

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

HUGO SPIEKER, LAURALEE SPIEKER,)
STEVEN POWERS, PATTIE POWERS,)
CLINTIN FLOYD WASSON, JEANNE)
WASSON, KENNY CARTER,)
CHRISTINE CARTER, and JIMMY D.)
CARTER, individually and as)
representative plaintiffs on behalf of)
persons and concerns similarly situated,)
))
Plaintiffs,)
))
v.)
))
POSTROCK MIDCONTINENT)
PRODUCTION, LLC, successor by merger to)
QUEST CHEROKEE, LLC,)
a Delaware limited liability company)
))
Defendant.)
_____)

COMPLAINT-CLASS ACTION

Case No. 07-1225-EFM

SECOND AMENDED COMPLAINT

1. Plaintiffs Hugo and Lauralee Spieker and Steven and Pattie Powers are citizens of Kansas, and are residents of Neosho County, Kansas. Plaintiffs Kenny and Christine Carter, Jimmy D. Carter, and Clinton Floyd and Jeanne Wasson are citizens of Kansas, and are residents of Wilson County, Kansas.

2. Defendant PostRock MidContinent Production, LLC (“PostRock”), a wholly owned subsidiary of PostRock Energy Services Corporation, is a Delaware limited liability company with its principal place of business in Oklahoma and by reorganization and merger is the legal successor in interest to Quest Cherokee, LLC, which was a Delaware limited liability company with its principal place of business in Oklahoma and, duly qualified to do business in the State of Kansas, and at the time of the filing of this action, was transacting business in

Kansas, including in Allen, Greenwood, Wilson, Neosho, Labette, Montgomery, Woodson, Elk, and Chautauqua Counties.

3. Plaintiffs are or at relevant times have been owners of mineral interests in lands burdened by oil and gas leases owned in whole or in part by defendant. Plaintiffs' mineral interests encompass minerals located in the State of Kansas and generally within the Cherokee Basin, a zone primarily productive of coalbed natural gas, located in Allen, Chautauqua, Elk, Labette, Greenwood, Montgomery, Neosho, Wilson, and Woodson, and other Kansas counties.

4. This Court has jurisdiction over the parties and over the subject matter, pursuant to 28 U.S.C. §1332.

Class Action Allegations

5. Plaintiffs bring this action individually and as representative parties, pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of all members of a class ("plaintiff class"), which consists of all those persons described in paragraph 6. At least one of the members of the plaintiff class is a citizen of a state different from defendant.

6. The plaintiff class is defined as all persons or concerns currently or previously owning mineral interests and/or overriding royalty interests in lands located in the Kansas counties of Allen, Chautauqua, Elk, Labette, Greenwood, Montgomery, Neosho, Wilson, and Woodson, burdened by oil and gas leases now or previously owned in whole or in part by PostRock, including the instrumentalities of the United States of America and federally chartered corporations, such as, but not limited to, the Farm Credit Bank of Wichita, but excluding the United States of America insofar as its mineral interests are managed by the Mineral Management Service.

7. There are in excess of 500 persons or entities in the plaintiff class defined above, and the plaintiff class is so numerous that joinder of all the members would be impracticable.

The exact size of the plaintiff class and the identity of its members are ascertainable from the business records of defendant.

8. There are questions of law and fact common to members of the plaintiff class. The claims of the representative plaintiffs are typical of the claims of all members of plaintiff class. The representative plaintiffs will protect adequately and fairly the interests of all members of the plaintiff class. Plaintiffs have engaged as counsel the law firm of Fleeson, Gooing, Coulson & Kitch, L.L.C., whose lawyers have considerable experience in representing the interests of royalty owners in class actions.

9. The questions of law and fact common to all members of the plaintiff class predominate over questions, if any, affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of the controversy.

10. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate relief with respect to the class as a whole.

