

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION,	§	Case No. 20-33233 (DRJ)
<i>et al.</i> , ¹	§	
	§	(Jointly Administered)
Reorganized Debtors.	§	
	§	

**REORGANIZED DEBTORS' OBJECTION TO
PROOF OF CLAIM NO. 2253 FILED BY ROXANE WEST**

This is an objection to your claim. The objecting party is asking the Court to disallow the claim that you filed in this bankruptcy case. You should immediately contact the objecting party to resolve the dispute. If you do not reach an agreement, you must file a response to this objection and send a copy of your response to the objecting party within 30 days after the objection was served on you. Your response must state why the objection is not valid. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.

Represented parties should act through their attorney.

The above-captioned reorganized debtors (together, the “Reorganized Debtors”) file this Objection (the “Objection”) to Proof of Claim No. 2253 (the “West Claim”) filed by Roxane West (the “Claimant”). In support of the Objection, the Reorganized Debtors affix as **Exhibit A** the *Declaration of Deven Bowles in Support of the Objection to Proof of Claim No. 2253 Filed by Roxane West* (the “Declaration”) and represent as follows:

¹ A complete list of each of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/chesapeake>. The location of Reorganized Debtor Chesapeake Energy Corporation’s principal place of business and the Reorganized Debtors’ service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Reorganized Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

A. The Pre-Petition Litigation.

4. On January 9, 2017, Shirlaine West Properties Limited and Nathan K. Griffin, on behalf of the Estate of Lorraine E. West and on behalf of the Estate of Shirley A. West (“Original Plaintiffs”) filed Plaintiffs’ Original Petition and First Set of Integrated Discovery against Chesapeake Exploration, L.L.C., Chesapeake Operating, Inc., and TOTAL E&P USA, Inc. in the District Court, 236th Judicial District, Tarrant County Texas, Cause No. 236-289847-17 (the “Lawsuit”). The Lawsuit was transferred to the MDL, Cause No. 48-000000-15, in the District Court, 48th Judicial District, Tarrant County, Texas. The Original Plaintiffs filed a First Amended Petition in the MDL on May 16, 2017 and a Second Amended Petition in the MDL on September 8, 2017. On January 12, 2018, the Original Plaintiffs assigned all of their rights and interests in the claims at issue to the Claimant, Roxane West.

5. Generally, the Lawsuit alleged that the defendants failed to remit certain royalties allegedly owed pursuant to an Oil and Gas Lease (the “Lease”).

6. On November 19, 2018, the trial court denied the Claimant’s Motion for Partial Summary Judgment on Lease Interpretation. On the same day, the trial court entered an order granting the Debtor defendants’ motion for summary judgment on the Claimant’s breach of contract claim, ruling the Claimant should take nothing by way of such claim.

7. The Claimant filed a Notice of Appeal on December 19, 2018, and the Lawsuit was pending on appeal in Cause No. 02-18-00424-CV in the Second District Court of Appeals at the time of the commencement of these chapter 11 cases.

B. The West Claim.

8. On October 20, 2020, the West Claim was received by the Reorganized Debtors’ claims, noticing and solicitation agent, Epiq Corporate Restructuring, LLC.² The West Claim states that the amount of the alleged claim is \$367,927.64. *See* West Claim, No. 7. The basis of the West Claim is alleged to be “[r]oyalty due on natural gas sold by debtor under oil and gas lease.” *See* West Claim, No. 8. The West Claim does not reference or affix the Lawsuit or the Notice of Appeal related to it. It does, however, affix the Lease, as well as a chart outlining asserted damages. The West Claim was asserted against Debtor Chesapeake Exploration, LLC.

C. The Claims Reconciliation Process.

9. On August 13, 2020, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice*

² The Claimant also filed proof of claim no. 2059 against Debtor Chesapeake Operating, LLC. On April 28, 2021, the Court entered an order expunging that claim [Docket No. 3557].

of Bar Dates, and (V) Granting Related Relief [Docket No. 787] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claim in these chapter 11 cases. Among other things, the Bar Date Order established October 30, 2020, at 5:00 p.m., prevailing Central Time, as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing.

10. On August 21, 2020, the Debtor Chesapeake Operating filed its Schedules of Assets and Liabilities [Docket No. 920] (the “Schedules”). On November 27, 2020, the Debtor Chesapeake Operating amended the Schedules [Docket No. 1944] (the “Amended Schedules”). The Amended Schedules state that Shirlaine West Properties Limited has a contingent, unliquidated and disputed unsecured claim of an undetermined amount. *See* Amended Schedules, No. 3.8779.

