

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

<b>ROGER A. SALVATORA, et al.,</b>	)	
	)	Civil Action No. 2:19-cv-01097
Plaintiffs,	)	
	)	Hon. Cynthia Reed Eddy
v.	)	Hon. William S. Stickman IV
	)	
<b>XTO ENERGY INC.,</b>	)	
	)	
Defendant.	)	

**NOTICE OF PENDING CLASS ACTION AGAINST XTO ENERGY FOR  
ALLEGEDLY UNDERPAYING ROYALTIES**

**IF YOU HAVE RECEIVED ROYALTY PAYMENTS FROM XTO ENERGY INC. AT ANY TIME AFTER AUGUST 2015, PLEASE READ THIS NOTICE CAREFULLY. THIS LAWSUIT MAY AFFECT YOUR RIGHTS, AND YOU HAVE A CHOICE TO MAKE.**

**TO: Everyone who has an interest in an oil and gas lease with Phillips Exploration, Inc., Phillips Production Company, PC Exploration, Inc., TWP, Inc., or Phillips Resources Inc. (collectively, “Phillips”) covering oil and gas interests (a) who received any royalty payments from XTO Energy Inc. (“XTO”) after August 2015; (b) whose oil and gas lease covered gas that was or is gathered on the Jefferson, Forward or AK Steel gathering segments of the Mountain Gathering system in Butler County, Pennsylvania; and (c) whose oil and gas lease based the royalty on a percentage of proceeds and contained a Market Enhancement clause or an essentially identical provision.**

- Phillips’ Market Enhancement oil and gas leases:
- state “notwithstanding anything to the contrary contained herein, it is agreed ... that all oil and gas royalties accruing to the lessor under this lease shall be net of lessor’s proportionate share of the cost of gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing the oil, gas or other products produced hereunder to transform the product into marketable form”; or
  - use substantially identical language and contain the words “marketable form.”

Plaintiffs contend that the gas XTO produces under the Market Enhancement oil and gas leases is in marketable form when it exits the processing plant, and that XTO cannot deduct any costs incurred after that point. Plaintiffs also contend that XTO has been taking unreasonably high deductions from royalty payments for processing gas and for gathering gas and thereby underpaying royalty amounts due under the oil and gas leases.

XTO disagrees with Plaintiffs’ claims. XTO believes it has complied with the terms of the oil and gas leases because the costs paid by XTO and deducted from royalty payments are consistent with the market. Additionally, XTO believes leases with Market Enhancement language contain a clear statement that XTO can deduct any expenses paid by XTO prior to the place where XTO sells the gas.

▶ This lawsuit seeks to recover (i) XTO’s alleged excessive charges for processing gas and gathering the gas and (ii) any charges incurred after the gas exited the processing plant.

▶ This lawsuit was filed on behalf of holders of royalty interests in Phillips’ oil and gas leases that contain a “Market Enhancement” clause who received royalty payments from XTO and whose gas was gathered on Mountain Gathering LLC’s Jefferson, Forward or AK Steel gathering segments in Butler County, Pennsylvania. It was also filed on behalf of those persons and entities who were class members in *Marburger v. XTO Energy Inc.*, Civ. Action No. 2:15-dv-00910 (W.D.Pa.) (or their successors in interest), who received one or more royalty payments from XTO after the *Marburger* settlement and whose gas was gathered by Mountain Gathering’s Jefferson, Forward or AK Steel gathering segments in Butler County, Pennsylvania. **The Court has allowed this lawsuit to go forward as a class action. You are receiving this notice because Plaintiffs believe from records that you had a Market Enhancement oil and gas lease with Phillips or are a successor in interest and that you qualify as a class member.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
<b>DO NOTHING</b>	<b>Stay in this lawsuit. Await the outcome. You cannot sue XTO separately for the claims asserted in this lawsuit.</b> If you do nothing, you will be bound by the judgment and will share in any benefits that may come from the trial. You, however, give up any right to sue XTO separately for the claims asserted in this lawsuit.
<b>ASK TO BE EXCLUDED</b>	<b>Get out of this lawsuit. Keep the right to sue XTO on your own and at your own expense.</b> If you ask to be excluded and any benefits are awarded at trial, you will not share in them. But you keep any rights to sue XTO separately for the claims asserted in this lawsuit.

