

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

JEFFRY S. VODENICHAR, DAVID M. KING, JR. and LEIGH V. KING, husband and wife, **JOSEPH B. DAVIS and LAUREN E. DAVIS**, husband and wife, **GROVE CITY COUNTRY CLUB**, and **RICHARD BROADHEAD**, individually and on behalf of all those similarly situated,

Plaintiffs,

No 2013-512

v.

HALCÓN ENERGY PROPERTIES, INC., MORASCYK & POLOCHAK, and CO-EXPRISE, INC., d/b/a **CX-Energy**,

Defendants.

FILED IN MERCER COUNTY
2016 MAR - 8 PM 2:35
RUTH A. BICE
PROTHONOTARY

PRELIMINARY APPROVAL ORDER

This matter is before the Court on the *Joint Motion for Preliminary Approval of Proposed Class Action Settlement* pursuant to Pa.R.Civ.P. 1710 in which the Court has been asked to give preliminary approval to a settlement entered into by plaintiffs and Defendant Halcon Energy Properties, Inc. (“Halcon”), through counsel, dated March 8, 2016, including documents executed pursuant thereto (“Settlement”), and to authorize certain actions pursuant to the Settlement and Pa.R.Civ.P. 1701 et seq.

This matter was filed on February 22, 2013 and has been comprehensively litigated before the Court since that time, thus providing a well-developed record. Plaintiffs’ general theory of their claims is that after obtaining oil and gas leases from the class members, Halcon decided that it would not pay the class members’ leases that were submitted under a Letter of Intent, instead using its capital for other transactions.

Although Halcon denies plaintiffs' allegations, it asserts that it wants to avoid the distraction, expense and unknown aspects of continued litigation (potentially for years including possible appeals) and thus, has entered into a Settlement with plaintiffs.

The Court having considered the entire record in this case, including the filings relating to class certification and preliminary approval, the Memorandum of Understanding and the arguments and representations of counsel, the Court finds that the requirements for preliminary approval have been met.

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

A. The Court does hereby preliminarily approve the Settlement finding it to be fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. In particular, the Court preliminarily approves, subject to further consideration at the Final Approval Hearing, the terms contained in the parties' Memorandum of Understanding as being fair and reasonable; said Memorandum of Understanding shall be filed separately and under seal.

B. The following class is preliminarily certified for purposes of settlement only (the "Class"):

All persons (1) who entered into a Landowner MarketPlace Agreement with CX-Energy and M&P relating to property located in Mercer County, Pennsylvania, (2) who executed an oil and gas lease and related documents with Halcón Energy Properties, Inc., (3) whose name was submitted to Halcón pursuant to ¶ 3 of the Halcón Agreement (as defined in the Amended Complaint), but (4) whose oil and gas lease was not paid by Halcón. Excluded from the class are claims arising from any oil and gas lease for which Halcón, within the time period permitted under the Halcón Agreement, gave written notice to CX-Energy or M&P asserting a Title Defect or "other Defect," except for any purported notice contained in the November 1, 2012 letter from David S. Elkouri to Joseph E. Morascyzk.

C. In addition to those excluded above, also excluded from the Class are those individuals and entities who timely and validly request to be excluded from the Class pursuant to notice to be subsequently approved by the Court, discussed below.

D. As discussed in more detail below, the Court finds and concludes that: (1) The members of the Class are so numerous that joinder of each member is impractical; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. The Court further finds that (5) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (6) a class action provides for the fair and efficient adjudication of this controversy, considering factors such as: (i) the minimal interests of members of the Class in individually controlling the prosecution of separate actions; (ii) the lack of any other litigation concerning the controversy already commenced by members of the Class in this action; (iii) the desirability of concentrating the litigation of the claims in this particular forum; and (iv) the lack of difficulties in the management of this class action. Class members' claims in this action are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Class members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Class members in individually controlling the litigation of their claims.

E. For purposes of this Settlement the Court finds that the Class consists of approximately 2,000 class members in Mercer County, Pennsylvania who executed approximately 1,400 oil and gas leases and have potential claims against Halcon relating thereto.

The joinder of all such class members in one action is clearly impractical, and the class members can be identified from the business records of defendants. As such, the numerosity criteria of Rule 1702(1) is satisfied.