11. On January 13, 2021, the Court confirmed the Debtors’ plan of reorganization [Docket No. 2833] (as amended, the “Plan”) memorializing that decision in an order filed on January 16, 2021. *See Order Confirming Fifth Am. Joint Ch. 11 Plan of Reorganization of Chesapeake Energy Corp. & Its Debtor Affiliates* [Docket No. 2915].³

12. For the reasons set forth below, and based on the review to date, the Reorganized Debtors have determined that the West Claim should be disallowed.

Objection

13. A filed proof of claim is deemed allowed, unless a party in interest objects. 11 U.S.C. § 502(a). *See also* Fed. R. Bankr. P. 3001(f) (“A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the

³ Notice of confirmation of the Plan was served on the Claimant, as evidenced by that certain *Affidavit of Service* [Docket No. 3210].

claim.”). Further, section 502(b)(1) of the Bankruptcy Code provides that the court “shall determine the amount of such claim ... as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—such claim is unenforceable against the debtor and the property of the debtor ...” 11 U.S.C. § 502(b)(1).

14. A properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See* Fed. R. Bankr. P. 3001(f). Whether a claim is allowable “generally is determined by applicable nonbankruptcy law.” *In re W.R. Grace & Co.*, 346 B.R. 672, 674 (Bankr. D. Del. 2006).

15. A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. *See, e.g., In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidenced. *See id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *Id.*

16. The Reorganized Debtors do not believe they are liable to the Claimant because the trial court accepted the Debtor defendants’ Lease interpretation. To be sure, in finding that the royalties were correctly paid under the Lease and no further amounts are owed, the trial court (a) granted the Debtor defendants’ motion for summary judgment on the Claimant’s breach-of-contract claim, and (b) denied the Claimant’s cross-motion for summary judgment on the breach of contract claim. The Debtor defendants’ motion for summary judgment asserted that the Lease’s royalty clause values the royalty at the “point of sale,” and the point of sale is indisputably at the wellhead. A royalty valued “at the well” is net of post-production costs. The trial court agreed that the summary judgment for the Debtor defendants was proper because they paid royalty based on

the wellhead value of the gas, in accordance with the Lease. For the same reason, the trial court denied the Claimant's motion for summary judgment and ruled that the Claimant shall take nothing from the Debtor defendants. Those rulings were correct then—and remain correct today.

17. To be sure, relevant case law provides: “Although royalty does not bear production costs, royalty usually bears post-production costs.” *See Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121-22 (Tex. 1996). Parties, however may modify that default rule in their lease. *See id.* The Claimant alleges the parties did so. The Claimant's argument, however, is contrary to established Texas law that when royalty is valued at the wellhead—as it is here—the royalty necessarily bears post-production costs. *See id.*

18. The trial court's rulings were proper and correct because the summary judgment evidence established: (a) the Lease values the Claimant's royalty at the “point of sale;” (b) the point of sale is indisputably at the well; (c) the Debtors did not make any deductions from the wellhead price when calculating the Claimant's royalty; (d) under controlling and well-settled Texas law, when a lease values the royalty at the well, the wellhead value of the gas is necessarily net of post-production costs; and (e) as a result, the Debtor defendants complied with the Lease as a matter of law and fact in paying the Claimant's royalties.

19. The trial court also properly and correctly rejected the Claimant's interpretation of the Lease, and in particular the Claimant's reliance on so-called “add back” and “cost-free” provisions because: (a) under controlling Texas law, such provisions are surplusage and do not change the meaning of a lease when, as here, the Lease values the royalty at the well;⁴ (b) the Claimant's interpretation of the Lease does not harmonize all of the Lease provisions and ignores

⁴ In *Heritage Resources*, the Texas Supreme Court held that “no deductions” clauses must be read in conjunction with the royalty provisions of the lease. So, when a no deductions clause states that there can be no deductions from “royalty,” *Heritage Resources* mandates that the court first determine where “royalty” is calculated.

that the Debtor defendants do not receive the downstream commercial price for gas on the Lease; (c) the Lease's market-enhancement clause expressly allows for deductions of the post-production costs at issue; and (d) as a matter of law, a purported "*Heritage* disclaimer" does not free a royalty from post-production costs when the text of the lease does not do so.⁵

20. The trial court already ruled the West Claim is without merit. The Claimant should not get another bite at the apple at this time. The West Claim should be disallowed.

Reservation of Rights

21. This Objection is limited to the grounds stated herein. It is without prejudice to the rights of the Reorganized Debtors or any other party in interest to object to the West Claim on any grounds whatsoever. The Reorganized Debtors expressly reserve all further substantive or procedural objections they may have. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor or Reorganized Debtor entity; (b) a waiver of any party's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this objection or any order granting the relief requested by this objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Reorganized Debtors' rights under the Bankruptcy Code or any other applicable law.

