

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

CHIEFTAIN ROYALTY COMPANY,

Plaintiff,

v.

**XTO ENERGY, INC. (including
predecessors, successors and affiliates),**

Defendant.

Case No. CIV-11-29-FHS

**DEFENDANT XTO ENERGY INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S PETITION**

Defendant XTO Energy Inc. ("XTO") submits its Answer and Affirmative Defenses to Plaintiff's Petition (the "Petition"). XTO denies the allegations contained in the Petition unless expressly admitted herein and further answers as follows:

VENUE AND JURISDICTION ALLEGATIONS

1. XTO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition and therefore those allegations are denied.

2. XTO denies that its principal place of business is in Oklahoma, as stated in paragraph 2 of the Petition, and states that states it is a Delaware corporation with its principal place of business in the State of Texas and it is authorized to do business in the State of Oklahoma.

3. XTO denies that this action is properly brought as a class action, denies that the class pled is a proper class, denies that the class claims arose in various counties in Oklahoma,

and denies that the Plaintiff has properly pled or has any claims against XTO. XTO admits the remaining allegations of paragraph 3 of the Petition.

4. XTO denies that the Plaintiff and the putative class members are entitled to any damages and denies that the amount in controversy does not exceed the federal jurisdictional amount for diversity, as pled by the Plaintiff in paragraph 4 of the Petition.

5. XTO denies the allegations of paragraph 5 of the Petition inasmuch as the Federal Court for the Eastern District of Oklahoma has original jurisdiction of this matter pursuant to the federal Class Action Fairness Act and denies anything to the contrary. XTO admits that it owns property and operates wells in Coal County and denies the remaining allegations in paragraph 5.

CLASS ACTION ALLEGATIONS

XTO restates and incorporates its answers to paragraphs 1 through 5 of the Petition as if they were fully set forth herein.

6. XTO admits that the Plaintiff purports to act on behalf of a class defined in paragraph 6 of the Plaintiff's Petition, but denies that this action is properly brought as a class action, denies that the class pled is a proper class, denies the applicability of 12 O.S. § 2023(b)(3), denies that a class should be certified under the Federal Rules of Civil Procedure and denies that the Plaintiff is a proper representative of such class.

7. XTO admits the class, as defined by the Plaintiff, would be numerous and comprised of more than 1000 members as alleged in paragraph 7 of the Petition and admits that the putative class members reside in several states, but XTO denies that such class representation is appropriate or that a class should be certified under the Federal Rules of Civil Procedure.

8. XTO admits the allegations of paragraph 8 of the Petition.

9. XTO denies the allegations of paragraph 9 of the Petition.

10. XTO admits that the Plaintiff is a mineral owner in Oklahoma wells where XTO is the operator, but denies the remaining allegations of paragraph 10 of the Petition.

11. XTO denies the allegations of paragraph 11 of the Petition.

12. XTO denies the allegations of paragraph 12 of the Petition.

BACKGROUND FACTS AND CLAIMS

13. XTO denies the allegations of paragraph 13 of the Petition.

14. XTO denies the allegations of paragraph 14 of the Petition.

15. XTO denies the allegations of paragraph 15 of the Petition.

16. XTO denies the allegations of paragraph 16 of the Petition.

17. XTO denies the allegations of paragraph 17 of the Petition.

18. XTO denies the allegations of paragraph 18 of the Petition.

19. XTO denies the allegations of paragraph 19 of the Petition.

20. XTO denies the allegations of paragraph 20 of the Petition.

21. XTO denies the allegations of paragraph 21 of the Petition.

22. XTO denies the allegations of paragraph 22 of the Petition.

23. XTO denies the allegations of paragraph 23 of the Petition.

24. XTO denies the allegations of paragraph 24 of the Petition.

25. XTO denies the allegations of paragraph 25 of the Petition.

26. XTO denies the allegations of paragraph 26 of the Petition.

27. XTO denies the allegations of paragraph 27 of the Petition.

28. XTO denies the allegations of paragraph 28 of the Petition.

29. XTO denies the allegations of paragraph 29 of the Petition.

BREACH OF CONTRACT

XTO restates and incorporates its answers to paragraphs 1 through 29 of the Petition as if they were fully set forth herein.

- 30. XTO denies the allegations of paragraph 30 of the Petition.
- 31. XTO denies the allegations of paragraph 31 of the Petition.
- 32. XTO denies the allegations of paragraph 32 of the Petition.
- 33. XTO denies the allegations of paragraph 33 of the Petition.

TORTIOUS BREACH OF CONTRACT

XTO restates and incorporates its answers to paragraphs 1 through 33 of the Petition as if they were fully set forth herein.

- 34. XTO denies the allegations of paragraph 34 of the Petition.
- 35. XTO denies the allegations of paragraph 35 of the Petition.
- 36. XTO denies the allegations of paragraph 36 of the Petition.

BREACH OF FIDUCIARY OR QUASI-FIDUCIARY DUTY

XTO restates and incorporates its answers to paragraphs 1 through 36 of the Petition as if they were fully set forth herein.

