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An ALM Publication

TEXAS**ZAPATA COUNTY****CONTRACTS**

Breach of Contract

Mineral owner underpaid plaintiffs' royalties, they claimed

Amount **\$2,780,000****CASE** Betsy Mecom, Donald R. Mullins, Jr., Lannie Louise Mecom, Mark Harvey Mullins and Wahatoya Ltd. v. Westport Oil & Gas Company, L.P., n/k/a Kerr-McGee Oil & Gas Onshore L.P., No. 6,470**COURT** Zapata County District Court, 49th, TX**DATE** 4/7/2015**JUDGE** Jose Antonio Lopez**PLAINTIFF****ATTORNEY(S)** Corey Wehmeyer; Santoyo Moore Wehmeyer P.C.; San Antonio TX for Donald R. Mullins, Jr., Lannie Louise Mecom, Mark Harvey Mullins, Wahatoya Ltd. Michael D. Jones; Jones Gill LLP; Houston TX for Betsy Mecom**DEFENSE****ATTORNEY(S)** D. Mitchell McFarland; Munsch Hardt Kopf & Harr P.C.; Houston, TX for Westport Oil & Gas Company L.P. Adolfo Campero Jr.; Campero & Becerra, P.C.; Laredo, TX for Westport Oil & Gas Company L.P.**FACTS & ALLEGATIONS** Pursuant to a 1974 mineral lease on a ranch in Zapata County, the plaintiffs (Betsy Mecom, her children and her childrens' holding company) together owned a royalty interest of about 13.33 percent on minerals under lease to Kerr-McGee Oil & Gas Onshore L.P. Mecom's sister owned the ranch, which consisted of approximately 8,300 acres and bordered the Rio Grande River. Plaintiff Betsy Mecom's three children were plaintiffs Donald R. Mullins Jr., Lannie Louise Mecom, and Mark Harvey Mullins. Plaintiff Wahatoya Ltd. was a holding company formed by the children to hold their mineral interests,

including but not limited to the ones in their aunt's Zapata County ranch.

The plaintiffs sued Westport Oil & Gas Company, L.P., now known as Kerr-McGee Oil & Gas Onshore L.P., for breach of the royalty provisions of the lease. The plaintiffs claimed that, from 2004 to 2011, Kerr-McGee failed to pay the correct royalties on production from more than 100 oil and gas wells.

The lease provided in part that any contract for the sale of gas from the lease would contain an annual price determination computed on the average of the highest price paid by three specific interstate purchasers of gas "of like quality and quantity" in Texas Railroad Commission District 4. The plaintiffs' natural gas marketing expert opined that, historically, natural gas had been priced and marketed using this method. The plaintiffs claimed that Kerr-McGee improperly failed to use this method in calculating the plaintiffs' royalty interest.

Kerr-McGee denied any breach and contended that the royalties were calculated correctly. Kerr-McGee's natural gas marketing expert maintained that the pricing and marketing method put forth by the plaintiffs was unusual and not historically used for calculating royalties. In cross-examination of the plaintiffs' natural-gas marketing expert, defense counsel proposed a modification of the plaintiffs' method.

INJURY From 2004 to 2011, the plaintiffs were paid about \$30 million in royalties. The plaintiffs claimed that, under the lease provision about contracts of sale, their royalties should have been either \$11.3 million greater or \$2.6 million greater, depending on how the provision is interpreted.

The plaintiffs sought either of those amounts as damages, along with \$480,000 in attorney fees through trial.

Defense counsel argued for an award of zero.

RESULT The jury found that Kerr-McGee failed to comply with the royalty payment provisions of the lease and that the noncompliance was not excused.

The jury awarded the plaintiffs \$2.3 million, as the difference between the plaintiffs' royalty as calculated by Kerr-McGee and the royalty as calculated according to the lease provisions.

The jury also found that the plaintiffs' reasonable and necessary attorney fees through trial were \$480,000.

EDITOR'S NOTE This report is based on information that was provided by counsel for Donald R. Mullins Jr., Lannie Louise Mecom, Mark Harvey Mullins and Wahatoya Ltd; Betsy Mecom's counsel; and defense counsel.