

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,)

)

)

Plaintiff,)

)

v.)

Case No. 6:17-cv-00336-KEW

)

(Removed from District Court of

NEWFIELD EXPLORATION)

Atoka County, State of Oklahoma,

MID-CONTINENT INC.,)

Case No. CJ-17-45)

)

Defendant.)

)

DECLARATION OF MEDIATOR DICK WATT

I, DICK WATT, upon personal knowledge and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was selected by the parties to mediate the above-entitled action and did so as an independent mediator. The mediation resulted in a settlement.

2. While the mediation process is confidential, the parties have authorized me to inform the Court of the matters set forth below, to be used in support of Plaintiff's Motion for Final Approval of Class Settlement.

3. My statements and those of the parties during the mediation are subject to a confidentiality agreement, and I do not intend to waive that agreement. I make this Declaration based on personal knowledge and am competent to so testify.

QUALIFICATIONS

4. I have practiced law in Texas since my admission to the Texas bar in 1972, after completion of both my undergraduate and legal education at The University of Texas at Austin. My practice emphasizes general civil litigation, oil and gas law, and oil and gas litigation,

including extensive trial and appellate work. In oil and gas matters, I have represented clients in all phases of the upstream and mid-stream exploration, development, and production sector, and besides representing parties in these areas, I have also served as both an arbitrator and a mediator in numerous energy-related matters. Prior to being a co-founder of WattThompson's predecessor firm in 2001, I was a founding partner of the Houston firm of Watt, White & Craig, and later maintained a solo practice in Houston from 1991. In 2019, I became of counsel with Pierce & O'Neill. I continue to remain active in oil and gas activities.

5. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

6. As explained herein, based on my experience as a mediator and arbitrator, it is my opinion that the Settlement in this case is fair, reasonable, and adequate.

THE SETTLEMENT PROCESS WAS THOROUGH, FAIR, AND ARM'S-LENGTH

7. Before the mediation, the parties provided to me and exchanged with each other extensive, confidential legal briefing regarding class certification, merits and damages issues supported by evidence and expert opinions. Based on these submissions and discussions during the mediation, I concluded that Class Counsel had performed a thorough examination of the factual discovery and payment data and, with the aid of experts, analyzed it to determine appropriate case valuations. Class Counsel was current and well informed on the law and provided legal research and analysis of Oklahoma law, federal law, and the law of other states. And, Defendant was cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case, and counsel for Defendant had performed considerable work in preparation for the mediation.

8. The mediation occurred at the offices of Yetter Coleman in Houston, Texas on June 26, 2019. Plaintiff and Class Representative, Robert Abernathy of Chieftain Royalty

Company, attended in-person, along with his counsel, Robert Barnes, Patranell Lewis, Emily Kitch, Pat Ryan, Jason Ryan, Paula Jantzen, and Jeff Angelovich. Defendant attended through its counsel, Collin Cox and Robert Woods and Director of Legal Services for Newfield/Encana, Jung Lee.

9. At the beginning of the mediation session, I asked detailed questions of both sides to expose their strengths and weaknesses, as well as to clarify where substantial disputes on class certification, liability, damages, and certain defenses still existed. The parties were cooperative and professional throughout this process.

10. The parties were not able to reach a resolution on June 26. However, the parties continued to work together through me to resolve this matter and were ultimately able to reach an agreement in principle in August 2019.

11. After presiding over the mediation process in this case, I am convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiations conducted in good faith. There was no collusion between the parties.

THE \$19.5 MILLION CASH SETTLEMENT AND ESTIMATED \$12 MILLION FUTURE BENEFIT IS FAIR, REASONABLE AND ADEQUATE

12. The parties exchanged massive amounts of data for experts to analyze. However, considerable differences continued to exist between the parties on liability, damages, and statute of limitations.

13. For example, the parties presented opposing, good faith arguments in separate sessions explaining each side's respective views of Defendant liability under Oklahoma oil and gas law and how to pay statutory interest on certain types of payments. The parties also disagreed about whether and to what extent Defendant was the responsible party for certain late payments that occurred during the relevant time period. An adverse ruling on these issues would

be devastating to Plaintiff's case.

14. Prior to the Settlement, there were pending litigation issues, including outstanding discovery disputes, that could have long delayed the resolution of the case. And, the dispute settled prior to class certification, which can often be a substantial hurdle for plaintiffs. Further, following certification, Class Representative and Class Counsel would still have been required to file, respond to, and win motions for summary judgment and ultimately succeed at trial—all for an unknowable amount of money, if any, to be awarded by an unknown jury.

15. Throughout the mediation process, I developed an understanding of the dispute, the respective positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal.

16. Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and at the mediation, the rigor of the negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits achieved in the Settlement, I believe that the terms of the \$19.5 million cash settlement are fair, adequate, reasonable and in the best interests of the Class. Moreover, the Settlement goes even further by requiring Defendant to implement new procedures and policies with respect to payment of statutory interest on late royalty payment. This is an outstanding result. It is my understanding that this change to Defendant's interest-payment practices confers an additional estimated \$12 million in present value, according to Plaintiff's experts.

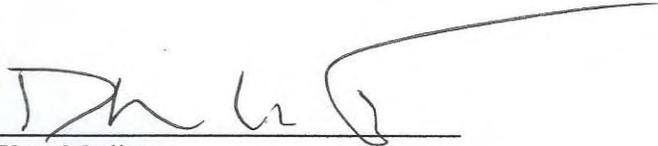
17. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation session, as well as from my numerous discussions with them, that Class Counsel performed a thorough examination of the documents and data produced in

this litigation. It is also my opinion that Class Counsel performed substantial work and effort in preparing their case for mediation and in presenting their claims in such a way to produce a valuable settlement for the Class.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Dated this 31st day of January 2020.



Dick Watt, Mediator



Dick Watt

Dick Watt has practiced law in Texas since his admission to the Texas bar in 1972, after completion of both his undergraduate and legal education at The University of Texas at Austin. Mr. Watt's practice emphasizes general civil litigation, oil and gas law, and oil and gas litigation, including extensive trial and appellate work. In oil and gas matters, he has represented clients in all phases of the upstream and mid-stream exploration, development, and production sector, and besides representing parties in these areas, has also served as both an arbitrator and a mediator in numerous energy-related matters. Prior to being a co-founder of WattThompson's predecessor Firm in 2001, Mr. Watt was a founding partner of the Houston firm of Watt, White & Craig, and later maintained a solo practice in Houston from 1991. In 2019, he became of counsel with Pierce & O'Neill. Dick is also active in ranching and oil and gas activities.

Representative Experience

- Served both on arbitration panels and representing clients before arbitration panels in arbitrations involving Joint Operating Agreements, Exploration Agreements, gas contracts, gas plants, offshore oil and gas facilities, and similar oil and gas contracts and joint ventures
- Served as a mediator in numerous disputes, mostly related to Energy, Oil and Gas or Real Estate
- Representation of party in arbitration over pipeline construction contract in the Arabian Sea
- Disputes over contracts and production sharing agreements in the Gulf of Guinea offshore West Africa
- Defense of independent oil company against fraud and theft of trade secret claims
- Representation of major oil company with regard to OCSLA lease interpretation
- Representation of royalty owners in class action regarding crude oil pricing
- Representation of royalty owners in class action regarding royalties on natural gas

- Representation of pipeline company in acquisition of easements and condemnation claims
- Representation of pipeline company in defense of water claims by water rights owners
- Representation of landowners against pipeline companies in eminent domain proceedings
- Defense of independent producer against class action claims asserted by property owners claiming damages to homes resulting from seismic shoot in urban area
- Representation of producers in take-or-pay litigation against pipeline companies
- Served as arbitrator in dispute between oil companies concerning exploration agreement
- Representation of royalty owners in development claim against lessee operator
- Defense of oil and gas company against royalty owner development claims
- Defense of oil and gas company against royalty owner drainage claims
- Representation of working interest owners in dispute over terms of acquisition agreement
- Defense of independent oil company over royalty owner fraud claims
- Arbitration in dispute between parties over construction of operating agreement
- Defense of oil company against royalty owner concerning lease terms
- Representation of bank trust company in dispute with trust beneficiaries over oil and gas royalty claims
- Representation of mineral owners under Padre Island National Seashore against National Park Service in multiple matters
- Representation of parties in probate proceedings involving duties of trustee and executor
- Arbitration of dispute between partners of a large law firm regarding provisions of the Partnership Agreement
- Representation of parties in will contest involving significant oil and gas assets
- Representation of drilling contractor against manufacturer of weight indicator on drilling rig

- Representation of large MLP pipeline company in defense of class action by shareholders

Practice Areas

- Commercial Disputes Litigation
- Arbitrations & Mediation
- Energy Litigation

Awards & Recognition

- Recipient of the 2014 Ernest E. Smith Lifetime Achievement Award by the Texas Journal of Oil, Gas and Energy Law of the University of Texas School of Law
- “Texas Super Lawyer,” Energy & Natural Resources Law and Business Litigation Law, 2004-2019 as recognized by Thomson Reuters and published in Texas Monthly
- Selected as one of five finalists for the 2012 Texas Lawyer Go-To Guide in Energy Law
- Former Co-Chair, Texas Oil, Gas & Energy Resources Law Section Pattern Jury Charge Project, and currently member of State Bar of Texas Oil & Gas Pattern Jury Charge Committee
- 2011 Chambers USA America's Leading Lawyer for Business, focusing on both general civil litigation and oil & gas litigation
- The Best Lawyers in America, selected by peers as one of Texas Best Lawyers in Natural Resources Law and Oil & Gas Law, as published by U.S. News and World Report, 2008-2019
- The Best Lawyers in America, voted “Houston Natural Resources Lawyer of the Year,” as published by U.S. News and World Report, 2010
- Chair of the State Bar of Texas Oil, Gas and Energy Resources Law Section for 2007-2008
- Martindale-Hubbell AV Preeminent Rating - The Highest Possible Rating from Martindale-Hubbell 1983-2019

