

## **Judge Says \$53M Deal Bars W.Va. Royalty Claims Against EQT**

By **Morgan Conley**

*Law360 (September 14, 2021, 9:18 PM EDT)* -- A West Virginia federal court has sided with EQT Corp. and agreed to block gas leaseholders from going after the business in state court for allegedly shorting them on royalties, agreeing the royalty owners are bound by a \$53.5 million class action settlement that resolved similar allegations.

U.S. District Judge John Preston Bailey granted EQT's request and enforced a permanent injunction entered alongside a 2019 order finalizing a \$53.5 million settlement between the energy company and tens of thousands of royalty owners. Judge Bailey said 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 barred under the 2019 order from pursuing their gas royalty claims in state court because they were class members who never opted out of the deal.

The Williams plaintiffs had attempted to argue they were not notified of the previous settlement and are therefore not subject to its terms. But Judge Bailey said due process only requires news of the settlement to be distributed in such a way that it is reasonably likely all class members will be notified, "not that it actually succeeds in reaching every individual class member."

Judge Bailey said that based on his own review of the settlement notification process, efforts to spread the word about the agreement were adequate. Consequently, the Williams plaintiffs received sufficient and proper notice of the settlement agreement under the law and are bound by the court's 2019 order.

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 court filings.

In exchange for those terms — which have benefited the Williams plaintiffs — participating class members "released" such royalty claims, Judge Bailey said. The court's July 2019 final order approved the settlement and barred future claims from class members who did not opt out of the 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 August brief.

In addition to bringing claims for underpaid gas royalties, the Williams plaintiffs also accused EQT in the state court action of not properly compensating them for natural gas liquids gleaned from gas produced

under their leases. Those claims aren't barred by the 2019 settlement and the Williams plaintiffs "can continue to prosecute those claims in the Ritchie County litigation," according to Tuesday's opinion.

Last month, the state court judge overseeing the Ritchie County dispute, Twenty-Third Judicial Circuit Judge Michael Lorensen, ruled that a state law prohibiting the deduction of post-production costs from oil and gas royalties can't be applied retroactively to wells permitted before the amended law went into effect.

That ruling means that while the Williams plaintiffs' remaining claims alleging they were underpaid for natural gas liquid can proceed, their allegations that EQT's past method for calculating payments for the liquids was unlawful can only apply to wells in Ritchie County permitted after May 31, 2018, the day the changes to the law went live.

The 2019 settlement agreement also set certain parameters on what claims related to natural gas liquids and liquid hydrocarbons can be pursued and how royalty owners should be compensated for liquids going forward, further limiting the claims that can proceed in state court, according to court filings.

Counsel for the Williams plaintiffs didn't immediately respond to a request for comment Tuesday.

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 by Scott A. 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 Janice Carter Brown.