

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

<b>CHIEFTAIN ROYALTY COMPANY and</b>	)	
<b>JACK LANCET,</b>	)	
	)	
	)	
<b>Plaintiffs,</b>	)	<b>No. CIV-11-212-R</b>
<b>v.</b>	)	
	)	
	)	
<b>QEP ENERGY COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	

**DECLARATION OF FRANCIS E. MCGOVERN**

I, Francis E. McGovern, declare as follows:

1. I was selected by the parties to mediate the above the matter and was later appointed by the Court as Special Master for settlement negotiations. I have been involved at every stage of the settlement process in this action, from the parties' first settlement meeting, to finalizing the Stipulation and Agreement of Settlement.

2. I am a professor of law at Duke University, where I teach classes related to alternative dispute resolution. I have also served as a professor, visiting professor, or fellow at the following institutions: Berkeley School of Law, Stanford Law School, Harvard Law School, the Massachusetts Institute of Technology, Boston University School of Law, the University of Alabama and Cumberland School of Law, among others. I have served as a special master,

court expert, mediator, or neutral in over seventy-five cases. *See Curriculum Vitae* of Francis E. McGovern, at <http://law.duke.edu/sites/default/files/cv/mcgovern.pdf>. Also, I am intimately familiar with Oklahoma state and federal courts and have helped facilitate the settlements of a number of large class actions involving Oklahoma businesses and energy companies. For example, I recently served as mediator in front of Judge Lee West in *Chickasaw Nation and Choctaw Nation of Oklahoma v. Mary Fallin et al.*, Case No. 5:11-CV-00927(W). I also recently mediated the \$119 million settlement in *Coffey, et al. v. Freeport Mc-Moran, et al.*, which involved property contamination claims brought by the residents of Blackwell, OK, against a large zinc smelting operation. I also mediated a substantial settlement in *United States of America ex rel. Harold Wright v. Agip Petroleum, et al.*, a federal qui tam action alleging royalty underpayment claims against oil and gas companies, many of which were based in or worked in Oklahoma. My experience in these actions and others has given me an understanding of large class actions in Oklahoma and provided me with the skills to help litigants achieve a fair, reasonable, and adequate settlement.

3. This declaration is intended to inform the Court of the process that led to the settlement in this action and to report on whether I believe the proposed settlement and plan of notice should be granted final approval. As reported below, I believe the proposed settlement and plan of notice are fair, reasonable, and adequate and in the best interest of the Class and should be finally approved.

4. The parties first contacted me about overseeing settlement discussions in August of 2012. From that point to the present, I have supervised the mediation process. I communicated with the parties by telephone and electronic mail during the period from August to September 2012, and held the first face-to-face meeting between representatives of the parties on September 19, 2012. While the content of these communications is privileged under the Federal Rules of Evidence,<sup>1</sup> I can state that during this first meeting, we discussed the substantive and procedural issues in this litigation, the respective positions of both sides, and began to develop a protocol for mediating this case in the future. Following the September 19, 2012 meeting, the parties exchanged extensive briefing related to the merits of their respective positions and the value of the Class' claims. This briefing refined each party's arguments, clarified the strengths and weaknesses of those arguments, and began the process of moving towards an agreeable case valuation.

5. Thereafter, the parties began a series of mediation sessions, which I supervised. The first session occurred on November 1, 2012 in Denver, Colorado. It was clear from the submissions and presentations made before and at this mediation session that the parties, with the help of counsel and experts, had thoroughly examined the extensive factual discovery (both formal and informal) to

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<sup>1</sup> Any discussion of settlement negotiations in this Report is not intended to, and does not, waive any settlement privileges or confidentiality provided by the Federal Rules of Evidence, the Oklahoma Rules of Evidence, or any applicable statute, rule or case law.

determine the value of the Class' claims. During this session, I met separately with each side to discuss their respective positions and to determine which issues the parties could agree on and to determine what additional information, research, and arguments would be helpful in resolving those issues upon which the parties disagreed. During the mediation process, it became clear that the parties believed any resolution would have to include not only payment for past alleged damages, but also some type of agreement regarding future royalty payment methodology. Accordingly, I directed the parties to work on these issues and, after this meeting ended, I continued to work with the parties via telephone and electronic mail.

6. On December 6, 2012, I met (in person and telephonically) with the parties' experts in Oklahoma City to further examine the parties' valuations of the Class' claims. During this meeting, I assisted the experts to ensure they had all the information they needed to evaluate the Class' alleged damages and the substantive strengths and/or weaknesses of some of the liability and damages arguments at issue. I think it is important to note that the Parties and their attorneys had enough confidence in the mediation process and in their experts to allow them to meet with each other and me outside the presence of the attorneys, which allowed the experts to openly communicate with one another and determine what information each side needed to gather and analyze to fully develop their damages arguments.

7. On December 14, 2012, the parties met for another mediation session in Denver, which I also supervised. During this session, I again worked

with the parties to determine which issues were no longer in dispute and which issues were still in conflict. After this session ended, I continued to communicate with the parties by telephone and electronic mail.

8. On January 9-10, 2013, the parties met again for a final mediation session and were able to reach an agreement concerning key components of a settlement. Since that time, the parties, with my assistance, have finalized all the terms of settlement, as set forth in the Stipulation and Agreement of Settlement. Throughout the settlement process, I continually communicated with both parties by telephone and electronic mail regarding the mediation process to facilitate the progression of settlement negotiations.