⁵ See *Chesapeake Exploration, L.L.C. v. Hyder*, 483 S.W.3d 870, 876 (Tex. 2016) ("*Heritage Resources* does not suggest, much less hold, that a royalty cannot be made free of postproduction costs. *Heritage Resources* holds only that the effect of a lease is governed by a fair reading of its text. A disclaimer of that holding, like the one in this case, cannot free a royalty of postproduction costs when the text of the lease does not do so. Here, the lease text clearly frees the gas royalty of postproduction costs and, reasonably interpreted, we conclude, does the same for the overriding royalty. The Disclaimer of *Heritage Resources*' holding does not influence our conclusion").

22. In the event that any of the West Claim is not disallowed and expunged on the grounds asserted herein, the Reorganized Debtors hereby reserve all rights to object to such claims, or any amended claim, on any other grounds. Additionally, the Reorganized Debtors expressly reserve all rights to amend, modify, or supplement the objections asserted herein and to file additional objections to the West Claim.

Notice

23. Notice of this Objection has been provided to the Claimant in accordance with the Bankruptcy Rules. The Reorganized Debtors submit that such notice is sufficient and proper under the circumstances and that no other further notice is requested.

The Reorganized Debtor respectfully requests that the Court enter the Order sustaining the Objection in its entirety and disallowing and expunging the West Claim and grant such other and further relief as is just and proper under the circumstances.

Houston, Texas
July 30, 2021

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

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Certificate of Service

I certify that on July 30, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

Exhibit A

Declaration of Deven Bowles

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION, <i>et al.</i> , ¹	§	Case No. 20-33233 (DRJ)
	§	
Reorganized Debtors.	§	(Jointly Administered)
	§	
	§	

**DECLARATION OF DEVEN BOWLES IN SUPPORT OF THE REORGANIZED
DEBTORS' OBJECTION TO PROOF OF CLAIM NO. 2253 FILED BY ROXANE WEST**

I, Deven Bowles, declare under penalty of perjury:

1. I have personal knowledge of all of the facts set out in this Declaration.²
2. I graduated with a BBA from the University of Oklahoma in 2006.
3. Since 2012, I have been employed with Chesapeake Operating, L.L.C. as the Manager – Revenue Accounting. Prior to that time, I served as Senior Accounting Supervisor and have worked for Chesapeake Operating, L.L.C. since 2006. I oversee the department which reviews the processing and allocation of revenues received from both third-party and affiliated purchasers of production, as well as the payments associated with those revenues, including those payments made on behalf of Chesapeake Exploration to its lessors. My department also oversees and hosts all revenue and JIB audits across all of the areas where Chesapeake operates. I also assist with litigation matters and special projects as they arise.

¹ A complete list of each of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors' claims and noticing agent at <https://dm.epiq11.com/chesapeake>. The location of Reorganized Debtor Chesapeake Energy Corporation's principal place of business and the Reorganized Debtors' service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

² Capitalized and undefined terms herein shall have the meanings ascribed to them in the objection to which this Declaration is affixed.

4. I am familiar with and have read the *Reorganized Debtors' Objection to Proof of Claim No. 2253 filed by Roxane West* (the "Objection"). I am also familiar with and have read the Lawsuit and the West Claim. I believe that the facts stated in the Objection are accurate.

5. My understanding is that on January 9, 2017, the Shirlaine West Properties Limited and Nathan K. Griffin, on behalf of the Estate of Lorraine E. West and on behalf of the Estate of Shirley A. West ("Original Plaintiffs") filed the Lawsuit in the District Court, 236th Judicial District, Tarrant County Texas, Cause No. 236-289847-17. The Lawsuit was transferred to the MDL, Cause No. 48-000000-15, in the District Court, 48th Judicial District, Tarrant County, Texas. The Original Plaintiffs filed a First Amended Petition in the MDL on May 16, 2017 and a Second Amended Petition in the MDL on September 8, 2017. On January 12, 2018, the Original Plaintiffs assigned all of their rights and interests in the claims at issue to the Claimant, Roxane West.

6. Generally, the Lawsuit alleged that the Reorganized Debtors failed to remit certain royalties alleged owed pursuant to the terms of an oil and gas lease (the "Lease"). The Reorganized Debtors filed a motion for summary judgment.

7. Generally, the Reorganized Debtors argued: (a) the Lease values the Claimant's royalty at the "point of sale;" (b) the point of sale is indisputably at the well; (c) Chesapeake did not make any deductions from the wellhead price when calculating the Claimant's royalty; (d) when a lease values the royalty at the well, the wellhead value of the gas is necessarily net of post-production costs.

