

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MONTANA LAND AND MINERAL
OWNERS ASSOCIATION, INC., ARNOLD
HOKANSON, LOU LUCKE, THE LUCKE
COMPANY, JULIE STRAUSER, CATHY
BESSETTE, HAROLD OLSON, DONALD
BOYCE and MARLA BOYCE,

Plaintiffs,

v.

DEVON ENERGY CORPORATION, DEVON
ENERGY PRODUCTION COMPANY, L.P.,
and DEVON GAS SERVICES, L.P.,

Defendants.

Case No. CV-05-30-H-RKS

**ORDER ON FINAL HEARING, FINAL CERTIFICATION OF THE
SETTLEMENT CLASS, AND FINAL APPROVAL OF SETTLEMENT
AGREEMENT AND RELEASE OF CLAIMS**

Pursuant to the Court's Order on Preliminary Certification of the Devon Settlement Class and the Notice of Proposed Settlement of Class Action ("Settlement Class Notice") sent to each Potential Settlement Class Member (as defined in the Settlement Agreement and Release of Claims), a final hearing on the reasonableness and fairness of the proposed settlement was held on August 22, 2007, in the U. S. District Court for the District of Montana, Helena Division. As required by the Order on Preliminary Certification, Class Counsel filed with the Court a Report on Status of Class Notice pursuant to Fed. R. Civ. P. 23(c)(2) ("Class Counsel's Report"). Class Counsel's Report confirms that (1) one objection was filed to the Class Settlement; (2) 1,896

potential class members remained as Settlement Class Members; and (3) 12 potential class members elected to opt-out of the Settlement. At the hearing, James H. Goetz and J. Devlan Geddes of Goetz, Gallik & Baldwin, P.C., John J. Mudd of Mudd Nelson P.C., Calvin T. Christian of Christian, Samson, Jones & Chisolm, PLLC, and Jamie S. Franklin of Meites, Mulder, Mollica & Glink represented the Plaintiffs and appeared as Class Counsel. Stanley T. Kaleczyc and Kimberly A. Beatty of Browning, Kaleczyc, Berry & Hoven, P.C., appeared on behalf of Defendants Devon Energy Corporation, Devon Energy Production Company, LP and Devon Gas Services, L.P. (collectively "Devon"). The Court reviewed Class Counsel Report, the materials filed in the matter including the materials comprising Class Counsel's Motion for Final Order, and considered the comments offered at the hearing.

Pursuant to Fed. R. Civ. P. 23 and 54, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The individual Plaintiffs filed a suit against Devon alleging individual claims and class action claims seeking, among other things, declaratory and compensatory relief. The Individual Plaintiffs sought certification of a class, including themselves, under Fed. R. Civ. P. 23(b)(2) for declaratory relief and a class under Fed.R.Civ.P.23(b)(3) for money damages. The Plaintiff Montana Land and Mineral Owners Association, Inc. (MLMOA) is a mutual benefits members organization incorporated in Montana and established in 1974. The MLMOA's members are oil and gas royalty owners in the state of Montana, but the MLMOA itself does not own any royalties nor is it entitled to any royalty payments or reporting documents from Devon.

As a Plaintiff in this matter, MLMOA sought declaratory relief as a representative organization.

2. Plaintiffs and Devon agreed to settle this action on terms memorialized in the Agreement for Settlement and Release of Claims executed by and between the parties (“Settlement Agreement”). The Settlement Agreement, without its exhibits, is attached to this Order as Exhibit 1 and incorporated fully herein.¹ All capitalized terms used in this Order and not defined herein shall have the meanings set forth in the Settlement Agreement. In the event of any conflict between the descriptions in these paragraphs and the more detailed terms of the Settlement Agreement, the Settlement Agreement shall govern.

3. The Court has jurisdiction and venue over this suit and the Settlement Class. Under Fed. R. Civ. P. 23(e), approval of this Court is required for any settlement and dismissal of this action.

Certification of the Settlement Class

4. The Settled Claims as defined in the Settlement Agreement all arise from the same nucleus of operative facts and form part of the same case or controversy as alleged against Devon in the Amended Complaint or threatened to be alleged against Devon so that all of the claims approved for settlement by this Order were or could have been asserted as class claims in this Action.