9. During discovery and throughout the mediation process, the parties exchanged enormous amounts of data relating to gas royalty payments for experts to analyze. While this helped to resolve many of the factual disputes between the parties, significant differences still existed between the parties on both liability and damages. The parties also had numerous disputes regarding a number of legal issues concerning Oklahoma oil and gas law and the proper calculation of royalty

10. Due in part to these disputes, the parties engaged in extensive back-and-forth arm's-length negotiations. Throughout the mediation process, in addition to our multiple face to face sessions and telephone sessions, the parties engaged in extensive briefing and communications via electronic mail. This process allowed me to help the parties resolve disputes on many issues, which in turn helped to narrow the issues in dispute at the final two day mediation session.

At the end of our final two day negotiation session, the parties agreed to a \$155 million settlement, which provides a \$115 million cash payment that has already been deposited into an escrow account on behalf of the Class and binding changes to QEP's royalty payment methodology that have an estimated net present value of at least \$40 million. The \$115 million cash component is a meaningful recovery for the Class. For example, the Class' claim for past royalty due would have been approximately \$43.5 million (without interest). QEP also agreed to pay for administration and notice costs (subject to reimbursement from any unclaimed and residual amounts in the settlement fund), which are expensive and typically paid out of the settlement fund.

11. The binding changes to QEP's royalty payment methodology for the Class Leases are set forth in detail in the Stipulation of Settlement. These benefits were a material part of the negotiation process, and the key terms were negotiated through hard-fought advocacy. The parties negotiated many of these terms and conditions for days and I presided over face-to-face meetings with both sides' experts, representatives from the highest levels of QEP and Chieftain, Class Counsel and QEP's counsel. I observed each side's discussions regarding this methodology and the underlying data used to value these future benefits, and I am confident that they not only provide an estimated present value of at least \$40 million to the Class, but also achieve this result immediately without the need for or risk and expense of future litigation. Thus, the \$115 million cash payment

combined with these binding changes brings the total value of the settlement to at least \$155 million.

12. Having presided over the entire mediation process and communicated extensively with the parties and their experts, I developed a complete understanding of this case, including the strengths and weaknesses of the parties' respective positions, the risks and rewards of continued litigation and inevitable appeal, and the costs and benefits of settlement.

13. Based on my understanding of this case, my review of the court filings and legal briefing, and the rigorous arm's-length mediation process, I believe that the terms of the settlement are fair, reasonable, and adequate and in the best interests of the Class. I believe the immediate value of the \$115 million cash recovery and the minimum estimated net present value of \$40 million in binding changes obtained in the face of substantial legal and factual disputes, outweigh the mere possibility of some recovery in the future.

14. Throughout the mediation and negotiation process, counsel for both parties exhibited the highest degree of professionalism and represented their respective clients with integrity and diligence. This high-quality representation in the mediation setting ensured that the negotiations occurred at arm's-length and in good faith, which led to the fair, reasonable, and adequate settlement of this action. At all times, the named Plaintiffs and Class Counsel diligently represented the Class. I understand that Class Counsel are seeking a fee award of one third of the entire present value of the Settlement amount, to be paid from the cash portion

of the Settlement, and for reimbursement of all reasonable expenses they advanced to litigate this case. I believe such a request to be fair and reasonable. In my experience, attorneys' fees in complex class actions such as this case are generally awarded on a percentage basis and the requested fee is actually on the low end of the range of contingent fees approved by Oklahoma courts in royalty class actions.

15. I can attest that the attorneys working on this matter for both sides are outstanding lawyers who worked with a high level of skill, efficiency and creativity on behalf of their clients. Indeed, the advocacy on both sides was outstanding. Further, Class Counsel litigated this matter on an entirely contingent basis and advanced all reasonable litigation costs for over three years with no recovery and no revenue from their work. Despite these risks, they continued to push for the best possible settlement for the Class, even though they could have settled this case for less money. And, Class Counsel was willing to try this case, and face the risk of losing with no chance to recover their expenses or for their labor, if they were not able to achieve a fair and reasonable result for the Class.

16. I also understand that the Class Representatives are requesting a case contribution award not to exceed 0.05 percent, in the aggregate, of the Settlement amount. Based upon my understanding of case contribution awards in other royalty class actions in Oklahoma courts, this range is on the low end of such awards, which usually are 1.0 percent or greater. Based upon my experience as mediator and Special Master, both Class Representatives worked zealously for the Class. Chieftain was directly involved in negotiating the future benefits and



agreed to undertake the audit responsibilities for the entire Class for years to come. These duties will require Chieftain, or a successor, to remain involved in auditing—and potentially litigating via arbitration—these future benefits for the life of the Class wells and any new wells drilled on land covered by the Class leases. Accordingly, I believe the case contribution award requested by the Class representatives is fair and reasonable.

17. In sum, I believe that the settlement is fair, reasonable and a result of Class Counsel's experience, reputation and ability. It is my opinion that the proposed settlement was reached at arm's-length, is fair and reasonable, and should be approved. It also is my opinion that the requested fee award and case contribution award is in line with the amounts approved by Oklahoma state courts and courts in the Western District of Oklahoma and the Tenth Circuit, and is fair and reasonable.

Date: April 25, 2013

  
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Francis E. McGovern

## 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 10:54 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  
Jack Lancet

**Document Number:** [141](#)

#### Docket Text:

**[DECLARATION by All Plaintiffs Declaration of Francis E. McGovern. \(Beckworth, Bradley\)](#)**

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

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**5:11-cv-00212-R Notice has been delivered by other means to:**

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

**Document description:**Main Document

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