

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

DORSEY J. REIRDON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:16-cv-00445-SPS
)	
CIMAREX ENERGY COMPANY)	
and CIMAREX ENERGY CO. OF)	
COLORADO,)	
)	
Defendants.)	

DECLARATION OF MEDIATOR BRADLEY A. GUNGOLL

I, BRADLEY A. GUNGOLL, 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 am a founding shareholder of Gungoll, Jackson, Box & Devoll, P.C. I practice litigation in all jurisdictions, state and federal. My peers have recognized me as a fellow in the American College of Trial Lawyers. I practice primarily in the areas of energy and natural resources law, environmental law, personal injury and product liability. I further

serve regularly as a mediator with Dispute Resolution Consultants and also serve as an Arbitrator. I frequently mediate cases involving energy law, contract law, insurance law and property issues.

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. The parties first formally mediated on April 24, 2018 under the supervision of Stephen McNamara, an experienced and highly respected mediator. Stephen McNamara has practiced oil and gas law since 1979. He has represented dozens of independent oil and gas producers in Oklahoma and elsewhere. He was formerly chief counsel of Reading and Bates Petroleum Co. in Tulsa. And, he has mediated dozens of complex oil and gas matters. Prior to this session, the parties submitted extensive mediation briefs to Stephen McNamara, outlining their respective positions on liability, damages, and the strengths and weaknesses of their respective cases. After a day of mediation and discussions with Stephen McNamara both together and separately, the parties were unable to reach a settlement. However, in the months following mediation session, the parties continued to discuss settlement negotiations through Stephen McNamara.

8. The parties formally mediated a second time on September 10, 2019. 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 royalty 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, Defendants were cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case, and counsel for Defendants had performed considerable work in preparation for the mediation.

9. The mediation occurred at the offices of Gungoll, Jackson Box & Devoll, 101 Park Ave., Suite 1400, Oklahoma City, Oklahoma on September 10, 2019. Plaintiff and Class Representative, Dorsey Reirton, attended in-person, along with his counsel, Brad Beckworth, Lisa Baldwin, and Emily Kitch. Defendants attended through their counsel, Nathan Davis and Bradley Welsh, and in-house counsel, Adam Vela.

10. 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.

11. After a full day of mediation discussions, the parties were able to reach an agreement in principle on September 10, 2019.

12. 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 \$10 MILLION SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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

14. For example, the parties disputed the precise scope of Defendants' royalty

obligations under Oklahoma law which raised legitimate questions of fact and law regarding whether Defendants were required to pay royalty on gas used off the lease in gas gathering systems and processing plants. The parties also disagreed on whether certain of the gas used occurred on the lease or off the lease premises. An adverse ruling on these issues would be devastating to Plaintiff's case.

15. Prior to the Settlement, there were numerous pending litigation issues, including substantial outstanding discovery, that would 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. Given all of these procedural and legal complexities and uncertainties, it is my opinion that the Settlement is in the best interest of the Settlement Class.

16. 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. 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 \$10 million settlement are fair, adequate, reasonable and in the best interests of the Class.

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 26th day of November 2019.



Bradley A. Gungoll
Mediator

EXHIBIT A

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Bradley A. Gungoll is a founding shareholder of Gungoll, Jackson, Box & Devoll, P.C. He practices litigation in all jurisdictions, state and federal. His peers have recognized him as a fellow in the American College of Trial Lawyers.

Gungoll practices primarily in the areas of energy and natural resources law, environmental law, personal injury and product liability. He further serves regularly as a mediator with Dispute Resolution Consultants and also serves as an Arbitrator. Regular Mediation disputes include Energy law, Contract law, Insurance law and Property issues.

Gungoll is a fellow of the Oklahoma Bar Foundation and past chairman of the Mineral Law section of the Oklahoma Bar Association. He has served as President and as a member of the Board of Directors of the Oklahoma Association for Justice formerly the Oklahoma Trial Lawyers Association. He is past Chair of the Energy and Natural Resources Section of the Oklahoma Bar Association and has been a member of the Access to Justice Committee of the State Bar. Gungoll further serves on the Alternative Dispute Resolution Committee for the American College of Trial lawyers and the Oklahoma Bar Association. Gungoll has served as President of the Garfield County Bar and currently serves the Oklahoma County Bar on the Fee and Grievance Committee.

Areas of Practice:

- Civil and Commercial Litigation • Energy and Natural Resources • Mediation and Arbitration • Environmental Law

Education:

- Oklahoma State University, B.S., 1975
American University, International School of Law; Oklahoma City University, J.D., 1979

Court Admissions:

- United States Supreme Court
- United States Court of Appeals, Tenth Circuit

- United States District Court Western District of Oklahoma
- United States District Court Northern District of Oklahoma
- United States District Court Eastern District of Oklahoma

Other Affiliations:

- American Bar Association
- American Association for Justice
- Oklahoma Bar Foundation
- Past Chairman of the Board of the Oklahoma Sports Hall of Fame and the Jim Thorpe Association.
- Past Associate Board of Directors of the National Cowboy and Western Heritage Museum.
- Oklahoma City Mineral Lawyers Society

Subject: Activity in Case 6:16-cv-00445-SPS Reirdon v. Cimarex Energy Company et al Declaration
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Eastern District of Oklahoma

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Case Number: [6:16-cv-00445-SPS](#)
Filer: Dorsey J. Reirdon
Document Number: [113](#)

Docket Text:

[DECLARATION of Mediator Bradley A. Gungoll by Dorsey J. Reirdon \(With attachments\)\(Beckworth, Bradley\)](#)

6:16-cv-00445-SPS Notice has been electronically mailed to:

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Document description:Exhibit Exhibit A - CV of Bradley Gungoll

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