- 37. XTO denies the allegations of paragraph 37 of the Petition.
- 38. XTO denies the allegations of paragraph 38 of the Petition.
- 39. XTO denies the allegations of paragraph 39 of the Petition.
- 40. XTO denies the allegations of paragraph 40 of the Petition.

FRAUD (ACTUAL AND CONSTRUCTIVE) AND DECEIT

XTO restates and incorporates its answers to paragraphs 1 through 40 of the Petition as if they were fully set forth herein.

41. XTO denies the allegations of paragraph 41 of the Petition.

42. XTO denies the allegations of paragraph 42 of the Petition.

43. XTO denies the allegations of paragraph 43 of the Petition.

44. XTO denies the allegations of paragraph 44 of the Petition.

CONVERSION

XTO restates and incorporates its answers to paragraphs 1 through 44 of the Petition as if they were fully set forth herein.

45. The language of the statute speaks for itself. To the extent the language of the statute has not been fully and accurately quoted, the allegations in paragraph 45 of the Petition are denied.

46. XTO denies the allegations of paragraph 46 of the Petition.

47. XTO denies the allegations of paragraph 47 of the Petition.

48. XTO denies the allegations of paragraph 48 of the Petition.

CONSPIRACY

XTO restates and incorporates its answers to paragraphs 1 through 48 of the Petition as if they were fully set forth herein.

49. XTO denies the allegations of paragraph 49 of the Petition.

50. XTO denies the allegations of paragraph 50 of the Petition.

51. XTO denies the allegations of paragraph 51 of the Petition.

52. XTO denies the allegations of paragraph 52 of the Petition.

ACCOUNTING

XTO restates and incorporates its answers to paragraphs 1 through 52 of the Petition as if they were fully set forth herein.

53. XTO denies the allegations of paragraph 53 of the Petition.

54. XTO denies the allegations of paragraph 54 of the Petition.

INJUNCTION

XTO restates and incorporates its answers to paragraphs 1 through 54 of the Petition as if they were fully set forth herein.

55. XTO denies the allegations of paragraph 55 of the Petition.

56. XTO denies the allegations of paragraph 56 of the Petition.

57. To the extent the allegations of paragraph 57 of the Petition are conclusions of law, no response is required. If, however, a response is required, XTO denies the allegations.

58. XTO admits the first sentence of paragraph 58 of the Petition as to the wells where it is the operator and denies the remaining allegations.

59. XTO denies the allegations of paragraph 59 of the Petition.

60. XTO denies that Plaintiffs are entitled to the relief requested in the Prayer of the Petition.

AFFIRMATIVE DEFENSES

For its affirmative defenses herein, XTO alleges as follows:

61. Plaintiff's Petition fails to state a claim upon which relief may be granted.

62. Plaintiff's Petition fails to allege with particularity any specific acts and/or omissions taken by XTO and fails to meet the prerequisites of Fed. R. Civ. P. 8 and 9.

63. Plaintiff's Petition should be dismissed as to unnamed predecessors, successors and affiliates, because the Petition violates Fed. R. Civ. P. 10(a), by designating unnamed "predecessors, successors and affiliates" in the caption.

64. Plaintiff has failed to state a claim for relief against XTO to the extent that Plaintiff seeks to impose liability on XTO as a successor, predecessor or affiliate.

65. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

66. Plaintiff's claims are barred in whole or in part by the statute of frauds.

67. Plaintiff's claims are barred in whole or in part by settlement, payment, release and accord and satisfaction.

68. Plaintiff's claims are barred by the doctrines of estoppel, waiver and/or laches.

69. Plaintiff's claims are barred in whole or in part by the doctrine of force majeure.

70. Plaintiff's claims are barred in whole or in part by the doctrines of *res judicata* and /or collateral estoppel.

71. The subject wells have, at all times, been prudently operated, and XTO has at all times carried out its operations in a reasonable and prudent manner.

72. XTO conducted its activities at all times in accordance with the lease agreements, applicable laws, industry standards and practices and custom and usage.

73. Plaintiff's claims are barred in whole or in part by the terms of the applicable lease agreements, transfer orders, and/or division orders applicable to the Plaintiff's property.

74. Plaintiff has failed to state a claim for unjust enrichment.

75. Plaintiff cannot recover on its unjust enrichment claim under Oklahoma law, because it has an adequate remedy at law.

76. Plaintiff has failed to state a claim for breach of fiduciary duty and cannot state a valid claim for breach of fiduciary duty under Oklahoma law.

77. Plaintiff has failed to state a claim for conversion and cannot state a valid claim for conversion under Oklahoma law.

78. Plaintiff is barred, in whole or in part, by the Settlement Agreement in *Booth et al. v. Cross Timbers Oil Company*, Case No. CJ-98-16, District Court of Dewey County, State of Oklahoma.

79. XTO has properly accounted to its royalty interest payees and properly paid royalties on all products upon which it is obligated to do so under Oklahoma law.

