

DISTRICT COURT, LA PLATA COUNTY,  
COLORADO

Court Address: 1060 E. 2nd Ave., Durango, CO 81301  
Phone Number: (970)247-2304

**Plaintiff(s):** RICHARD PARRY, LINDA PARRY,  
EVELYN L. PAYNE, and DAVID G. GROBLEBE,  
individually and as representative Plaintiffs on behalf of  
persons similarly situated, (94CV111)

(Consolidated with other cases as 94CV105)

v.

**Defendant(s):** AMOCO PRODUCTION COMPANY, a  
Delaware corporation

**Attorney or Party Without Attorney:**

G.R. Miller

MCDANIEL, BATY, MILLER & ROBBINS, LLC

1040 Main Avenue

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**and of counsel:**

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▲ COURT USE ONLY ▲

Case Number: 94CV105

Div.:

Ctrm.:

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
REQUIRING AMOCO TO REFUND ALL DEDUCTIONS  
(EXCEPT TAXES) TAKEN FROM ROYALTY PAYMENTS UNDER  
INSTRUMENTS PLACED IN SUBCLASS 2**

On November 6, 2001, plaintiffs filed their Motion for Partial Summary Judgment Obligating Amoco to Refund Deductions (Except Taxes) Taken from Royalty Payments to Members of Subclass 2 Holding "Gross Proceeds" Leases (the "November 6 Motion"). Subsequent thereto, as they advised the Court during the status conference held herein on March 21, 2002, the parties entered into an agreement whereby, among other things, they partially resolved the issues raised by the November 6 Motion.<sup>1</sup> As indicated during the March 21 status conference, for the purpose of avoiding confusion in the record of these proceedings, plaintiffs have since filed their Withdrawal of Motion for Partial Summary Judgment Obligating Amoco to Refund Deductions (Except Taxes) Taken from Royalty Payments to Members of Subclass 2 Holding "Gross Proceeds" Leases ("Withdrawal of November 6 Motion").

Consistent with the statement set forth in the Withdrawal of November 6 Motion, plaintiffs are now reasserting their motion with regard to deductions taken by Amoco from royalty payments made to members of Subclass 2 holding pure "gross proceeds" leases subsequent to the effective date of *Rogers*, which claims were not resolved by the partial settlement. In addition, plaintiffs seek partial summary judgment against Amoco as to all deductions taken from royalty payments under other types of instruments placed in Subclass 2,<sup>2</sup> including but not limited the following:<sup>3</sup>

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<sup>1</sup> Documentation of the agreement partially resolving the November 6 Motion will be presented to the Court in the near future. Among other things, the Court will be asked to approve the form of notice to be given to those class members affected by the partial settlement and to schedule a hearing to determine whether such agreement should be approved and to allow reasonable fees and expenses associated therewith.

<sup>2</sup> The 22 non-gross proceeds lease forms are attached hereto, and Plaintiffs will supplement this motion with a copy of the applicable non-gross proceeds overriding royalty forms together with a summary of the applicable royalty provisions.

<sup>3</sup> As previously stated, plaintiffs claim for wrongful deductions is limited to expenses incurred between the wellhead and the inlet to the interstate transmission pipelines. Plaintiffs are not asserting any claim with regard to any expenses incurred by Amoco to transport the gas on transmission pipelines.

**Bates No.:**                      **Royalty Provision**

1) AL09033 - AL09038: "Lessee shall deliver free of all costs, expenses and taxes, including ad valorem taxes and excepting gross production taxes, to Lessor, or to the credit of Lessor, as royalty one-fourth(1/4) of all oil, gas or any of the constituent elements thereof which may be attributable to the leased premises, from the field or other type of separators, or from a plant or plants, whether or not located on the leased premises."

2) AL09124 - AL09125: "[T]here shall be no deductions from the value of Lessor's royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter to market such gas."

3) AL08636-AL08637: "One-fourth (1/4) of the proceeds of the sale or if no sale, of the market value at the well, of all gas and casinghead gas produced and saved from the lease acreage, which shall be paid to the Lessor free of all cost and expense, except taxes on production."

4) AL07596-AL07598 & AL08160-AL08163: "[R]oyalties shall be calculated and valued in the same manner as royalties payable to the United States under federal oil and gas leases..."

5) AL090726-AL09727: "Lessee agrees that all royalties accruing under this lease shall be paid without deduction for cost of producing, gathering, storing, separating, treating, dehydrating, compression, processing, transporting, and otherwise making the oil, gas and other products produced thereunder ready for sale or use."

6) AL05644-AL05646: "Royalties on oil and gas payable to lessor hereunder shall be free and clear of transportation, compression and processing costs provided that any extra transportation incurred by delivery, at the direction of the lessor, of lessor's share of oil and/or gas to a pipe line other than the pipe line to which lessee connects its wells shall be charged to lessor."

7) AL07870-AL07872: "[R]oyalties to be paid by Lessee hereunder shall be paid free of all costs (excluding taxes), including but not limited to costs incurred for transporting, dehydrating, compressing, processing, treating or otherwise marketing the production or rendering the production capable of being marketed."

8) AL01297-AL01298: "[T]here shall be no deductions from the value of Lessor's royalty by reason of any required processing, cost of dehydration, compression, transportation, or other matter to market such gas."

It is undisputed that the royalty payments being received by the members of Subclass 2 covered by this motion are reduced by expenses incurred by Amoco to gather, dehydrate, compress and treat the gas upon which such royalties are paid. Plaintiffs' Exhibit 17 (Amoco Letter of June 17, 1991).

In its orders categorizing subclass 2 instruments, the Court has previously held that Subclass 2 Instruments expressly preclude deductions of costs incurred for such purposes from Amoco royalty payments.

Based upon the arguments set forth by plaintiffs in their briefs in support of the November 6 motion, this Court should enter an order requiring Amoco to refund, with interest, all of the deductions taken by Amoco from royalty payments to members of Subclass 2 except taxes and fees incurred to transport such gas on transmission pipelines.

RESPECTFULLY SUBMITTED this 15th day of April, 2002

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By:



G.R. Miller - #8406  
*Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of day of April, 2002, I mailed a true and correct copy of the above and foregoing Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment Requiring Amoco to Refund All Deductions Taken from Royalty Payments Under Instruments Placed in SubClass 2, postage prepaid and properly addressed, to the following persons:

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