

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHIEFTAIN ROYALTY COMPANY §
and JACK LANCET §

Plaintiffs, §

v. §

Case 5:11-cv-00212-R

QEP ENERGY COMPANY §
(including affiliated predecessors §
and successors), §

Defendant. §

STATE OF OKLAHOMA)
) ss.
COUNTY OF)

**DECLARATION OF ROBERT S. ABERNATHY ON BEHALF OF CHIEFTAIN ROYALTY
COMPANY**

I, ROBERT S. ABERNATHY, of lawful age, first being duly sworn upon oath,
and upon personal knowledge, state as follows:

1. I currently serve as the President of Chieftain Royalty Company
("Chieftain").

2. I am fully authorized to execute this affidavit on behalf of Chieftain and to
serve as Chieftain's representative in this matter.

3. Chieftain is one of the Named Plaintiffs and one of the Court-appointed
Class Representatives in the above-referenced action (the "Action"). I have personal
knowledge of the facts set forth in this Declaration based upon my personal involvement
in this matter and/or based on information provided to me by Class Counsel.

4. I, on behalf of Chieftain, respectfully submit this Declaration in support of final approval of the Stipulation and Agreement of Settlement. I am also submitting this Declaration in support of Class Counsel's application for an award of attorney's fees and reimbursement of expenses, and case contribution awards to Class Representatives.

5. By submitting this Declaration, neither I nor Chieftain waive any protections available to us under the attorney client privilege, work product privilege, or any other privileges we may have.

6. As a result of my examination of the Action and discussions with Class Counsel, Chieftain decided to join the Action against Defendant and to retain Barnes & Lewis LLP ("B&L") and Nix Patterson & Roach LLP ("NPR") (collectively "Class Counsel") as counsel to prosecute the Action. As part of that decision, Class Counsel and I discussed the responsibilities of serving as a Named Plaintiff and proposed Class Representative, and my commitment to fulfilling those responsibilities on behalf of Chieftain.

7. I, on behalf of Chieftain, retained B&L and NPR because I believed these firms possessed the requisite expertise in complex, nationwide litigation and had sufficient legal and financial resources to vigorously prosecute this Action on behalf of all Class Members against a well-funded and well-defended opponent. Based on my evaluation of this complex Action, the risks associated with litigating the Action, the potentially significant expenses Class Counsel could be required to incur and the high level representation to be provided by Class Counsel, Class Counsel and I agreed that Class Counsel would represent Chieftain on a contingency fee not to exceed 40%. At the



time this agreement was reached, I believed the ceiling of a 40% contingency fee to be at or below the market rate. Class Counsel and I executed a written agreement that Class Counsel could seek a fee of 40% of any gross recovery.

8. I, on behalf of Chieftain, have been informed, involved and active in the Action, from the decision to file the Petition, to producing documents, monitoring formal mediation sessions, and finally approving the terms of the Settlement. For example, I reviewed and approved all Complaints and drafts of other substantive pleadings prior to filing, and consistently received periodic status reports from Class Counsel. I also actively supervised and monitored Class Counsel's work in this case and participated in all significant decisions in the Action, including the decision to enter into the Settlement. I conferred with Class Counsel throughout the Action and was advised of all significant matters in the Action.

9. I understand that this Action was litigated for over two years, including extensive discovery and production (consisting of approximately 12 gigabytes, 30,300 files, and 782,000 pages of digital data); taking and defending multiple depositions; preparing expert reports; briefing and arguing class certification; accounting review and analysis; land and lease examination and analysis; engineering evaluation and analysis; consulting with and preparing expert witnesses; multiple formal mediation sessions over the course of several month; settlement negotiations; and damages modeling.

10. As part of the litigation of this Action, I, on behalf of Chieftain, produced documents in response to Defendant's discovery requests and interrogatories.

11. I was also involved in the formal mediation process. In 2012, I, on behalf

of Chieftain, agreed to mediation before Francis McGovern. Based on information provided to me and as stated in the Declaration of Mr. McGovern, it is my understanding that the mediation process was extensive and in total encompassed months of negotiations, including face-to-face mediations, numerous telephone calls, and the submission of extensive mediation statements and damages calculations. Class Counsel kept me informed of the status of settlement negotiations during the mediation process. Throughout the negotiation process, Class Counsel kept me informed of each development that occurred and sought and obtained approval to negotiate on behalf of the Class, Chieftain and Jack Lancet (the other Class Representative in the Action). Class Counsel acted at Chieftain's direction and with my approval in all respects. After the parties reached an agreement in principle to settle this matter, Class Counsel reported back to me to obtain final approval, which was granted.

12. I believe the mediation process resulted in an excellent settlement, which provides \$115,000,000 in cash, plus immediate binding changes in QEP's royalty payment methodology for the Class Leases that have an estimated present value of at least \$40,000,000, which I believe is a significant benefit to the Class.

