

EQT Says \$53M Deal Bars W.Va. Leaseholders' Royalty Claims

By **Bill Wichert**

Law360 (August 13, 2021, 5:43 PM EDT) -- EQT Production Co. has called on a West Virginia federal court to block gas leaseholders from going after the business in state court for allegedly shorting them on royalties, arguing that such claims are barred under a \$53.5 million class action settlement over similar allegations.

Pittsburgh-based EQT on Thursday asked U.S. District Judge John Preston Bailey to stop four lessors from pursuing their royalty claims in a state court lawsuit they filed last year against the company and related entities, saying they are prohibited from doing so under a permanent injunction the judge entered in a 2019 final order with respect to the settlement.

The four individuals behind the state suit in Ritchie County, West Virginia — Diana L. Weiss, Mahlon F. Harris, and Philip K. and Timothy A. Williams, collectively referred to as the Williams plaintiffs — are class members bound by the agreement after having failed to opt out of the deal, EQT said in a brief on its motion seeking to enforce the final order.

"The court should enforce its injunction against the Williams plaintiffs because they are settlement participants who received proper notice of the settlement agreement and are attempting to assert gas royalty claims in the Ritchie County litigation that were settled, released, and enjoined by this court," EQT said.

The class action, which was originally filed in 2013 by the so-called Hamric plaintiffs, dealt with allegations that EQT made improper deductions from royalties paid to West Virginia gas leaseholders. Under the settlement, EQT agreed to pay more than \$50 million to the class and pay future royalties based on a certain methodology, according to Thursday's brief.

In exchange for those terms — which have benefited the Williams plaintiffs — participating class members "released" such royalty claims, the brief states. Judge Bailey in July 2019 entered the final order approving the settlement and barring those claims from class members who did not opt out of the agreement.

The order stated that "all participating class members shall be and are hereby barred and enjoined from asserting royalty claims against any party released under the subject settlement agreement."

About a year later, the Williams plaintiffs launched the state court lawsuit, "asserting the exact claims this court 'barred and enjoined' in its final judgment," according to EQT's brief.

The leaseholders have suggested that the final order did not preclude their royalty claims since they alleged they did not receive notice of the class action and thus did not have a chance to opt out of the settlement, court documents state.

For example, in a footnote in their complaint, the plaintiffs said, "EQT defendants failed to provide the claims administrator with adequate client information of plaintiffs; therefore, plaintiffs did not receive notice of their inclusion in the class action."

But EQT on Thursday countered that the plaintiffs received "proper notice" of the agreement.

Under the notice plan approved by Judge Bailey, "notice by publication," such as in newspapers across West Virginia, was permitted for class members whose addresses were unknown, EQT said. The judge approved that method for 1,141 class members who "were not mailed actual notices" and did not exclude them from the settlement class, EQT said.

"Receipt of an actual notice in the mail by each class participant was not required by this court's notice plan, was not a prerequisite to a class participant's inclusion in the settlement class, and was not required by the black-letter law governing due process and Rule 23 notice requirements [under the Federal Rules of Civil Procedure]," EQT said.

EQT attorney Lauren W. Varnado of McKool Smith PC told Law360 on Friday in a statement, "EQT paid over \$50 million to settle claims on a classwide basis in exchange for a full and final release. Plaintiffs in the Ritchie County litigation are now trying to relitigate virtually identical claims to those settled, and attempting to sidestep the classwide settlement and release."

"The court specifically established notice procedures meeting the standards of FRCP 23, and those procedures were determined by the court to have been met. Where courts certify a class and approve a classwide settlement under FRCP 23, the settlement obligations must be enforced," Varnado added.

Counsel for the Williams plaintiffs in the state court lawsuit did not immediately respond to a request for comment Friday.

EQT is represented by Jennifer J. Hicks and Mark K. Dausch of Babst Calland Clements and Zomnir PC and Lauren W. Varnado and David R. Dehoney of McKool Smith PC.

The Williams plaintiffs are represented in the state lawsuit by Scott A. Windom and Rodney C. Windom of Windom Law Offices PLLC.

The case is The Kay Co. LLC et al. v. EQT Production Co. et al., case number 1:13-cv-00151, in the U.S. District Court for the Northern District of West Virginia.

--Editing by Daniel King.