

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

RICHARD P. MARBURGER, Trustee)
of the Olive M. Marburger Living Trust)
and **THIELE FAMILY, LP**,)
)
Plaintiffs,)
)
v.)
)
XTO ENERGY INC.,)
)
Defendant.)

Civil Action No.2:15-cv-00910-DSC-CRE

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.

If you had an oil and gas lease with Phillips Production Company, Phillips Exploration, Inc., PC Exploration, Inc., Phillips Resources or an entity affiliated with any of them (“Phillips”) at any time between January 2012 and October 1, 2017, covering oil and gas interests in Pennsylvania under which (i) the royalty is a percentage of the proceeds received by lessee and (ii) the lease did not expressly permit post-production costs to be netted out of (“netted out” means deducted or subtracted) the proceeds of sale before calculating the royalties due (the “Phillips Standard Lease” as defined more specifically in Section B) or you had a royalty interest in such a lease and you also meet the Class Definition in Section B below, you may be entitled to benefits from and your rights may be affected by the settlement of this class action. Please read the following carefully.

This Notice describes, among other things: what the lawsuit is about; who is in the class and will receive benefits and be affected by the settlement; the terms of the proposed settlement; how you can exclude yourself from the lawsuit, if you desire; how you can object to the terms of the settlement and the award of attorneys’ fees, costs, expenses and administrative costs, if you desire; and that you will be bound by a judgment entered by the Court if you do not exclude yourself.

A. Introduction

Richard P. Marburger, as trustee, and Thiele Family, LP, (the “Plaintiffs”) brought this lawsuit as a class action for themselves and all those who have royalty interests in a Phillips Standard Lease for oil and gas in Pennsylvania that was under the direct or indirect control of XTO Energy Inc. (“XTO”) at any time between January, 2012, and October 1, 2017 (the “Class Period”). The Phillips Standard Leases state that the lessor shall pay a royalty “equal to [a specified percentage] of the proceeds received from time to time by lessee for all gas ... produced, metered and sold, less lessor’s pro rata share of any severance or excise tax imposed by any governmental body.” During the Class Period, XTO sold some of the gas produced under the leases at or near the wells from which it was produced and paid royalties on the gross proceeds of those sales. The remainder of the gas produced under the leases was sold at points downstream of the wells, closer to the eventual consumers. As to those sales away from the wells, XTO incurred certain post-production costs necessary to sell the gas. XTO netted out of the proceeds of those sales the post-production costs actually incurred and then paid royalties on that net amount. The royalty statements sent to the lessors showed, for the volume of gas sold as to that lease that month, costs netted out from the proceeds before royalties were calculated. Those post-production costs were expenses incurred for gathering, processing, compressing, transporting, treating, separating, and dehydrating gas and its components. Plaintiffs, on behalf of themselves and everyone with a Phillips Standard Lease, sued XTO alleging that the Phillips Standard Leases required XTO to calculate royalties based on the gross proceeds it received, not the net proceeds after netting out post-production costs. The lawsuit claims that XTO must pay royalties on the gross proceeds of sale, whether the gas is sold at the wells or downstream of the wells, without any netting of post-production costs. The Phillips Standard Leases do not expressly require payment of royalties on gross proceeds but they also do not expressly permit XTO to net out post-production costs. XTO denies Plaintiffs’ allegations and maintains that the practices of the oil and gas industry and the meaning of the royalty provision permit it to pay royalties under the Phillips Standard Leases based on net proceeds after netting out any post-production costs to sell the gas.

Although it continues to deny any liability, XTO has agreed to a Settlement, the specific terms of which are contained in a Class Action Settlement Agreement filed with the Court, to avoid the expenses, burdens and uncertainties of continued litigation. All parties faced significant risks that will be resolved if the Court approves the Settlement. Plaintiffs believed