F. This action involves at least the following questions that are common to all class members:

- (i) Whether Halcón breached the June 2012 Letter of Intent (the "LOI") when it rejected leases from the plaintiffs and class members and is liable for nonpayment of the bonuses;
- (ii) Whether Halcón had any discretionary right under the LOI to reject leases based upon the city, borough or township in which the land was located;
- (iii) Whether Halcón had a right to refuse to pay the class members based on its internal budget decisions unrelated to its obligations under the LOI;
- (iv) Whether Halcón acted uniformly in refusing to pay the class members based on its internal budgetary decisions unrelated to any provision in the LOI;
- (v) Whether Halcón acted honestly and in good faith and fair dealing;
- (vi) Whether by rejecting such leases, Halcón lost, waived or is estopped from asserting any right to inspect or to object based upon any purported Title Defect or "other Defect";
- (vii) The interpretation of the class members' rights under the LOI, including whether they are parties or third-party beneficiaries;
- (vi) Whether the LOI was an offer and the actions of class members in executing and executing the form leases and other documents constituted an acceptance;
- (vii) Whether Halcón accepted in advance all oil and gas leases submitted by class members, subject only to good title and the absence of "other Defects," when it entered into the LOI with CX-Energy and M&P, acting on behalf of class members;
- (viii) The measure of damages;
- (ix) Whether the lease documents CX-Energy and M&P provided to class members differed from the lease documents required by the LOI, and whether any such variation in the lease documents was material and justified Halcón's refusal to perform;

(x) Whether Halcón rejected oil and gas leases of plaintiffs because of any such variations in the lease documents, or rather, used any such late-discovered variation as a subterfuge to seek to avoid its obligations to class members;

(xi) Whether Halcón engaged in wanton and outrageous conduct when it attempted to obtain from CX-Energy and M&P releases or compromises of plaintiffs' and the class members' claims; and

(xii) Whether Halcón obtained a release of liability from CX-Energy and M&P for the class members and whether any such release is valid.

Such common questions of law and fact satisfy the criterion of Rule 1702(2). Common questions also predominate over any questions affecting only individual class members. Indeed, plaintiffs have established that the finder of fact could conclude that Halcon acted on grounds generally applicable to the Class as a whole.

G. The typicality requirement in Rule 1702(3) assures that the class representatives' overall position is sufficiently aligned with absent class members to ensure that the representative will advance all Class members' interests. *Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d at 30 (Pa. 2011); *Braun v. Wal-Mart Store, Inc.*, 24 A.3d 875, 894-895 (Pa. Super. 2011), *aff'd* 106 A.3d 656 (Pa. 2014). In other words, it ensures that there is no conflict of interest between the representative plaintiffs' legal theories and the interests of the class. It tests whether the representative plaintiffs' interests and theories "are so interrelated that the interests of the class members will be fairly represented in their absence." *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, at 158 n.13 (1982).

H. All representative plaintiffs and Class members share a common interest in establishing Halcon's alleged breach of contract and tortious conduct, and their claims are all based upon identical contractual provisions, facts and legal theories. No fact or legal argument necessary to establish the representatives' claims will in any manner undercut the other Class

members' claims, and no conflict exists for purposes of settlement. Accordingly, the typicality requirement of Rule 1702(3) is satisfied.

I. Plaintiffs' counsel are experienced and competent in complex litigation and class actions, and they have with dedication and competence protected and advanced the interests of the Class in the proceedings in this action to date. The representative plaintiffs have no conflicts of interest and have pursued this action vigorously. The adequacy of representation criteria in Rules 1702(4) and 1709 are satisfied.

J. This action relates to land situated in Mercer County. There are no likely difficulties in managing this action as a class action, and judicial economy will be furthered by certifying the Class because the Court likely would face a large number of new individual lawsuits from large landowners based on the allegations contained in the amended complaint if class certification were to be denied. Many class members, however, have claims too small to justify litigation, and they would be deprived of any recovery by the denial of class certification.

K. A class action provides a fair and efficient method of adjudicating this controversy, and the criteria in Rule 1702(5) and 1708 are satisfied.

L. The Court appoints Jeffrey S. Vodenichar, David M. King, Jr., Leigh V. King, Joseph B. Davis, Lauren E. Davis, Grove City Country Club and Michael Broadhead, executor of the Estate of Richard Broadhead as Class representatives, for purposes of Settlement, on behalf of all Class members.

M. The Court appoints David A. Borkovic as Lead Counsel for the Class; attorney Richard A. Finberg is hereby appointed Co-Lead Counsel for the Class; and attorneys David M. Cohen and John C. Butters are appointed Counsel for the Class. The Court finds them to be

experienced in class action litigation, professional, capable and qualified to serve as counsel for the Class.

N. The Court orders that all parties shall cooperate and within 14 days exchange information and data to identify each class member for purposes of providing notice pursuant to the preceding paragraph.

O. The Court orders that the parties shall present a plan of notice to the Court within 100 days of entry of this Order complying with Pa.R.Civ.P 1712 and providing that notice of the Final Approval Hearing be given, in the name of the Clerk of the Court, to Class members.