13. I understand that these binding changes, which are spelled out in great detail in the Stipulation and Agreement of Settlement, consist of changes in QEP's fee-deduction and royalty-calculation policies with respect to the Class Leases and Class Force Pooled Royalty Interests. I also understand that these policy changes began for production occurring in March 2013, and will continue without limitation for the life of each well (and any future well on the Class Leases or on spacing units), regardless of

transfer or assignment from QEP to other oil and gas companies. Moreover, Chieftain has agreed to conduct a bi-annual audit of QEP's changes, at QEP's expense, to ensure that these changes are being provided and a provision by which any failure of QEP to provide such future benefits can be resolved by arbitration, at QEP's expense, in lieu of additional litigation.

14. Through Chieftain's involvement as one of the Class Representatives in this Action, as well as my frequent discussions with Class Counsel, I believe I understand the strengths and weaknesses of the Class' claims against Defendant in the Action. I am aware of the hurdles the Class would be required to overcome to prove liability and damages, and to recover damages in the event a judgment were obtained.

15. I believe that my understanding of the facts as they pertain to this litigation, as well as my extensive interaction with Class Counsel, enables me to recommend approval of the Settlement. I believe the Settlement is a substantial recovery for the Class under circumstances where it was possible that no recovery at all would be obtained.

16. Chieftain is very pleased with the efforts of Class Counsel who at all times conducted themselves with professionalism and diligence while effectively advocating the interests of the Class, Chieftain and Jack Lancet. I believe that without the skill of Class Counsel, this resolution would not have been achieved.

17. Class Counsel is collectively applying for an award of attorney's fees out of the total Settlement value, as well as reimbursement of litigation costs and expenses reasonably and necessarily incurred in successfully prosecuting the claims in this Action. Class Counsel negotiated the amount of their request with Chieftain prior to its entry into

the litigation and, as a result of their extensive, efficient and excellent work, I have approved Class Counsel's application for a fee award equal to one-third (33 and 1/3%) of the total Settlement value of \$155 million, which is less than the 40% Chieftain approved before entering the Action. Also, Chieftain approves Class Counsel's request for reimbursement of reasonable costs and expenses. In the Notice, Class Counsel stated that they would request expenses of no more than \$1,350,000. I understand that if the award is granted, attorney's fees plus interest and reimbursed expenses will be paid to Class Counsel out of the Gross Settlement Fund.

18. Chieftain supports this request for attorney's fees and expenses because it is consistent with, and actually lower than, Chieftain's negotiated fee agreement with Class Counsel and I have been pleased with the manner in which Counsel conducted the Action, and more importantly, with the results achieved. Based on the information provided to Chieftain, and my experience working with Class Counsel to date, I believe Class Counsel has litigated this Action in an efficient manner in light of the complexities of the Action and has incurred reasonable and necessary expenses. I have also received calls from several absent Class Members expressing their thanks and appreciation for the excellent results achieved with no objections to Class Counsel's request for attorney's fees or expenses.

19. While Chieftain will only recover its *pro rata* share of the Net Settlement Fund, both Chieftain and Jack Lancet, as Class Representatives, intend to seek case contribution awards for our representation of the Class, which will not exceed one-half of one percent (0.5%) of the Settlement Amount in the aggregate. I believe that such

awards are justified in this case. Not only has Chieftain been extensively involved in the prosecution and settlement of this case, as discussed in detail above, Chieftain also has agreed to continue its involvement in the case indefinitely by conducting bi-annual audits of QEP's royalty payments to ensure QEP's compliance with its new royalty payment methodology.


20. As set forth above, Chieftain actively and effectively fulfilled its obligations as a representative of the Class, complying with all demands placed on it during the prosecution and settlement of this Action. I reviewed draft pleadings and motions, responded to document requests and interrogatories, searched for and produced records and other responsive documents, reviewed filings, communicated regularly with Class Counsel, and was continuously involved in the litigation process. Based on these efforts and the benefits obtained for the Class, I submit that a case contribution award is fair and reasonable to compensate Chieftain for the time and expense incurred in order to obtain this Settlement on behalf of the Class.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge based on my personal experience in this matter, and the information known to and/or made available to me.

Handwritten signature or initials in the bottom right corner of the page.

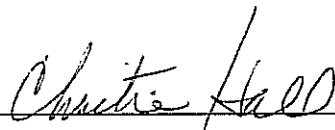
FURTHER AFFIANT SAYETH NOT.

Dated this 19 day of April, 2013.


Robert S. Abernathy
President of Chieftain Royalty Company

Subscribed and sworn to before me this 19 day of April, 2013.

(SEAL)


Notary Public

Commission Number 02016969
My Commission Expires 11/19/2014.



Other Documents

[5:11-cv-00212-R Chieftain Royalty Company v. QEP Energy Company](#)

U.S. District Court

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered by Beckworth, Bradley on 4/25/2013 at 10:23 AM CDT and filed on 4/25/2013

Case Name: Chieftain Royalty Company v. QEP Energy Company

Case Number: [5:11-cv-00212-R](#)

Filer: Chieftain Royalty Company

Document Number: [140](#)

Docket Text:

[DECLARATION by Chieftain Royalty Company Declaration of Robert S. Abernathy on Behalf of Chieftain Royalty Company. \(Beckworth, Bradley\)](#)

5:11-cv-00212-R Notice has been electronically mailed to:

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The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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