that under the proper interpretation of the royalty provision, XTO had to calculate royalties on the basis of the gross proceeds it received. XTO, on the other hand, believed that the plain language of the lease, the Pennsylvania Supreme Court's decision in *Kilmer v. Elexco Land Services, Inc.*, 990 A.2d 1147 (Pa. 2010), and industry custom and practice authorized it to net out post-production costs before calculating royalties. To the extent that the District Court or the Pennsylvania Supreme Court were to hold that *Kilmer* permitted XTO to net out post-production costs before calculating royalties, plaintiffs might not be able to recover. XTO also asserted that it could sell all of the gas "at the wellhead" in the future and eliminate any claim for future damages. *Kilmer* and changes in law in other states indicated that lessors under Phillips Standard Leases faced significant risks. There is no assurance that XTO would not be able to net out such post-production costs in the future, and it could alternatively change its method of selling the gas under the Phillips Standard Leases so as to pay the same amount of royalties in the future. If the Court approves the Settlement, XTO will pay to the class a total of \$11,010,000. The Final Order will permit XTO to net out post-production costs in the future. Through this compromise, XTO has agreed to pay a substantial amount to the Settlement Class in immediately available cash as compensation for past netting out of post-production costs and it will be able in the future to net out costs. This provides an incentive to continue production in the future for the benefit of all parties, and the risks of future litigation are eliminated.

The settlement reflects a compromise under which XTO will essentially pay back the deductions it has taken since January 2012, but XTO will continue to take netback deductions in the future. The class supports this compromise because it removes the risk of getting no recovery at all and because the post-production costs that XTO deducted, which are known and certain, will be paid back while the volume of future post-production costs is unknown. The compromise provides assured payment for deductions already taken, while authorizing future netback deductions that XTO contends were proper at all times. It thereby gives XTO an incentive to maintain or increase future production which ultimately will benefit all sides.

You are receiving this Notice because XTO's records indicate that you were a lessor or owned a royalty interest in a Phillips Standard Lease during the Class Period. As such, you may be affected by the Settlement.

B. The Settlement Class

The Court has preliminarily approved the following Settlement Class. All persons and entities are included who meet the following definition:

Every individual and entity, including every predecessor and successor-in-interest, who possessed a royalty ownership interest at any time between January, 2012 and October 1, 2017, in an oil and gas lease with Phillips Production Company, Phillips Exploration, Inc., PC Exploration, Inc., Phillips Resources or any entity affiliated with them or any of them ("Phillips") covering oil and gas interests in Pennsylvania: (i) which lease states that the royalty for gas shall be "equal to [a specified percentage] of the proceeds received from time to time by lessee for all gas ... produced, metered and sold, less lessor's pro rata share of any severance or excise tax imposed by any governmental body; (ii) which lease does not contain any provision that expressly mentions post-production expenses, including any such language in a "Market Enhancement" provision; (iii) which lease has been assigned to or is or was under the direct or indirect control of XTO (a lease that satisfies (i), (ii) and (iii) being a "Phillips Standard Lease"); and (iv) which individuals and entities were identified by XTO on October 16, 2017, in a spreadsheet named "Marburger final numbers," as revised November 15, 2017, which it provided to plaintiffs' counsel and the Settlement Administrator. The Settlement Class excludes (a) any lessor under any such lease who has an existing lawsuit against XTO separate from this action related to alleged underpayment of royalties under Phillips Standard Leases by XTO; (b) any oil and gas lease that determines the royalty based on "value;" (c) any person who is an officer, director, employee or agent of Phillips or XTO; (d) any person or entity who has previously released XTO from liability concerning any claims asserted in this action; (e) the United States; and (f) the Commonwealth of Pennsylvania.

If you are not sure whether you are included in the Class, you can call 1-866-274-4004 or visit www.strategicclaims.net for more information, or you can mail or fax a letter to the Claims Administrator at the address below.

If you believe you are a class member and you did not receive a copy of this Notice by mail, you **must** contact the Settlement Administrator by telephone at 1-866-274-4004 or by mail addressed to Marburger XTO Settlement, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 3, Media, PA 19063.

C. The Settlement

Under the Settlement, XTO will pay to the Settlement Class \$11,010,000.00 (the "Settlement Fund") in full settlement of all claims related to royalty payments under the Phillips Standard Leases during the Class Period. Plaintiffs' counsel will seek the Court to authorize payment of counsel fees, litigation costs and expenses, administration costs and incentive awards from the Settlement Fund. Class Counsel's request for counsel fees and litigation costs and expenses shall not exceed 33% of the Settlement Fund. After such payments are deducted from the Settlement Fund, the remaining cash (the "Net Settlement Fund") will be distributed among the Settlement Class members generally as follows: each Class Member will receive (a)

\$500.00 and (b) after deducting the \$500.00 per Class Member from the Net Settlement Fund, the remaining amount shall be allocated to Class Members based on the Class Member's proportionate share of his post-production expenses to the total post production expenses, as described more fully in the Plan of Administration filed with the Court. Based on the currently available information, each class member may be entitled to recover approximately 95% of the amounts XTO deducted from royalty payments for post-production costs during the Class Period plus \$500, subject to the deduction of Court-approved litigation costs, expenses and attorneys' fees. In addition, the Final Order will provide that XTO is authorized to deduct post-production costs from the proceeds it receives for gas under the Phillips Standard Leases after entry of the Final Order in this action. The actual language is contained in the Settlement Agreement which can be viewed online at www.strategicclaims.net.

