

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
- CHARLESTON DIVISION-

GARY P. JONES and SHIRLEY J. JONES,  
individually, and H. DOTSON CATHER,  
Trustee of Diana Goff Cather Trusts, and  
MCDOWELL POCAHONTAS COAL  
COMPANY, INC., a Virginia corporation,

Plaintiffs,

v.

Civil Action No. 2:06-cv-00671  
(Judge Joseph R. Goodwin)

DOMINION TRANSMISSION, INC.,  
a Delaware corporation, DOMINION  
EXPLORATION & PRODUCTION, INC.,  
a Delaware corporation, and DOMINION  
APPALACHIAN DEVELOPMENT, LLC,  
a Virginia corporation,

Defendants.

**MEMORANDUM OPINION AND FINAL ORDER APPROVING SETTLEMENT AND  
CERTIFYING THE SETTLEMENT CLASS**

Pending before the court is the Joint Motion for Final Approval of Class Action Settlement [Docket 182]. This litigation arises from allegations that the defendants, Dominion Transmission, Inc., Dominion Exploration & Production, Inc., and Dominion Appalachian Development, LLC, (collectively, “Dominion”) failed to pay the royalties due under their oil and gas leases to the named plaintiffs and the class they represent (collectively, “Settlement Class” or “Class Members”). Dominion and the named plaintiffs (collectively, “the Parties”) have reached an agreement to resolve the named plaintiffs’ claims. Having considered the entire record of submissions in this matter and the oral presentations at the final fairness hearing, I **FIND** that the Settlement Class satisfies the requirements of Federal Rules of Civil Procedures 23(a) and 23(b)(3). Moreover, I **FIND** that the

settlement is fair, reasonable, and adequate. Accordingly, the plaintiffs' motion for final approval of the class action settlement is **GRANTED**.

## **I. Background**

On June 15, 2006, the Supreme Court of Appeals of West Virginia entered a ruling in *Estate of Tawney v. Columbia Natural Resources, LLC*, and held that post-production costs cannot be deducted from a lessor's due royalty unless the controlling oil and gas lease explicitly provides for such a deduction, identifies the deductions to be taken, and describes the method of calculating the deductions. 633 S.E.2d 22, 30 (2006). This opinion had significant implications for parties to oil and gas leases in West Virginia, such as the Class Members in this case, who are owners, lessors, and beneficiaries of oil and gas leases held by Dominion.<sup>1</sup> The Class Members' leases, though somewhat variable, all provided that Dominion would pay the lessors a royalty on the gas produced from the wells on those leases. On June 22, 2006, one week after the Supreme Court of Appeals of West Virginia decided *Tawney*, the named plaintiffs filed their Complaint in the Circuit Court of Roane County, West Virginia, claiming that Dominion had wrongfully withheld royalties due to them. (Notice Removal, Ex. B [Docket 1].)

In their Complaint,<sup>2</sup> the named plaintiffs asserted claims of breach of contract, breach of

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<sup>1</sup> The plaintiffs originally named as defendants Dominion Resources, Inc., Dominion Transmission, Inc., and Dominion Exploration & Production Inc. (Notice Removal, Ex. A.) On July 16, 2008, in my Order Conditionally Certifying Temporary Settlement of Class and Preliminarily Approving Settlement [Docket 107], I granted the Parties request to substitute Dominion Appalachian Development, LLC as a party in place of Defendant Dominion Resources, Inc. (Ord. Conditionally Certifying Temp. Settlement Class ¶ 1.) Because the substitution of parties does not materially impact the procedural or substantive development of the case, I will refer to the defendants at all stages of this action collectively as "Dominion."

<sup>2</sup> The plaintiffs filed an Amended Complaint on August 22, 2006 in which they added McDowell Pocahontas Coal Company, Inc., as a named plaintiff. (Notice Removal, Ex. B.) The

fiduciary duties, fraud, and violations of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 to -110. (*Id.* ¶¶ 23-30.) The named plaintiffs further alleged that they were entitled to punitive damages because Dominion had acted with intentional and reckless disregard for the plaintiffs' rights. (*Id.* ¶ 31.) Finally, the named plaintiffs argued that the action was appropriate for prosecution as a class action. (*Id.* ¶¶ 32-43.)