▶ Your options are explained in this Notice. To ask to be excluded, you must act so that your exclusion request is **postmarked by January 8, 2024**. See page 4.

▶ This Notice is only a summary. The significant pleadings and Court Orders are available for review at [www.strategicclaims.net/xtoenergy/](http://www.strategicclaims.net/xtoenergy/).

**1. Why did I receive this Notice?**

An Order of the United States District Court for the Western District of Pennsylvania (the “Court”) dated October 4, 2023 approved this Notice and directed that it be sent to each person or entity listed in ECF No. 185-2 at pp 1-6. If you also had a Phillips oil and gas lease that was included in the *Marburger* class action and you satisfied the class criteria for the *Marburger* class members, you may receive a separate Notice related to that lease. The final outcome of this lawsuit has not been decided. Plaintiffs continue to litigate it.

**2. What is this case about?**

XTO produces gas under oil and gas leases that contain a Market Enhancement clause. When XTO calculates the amount of the royalties it owes you, the lease states which post-production costs XTO can deduct from royalty payments, see above.

This lawsuit seeks to recover the deductions from royalty payments that Plaintiffs claim are unreasonable and excessive. Plaintiffs also contend that the gas is in marketable form when it leaves the

processing plant and that XTO cannot deduct any costs incurred after that time. The Third Amended Complaint which describes Plaintiffs' claims in more detail is available for your review at [www.strategicclaims.net/xtoenergy/](http://www.strategicclaims.net/xtoenergy/).

XTO contends that the costs it deducted were reasonable, supported by the costs to provide such services, comparable to the costs charged by other companies, and allowed by the oil and gas leases. XTO's Answer to the Third Amendment Complaint which describes XTO's response in more detail is available for your review at [www.strategicclaims.net/xtoenergy/](http://www.strategicclaims.net/xtoenergy/).

### **3. Who is in the Class?**

If (i) you have a Phillips oil and gas lease that contains a Market Enhancement clause; (ii) you received one or more royalty payments from XTO after August 2015; and (iii) your gas was gathered on Mountain Gathering's Jefferson, Forward or AK Steel gathering segments you may be a member of the Class. For clarity, the gas wells on the Jefferson, Forward, and AK Steel gathering segments are identified on [www.strategicclaims.net/xtoenergy/](http://www.strategicclaims.net/xtoenergy/).

A "Market Enhancement clause" means an oil and gas lease provision that (i) states "Notwithstanding anything to the contrary contained herein, it is agreed between the Lessor and Lessee that all oil and gas royalties accruing to the Lessor under this lease shall be net of Lessor's proportionate share of the cost of gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing the oil, gas or other products produced hereunder to transform the product into marketable form" or (ii) uses substantially identical language and includes the words "marketable form."

The full class definition, which also lists certain people who are excluded from the class, can be found at [www.strategicclaims.net/xtoenergy/](http://www.strategicclaims.net/xtoenergy/).

Please note that the Court can modify who is in the Class as the case moves forward. As a Class Member, you will be bound by the result of any trial of the lawsuit and any rulings issued by the Court, unless you timely submit an exclusion request, as described below.

The named plaintiffs who represent the Class with respect to the processing and gathering overcharge claim are Roger A. Salvatora, Sandra E. Salvatora, D&M Marburger Family Enterprises, L.P., Heasley's Nurseries, Inc., and Rodney L. Lang and Bonita A. Lang (the "Plaintiffs"). The named plaintiffs who represent the class with respect to deducting costs incurred after the gas may have been transformed into marketable form under the Market Enhancement claim are Rodney L. Lang and Bonita A. Lang. The Plaintiffs have a duty to act in the best interests of the Classes and have been deemed adequate representatives by the Court.

### **4. What if I remain in the Class?**

If you remain in the class, you will be bound by any judgment (for or against the class members) and will not be able to sue XTO for any claim asserted in this case. If a jury finds that XTO breached your oil and gas lease by deducting excessive costs or costs incurred after the product obtained marketable form, you will be entitled to damages less your share of any Court-approved costs, expenses, incentive awards and attorneys' fees, if any. If you remain in the Class, you will **not** have to pay money out of your pocket to pursue the claims certified by the Court; those amounts will be paid from any recovery. The lawyers for the Classes do not get paid unless they get money for you. If the jury finds that XTO did not breach your oil and gas lease by deducting excessive costs or costs after the product obtained marketable form, you will not be able to sue XTO for those claims.