11. The common questions of law or fact involved in this case include: whether defendant has paid royalties to members of the plaintiff class on the basis of volumes of gas less than those measured at the wellheads and whether any valid legal basis for such reduction exists; whether defendant has made royalty payments to members of the plaintiff class in an untimely manner without paying interest thereon as required by Kansas law; whether defendant has reduced royalties by allocating marketing costs to royalty owners and whether any valid legal basis for such reduction exists; whether defendant has reduced royalties by deducting expenses incurred to put gas in marketable condition and whether any valid legal basis for such reduction exists; whether defendant has reduced royalties by deducting expenses incurred to produce gas and whether any valid legal basis for such reduction exists; whether defendant has reduced royalties by deducting amounts in excess of the actual and reasonable costs incurred; whether

defendant has failed to properly account for and pay royalties on oil removed from water produced from the plaintiff class' leases and collected and sold at defendant's water disposal facilities; whether defendant has complied with the Kansas Check Stub Statute, K.S.A. § 55-1620; and whether defendant has improperly deducted conservation fees imposed by the Kansas Corporation Commission pursuant to K.S.A 55-176 and K.A.R. 82-3-307 from royalty payments.

12. Defendant contracts with an affiliated company, believed to be Bluestem Pipeline, LLC, to provide services necessary to produce, gather, and put the gas involved in this case in marketable condition at centrally located facilities between the wellhead(s) and the inlet point(s) on the transmission pipeline owned by Southern Star Central Gas Pipeline, Inc., or other transmission pipelines, which services may include compression, processing, gathering, dehydration, treating, fractionation, transportation, and other costs associated with marketing production from the subject leases.

13. Defendant has failed to pay royalties to members of plaintiff class in accordance with the express and implied covenants of their leases and overriding royalty instruments, by failing to pay members of the plaintiff class on the basis of volumes of gas measured at the wellhead(s), but has instead reduced said volumes by ten percent or more and paid royalties on the basis of such reduced volumes, due to use of gas for fuel, line loss, shrinkage or otherwise.

14. Defendant has failed to make royalty payments to members of the plaintiff class within the time prescribed by K.S.A. 55-1615, and has failed to pay interest on such delayed payments, in violation of K.S.A. 55-1615.

15. In addition to coalbed methane gas, some oil is recovered from water produced from defendant's wells on the plaintiff class' leases, which is collected at defendant's water disposal facilities. The oil is then sold or otherwise disposed of by defendant. Defendant does

not account to members of the plaintiff class regarding such oil, and has not paid royalties to members of the plaintiff class for such oil.

16. Defendant has failed to pay royalties to members of plaintiff class in accordance with the express and implied covenants of their leases and overriding royalty instruments, by wrongfully allocating to members of plaintiff class a pro rata share of expenses incurred for the purposes of producing and/or putting the gas involved in this case into marketable condition ("marketing costs").

17. Upon information and belief, defendant has failed to pay royalties to members of plaintiff class in accordance with the express and implied covenants of their leases and overriding royalty instruments, by wrongfully allocating to members of the plaintiff class marketing costs that exceed the actual and reasonable costs of the services represented.

18. Defendant has failed to pay royalties to members of plaintiff class in accordance with the express and implied covenants of their leases and overriding royalty instruments, by wrongfully allocating to members of the plaintiff class marketing costs that are not authorized by the express and implied terms of their leases and overriding royalty instruments.

19. In response to inquiries, defendant has asserted that it is entitled to share such marketing costs with members of the plaintiff class and to reduce their royalty payments accordingly. An actual controversy therefore exists between the parties regarding the propriety of such allocation and reduction, warranting declaratory relief.