Memberships

- Texas Bar Association
- Houston Bar Association
- American Bar Association

Selected Speeches & Publications

- Author: *Oil and Water – Do They Mix On the Surface? An Analysis and Critique of the Accommodation Doctrine and Coyote Lake Ranch, LLC v. The City of Lubbock*. State Bar of Texas, Oil, Gas and Energy Resources Law Section Report. Volume 41, Number 3. Spring 2017
- Author: *Commentary on Jones v. Killingsworth by Dick Watt*. Landmarks of a Century in Oil and Gas Law – Twenty Cases That Shaped Oil and Gas Jurisprudence, compiled by The Oil, Gas and Energy Resources Law Section of the State Bar of Texas, 2017
- Author/Speaker: *Royalty Issues and Decisions*, State Bar of Texas 34th Annual Advanced Oil, Gas & Energy Resources Law Course, September 29-30, 2016
- Author/Panelists: *Panel Discussion: Recent Developments Involving the Conflicting Rights of Mineral Owners and Surface Owners*, 42nd Annual Ernest E. Smith Oil, Gas and Mineral Law Institute, April 15, 2016
- Author/Speaker: *Mediating Oil and Gas Disputes in Texas* for the State Bar of Texas, Oil and Gas Disputes 2015, January 8-9, 2015
- Author/Speaker: *Flashpoints in Joint Operating Agreements* for the Institute for Energy Law, The Center for American and International Law, 9th Annual Energy Litigation Conference, October 12, 2010
- Co-Author: *The Legal Principles Affecting Contractual Liabilities When Oil & Gas Properties Are Assigned*, 20th Annual Energy Law Institute, South Texas College of Law, November 8, 2007
- Author/Speaker: *Beyond the Standard Lease Form Selected Oil & Gas Lease Issues* for the Rocky Mountain Mineral Law Foundation, November 4-5, 2004
- Co-Author/Speaker: *Royalty Litigation in 2004 An Update and a Look Ahead* for the University of Texas School of Law Civil Litigation Conference, October 28-29, 2004
- Co-Author: *A Litigation Perspective: Selected Thoughts on the Express Negligence Doctrine, Exculpatory Clauses, and Indemnity in Joint Operating Agreements*. State Bar of Texas Oil, Gas and Energy Resources Law Section Report. Volume 26, Number 1. September 2001
- Author/Speaker: *Application of Discovery Rule In Oil and Gas Litigation: 1995 Update – The Plaintiffs’ Perspective* for State Bar of Texas, Advanced Oil, Gas and Mineral Law Course, September 21, 1995
- Co-Author/Speaker: *Drainage From A to Z* for State Bar of Texas, 12th Annual Advanced Oil, Gas and Mineral Law Institute, October 6-7, 1994

- Author/Speaker: *Judicial Process for Evaluating Producing and Non-Producing Oil and Gas Properties* for the Austin Geological Society and Travis County Bar Association and endorsed by the State Bar of Texas, Environmental Law Section, October 8, 1994
- Author/Speaker: *Marketing and Implied Covenant Litigation* for the State Bar of Texas, 11th Annual Advanced Oil, Gas and Mineral Law Course, October 14, 1993
- Author/Speaker: *Application of Discovery Rule in Oil and Gas Litigation* for the South Texas College of Law, 6th Annual Advanced Oil & Gas Institute, July 22, 1993
- Co-Author/Speaker: *To Share or Not To Share - Royalty Obligations Arising Out of Take-or-Pay or Similar Gas Contract Litigation* for the Southwestern Legal Foundation 42nd Annual Institute on Oil and Gas Law and Taxation, February 21, 1991
- Author/Speaker: *Sun v. Jackson: An Analysis of a Lessee's Obligations In Texas Under the Implied Covenant of Reasonable Development in 1990* for Houston Bar Association, Oil, Gas and Mineral Law Section, April 24, 1990

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Court Admissions

- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Western District of Texas
- U.S. District Court for the Northern District of Texas
- U.S. Court of Appeals for the Fifth Circuit

Education

- The University of Texas School of Law, Austin, Texas, 1972 J.D.
- The University of Texas at Austin, Texas, 1969 B.A.

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