5. The Settlement Class Members are so numerous that joinder is impractical.

¹ The Exhibits to the Settlement Agreement were appended to Plaintiffs’ *Motion for Preliminary Approval of Classwide Settlement* (Docket No. 108).

6. There are questions of law and fact common to the Settlement Class Members and Plaintiffs.

7. The questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual members, and a settlement of Settlement Class Members' claims by a class action under Fed. R. Civ. P. 23 is superior to other available methods for the fair and effective settlement and adjudication of the controversy.

8. Plaintiffs' claims are typical of the Settlement Class Members' claims.

9. Settlement Class Members have no special interest in individually controlling the prosecution of separate actions.

10. Class Counsel is experienced and fully qualified.

11. Plaintiffs are adequate representatives of the Settlement Class and will fairly and adequately represent the interests of Settlement Class Members.

12. No significant difficulties are likely to be encountered in the management of the action as a class action for settlement purposes.

13. Exhibit 2 to this Order is a list of all members of the Potential Settlement Class. Those royalty payees who **have** filed timely notice of their request to be excluded from the Settlement Class are identified in Exhibit 2 to this Order as "Opt Outs" and, consequently, are specifically excluded from the Settlement Class, are not bound by this Order nor entitled to the benefits provided in this Order, and comprise the Opt-Out Claimants. The remaining members of the Potential Settlement Class who **have not** filed timely notice of their request to be excluded from the Settlement Class are set forth in Exhibit 2 to this Order and are not identified as "Opt Outs." The Court hereby certifies

as members of the Settlement Class those royalty payees set forth in Exhibit 2 to this Order who are not designated as “Opted Out.” The Opt-Out Claimants collectively do not exceed 5% of the Cash Settlement Amount.

Notice of Pendency of the Class Action Proposed Settlement and Hearing

14. Pursuant to the Order on Preliminary Certification of the Potential Settlement Class and Fed. R. Civ. P. 23(e), Class Counsel provided the Settlement Class Notice to all Potential Settlement Class Members listed on Exhibit B of the Settlement Agreement.

15. According to the Class Counsel’s Report, the Settlement Class Notice was sent via certified mail service to all Potential Settlement Class Members listed on Exhibit B of the Settlement Agreement. Class Counsel’s Report confirms that one objection was filed to the Class Settlement.

16. Reasonable and adequate notice of the certification of the Settlement Class and the settlement of claims of Settlement Class Members was given through sending of the Notice as approved in the Court’s Order on Preliminary Certification.

Approval of the Settlement Agreement

17. The proposed settlement as set forth in the Settlement Agreement was made in good faith.

18. The proposed settlement as set forth in the Settlement Agreement constitutes a fair, adequate and reasonable settlement of all Settled Claims.

19. This court finds after considering all the circumstances that the Settlement Agreement is fair and equitable and should be approved.

Reasonableness of Attorneys' Fee

20. No member of the Potential Settlement Class appeared at the time of the final hearing to object to the Petition for Fees and Costs. Further, counsel for the Defendants stated that Defendants had no objection to the Petition for Fees and Costs.

21. This court finds that Class Counsel achieved an excellent result for the Settlement Class.

22. This court finds that this case required significant outlays of time and resources for Class Counsel and was vigorously litigated by both sides.

23. This court finds that the legal issues in this case were issues of first impression in Montana and the level of complexity was high.

24. This court finds that the Settlement Class faced a significant risk of no recovery.

25. This court finds that some class member representatives searched for a period of years to secure counsel for this matter.

26. This court finds the one-third contingency fee agreement between class representatives and Class Counsel to be reasonable.

27. This court finds that Class Counsel's performance generated substantial benefits to the Settlement Class beyond the cash settlement fund.

28. This court examined alternative measures for attorneys' fees, including the Lodestar method, and finds the contingency fee to be reasonable.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

A. The Settlement Class Members are certified as a class under Fed. R. Civ. P. 23 for purposes of settlement only of Settled Claims, and shall proceed with settlement as provided in this Order.

B. As of the Approval Event, all Opt-Out Claimants timely and properly opted out of the Settlement Class and shall not be deemed by that fact to have released Devon or Devon's Additional Released Parties.