8. My understanding is that on November 19, 2018, the trial court denied the Claimant's motion for partial summary judgment. On the same day, the trial court entered an order granting the Reorganized Debtors' motion for summary judgment on the Claimant's breach of

contract claim. The trial court ruled that the Claimant should take nothing by way of such claim. True and correct copies of the summary judgment orders are attached hereto as **Exhibit A-1**.

9. The Claimant filed a Notice of Appeal on December 19, 2018, and the Lawsuit was pending on appeal in Cause No. 02-18-00424-CV in the Second District Court of Appeals at the time of the commencement of these chapter 11 cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Date: July 30, 2021

/s/ *Deven Bowles*

Manager – Revenue Accounting
Chesapeake Operating, L.L.C.

Exhibit A-1

Summary Judgment Orders

CAUSE NO. 048-000000-15

NOT APPLICABLE TO ALL ACTIONS

IN RE:

CHESAPEAKE BARNETT

ROYALTY LITIGATION #2

SHIRLAINE WEST PROPERTIES
LIMITED and NATHAN K. GRIFFIN, ON
BEHALF OF THE ESTATE OF LORRAINE
E. WEST AND ON BEHALF OF THE
ESTATE OF SHIRLEY A. WEST,

Plaintiffs,

vs.

CHESAPEAKE EXPLORATION, L.L.C.,
CHESAPEAKE OPERATING, INC., and
TOTAL E&P USA, INC.

Defendants.

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

PRETRIAL COURT NO.
048-289847-17

TRIAL COURT NO.
236-289847-17

**ORDER DENYING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT ON LEASE INTERPRETATION**

On the 12th day of October, 2018, came on for consideration Plaintiffs' Motion for Partial Summary Judgment on Lease Interpretation. Having considered Plaintiffs' Motion, the competing cross-motions, responses and replies, the summary judgment evidence, and the arguments of counsel, the Court is of the opinion that Plaintiffs' ^{own} ~~Cross~~ Motion should be DENIED in all respects.

ORDER DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
ON LEASE INTERPRETATION – PAGE 1 of 2



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IT IS THEREFORE ORDERED that Plaintiffs' ^{On}~~Cross~~-Motion is hereby DENIED.

SIGNED this 19th day of November, 2018.


HONORABLE JUDGE PRESIDING

MDL No. 48-000000-15

NOT APPLICABLE TO ALL ACTIONS

IN RE:

CHESAPEAKE BARNET

ROYALTY LITIGATION #2

SHIRLAINE WEST PROPERTIES LIMITED
and NATHAN K. GRIFFIN, ON BEHALF OF
THE ESTATE OF LORRAINE E. WEST
AND ON BEHALF OF THE ESTATE OF
SHIRLEY A. WEST,
Plaintiffs,

VS.

CHESAPEAKE EXPLORATION, L.L.C.,
CHESAPEAKE OPERATING, INC.,
JAMESTOWN RESOURCES, L.L.C., and
TOTAL E&P USA, INC.,
Defendants.

IN THE 48TH JUDICIAL

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

PRETRIAL COURT NO.
048-289847-17

TRIAL COURT NO.
236-289847-17

**ORDER ON CHESAPEAKE DEFENDANTS'
TRADITIONAL AND NO-EVIDENCE SUMMARY JUDGMENT**

ON THIS DAY came to be considered Chesapeake Exploration, L.L.C. and Chesapeake Operating, L.L.C.'s (collectively "Chesapeake") Traditional and No-Evidence Summary Judgment (the "Motion") on the claims of Shirlaine West Properties Limited and Nathan K. Griffin, on behalf of the Estate of Lorraine E. West and on behalf of the Estate of Shirley A. West (collectively "Plaintiffs") with such Motion joined by Jamestown Resources, L.L.C. After considering the Motion, any response or reply thereto, and all evidence submitted in support of same, the Court hereby GRANTS the Motion as follows:



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Tab B

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☒ It is ORDERED that the Motion is GRANTED in all respects as to Plaintiffs' claim for Breach of Contract, and the Court hereby renders traditional summary judgment on, and rules that Plaintiff shall take nothing by way of such claim.

☒ It is ORDERED that the Motion is GRANTED in all respects as to Plaintiffs' claim for Breach of Contract, and the Court hereby renders no-evidence summary judgment on, and rules that Plaintiff shall take nothing by way of such claim.

~~☐ It is ORDERED that the Motion is GRANTED in all respects as to Chesapeake's Affirmative Defense of Limitations, and it is ORDERED that Plaintiffs take nothing on their claims based upon royalties due and owing prior to January 9, 2013.~~ Du

SIGNED
Dated: November 19, 2018.


Hon. Judge Presiding