80. XTO has fulfilled any and all obligations and duties, both legal and equitable, owed to Plaintiff.

81. Plaintiff's claims are barred in whole or in part by ratification.

82. XTO has paid all sums due.

83. XTO has acted in compliance with applicable state and federal laws, rules and regulations.

84. Plaintiff is not entitled to interest.

85. Plaintiff is not entitled to an accounting.

86. To the extent that the Plaintiff's claims are based on the breach of an implied covenant in an oil and gas lease, Plaintiff has waived those claims by not making a proper demand for performance of the covenant.

87. XTO is not liable to Plaintiff or any class member with whom XTO has had no contractual relationship arising from an oil and gas lease.

88. Gas produced from the class wells is marketable at the well.

89. Plaintiff is not entitled to royalty on any proceeds related to natural gas liquids.

90. Plaintiff's damage claims are speculative, remote and not reasonably foreseeable.

91. Plaintiff has failed to satisfy all conditions precedent to the filing of this lawsuit.

92. Plaintiff's alleged claims arise in contract and Plaintiff is therefore not entitled to exemplary or punitive damages.

93. The imposition of exemplary or punitive damages in this case would violate XTO's due process rights secured by the United States Constitution, the Oklahoma Constitution and the constitutions of other States whose interests are implicated by Plaintiff's allegations.

94. The punitive damages sought by Plaintiff are limited by constitutional due process, which requires that a person receive fair notice not only of the conduct that will subject him to punishment but also of the severity of the penalty that can be imposed.

95. XTO affirmatively pleads that any award of punitive or exemplary damages violates the Due Process Clause of the Fifth Amendment and Fourteenth Amendment to the United States Constitution, in addition to the due process clause of the Oklahoma Constitution, because:

- (a) XTO is without effective and adequate procedural protections against arbitrary or erroneous awards of such damages;
- (b) XTO is being denied the requirement of adequate notice of the type of conduct or elements of the offense that could warrant such an award or the amount of such damages that could be awarded;
- (c) such an award does not bear a close relationship to appropriate civil fines or penalties established by the legislature, or by administrative agencies under authority delegated by the legislature;
- (d) such an award would impermissibly discriminate against corporate defendants, including XTO, that are organized under the laws of other states and that maintain their principal places of business in other states;
- (e) evidence of XTO's net worth would invite the jury to award an arbitrary amount of punitive damages based on XTO's status as an industrial enterprise; and

- (f) XTO's conduct that is alleged to warrant punitive or exemplary damages is unrelated to Plaintiff's harm and, therefore, such damages are unlawfully intended to punish and deter XTO.

96. XTO affirmatively pleads that Plaintiff's claim for punitive damages is barred by the Due Process Clause and the Commerce Clause of the United States Constitution and by principles of federalism embodied in the United States Constitution, to the extent that any claim is based on conduct by XTO that occurred outside the State of Oklahoma.

97. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to each of the five reprehensibility factors set out in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 419, 123 S. Ct. 1513, 1521 (2003). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

98. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the constitutional factors that govern the permissible ratio of punitive damages to compensatory damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 1524 (2003) (holding that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process"). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to

permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

99. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the comparable civil fine that could be imposed on the XTO for the conduct in question. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 428 123 S. Ct. 1513, 1531 (2003) (holding that civil fines are more appropriate benchmarks for punitive damages than criminal penalties); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 583, 116 S. Ct. 1589, 1603 (1996) (holding that courts "should accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue."); (O'Connor, J., concurring in part and dissenting in part) (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301, 109 S. Ct. 2909, 2934 (1989)); *Clark v. Chrysler Corp.*, 436 F. 3d 594, 607 (6th Cir. 2006) (rejecting potential for punitive damages award as a basis for comparison in favor of potential civil penalties under applicable federal statute). Such specific jury instructions and specific findings of fact on the comparable civil penalties are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

100. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process

Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the direct relationship between XTO's conduct and the specific injury suffered by Plaintiff. *Phillip Morris USA v. Williams*, 549 U.S. 346, 355, 127 S. Ct. 1057, 1064 (2007) (holding that "the Due Process Clause requires States to provide assurance that juries are not asking the wrong question, *i.e.*, seeking, not simply to determine reprehensibility, but also to punish for harm caused strangers"); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423, 123 S. Ct. 1513, 1523 (2003) (holding that "[D]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under guise of the reprehensibility analysis."). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001), to ensure that the award is based solely on the conduct that caused specific injury to the plaintiff[s].

101. Plaintiff's claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of Oklahoma, because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the exclusion of all items of compensatory damage from the quantum of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426, 123 S. Ct. 1513, 1525 (2003) (noting that "[t]he compensatory damages for the injury suffered here . . . likely were based on a component that was duplicated in the punitive award"). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review required by

Cooper Indus. Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), to ensure that items of compensatory damages are not impermissibly ‘double-counted’ in the quantum of punitive damages.

102. XTO reserves the right to amend to plead additional affirmative defenses as discovery continues in this matter.

WHEREFORE, XTO prays that judgment be entered in its favor on Plaintiff’s claims and that XTO be awarded its costs, attorneys’ fees and such other and further relief as the Court deems just and proper.

Dated: August 1, 2011

Respectfully submitted,

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

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**ATTORNEYS FOR DEFENDANT,
XTO ENERGY INC.**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 1st day of August, 2011 I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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