

## **EQT Tells 4th Circ. \$40M Royalty Dispute Must Be Shut Down**

By **Morgan Conley**

*Law360 (July 20, 2021, 7:15 PM EDT)* -- EQT Corp. urged the Fourth Circuit on Tuesday to put the kibosh on oil and gas royalty owners' \$40 million trespassing suit against the company in state court, arguing it was "nonsensical" for a lower court to find a decade-old settlement doesn't bar the state-court action.

In an opening brief, EQT told the circuit court it must reverse U.S. District Judge Joseph R. Goodwin's refusal to enjoin a group of royalty owners led by Marcus Huey from pursuing trespass claims in state court. The company told the appellate court that Judge Goodwin failed to uphold settled precedent that a state court action can't proceed if it conflicts with the terms of a settlement approved by a federal court.

"If not reversed, this decision will invite an overwhelming number of collateral attacks on federal class action settlements in state court proceedings," EQT said. "This will seriously undermine the class action mechanism and deter parties from entering into class action settlements."

EQT took particular issue with the lower court indulging the idea that the Huey plaintiffs' leases may have terminated prior to them accepting the terms of a 2010 deal that bars settlement class members from asserting claims released under the agreement. Even if the Huey plaintiffs' leases had terminated, they would still be included in the settlement class because it was defined as all those who "entered into" a flat-rate lease with EQT or its predecessors, the company argued.

The 2010 deal at issue in the present dispute ended class claims that EQT improperly paid royalties by deducting post-production expenses or paying a standard royalty amount annually regardless of what was produced under the lease. The contract was known as a "flat-rate lease" and the Huey plaintiffs were part of a flat-rate subclass, according to Judge Goodwin's opinion.

The Huey plaintiffs are now accusing EQT of trespassing after allegedly discovering that a lease it held had terminated as early as 1987 when production on a well lapsed. Without a lease, the company trespassed on the property years later to drill new wells, the owners allege in the state court action.

Those allegations are separate from the settlement agreement that resolved claims 'based upon the failure to pay proper royalty,'" according to Judge Goodwin's April order.

EQT fought Judge Goodwin's characterization of the Huey plaintiffs' state law claim as one for trespass as opposed to a royalty claim, saying that because the plaintiffs "pleaded their state court trespass theory within a contractual claim," it is a royalty claim that is barred by the prior settlement agreement.

EQT reawakened the long-dormant docket for the settled class action in September, urging the court to enforce the terms of the deal and block the Huey plaintiffs from pursuing over \$40 million in damages from the driller in state court, arguing the settlement bars claims EQT trespassed on their mineral estate.

The royalty owners accuse EQT of making improper royalty payments and taking improper deductions for oil and gas produced under a lease in northern West Virginia. The state court suit includes claims of breach of contract and breach of contractual duty of good faith and fair dealing. It accuses EQT of trespassing on the royalty owners' mineral estate, alleging that a failure to "maintain operations going back to the 1980s" means the company forfeited the lease.

EQT told the court in past filings that it petitioned the state court to grant summary judgment in its favor on the claims related to the trespass allegations, informing the court that the class settlement bars the claims that the lease was terminated. The state court rejected EQT's motion for summary judgment in mid-August without explanation, the company said in the motion urging the federal court to enjoin the state court action.

EQT unsuccessfully sought to disqualify the state court judge overseeing the Huey matter, Judge David W. Hummel Jr. In April, the West Virginia high court refused to disqualify Judge Hummel from royalty disputes involving EQT, including the Huey matter.

The ruling shut down the company's claims that the judge isn't impartial because he has a financial stake in oil and gas interests in the county he presides over. After reviewing the evidence EQT submitted to support its allegations against Judge Hummel, the Supreme Court of Appeals determined that "a conflict of interest does not exist and that Judge Hummel's disqualification is not warranted," according to an order signed by Chief Justice Evan H. Jenkins.

Counsel for EQT and the Huey plaintiffs didn't immediately respond to requests for comment Tuesday.

The royalty owners are represented by John F. McCuskey and J. Robert Russell of Shuman McCuskey Slicer PLLC.

EQT is represented by David Dehoney and Lauren Varnado of McKool Smith PC and Jennifer Hicks of Babst Calland Clements & Zomnir PC.

The suit is *Marcus Huey v. Equitable Production Co.*, case number 21-1614, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Bruce Goldman.