On August 29, 2006, the action was removed to this court pursuant to 28 U.S.C. §§ 1331, 1332(d), 1337, and 1367. Dominion filed an Answer to the named plaintiffs' Amended Complaint on August 30, 2006. The Parties then began formal and informal discovery and beginning in June 2007, commenced formal mediation sessions with mediator David Hendrickson. The Parties entered into a Settlement Agreement on April 30, 2008, and an Amended Settlement Agreement on July 14, 2008. On July 16, 2008, this court entered an Order Conditionally Certifying Temporary Settlement Class and Preliminarily Approving Settlement ("Preliminary Approval Order") [Docket 107]. On September 17, 2008, this court entered a Stipulation and Order ("September 2008 Stipulation and Order") approving the Parties' joint stipulation clarifying certain sections of the Amended Settlement Agreement [Docket 115]. The Parties then proceeded to notify Class Members pursuant to the notice plan developed by Hilsoft Notifications and approved by this court in the Preliminary Approval Order as the best notice practicable under the circumstances. In response to the notification, three objections and three notices of appearance were filed.<sup>3</sup> Also, thirty-two exclusion requests were filed. *See* Exhibit A. The Parties filed a joint response to the objections of Ms. Doris

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Amended Complaint contained no other material changes.

<sup>3</sup> Objections were filed by Ann Shreve Norris [Docket 131], Hunter M. Bennett [Docket 149], and Doris Weaver Griffith [Docket 156]. Notices of appearance were filed by Tamela S. Cross [Docket 144], Doris Weaver Griffith [Docket 156], and Hunter M. Bennett [Docket 164].

Weaver Griffith and Mr. Hunter M. Bennett [Docket 167]. Dominion filed a response to the objection of Ms. Ann Shreve Norris [Docket 166].

The Parties filed a Joint Motion for Final Approval of Class Action Settlement on January 9, 2009 [Docket 182]. This court held a final fairness hearing on January 21, 2009. At the hearing, the Parties appeared before the court on their Joint Motion for Final Approval and requested a final order and judgment exercising personal jurisdiction over the Class Members, certifying a settlement Class consisting of One-Eighth and Flat Rate Subclasses, overruling the objections to the settlement, finding that the settlement is fair, reasonable, adequate and not the product of collusion and granting final approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e). The Parties were given an opportunity to speak in favor of the settlement. None of the objectors, including those who filed notices of appearance, attended the hearing to speak in support of their objections.

## **II. Summary of the Final Settlement Agreement**

The Amended Settlement Agreement and the Stipulation and Order entered on September 17, 2008 (collectively, "Final Settlement Agreement") constitute the final agreement underlying the pending motion. The Final Settlement Agreement creates two subclasses: (a) lessors who were due royalties for One-Eighth Wells, and (b) lessors who were due royalties for Flat Rate Wells. The Final Settlement Agreement also provides formulas for calculating individual settlement payments for each Class Member. The formulas calculate the settlement payment based on the type of well in an individual Class Member's lease, the length of time the Class Member owned an interest in the well, and the actual royalties paid on that well. Class Members with One-Eighth Well Leases have the option of receiving a higher settlement payment under a more generous formula if they enter into a Lease Modification. Also, each class member's payment will be reduced by attorneys'

fees and costs. Class Counsel may request fees in an amount up to 25 percent of the total settlement payment made to all participating class members.

The class members will be paid out of a Settlement Fund created by Dominion. Dominion's contribution to the fund will not exceed the estimated payment to each subclass in the event that every Class Member participates. Dominion's contribution to the fund is reduced by the amount owed to Dominion itself and the amount owed to class members that have excluded themselves from the settlement. Any funds remaining after settlement payments and fee awards, including any interest accrued, will be paid back to Dominion.

Class Members will receive payment upon completion and submission of a Claim Form. The Claim Form will be sent to each class member by the Claims Administrator and will contain information including the payment amount to which the class member is entitled. The Claim Form also will contain a provision releasing Dominion from future claims by Class Members for improper royalty payments, improper deductions, improper measurement, improper accounting for natural gas liquids, improper sales prices, breach of lease agreements, breach of fiduciary duty, fraud, violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 to -110, violation of the West Virginia Flat Rate Royalty Statute, W. Va. Code § 22-6-8, and punitive damages for failure to pay proper royalty. Class Members must return the Claim Form to the Claims Administrator or dispute the contents of the Claim Form within forty-five (45) days after the Claim Form is mailed to them.

