

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG

THE KAY COMPANY, LLC,
WILLIAM CATHER, Trustee
of Diana Goff Cather Trusts,
and JAMES E. HAMRIC III,
and all other persons and
entities similarly situated,

Plaintiffs,

v.

Case No. 1:13-CV-151
Honorable John Preston Bailey

EQT PRODUCTION COMPANY,
a Pennsylvania corporation;
EQT CORPORATION,
a Pennsylvania corporation;
EQT ENERGY, LLC, a
Delaware limited liability company;
EQT INVESTMENTS HOLDINGS, LLC, a
Delaware limited liability company;
EQT GATHERING, LLC, a
Delaware limited liability company; and
EQT MIDSTREAM PARTNERS, LP,
a Delaware limited partnership,

Defendants.

**PLAINTIFFS' MOTION TO APPROVE CLASS NOTICE
PLAN AND APPOINT ADMINISTRATOR OF CLASS ACTION**

Now come Plaintiffs by counsel and move the Court pursuant to FRCP 23(c) to

1) approve the class notice plan as set forth in Ex. A, (2) appoint Chuck Smith and the accounting firm, Smith Cochran Hicks, PLLC, as the Class Administrator for the purpose of providing notice and information to the class as set forth in the notice and 3) set a date for class members to opt out if they choose.

1. Plaintiffs move the court to approve the notice plan proposed by Shannon R. Wheatman, President of Kinsella Media, LLC (“KM”), experienced experts in designing and implementing notices and programs for class actions pursuant to FRCP 23. See Declaration of Shannon Wheatman, Ex. A describing and explaining that the form of notice, content and communication plan, both mail and publication, satisfies all requirements for notice and that the notice and plan represent the best notice practicable under the circumstances. The proposed notice, Ex. A(2); the envelope for mail, Ex. A(3); and the Publication Notice, Ex. A(4), are attached to Ms. Wheatman’s disclosure. Ms. Wheatman’s CV is attached as Ex. A(1).

F.R.C.P. 23(c) requires that the notice for the subject class action provide the best notice practicable under the circumstances. *Amchem Products, Inc. v. Windsor*, 521 US 591, 593 (1997). Individual notices should be provided to all members who can be identified through reasonable effort. *Eisen v. Carlisle and Jacquelin*, 94 S. Ct. 2140 (1974). *Phillips Petroleum Co. v. Shutts*, 70 S. Ct. 876 (1985). The subject notice plan provides for notice by mail to all members of the class who are known. Since defendants have the names and addresses of the class members, notice will be sent by United States Mail to all known lessors.

In the event that there may be a class member whose address is unknown, then notice will be by publication in newspapers all across West Virginia. In the event that the lessor class member lives out of state and their address is unknown, then notice will be made by Earned Media, wherein a nationwide press release will be distributed on P.R. Newswire’s US1 news circuit reaching approximately 15,000 print and online media outlets and more than 5,400 websites, databases and online services. A nationwide press release is also being utilized to reach out-of-state lessors.

Prior to mailing the notices, the addresses will be checked against the National Change of Address (“NCOA”) database, which is maintained by the United States Postal Service (“USPS.”) In order to ensure the most accurate mailings possible, the Claims Administrator will certify addresses via the Coding Accuracy Support System, and verify them through Delivery Point Validation. Additionally, if available, the social security numbers of former leaseholders will be checked against the Social Security Index which is maintained by the Social Security Administration. An heir search will be done for any former leaseholder who is deceased.¹ Notices which are returned will be re-mailed and if not delivered, will be further searched through a third-party vendor.

As set forth in Manual for Complex Litigation, 4th, David F. Herr, 2017, §21.311, p. 347-348, the notice pursuant to FRCP 23(c) should clearly and concisely state in plain and easily understood language:

- (i) the nature of the action; Ex. A2, Class Notice, p. 1, §1-5.
- (ii) the definition of the class certified; *Id.* §§6-13.
- (iii) the class claims, issues, and defenses; *Id.* §2, 4, 5, 7, 8, 9, 10, 12.
- (iv) that a class member may enter an appearance through an attorney if the member so desires; *Id.* §15.
- (v) that the court will exclude from the class any member who requests exclusion; *Id.* §§15-16.
- (vi) the time and manner for requesting exclusion; and *Id.* §§15-16.
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3). *Id.* §16, 19, 20.

Further, the content of the notices should advise its members when and how a class member may opt out of the class. See Notice §15, which addresses the procedure for opting out

¹ The deceased’s name and address will be used to search a third-party address locator service for other individuals that lived at the same address at any time with the deceased.

of the class. The above Manual also states that supplement of information should be provided in the notice to enable the class member to make an informed decision about their participation including the following:

- (viii) describe succinctly the positions of the parties; See Notice Ex. A2, Notice, §§1-13.
- (ix) identify the opposing parties, class representatives, and counsel; *Id.*, §§ 1, 6-12, 7-18.
- (x) describe the relief sought; and *Id.*, §§1-5, 13, 21.
- (xi) explain any risks and benefits of retaining class membership and opting out, while emphasizing that the court has not ruled on the merits of any claims or defenses. *Id.*, §1, 4, 10, 12, 14, 15, 16, 20.

The notice and notice plan fully satisfies the requirement of FRCP 23 and the due process requirements for the class. Therefore Plaintiffs move that the notice plan, Ex. A, and the notices and exhibits attached be approved by the court.

2. Plaintiffs move the Court to appoint Chuck Smith and the firm of Smith Cochran and Hicks, PLLC as the Class Action Notice Administrator, to mail the notices and assure publication is performed pursuant to the Court's order and the notice plan. Also, with approval of the court, the administrator will install and manage a website for the Class Action and its members and will communicate when required, as permitted by the Court's orders and by the approved notice.

3. Plaintiffs move the Court to set a time for opt outs to be noticed and to opt out of the class. Plaintiffs move the Court to permit class members until April 14, 2018, as a deadline to file opt-outs to exclude themselves from the class, and that all notices will be mailed, and published on or before February 14, 2018.

THE KAY COMPANY, LLC, WILLIAM CATHER, Trustee of Diana Goff Cather Trusts, and JAMES E. HAMRIC III, and all other persons and entities similarly situated,

By Counsel

/s/ Marvin W. Masters

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CERTIFICATE OF SERVICE

I, Marvin W. Masters, hereby certify that on December 18, 2017, I electronically filed “Plaintiffs’ Motion to Approve Class Notice Plan and Appoint Administrator of Class Action” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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