

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

HUGO SPIEKER, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

Case No. 07-1225-EFM

POSTROCK MIDCONTINENT
PRODUCTION, LLC, successor by merger
to QUEST CHEROKEE, LLC, a Delaware
limited liability company,

Defendant.

DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

Pursuant to Fed. R. Civ. P. 59(e), defendant PostRock Midcontinent Production, LLC, successor by merger to Quest Cherokee, LLC, ("PostRock") respectfully asks this Court to alter or amend its Settlement Order and Judgment (ECF 132) entered December 30, 2011, in the above captioned matter, as set forth herein. In support of this motion, PostRock states as follows:

1. On December 30, 2011, the Court entered its Settlement Order and Judgment and, among other things, certified a Settlement Class and approved the Settlement Agreement in connection with the above captioned matter. The definitions set forth in Section 1 of the Settlement Agreement are incorporated herein by reference.

2. Pursuant to 28 U.S.C. § 1715, PostRock is required to serve the requisite notice of the settlement of this class action lawsuit on the appropriate State official of each State in which a class member resides and on the appropriate Federal official. PostRock seeks to amend the

Settlement Order and Judgment to direct and allow PostRock to provide that notice, and to delay the payment of Payment No. 1 to the Class Members until that notice has been provided.

3. PostRock seeks to alter or amend the Settlement Order and Judgment as follows:

First, to direct and allow PostRock to give the notice of the settlement of this class action to the requisite State and Federal officials as required by 28 U.S.C. § 1715. Such notice will be given by PostRock, at PostRock's sole expense, as soon as reasonably practicable after the entry of the order granting this motion, but not later than February 3, 2012. PostRock will file a certification with the Court when such notice has been served, including the date upon which such notice was served (the "Notice Date").

Second, to modify the terms of the Settlement Agreement as follows: Payment No. 1 required by the Settlement Agreement will be paid by PostRock to the Clerk of the District Court by either February 3, 2012, or three (3) days following the entry of an Order granting this motion, whichever date is later. Payment No. 1 will be held by the Clerk of this Court in an interest bearing account at a federally insured financial institution for a period of ninety (90) days after the Notice Date. Within three (3) business days after the expiration of that 90-day period, Payment No. 1, together with all interest accrued thereon, will be paid by the Clerk to PostRock, which will hold those funds in trust, for distribution pursuant to the Settlement Agreement, the Settlement Order and Judgment, and any order modifying them. Within three (3) business days following the receipt of those funds from the Clerk, PostRock will file an Amended Final Distribution Schedule, amending the amount of Payment No. 1 to include all accrued interest and allocating such interest to the Class Members (and none to Class Counsel, litigation expenses, or administrative expenses) for distribution as part of Payment No. 1 and will pay and distribute those funds to the Class Members in accordance with the Amended Final

Distribution Schedule. Payment No. 2 shall be made by PostRock not later than one (1) year following the payment of Payment No. 1 to the Clerk.

4. Except as modified as requested herein, the terms of the Settlement Agreement shall be unchanged. PostRock will continue to pay royalties to Class Members in accordance with the going forward provisions of the Settlement Agreement.

5. Not later than five (5) business days following the entry of an Order granting this motion, PostRock will, at PostRock's sole expense, send a notice to the Class Members advising them of the delay in their receipt of Payment No. 1 as a result of this Order. PostRock will confer with Class Counsel on the form and content of that notice.

6. PostRock seeks to modify and amend the Settlement Order and Judgment solely for the purposes of complying with the notice provisions of 28 U.S.C. § 1715 and delaying the timing of Payment No. 1 to the Class Members. Except as modified herein, the Settlement Order and Judgment should remain unchanged and shall be final and not subject to objection by any of the Class Members.

7. Pursuant to D. Kan. Rule 7.1(a)(4), PostRock requests that the Court relieve PostRock from the requirement of filing a separate brief or memorandum in support of this motion.

WHEREFORE, defendant PostRock Midcontinent Production, LLC ("PostRock") respectfully asks this Court to:

- a. Alter or amend the Settlement Order and Judgment as requested herein; and
- b. Order any such other, further, and different relief as this Court deems just and equitable.

DATED this 27th day of January, 2012.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: /s/ David E. Bengtson

David E. Bengtson KS 12184
1625 N. Waterfront Parkway, Suite 300
Wichita, KS 67206-6620
Telephone: (316) 265-8800
Facsimile: (316) 265-1349

ATTORNEYS FOR DEFENDANT
POSTROCK MIDCONTINENT
PRODUCTION, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day January, 2012, the above and foregoing was electronically filed with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

David G. Seely
Charles E. Millsap
Fleeson, Gooing, Coulson & Kitch
301 N. Main, Suite 1900
Wichita, Kansas 67202
Email: dseely@fleeson.com
Email: cmillsap@fleeson.com

Attorneys for Plaintiffs

/s/ David E. Bengtson

Attorney for Defendant PostRock
Midcontinent Production, LLC