### **III. Personal Jurisdiction and Notice**

In the context of a class action, the due process requirements of the Fifth Amendment require “[r]easonable notice combined with an opportunity to be heard and withdraw from the class.” *In re*

*Serzone Prod. Liability Litig.*, 231 F.R.D. 221, 231 (S.D. W. Va. 2005). Federal Rule of Civil Procedure 23 also requires that a class receive notice prior to settlement. Rule 23(c) specifically provides that for a class maintained under Rule 23(b)(3), the notice must be “the best practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The rule further provides that the notice inform potential class members of the nature of the action, that class members may make an appearance through counsel, that class members may exclude themselves from the settlement, and that the class judgment will have a binding effect on class members who are not excluded. *Id.* “[S]ilence on the part of those receiving [such] notice is construed as tacit consent to the court’s jurisdiction.” *In re Serzone*, 231 F.R.D. at 231 (internal quotations omitted).

In my July 16, 2008 Order, I approved the form of notice and plan dissemination which included a comprehensive mailing to all reasonably identifiable class members; an informational release to 4,490 press outlets throughout the United States, and the establishment of an information website ([www.DominionClass.com](http://www.DominionClass.com)). The plan was implemented by Arnett & Foster, PLLC (“A&F”), selected by the Parties, and approved by this court, to serve as the Claims Administrator. A&F supplemented the notice plan’s notification methods by creating a toll-free number that notified class members could call to receive additional information.

Notice was uniquely effective in this action because Dominion’s records of their leases allowed A&F to provide individual notice by mail to most class members. Often in class actions, a significant number of the class members are unknown and such direct notice is impossible. The Parties’ notice expert Shannon R. Wheatman, Ph.D. of Hilsoft Notifications testified that in this case, however, that the mailed notices reached approximately 95.4 percent of the potential class.

I was informed at the hearing that notices actually reached close to 97.5 percent of the potential class. Moreover, no notified Class Members have objected to the settlement on the basis of lack of reasonable notice and opportunity to be heard or to opt out. I **HOLD** that personal jurisdiction exists over the Class Members because notice was reasonable and afforded the Settlement Class an opportunity to be heard and to opt out.

#### **IV. CAFA Requirements**

The Class Action Fairness Act of 2005 (“CAFA”) requires each defendant participating in a proposed class settlement to provide appropriate state officials with information about the settlement, including, *inter alia*, a copy of the complaint, notice of any judicial hearings, any notification to class members, and any final judgments on the settlement. 28 U.S.C. § 1715. The Parties satisfied that requirement by sending timely notice packets to fifty-two Attorneys General after they filed their first proposed settlement agreement in May 2008, and again in July 2008 after they filed an amended settlement agreement. The Parties did not send new notice packets after the filing of the September 2008 Stipulation and Order. That Order, however, did not change the value of the settlement but only clarified the release provisions and the method of calculating the settlement proceeds distributed to Flat Rate Subclass Members. Therefore, the September 2008 Stipulation and Order did not trigger additional CAFA obligations. I **FIND** that the Dominion Defendants have provided adequate notice of the settlement to appropriate State and Federal Officials under 28 U.S.C. § 1715.

#### **V. Class Certification**

A settlement class must meet the prerequisites for class certification under Federal Rule of Civil Procedure 23(a) and at least one of the subsections of Rule 23(b). *In re Serzone*, 231 F.R.D.

at 237. The Fourth Circuit reads Rule 23 liberally and applies it flexibly to “best serve the ends of justice for affected parties and promote judicial efficiencies.” *Id.* (quoting *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003)). In this case, the Parties seek class certification under Rule 23(b)(3). In my Preliminary Approval Order, I analyzed the proposed settlement class and subclasses pursuant to Rules 23(a) and 23(b)(3) and found that the requirements of those rules had been met. Nothing added to the record since that time alters my findings.<sup>4</sup> In addition, no Class Members have objected to the certification of a settlement class as preliminarily and conditionally certified in the Preliminary Approval Order. Finally, the high success rate of the class notification supports class treatment in this case because there is little risk that class members’ interests were inadequately represented or were unprotected. Consequently, for the reasons set forth in the Preliminary Approval Order, and those discussed above, I **CERTIFY** a Settlement Class, consisting of the following two Subclasses of Plaintiffs:

**Flat Rate Subclass:** All persons who have entered into, or who are or were lessors of, oil and gas leases on lands lying within the boundary of the State of West Virginia, and who have or had oil, gas or other hydrocarbon production under said lease and have received or are due royalty payments from June 22, 1996 through the Date of Settlement, from [Dominion], or their predecessors or successors for

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<sup>4</sup> According to the Parties’ statements at the fairness hearing, accurately calculating the damages of each class member would require an individualized inquiry into factors affecting the specific royalty deductions of each class member. But where common issues of liability predominate over individual issues of liability, courts find that the Rule 23(b)(3) predominance requirement is met even though an individualized inquiry into damages may be necessary. *See Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 428 (4th Cir. 2003). Particularly in this case, the fact that an accurate assessment of the class members’ damages would require individualized inquiries detracts little from the predominating common liability issues. Almost all of the class members have been notified and have tacitly agreed to a common calculation method for damages. Consequently, there will be no actual individualized inquiry into damages that would destroy the “economies of time, effort, and expense,” achieved by settling this action as a class. Fed. R. Civ. P. 23 Advisory Committee’s Note 1966, subdivision (b)(3).

Flat Rate Wells. The Flat Rate Subclass excludes lessors due royalties for One-Eighth Wells, Fixed Rate Wells, and Non-Affiliate Farmout Wells, as well as persons entitled to receive Overriding Royalty Interests. Dominion Resources, Inc. and its subsidiaries, affiliates, and related corporations are excluded as lessors from this Subclass. The Flat Rate Subclass does not include lessors due royalties for wells drilled or acquired by [Dominion] after May 31, 2006.

**One-Eighth Subclass:** All persons who have entered into, or who are or were lessors of, oil and gas leases on lands lying within the boundary of the State of West Virginia, and who have or had oil, gas or other hydrocarbon production under said lease and have received or are due royalty payments from June 22, 1996 through the Date of Settlement, from [Dominion], or their predecessors or successors for One-Eighth Wells. The One-Eighth Subclass excludes lessors due royalties for Flat Rate Wells, Fixed Rate Wells, Non-Affiliate Farmout Wells, and wells under leases where the deduction of Post-Production Expenses is expressly permitted, as well as persons entitled to receive Overriding Royalty Interests. Dominion Resources, Inc. and its subsidiaries, affiliates, and related corporations are excluded as lessors from this Subclass. The One-Eighth Subclass does not include lessors due royalties for wells drilled or acquired by [Dominion] after May 31, 2006.

## **VI. Fairness Determination**

Federal Rule of Civil Procedure 23(e)(1)(C) provides that a court may only approve the settlement of a certified class action after determining that it is fair, reasonable, and adequate. While compromise and settlement are favored by the law, “the primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during settlement negotiations.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). In *In re MicroStrategy, Inc. Securities Litigation*, 148 F. Supp. 2d 654 (E.D. Va. 2001), the court noted that approval of a class action during settlement is committed to the “sound discretion of the district courts to appraise the reasonableness of particular class action settlements on a case-by-case basis,

in light of the relevant circumstances.” 148 F. Supp. 2d 654, 663 (E.D. Va. 2001) (quoting *Evans v. Jeff D.*, 475 U.S. 717, 742 (1986)).

As a preliminary matter in this fairness determination, I note that the traditional concern for the interests of absent class members is substantially alleviated in this case by the high percentage of known class members. As discussed above, the Parties have successfully sent individual notice to 97.5 percent of the approximately 25,000 member class. Therefore, almost the entire class has been informed of the terms of the settlement. Their tacit consent to the terms of the settlement weighs heavily towards a finding of fairness.