**5. Is there any money for the Classes now?**

No. No trial has occurred, and the Court has made no findings about liability. This Notice tells you that you may be a member of the Classes and that your rights may be affected by this Lawsuit. There is no guarantee that the judgment in favor of the Classes may be entered or that the Court will award the Classes any money or other relief.

**6. Who are the lawyers for the Classes?**

The Class is represented by Class Counsel, who are:

David A. Borkovic  
Jones, Gregg, Creehan & Gerace  
20 Stanwix Street, Suite 1100  
Pittsburgh, PA 15222

Telephone: 412-261-6400

Facsimile: 412-261-2652

Email: dab@jgcg.com

Mr. Borkovic was the lawyer for the Class in the *Marburger* case and is experienced in oil and gas class actions. He has been elected by his peers to Best Lawyers in America and Pennsylvania Super Lawyers.

**7. Do I need my own lawyer?**

You do not need to hire your own lawyer to pursue the claims certified by the Court because Class Counsel is representing the members of the Classes. If you wish, you may consult with your own lawyer concerning your rights in the lawsuit, but any use of your own lawyer will be at your own expense.

**8. How will Class Counsel be paid?**

If Class Counsel obtains benefits for the Classes, Class Counsel will ask the Court to decide the amount of Class Counsel's reasonable attorneys' fees, costs and expenses, an amount that will be deducted from the recovery.

**9. What if I exclude myself from the Class?**

If you exclude yourself from the Class, you will retain your right to sue XTO separately for the claims asserted in this lawsuit but you will have to retain your own attorney to pursue your claim. You may also exclude yourself if you do not want to sue XTO. If you exclude yourself, you will not be bound by any judgment entered in this case, either positive or negative for the class.

**10. How do I exclude myself from the Class?**

Any request to be excluded must be in writing and signed. You may send a letter addressed to Class Counsel, whose address is in No. 6, above, with a copy to Strategic Claims Services, 600 N. Jackson Street, Suite 205, Media, PA 19063 asking to be excluded from the Class. The letter must contain your name and address, the name of this case (*Salvatora v. XTO Energy Inc.*), must request to be excluded from the class, be dated, and be signed in ink. If you are a joint party to the oil and gas lease, all parties to the lease must join in the exclusion request. Either mail the letter to Class Counsel at the above address with a copy to Strategic Claims Services or fax the letter to Class Counsel at 412-261-2652 and to Strategic Claims Services at 610-565-7985. **In order to be effective, your exclusion request must be POSTMARKED by JANUARY 8, 2024.**

If you have both an oil and gas lease that was part of the *Marburger* settlement and a separate oil and gas lease with a Phillips company that contains a Market Enhancement clause and you want to be excluded, you must specify whether you want to be excluded from one or both classes. If you have a

separate oil and gas lease with a Phillips company that was part of the *Marburger* settlement, you should receive another Notice that is related to that oil and gas lease.

**11. How do I get more information?**

You have three ways of getting further information: You may contact Class Counsel at the telephone number, email address and address above. You may also consult the significant pleadings, other papers and Court Orders on the internet at [www.strategicclaims.net/xtoenergy/](http://www.strategicclaims.net/xtoenergy/). You may also consult the pleadings and other papers in this lawsuit at the United States District Court for the Western District of Pennsylvania at the Joseph F. Weis, Jr., United States Courthouse, Grant Street, Pittsburgh, PA 15219, during regular business hours.

**DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, XTO OR XTO'S LAWYERS ABOUT THIS LAWSUIT.**

THIS DOES NOT RESTRICT YOU FROM CONTACTING XTO REGARDING YOUR ONGOING BUSINESS RELATIONSHIP WITH THEM, INCLUDING BUT NOT LIMITED TO INQUIRING ABOUT THE STATUS OF A ROYALTY CHECK, CHANGES OF OWNERSHIP, PAYMENT PREFERENCES OR OTHER NOTICES REQUIRED BY YOUR LEASE.

Dated: October 4, 2023

By Order of the Court

*Salvatora v. XTO Energy Inc*  
c/o Strategic Claims Services  
600 N. Jackson Street, Suite 205  
Media, PA 19063

**IMPORTANT LEGAL NOTICE – PLEASE FORWARD**