20. By its conduct, defendant has breached its duties and obligations (both express and implied) arising under the aforementioned leases and overriding royalty instruments, including but not limited to the following:

(a) By means of its practice of paying royalties on the basis of reduced volumes, rather than on the volumes of gas measured at the wellheads, defendant has

wrongfully reduced royalty payments to members of the plaintiff class and has thereby breached its obligation to fairly and accurately account with fidelity to members of the plaintiff class; and

(b) By means of its practice of making untimely royalty payments, without paying interest thereon, defendant has violated K.S.A. 55-1615 and has wrongfully retained the use of and converted funds belonging to members of the plaintiff class; and

(c) By means of its allocation of expenses in excess of the actual costs of the services represented, defendant has wrongfully reduced royalty payments to members of the plaintiff class, and has thereby breached its obligation to fairly and accurately account with fidelity to members of the plaintiff class; and

(d) By means of its allocation of costs associated with the production of the effluent stream, defendant has wrongfully reduced royalty payments to members of the plaintiff class, and has thereby breached its duty to produce gas at its own expense; and

(e) By means of its allocation of marketing costs, defendant has wrongfully reduced royalty payments to members of the plaintiff class, and has thereby breached its duty to produce gas in a marketable condition at its own expense; and

(f) By failing to account and pay royalty to members of the plaintiff class for oil recovered from water produced from defendant's wells on the plaintiff class' leases and collected and sold at water disposal facilities, defendant has wrongfully breached its duty to fully, faithfully, and fairly account for all products and proceeds obtained as a result of operations conducted pursuant to the oil and gas leases and has failed to comply with the requirements of the Kansas Check Stub Statute, K.S.A. §55-1620; and

(g) By improperly deducting conservation fees from royalty and overriding royalty payments, defendant has breached its obligation to fairly and accurately account with fidelity to members of the plaintiff class.

21. As a result of defendant's breaches, it is not properly accounting for royalties to members of the plaintiff class, who are entitled to recover damages in the form of such improper deductions and unpaid royalties, plus interest.

22. Upon information and belief, the amount in controversy exceeds the sum of \$5 million, exclusive of interest and costs.

WHEREFORE, plaintiffs, individually and as the representatives of the plaintiff class, pray:

1. For the judgment of this court declaring: (a) that defendant is prohibited from paying royalties on reduced volumes; (b) that defendant is prohibited from making untimely payments of royalty without paying interest thereon; (c) that defendant is prohibited from allocating marketing costs so as to reduce such royalty payments to which members of plaintiff class are entitled and from allocating any marketing costs in excess of the actual and reasonable costs of the services; (d) that defendant is prohibited from selling and disposing of oil recovered from water produced on the plaintiff class' leases and collected at water disposal facilities without properly accounting to and paying members of the plaintiff class; and (f) that defendant is prohibited from deducting conservation fees from royalty payments; and for an order (i) permanently prohibiting defendant from calculating and paying royalty payments in such a manner or in any other manner contrary to its duties under Kansas law, and (ii) requiring defendant to henceforth calculate and make royalty payments in accordance with such duties.

2. For an Order requiring defendant to file an accounting with the Court in which it identifies the amount of such monetary and volumetric deductions charged to the account of each

member of the plaintiff class and to deposit such amounts, plus prejudgment interest, and interest under K.S.A. 55-1615, into the registry of the Court, so that proper and timely distribution thereof can be made in accordance with further orders of the Court;

3. For an Order requiring defendant to file an accounting with the Court in which it identifies the amount of all oil collected at water disposal facilities, and the value of all proceeds and benefits received therefrom;

4. For an Order requiring defendant to file an accounting with Court in which it identifies the amount of the conservation fees deducted from payments to members of the plaintiff class; and

5. For the costs of this action, for reasonable attorney fees under K.S.A. 55-1617, and for such other and further relief which the Court deems just, proper, and equitable.

Respectfully submitted,

By /s/ David G. Seely
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DEMAND FOR JURY TRIAL

COME NOW the plaintiffs and plaintiff class and request a trial by jury on all claims so triable.

/s/ David G. Seely
David G. Seely

CERTIFICATE OF SERVICE

I certify that on November 29, 2011, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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