I must, however, apply the more specific analysis adopted by the Fourth Circuit for determining whether the settlement satisfies the Rule 23 requirements. The Fourth Circuit has adopted a bifurcated analysis, separating the inquiry into a settlement’s “fairness” from the inquiry into a settlement’s “adequacy.” *MicroStrategy*, 148 F. Supp. 2d at 663 (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158-89); *see also Strang v. JHM Mortgage Sec. Ltd. P’ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995). In assessing the “fairness” of a proposed settlement, the court must consider the following four factors: (a) the posture of the case at the time the settlement was proposed; (b) the extent of discovery that had been conducted; (c) the circumstances surrounding the negotiations; and (d) the experience of counsel in the area of class action litigation. *MicroStrategy*, 148 F. Supp. 2d at 663-64; *see also Strang*, 890 F. Supp. at 501. In determining the “adequacy” of the settlement, the court looks to the following: (a) the relative strength of the plaintiffs’ case on the merits; (b) the existence of any difficulties of proof or strong defenses the plaintiffs would likely encounter if the case were to go to trial; (c) the anticipated duration and expense of additional litigation; (d) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (e) the degree

of opposition to the settlement. *MicroStrategy*, 148 F. Supp. 2d at 665; *see also Strang*, 890 F. Supp. at 501.

#### **A. Fairness**

I **FIND** that the Final Settlement Agreement in this action meets the fairness test because it has been negotiated at arm's length over a period of months between counsel through the use of an experienced mediator. This action has been pending for approximately two and a half years. In that time, Plaintiff Class Representatives have actively pursued necessary discovery. In fact, Dominion has produced over 118,000 pages of documents to the Plaintiff Class Representatives,<sup>5</sup> in addition to numerous pages of database information produced on CDs. Class Counsel<sup>6</sup> have taken depositions pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. Plaintiff Class Representatives have retained several expert witnesses in the field of gas royalty accounting. During the pendency of this action, including over ten months of intensive settlement negotiations, Class Counsel, with the aid of their experts, have been able to determine the nature and strength of the Class Members' claims and to make reasonable damages calculations. Finally, Class Counsel are experienced in class action litigation generally and in the particular field of gas royalties class actions.

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<sup>5</sup> In my Preliminary Approval Order, I designated the named plaintiffs in this matter as Plaintiff Class Representatives.

<sup>6</sup> In my Preliminary Approval Order, I appointed as Class Counsel Marvin W. Masters, The Masters Law Firm, LC, Charleston, West Virginia; Michael W. Carey, Carey Scoot & Douglas, PLLC, Charleston, West Virginia; Thomas W. Pettit, Thomas W. Pettit, L.C., Barboursville, West Virginia; Scott S. Segal, The Segal Law Firm, Charleston, West Virginia; and David J. Romano, Romano Law Offices, Clarksburg, West Virginia. (Preliminary Approval Order ¶ 4.)

**B. Adequacy**

I **FIND** that the Agreement also meets the adequacy test. Although Plaintiff Class Representatives believe they have strong claims against Dominion, there is obviously no certainty that they will prevail if the settlement is not approved and the litigation continues. Moreover, Dominion has denied liability and will continue to challenge Plaintiff Class Representatives' claims if the case should move forward. The issues in this action involving gas lease language and the permissibility of deductions from royalties are complex and may be difficult for a jury to understand at trial. Complex litigation such as this would be very costly to maintain, as the Parties expect to take many additional lengthy depositions and also engage in the continued production and review of documents. Further, maintenance of this action would require extensive review by experts who would be costly to both sides.

There is no issue of the solvency of Dominion and the Final Settlement Agreement establishes a Settlement Fund to which Dominion have already contributed an initial deposit of \$15 million as outlined in the Agreement.

As discussed above, only three class members have filed objections to the settlement, and those objections have been resolved or are premature, as discussed below. The small number of objections is especially significant because such a high percentage of the Class Members were successfully notified. Only a small number of Class Members (thirty-two out of twenty-four thousand) asked to be excluded. *See* Exhibit A attached.

For the reasons discussed above, I **FIND** that the settlement is fair, reasonable and adequate, and not the product of collusion.

## VII. Objections

Three Class Members have filed objections: Ann Shreve Norris, Hunter M. Bennett, Jr., and Doris Weaver Griffith [Dockets 131, 149, 156]. The Parties have timely responded to the objections of Mr. Bennett and Ms. Weaver [Docket 167]. Dominion timely responded to Ms. Norris' objection [Docket 166]. None of the objectors appeared at the fairness hearing in support of their objections. I will address each objections in turn.

