terms of the \$80 million settlement are fair, adequate, reasonable and in the best interests of the Class. Moreover, as a result of this litigation, Defendant implemented new procedures and policies for calculating and paying royalty on production of natural gas (and its constituents) on the Ardmore Loop gathering system in July 2012. It is my understanding these changes in Defendant's policies and procedures conferred a benefit of at least \$60 million to Class Members with royalty interests in wells connected to the Ardmore Loop. In addition, as a result of this Litigation, Defendant agreed to continue to implement its procedures and policies for calculating and paying royalty on production of natural gas (and its constituents) on the Ardmore Loop. It is my understanding that Defendant's agreement to continue to implement its procedures and policies on the Ardmore Loop confers an additional \$74 million in present value on Class Members with royalty interests in Ardmore Loop wells. This is an outstanding result for the Class.

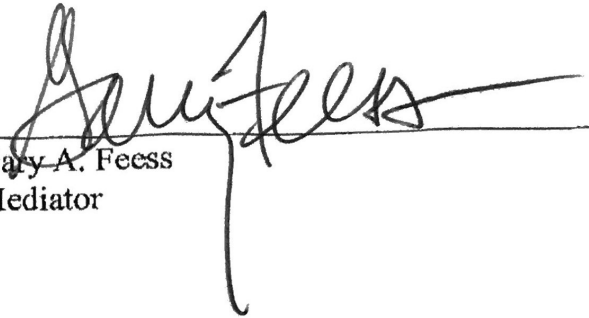
17. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation sessions, as well as from my numerous discussions with them, that Class Counsel performed a thorough examination of the documents and data produced in this litigation. It is also my opinion that Class Counsel performed substantial work and effort in preparing their case for mediation and in presenting their claims in such a way to produce a

valuable settlement for the Class.

18. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Dated this 22^d day of February 2018.



Gary A. Fees
Mediator