C. Following the Approval Event, each Settlement Class Member as defined shall become fully bound by all of the releases and other obligations and conditions as set forth herein and in the Settlement Agreement and shall be deemed to have released Devon and Devon's Additional Released Parties as provided in the Settlement Agreement.

D. Except as necessary to enforce this Order and the Settlement Agreement, Plaintiffs, Settlement Class Members and their heirs, personal representatives, assigns, and successors are barred from bringing claims against Devon and Devon Additional Released Parties, as defined in the Settlement Agreement, for Settled Claims as specifically defined in the Settlement Agreement.

E. Devon has escrowed with the Escrow Agent the sum of \$5,000,000.00 Dollars ("Escrow Account") in accordance with the Settlement Agreement.

F. The portion of the Escrow Account that is attributable to the Opt-Out Claimants share of that amount shall be immediately returned, with accrued interest, to Devon in accordance with the Settlement Agreement.

G. The balance of the Escrow Account, less any approved Attorney's Fees Claims and Administrative Costs, shall be distributed to the Settlement Class in

accordance with the Settlement Agreement. This Court approves the payment schedule for the Settlement Class attached hereto as Exhibit 2.

H. All interest accrued from the Escrow Account through the date of distribution attributable to the Settlement Class Members' portion of the Escrow Account shall be payable to Settlement Class Members. All interest accrued from the Escrow Account through the date of distribution attributable to the Opt-Out Claimants' portion of the Escrow Account shall be returned to Devon. Class Counsel should receive no portion of the interest.

I. The reasonable attorneys' fees of Class Counsel ("Permissible Class Counsel Fees") are and shall be in the amount of \$1,666,666.00. The reasonable litigation costs ("Litigation Costs") are and shall be in the amount of \$114,837.48. The reasonable Administration Costs are estimated to be in the amount of \$30,354.17. These sums shall be paid from the Escrow Account and the remaining amount, less the portions attributable to the Opt-Out Claimants, shall be paid to Settlement Class Members in the amounts as set forth in Exhibit 4 to this Order.

J. Within five (5) days of the entry of satisfaction of the Approval Event, as that term is defined in the Settlement Agreement, Devon and Class Counsel shall instruct the Escrow Agent to release from the Escrow Account all funds to be paid according to the Settlement Agreement ("Distribution Date"). This amount will be released per the Settlement Agreement to pay the amounts to be distributed to Settlement Class Members, the Permissible Class Counsel Fees, Litigation Costs and Administration Fees and to refund to Devon that portion of the Escrow Account attributable to those sums that would have been paid to Potential Class Members listed in Exhibit 2 to this Order who have

requested to be excluded from the Settlement Class. The Permissible Class Counsel Fees shall be released to Meites, Mulder, Mollica & Glink.

K. Class Counsel shall attempt to locate all Settlement Class Members whose Class Notices were undeliverable via Certified Mail. For those Settlement Class Members who are not located by Class Counsel and whose settlement amount is greater than \$100, Class Counsel shall engage a skip tracing service to perform a skip trace. Class Counsel shall complete its attempts to locate Settlement Class Members within sixty (60) days of the Approval Event.

L. All Distribution Checks must be cashed within 180 days of the Distribution Date pursuant to §1.45 of the Settlement Agreement.

M. Pursuant to §2.6.4 of the Settlement Agreement, within 240 days of the Distribution Date, any unclaimed Distribution Checks and all unused Administration Fees shall be paid to the Montana Justice Foundation, a charitable organization that has been approved by the Court as a cy pres recipient, to be earmarked exclusively for the delivery of civil legal aid in Blaine and Hill Counties, Montana.

N. No funds will remain in the Escrow Account after release of the funds as required by the Settlement Agreement and Release of Claims and by this Order.

O. The original Plaintiffs' signature pages to the Settlement Agreement shall be electronically filed with the Court, with the original pages to be retained by Class Counsel.

P. Upon entry of this Order and satisfaction of the Approval Event, as that term is defined in the Settlement Agreement, Class Counsel and counsel for Devon shall file a stipulated satisfaction and order of dismissal with prejudice of all Settled Claims.

The order of dismissal with prejudice of the Settled Claims shall be entered by the Court and shall be considered a final order, subject to appeal under Fed. R. Civ. P. 54.

DATED this 24th day August of 2007.

/s/ Keith Strong
Keith Strong
U.S. Magistrate Judge