Mr. Bennett objects to the word "assigns" in the definition of "Dominion" in the Agreement and to the inclusion of the same word in the Claim Forms. Mr. Bennett reasons that because the definition of "Non-Affiliate Farmout Wells" in the Amended Settlement Agreement expressly excludes these wells from the settlement, no one should be required to release claims relating to them. The Parties agree that the term "assigns" does not include those who operate Non-Affiliate Farmout Wells, which are wells on Dominion leases where Dominion does not operate the well and pay the royalty. Accordingly, I **FIND** that the term "assigns" as used in this case and as used in the claim form release required to be submitted by claimants does not include those who operate Non-Affiliate Farmout Wells, and accordingly claims against operators of Non-Affiliate Farmout Wells are not released in this settlement.

I received a letter from Mr. Bennett in which he explained that the Parties' clarification of the word "assigns," as described by my finding above, satisfies his objection. Consequently, he formally withdraws his objection [Docket 186]. "Court approval is necessary for the withdrawal of objections to settlements binding on the class." Manual for Complex Litigation (Fourth) § 21.643 at 328 (2004). I **FIND** that Mr. Bennett seeks to withdraw his objection based on a clarification, rather than a modification of the settlement agreement. Accordingly, I approve the withdrawal of

Mr. Bennett's objection. *See* Fed. R. Civ. P. 23 advisory committee's note to the 2003 Amendments, Paragraph (4) (explaining that if objections are withdrawn or surrendered on terms that do not modify the settlement, then the court may approve the withdrawal without "elaborate inquiry").

Ms. Griffith objects that she and her fellow heirs "do not know the terms of the [Amended Settlement Agreement] or dollar amount that is being considered." Courts frequently approve settlements such as this where the settlement fund and individual settlement payments are not precisely quantified until after an order is entered finally approving the settlement. *See, e.g., Nat'l Treasury Employees Union v. United States*, 54 Fed. Cl. 791, 805-06 (2002) (holding that settlement was fair, adequate and reasonable where notice provided to class members set forth the aggregate amount to be paid to the class, the formula for distributing that amount among the class members and the class members' due process rights). Furthermore, Class Counsel informed me at the fairness hearing that Ms. Griffith was contacted and, upon having the settlement terms explained to her, was satisfied by the settlement terms. Accordingly, I **FIND** that the Parties have adequately disclosed the terms of the Agreement and the dollar amount being considered. Ms. Griffith's objection is **OVERRULED**.

Ms. Norris objects to the Fee Award. Class Counsel's Motion for Award of Attorney Fees and Reimbursement of Expenses and the memorandum in support thereof were filed on January 9, 2009. Ms. Norris' objection was premature and more appropriately directed at the Class Counsel's motion for attorneys' fees. Nevertheless, for the purposes of assessing the fairness of the Final Settlement Agreement, I note that "[a]warding attorneys 25% of a common fund represents a typical bench mark." *Manual for Complex Litigation (Fourth)* § 14.121 at 188 (2004). Moreover, attorney

fees in this action are subject to a separate court determination of reasonableness and consequent approval. Therefore, I **FIND** that the attorney fee provision of the Final Settlement Agreement is reasonable and does not detract from the fairness, reasonableness, and adequacy of the agreement. Though Ms. Norris' objection is **OVERRULED**, I will take her concerns into consideration when I address in a separate order Class Counsel's pending Motion for Award of Attorney Fees and Reimbursement of Expenses [Docket 180].

### **VIII. Miscellaneous Matters**

Before concluding, there are two miscellaneous matter that I should address. The first involves Ms. Tamela S. Cross, a class member who filed a notice of appearance [Docket 144] but did not attend the fairness hearing to state any comments or objections. Ms. Cross did not file any written objections. At the fairness hearing, Class Counsel informed me that they had contacted Ms. Cross and that she had questions about, rather than objections to, the terms of the Final Settlement Agreement. Class Counsel further represented that Ms. Cross seemed satisfied with their explanation and she did not intend to attend to the hearing. On January 28, 2009, I received a letter from Ms. Cross confirming that she and Mr. Gregory N. Cross have no objection to the settlement [Docket 187]. Accordingly, Ms. Cross' communications with this court do not affect my evaluation of the Final Settlement Agreement.