The distribution to the members of the Settlement Class is based on the following assumptions, among others: (a) that very few sales of royalty interests have occurred during the specified Class Period; (b) that, where sales did occur, the parties intended for the buyer to receive payment for past claims; and (c) that, where royalty interests passed through in heritage, devise or interfamily transfers, it was the intent that the heir, devisee or transferee receive the right to receive payment for claims based on past production. To the extent these assumptions are not correct in relation to the particular transfers of interests, the Court will be asked to order that the Settlement Class member who receives payment shall, in turn, make payment to the proper party.

The plaintiffs and the attorneys for the Settlement Class believe that the claims asserted in the lawsuit have merit. They recognize however that continuing to prosecute the claims against XTO through trial and appeal will be expensive and lengthy. Moreover, there are risks of not succeeding in the litigation, and the Settlement provides immediate cash to the Settlement Class. At the time the parties agreed to the Settlement, both plaintiffs and XTO had taken discovery, engaged experts and understood the strengths and weaknesses of their respective positions. Counsel for the Settlement Class believes that the settlement is in the best interest of the class and that it provides substantial benefits as compared to the risk that a smaller recovery, if any, would be obtained after trial.

Except for those who exclude themselves from the Settlement, the Settlement resolves and releases all claims that were brought or that could have been brought against XTO related to the calculation of royalties under the Phillips Standard Leases during the Class Period. The full language of the Release is contained in the Settlement Agreement available online at www.strategicclaims.net. No payments will be provided to Settlement Class members until after the Court enters a final judgment approving the Settlement and no further appeals are possible.

XTO has reserved the right, in its sole discretion, to terminate the proposed Settlement if (a) a certain percentage of the Settlement Class members exclude themselves from the Settlement or (b) Settlement Class members exclude themselves who, taken together, would receive a certain percentage or more of the Settlement Fund. XTO must exercise its right within 20 calendar days after the deadline for Requests for Exclusion to be submitted under Section D.

Unless you exclude yourself from this Settlement, you cannot separately sue XTO, continue to sue, or be part of any other lawsuit against XTO about the legal issues in this case. The issues include all claims that could have been asserted by Settlement Class members related to the payment of royalties for gas under the Phillips Standard Leases during the Class Period. The decision by the Court will bind everyone who does not exclude himself, herself or itself. The released claims — the claims you are giving up — are described more fully in the Settlement Agreement available online at www.strategicclaims.net. You may also contact the Claims Administrator at 1-866-274-4004 and request that a copy of the Settlement Agreement be mailed to you.

D. Excluding Yourself From The Settlement

If you do not want the benefits of or to participate in the Settlement or if you want to keep the right to sue or continue to sue XTO on your own about the legal issues in this case, then you must exclude yourself from — or opt out of — the Settlement Class.

You **CANNOT** exclude yourself by telephone or by email. In order to exclude yourself from the Settlement, you **must mail or fax** a letter to the Claims Administrator that includes all of the following:

- ▶ The case name, *Marburger v. XTO Energy Inc.*, Case No. 2:15-cv-00910-CRE;
- ▶ Your full name, address and telephone number;
- ▶ A statement that you wish to be excluded from the Settlement Class; and
- ▶ Your signature (or in the event of an entity, the signature of an authorized representative).

If you are a co-lessor or a co-owner of a royalty interest in a Phillips Standard Lease (such where the lease or royalty interest is in the name of husband and wife or other family members), a Request for Exclusion by one co-owner applies to all co-owners. Each request for exclusion must be signed personally by the person requesting exclusion or by an authorized officer, partner or managing agent of a legal entity. Requests for exclusion cannot be made on a representative basis, and no request for exclusion will be valid if it requests a qualified, conditional or partial exclusion.

