

FILED

IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS

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KOLEE FROEMMEL  
CLERK OF THE DIST. COURT

*[Signature]*  
STEVENS COUNTY, KANSAS

JOHN STEPHEN ALFORD and  
ROBERT LARRABEE, individually and  
on behalf of Plaintiff Class, as more  
fully described than the First Amended  
Petition,

Plaintiffs

vs.

Case No. 93-C-37

PIONEER NATURAL RESOURCES  
USA, INC.,

Defendant

**JOURNAL ENTRY OF DECISION BY THE COURT UPON PLAINTIFFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

The Plaintiffs have filed their Motion for Partial Summary Judgment herein to which the Defendant has responded.

The Plaintiff Class claims that the Defendant has charged the Plaintiff class a prorata share of some of the expenses incurred by the Defendant to produce gas. The Plaintiffs' Motion for Partial Summary Judgment claims that there are no material facts in controversy concerning their claim against the Defendant. The Plaintiffs, by way of their Motion for Partial Summary Judgment, want judgment from this Court that the Defendant be prohibited from deducting expenses for costs of compression from royalty payments to the Plaintiff Class and an order requiring the Defendant submit an accounting which fully discloses the amount of deductions taken from royalty payments made to each member of the Plaintiff Class during the period covered by this law suit.

The facts of this case are well stated within the Plaintiffs' Motion for Partial Summary Judgment and there is no need of this Court restating those facts in this journal entry.

The Court has read and reviewed the brief submitted and the Larrabee Settlement Agreement and recognizes that the Larrabee Settlement Agreement applies to the MTR gas gathering system of the Defendant and not the TEMA gas gathering system of the Defendant.

At the heart of the Plaintiffs' Motion for Partial Summary Judgment is the contention that the Defendant is charging the royalty interest owners of the Plaintiff Class a proportionate share of the cost of compression, which the Plaintiffs claim is used to produce gas from the Defendant's wells in which the Plaintiff class hold a royalty interest.

The Plaintiff Class relies upon a series of Kansas Supreme Court decisions for its legal authority that the Defendant cannot deduct costs of compression utilized for production of gas from the royalty interest owner's payments.

Gilmore v. Superior Oil Company, 192 Kan. 388, Schupbach v. Continental Oil Company, 193 Kan. 401, and Steinberger v. Marithon Oil Company, 257 Kan. 315 are the primary authorities relied upon by the Plaintiffs.

The Defendant has responded with three separate defenses to the claim of the Plaintiff Class.

The Defendant does not agree with the legal conclusion the Plaintiff Class has drawn from the cases the Plaintiff Class has relied upon for the support of their proposition that any or all, compression charges are not allowable to be charged against the royalty owner class.

The Defendant first contends it is not necessarily the cost of compression which is not chargeable against a royalty interest share, it is the cost of production of gas that cannot be charged against the royalty owners' interest.

The next level of defense the Defendant has asserted is that the settlement agreement dated April 11, 1975, in Robert Larrabee, et. al. v. Mesa Petroleum Company, Case No. 4950 of the Stevens County District Court is an agreement that controls the issue of the sharing of the cost of compression utilized by the Defendant on its MTR gas gathering system.

It is clear from the facts of this case that there has been a substantial change in the nature and amount of compression that has been added to the gathering systems of the Defendant from and after April 11, 1975.

It is also clear from the facts of this case that the Larrabee Settlement Agreement does not apply to those members of the Plaintiff Class on the TEMA gathering system operated by the Defendant.

As a third level of defense, the Defendant asserts that the compression it has utilized in its gathering system is not an act of the production of gas, but is, instead, an act of transportation.

In the Larrabee Settlement Agreement, a proceeds less expenses method is used to determine deductions from royalty payments paid to the MTR subclass. There appears to be no dispute the Larrabee Settlement Agreement authorized the Defendant to charge royalty owners for the operation of the gathering system.

The real dispute that arises as to the MTR subclass is whether or not the lateral compression that has been installed upon the gas gathering system of the Defendant is necessary as a part of the operation of gathering as opposed to necessary for production.

The Plaintiffs' Motion for Partial Summary Judgment is denied. This Court finds there are several disputed material facts that exist in this case.

This Court cannot find as a matter of law that any or all costs of compression are costs of production. Conversely, this Court cannot find as a matter of law that any or all costs of compression are costs of transportation and not of production.

This Court believes the function or the purpose of the compression that has been applied to the gathering system of the Defendant determines whether the cost of that compression is a cost of production of gas or a cost of transportation of that gas.

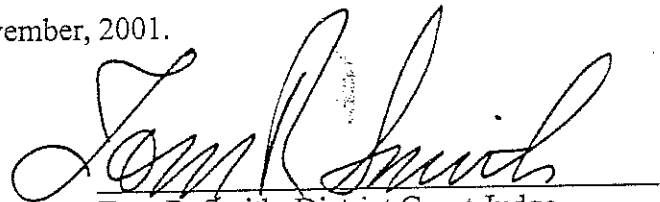
To this Court that is always a question of fact.

There is a further question of fact to this Court as to the intent of the parties in the Larrabee Settlement Agreement of 1975 as to whether or not the compression used and applied on the MTR line should be classified as a gathering expense or a production of gas expense pursuant to the terms of the agreement.

It is clear to this Court there are several questions of material fact involved in the Plaintiffs' claim and, therefore, the Plaintiffs' Motion for Partial Summary Judgment shall be and is hereby denied.

This is a final order of this Court without the necessity of further orders, journal entries of any nature.

Dated this 6th day of November, 2001.

  
Tom R. Smith, District Court Judge

## CERTIFICATE OF SERVICE

I, Renata McCulloch, hereby certify that I mailed a true and correct copy of the above Journal Entry by United States mail, postage prepaid and properly addressed on the 6<sup>th</sup> day of November, 2001 to:

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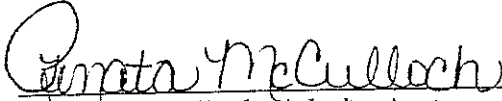
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