P. All applications for an award of attorneys' fees, reimbursement of expenses and class representative stipends shall be filed with the Court no later than twenty-one (21) days before the Final Approval Hearing scheduled below.

Q. The Court orders that Class members may serve written requests for exclusion by submitting a request for exclusion as provided in the notice to be approved by the Court. All individuals and entities that submit a valid and timely request for exclusion in the manner set forth in such notice, shall have no rights under the Settlement, shall not share in the distribution of the Settlement proceeds, and shall not be bound by the Settlement or any Final Order and Judgment approving the Settlement; provided that any such request for exclusion must be postmarked or received by the date specified in such notice, and in no event less than 14 days before the Final Approval Hearing scheduled below.

R. The Court orders that Class members may serve written objections to the Settlement and the application by Class counsel for attorneys' fees, reimbursement of expenses and class representative stipends. Class members may also appear and show cause, if he, she or it has any reason why the Settlement should not be approved as fair, reasonable and adequate, or

why a Final Order and Judgment should not be entered thereon, or, why attorneys' fees, expenses and class representative stipends should not be awarded; provided, however, no Class member shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Final Order and Judgment to be entered thereon approving the same, or, the attorneys' fees, expenses and stipends to class representatives, unless that person or entity has hand delivered or mailed a written objection and copies of any papers and brief in support thereof as specified in the notice to be approved by the Court, and postmarked or received by the date specified in such notice, and in no event less than 14 days before the Final Approval Hearing scheduled below.

S. Any Class member who does not request exclusion may enter an appearance in the action at his, her or its own expense and through counsel of his, her or its own choice. If he, she or it does not enter an appearance, he, she or it will be represented by counsel appointed by the Court for the Class herein.

T. All papers of the parties in support or opposition of final approval of the Settlement shall be filed with the Court and served by overnight mail or hand delivery on or before seven (7) days before the Final Approval Hearing.

U. The Court directs that a final approval hearing ("Final Approval Hearing") be held as specified in the Notice to Class Members as approved by this Court in Courtroom ____, Mercer County Courthouse, Mercer, Pennsylvania 16137 to rule: (i) whether the Settlement should be finally approved as fair, reasonable, adequate and in the best interests of the Class; (ii) whether the Settlement class should be finally certified; (iii) whether a Final Order and Judgment should be entered dismissing the action as against Halcon; (iv) on an award of attorneys' fees, reimbursement of expenses, class representative stipends or other charges; and (v) on such other

matters as may be appropriate in the implementation of this Settlement. The Court may adjourn the Final Approval Hearing or modify any of the dates set forth herein without further notice to the Class.

V. All Class members who do not request exclusion shall be bound by all orders, determinations and judgments in this action concerning the Settlement, whether favorable or unfavorable to Class members or any of them.

W. The Court orders that to receive benefits from the Settlement, Class Members must comply with the terms and conditions specified in the notice to be approved by the Court.

X. Pending final determination of whether the Settlement should be finally approved, the Court preliminarily bars and enjoins the institution and prosecution, by Class members who have not properly excluded themselves from the Class, of any claims against Halcon that are subject to a release agreed to by the parties and to be submitted to the Court for approval along with the form of notice.

Y. All Settlement funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court.

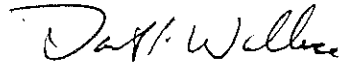
Z. Neither the Settlement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Halcon of the truth of any of the allegations in the complaint or of any liability, fault, or wrongdoing of any kind.

AA. The Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement or the enforcement thereof. The Court may approve the Settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to Class members.

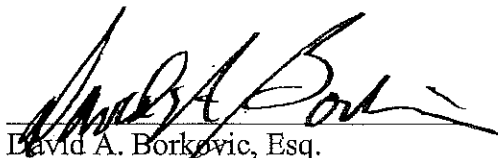
BB. Nothing herein shall be deemed as settlement, compromise or resolution of any and all claims by plaintiffs against defendants **MORASCYZK & POLOCHAK**, and **CO-EXPRISE, INC.**, d/b/a **CX-Energy**.

SO ORDERED, this 8th day of March, 2016.

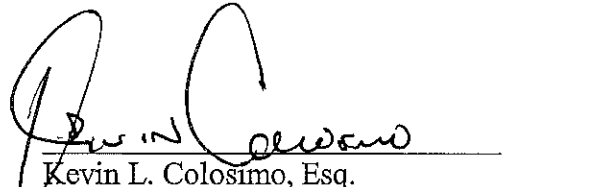
BY THE COURT:



Consented to By Plaintiffs and Halcon.



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