The Request for Exclusion must be postmarked or faxed to the Claims Administrator at the following address on or before January 8, 2018, and must be actually received by the Claims Administrator:

By Mail: Marburger XTO Settlement
c/o Strategic Claims Services
P. O. Box 230
600 N. Jackson Street, Suite 3
Media, PA 19063

By Fax: (610) 565-7985

Unless you exclude yourself, you give up the right to sue XTO for any claim that the Settlement resolves and releases, and you will be bound by the Court's Order making explicit XTO's right in the future to deduct post-production expenses in calculating royalties under the Standard Phillips Leases. If you do exclude yourself from the Settlement, you will not receive any cash or other benefits.

E. The Lawyers Representing You

The Court has appointed David A. Borkovic, Jones, Gregg, Creehan & Gerace, LLP, as counsel for all Settlement Class members. He and his firm are called Class Counsel. You will not be separately charged for these lawyers. The Court will determine reasonable amounts for Class Counsel's fees, expenses and costs, and the administration costs, and those items will be paid from the Settlement Fund.

Class Counsel have been working on a contingent fee basis, somewhat like Edgar Snyder, and will not receive any fees unless they obtain money for the class. They have not received any payment for their services in pursuing the claims against XTO on behalf of the Settlement Class, nor have they been paid for the costs and expenses incurred in this litigation. Class counsel have not submitted a request for attorneys' fees or reimbursement of litigation costs and expenses at this time. The application for attorneys' fees, expenses, costs, administration costs of the Settlement Administrator and incentive awards for the Class Representatives will be filed with the Court by February 28, 2018, and will be available at www.strategicclaims.net after it is filed. XTO has agreed that it will not take any position on the amount of attorneys' fees requested by Class Counsel so long as the request does not exceed one-third of the Settlement Fund. XTO has also agreed not to oppose a request for incentive awards for the Class Representatives to be paid from the Settlement Fund. Such incentive awards will be requested in the amount of up to \$5,000 each. The Court will make the final determination on how much Class Counsel will be paid and whether to approve incentive awards for the Class Representatives. Attorneys' fees, expenses, costs, administration costs, and incentive awards for the Class Representatives will only be awarded after the Court has determined that they are fair and reasonable. If you want to be represented by your own lawyer, you may hire one at your own expense, and that lawyer must enter his or her appearance with the Court.

F. Objecting to the Settlement

If you are a member of the Settlement Class, you can object to all or any part of the Settlement, as well as the request for fees, reimbursement of expenses and costs, costs of administration and any Class representative incentive awards. In order to object, you must submit a letter that includes the following:

- ▶ The case name, *Marburger v. XTO Energy Inc.*, Case No. 2:15-cv-00910-CRE;
- ▶ Your full name, address and telephone number;
- ▶ A statement that you wish to object to all or any part of the Settlement;
- ▶ The legal and factual bases for your objection and any supporting materials; and
- ▶ Your signature (or in the event of an entity, the signature of an authorized representative).

If you are a co-lessor or a co-owner of a royalty interest in a Phillips Standard Lease (such where the lease or royalty interest is in the name of husband and wife or other family members), all co-owners must complete and sign the objection.

Any objection that does not set forth the legal and factual bases for the objection will be rejected, and any such objection will be deemed to have been waived.

You must mail or deliver your objection to each of the following addresses on or before January 8, 2018:

Settlement Administrator
Marburger XTO Settlement
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 3
Media, PA 19063

Class Counsel
David A. Borkovic
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219

Defendant's Counsel
Nicolle R. Snyder Bagnell
Reed Smith LLP
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222

There is a difference between objecting and excluding oneself. Objecting is telling the Court that you do not like something about the Settlement. You cannot object to the Settlement if you exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court you do not want to be part of the Settlement or to be included in the Settlement Class.

G. The Fairness Hearing

The Court will hold a hearing (the “Fairness Hearing” or the “Final Approval Hearing”) to decide whether the Settlement is fair, reasonable and adequate and whether to enter a final judgment approving the Settlement and Class Counsel’s request for fees, costs, expenses, administration costs and Class Representative incentive awards. You may attend, but you do not have to do so. If you plan to attend, you will need to bring a form of government identification in order to enter the Courthouse.