Second, this court received an exclusion notice from the executor/trustee of the estate of deceased lease holder, Leslie C. Brooks [Docket 143]. The beneficiaries to Mr. Brooks' oil and gas interests, however, notified this court after the deadline for exclusion notifications that they do not want to be excluded [Docket 165]. The Parties agree that the re-inclusion of these beneficiaries in the Settlement Class does not affect the Settlement Agreement or amount. Neither party objects to

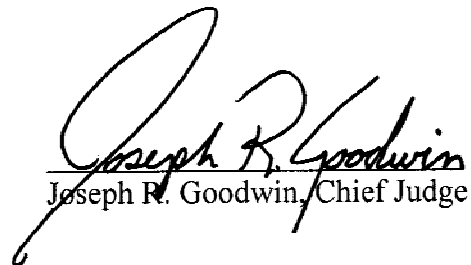
the inclusion of the beneficiaries to Mr. Brooks' leases. Accordingly, the beneficiaries to Mr. Brooks' leases are included in the Settlement Class.

### **IX. Conclusion**

For the reasons discussed above, the Joint Motion for Final Approval of Class Action Settlement is **GRANTED** [Docket 182]. Accordingly, the court **CERTIFIES** the proposed class upon finding that the class satisfies Rule 23(a) and Rule 23(b)(3) and **APPROVES** the Final Settlement Agreement upon finding that the settlement is fair, reasonable, and adequate for the purposes of Rule 23(e). The court further **APPROVES** the withdrawal of Mr. Hunter M. Bennett's objection to the Final Settlement Agreement [Docket 149] and **OVERRULES** the remaining objections [Dockets 131 and 156].

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 30, 2009

  
Joseph R. Goodwin, Chief Judge

**Exhibit A - Exclusion Requests**

1. Thomas Frum  
(Docket No. 119)
2. Ronald D. Siers  
(Docket No. 120)
3. Joan M. Siers  
(Docket No. 121)
4. Mark P. Hayes  
(Docket No. 122)
5. Ione F. Gineste  
(Docket No. 123)
6. Marie E. Gassaway  
(Docket No. 124)
7. Janice B. Hammack  
(Docket No. 125)
8. Forest Oil Corporation  
Forest Oil Permian Corporation  
The Wiser Oil Co.  
(Docket No. 126)
9. Judy Mae Johnson  
(Docket No. 128)
10. Gary L. Stephens  
Sharon A. Hodgson  
Sheila Kay Haught  
Estate of Zelleth W. Stevens  
(Docket No. 129)
11. Melissa E. Stewart  
(Docket No. 130)
12. Eastern American Energy Corp.  
Eastern American Energy Co.  
(Docket 132)
13. Linda A. Waldeck and/or  
Franklin L. Waldeck  
(Docket No. 133)
14. Energy Corporation of America  
(Docket No. 135)
15. William C. White  
(Docket No. 136)
16. James C. West, Jr.  
Nina R. West  
(Docket No. 137)
17. Minerals Management Service  
(Docket No. 138)
18. East Resources Inc.  
(Docket No. 139)
19. Michael F. Pleasants  
(Docket No. 140 & 141)
20. Pocahontas Land Corporation  
(Docket No. 142)
21. Charles F. Doggett  
(Docket No. 145)
22. Stephen Quinton King  
(Docket No. 146)
23. Dominion Transmission, Inc.,  
Dominion Exploration & Production,  
Inc., Dominion Appalachian  
Development, LLC, and all  
subsidiaries, affiliates and related  
corporations  
(Docket No. 148)

24. Jeannette L. Collins by Carol Sue Jones  
(Docket No. 150)
25. Elizabeth P. Marshall, Attorney  
in Fact for Rebecca B. Whetherholt  
(Docket No. 151)
26. George B. Craig  
(Docket No. 152)
27. Norma Jean Wright by Lisa R.  
Neuman and Lori W. Kellner  
(Docket No. 153)
28. John C. Craig  
(Docket No. 158)
29. Range Resources-Pine Mountain, Inc.  
(Docket No. 159)
30. Penn Virginia Oil & Gas Corp.  
(Docket No. 160)
31. Devon Energy Production Co., LP  
Devon Energy Production Company, LP  
Devon Energy Corporation  
(Docket No. 161)
32. O.C. Spaulding  
(Docket No. 162)