The Court will hold the Final Approval Hearing at **9:30 AM on March 27, 2018** (local time), before **the Honorable Cynthia Reed Eddy, United States Magistrate Judge, Courtroom 10A, Joseph F. Weis, Jr., United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219**, to rule upon (a) whether the Settlement should be finally approved as fair, reasonable and adequate; (b) whether the Settlement Class should be finally certified; (c) whether a final order and judgment should be entered dismissing the action; (d) the award of attorneys’ fees, reimbursement of expenses and costs, administration costs, and incentive awards; and (e) such other matters as may be appropriate to implement the Settlement. If there are any properly filed objections, the Court will consider them at that time. You should be aware that the Court may change the date and time of the Final Approval Hearing without another notice being sent. The latest information will be posted on the website www.strategicclaims.net.

You do not have to come to the Final Approval Hearing. Class Counsel will answer questions the Court may have. You may, however, come at your own expense. If you have an objection, you do not have to come to Court to talk about it. As long as you submit your written objection as required above, the Court will consider it. You may also pay your own lawyer to attend if you wish, but it will be at your own expense. If you plan to attend the Final Approval Hearing, you should check the website or with Class Counsel to be certain that the date and/or time has not changed.

If you wish, you may ask the Court for permission to speak at the Final Approval Hearing. In order to do so, you **must** send a letter stating that you intend to appear and wish to be heard (your “Notice of Intention to Appear”). Your Notice of Intention to Appear must include the following: (a) your name, address and telephone number; (b) a statement that this is your Notice of Intention to Appear in *Marburger v. XTO Energy Inc.*, Case No. 2:15-cv-00910-CRE; (c) the reason you wish to be heard; (d) attach or enclose any papers, exhibits or other evidence or information that you wish to present to the Court at the Final Approval Hearing; and (e) your signature. If you are a co-lessor or a co-owner of a royalty interest in a Phillips Standard Lease (such where the lease or royalty interest is in the name of husband and wife or other family members), all co-owners must complete and sign the Notice of Intention to Appear. You cannot speak at the Final Approval Hearing if you excluded yourself from the Settlement or the Settlement Class. **Moreover, no Settlement Class member may appear and argue or attempt to show cause why the Settlement should not be approved as fair, reasonable or adequate, or why a Final Order and Judgment should not be entered, or why the request by Class Counsel for attorneys’ fees, costs and expenses, administrative costs and incentive awards should not be granted unless that member of the Settlement Class has followed the procedures set forth in Section F, above, for serving written objections.**

H. If You Do Nothing

If you are a member of the Settlement Class and received this notice by mail, then the Claims Administrator has a record of your Phillips Standard Lease or your royalty ownership interest, and you do not have to do anything to receive benefits under the settlement. If you are a class member and did not receive this Notice by mail, you must contact the Claims Administrator to confirm that you are a class member. If you are a member of the Settlement Class and you do nothing, you will receive the settlement payment approved by the Court. *If you are a member of the Settlement Class, unless you exclude yourself, you will release and not be able to sue XTO or to continue or be part of a lawsuit against XTO about royalty payments during the Class Period.*

I. Additional Information

This Notice summarizes the proposed Settlement. More details are in the Class Action Settlement Agreement available at the settlement website, www.strategicclaims.net. You may also review the Class Action Settlement Agreement and other documents filed in the case on PACER or at the Clerk’s Office for the United States District Court for the Western District of Pennsylvania, Joseph F. Weis, Jr., United States Courthouse, 700 Grant Street, Pittsburgh, PA 15219, during normal business hours.

For assistance, you may call the Claims Administrator toll free at (866) 274-4004, fax the Claims Administrator at (610) 565-7985 or write the Claims Administrator at Marburger XTO Settlement, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 3, Media, PA 19063. You may also visit the website for the settlement, www.strategicclaims.net.

You may also contact Class Counsel David A. Borkovic at Jones, Gregg, Creehan & Gerace, LLP, 411 Seventh Avenue, Suite 1200, Pittsburgh, PA 15219, (412) 261-6400 or Marie Garda-Knoche, a paralegal at Jones, Gregg, Creehan & Gerace, LLP, 411 Seventh Avenue, Suite 1200, Pittsburgh, PA 15219, (412) 261-6400.

The tax consequences of the Settlement to you may depend on individual circumstances, and you should consult with your tax advisor.

DO NOT CONTACT THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT

Dated: November 17, 2017

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Marburger XTO Settlement
c/o Strategic Claims Services
600 N. Jackson Street, Suite 3
Media, PA 19063

IMPORTANT LEGAL DOCUMENT – PLEASE FORWARD