

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
WHEELING**

**BRENDA LEA HOPPER, et al.,  
individually and on behalf of  
other persons and entities similarly situated,**

*Plaintiffs,*

**and**

**Case No. 5:20-cv-101 (Lead)  
(Consolidated with 5:20-cv-110)  
Hon. Judge John P. Bailey**

**JUDITH E. ASH-YOUNG, individually and  
on behalf of all other persons and entities  
similarly situated,**

*Plaintiff,*

**vs.**

**JAY-BEE OIL & GAS, INC., et al.,**

*Defendants.*

**FINAL APPROVAL ORDER**

Plaintiffs Brenda Lea Hopper and Debra Lynn Kurfis, as Executrixes of the Estate of Allen Smith, Richard L. Armstrong, Donald R. Reynolds, and Judith E. Ash-Young, (collectively, “Plaintiffs”) have moved for final approval of a proposed class action settlement which would resolve Plaintiffs’ claims against Defendants Jay-Bee Oil & Gas, Inc., JB Exploration I, LLC, JB Exploration II, LLC, Jay-Bee Production Company, BB Land, LLC, Jay-Bee Royalty, LLC, JBU, LLC, Abacus Union, LLC, DMRB Services, LLC, and Deborah V. Broda-Morgan (the “Jay-Bee Companies”), and Randall J. Broda in his individual capacity, the Estate of Randall J. Broda, and/or Peter Sachs as Administrator Ad Litem of the Estate of Randall J. Broda (the “Estate”) (collectively, “Settling Defendants”). Upon consideration of the motion, the memorandum in support, the Class Settlement and Release Agreement between Plaintiffs and the Jay-Bee

Companies (Doc. 604-1) (the “Company Settlement Agreement”), the Class Settlement and Release Agreement between Plaintiffs and the Estate (Doc. 604-2) (the “Estate Settlement Agreement”),<sup>1</sup> and supporting exhibits to this motion, the Court **GRANTS** final approval of the Settlements Agreements, finding specifically as follows:<sup>2</sup>

### **I. Jurisdiction**

1. The Court finds that it has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.

### **II. Certification of Settlement Class**

2. Under Rule 23 of the Federal Rules of Civil Procedure, the Court certifies the following “Settlement Class” as to both of the proposed settlements, consisting of:

All persons and entities, including their respective successors and assigns, who, since May 21, 2010, were paid or due royalties from Defendants under leases pertaining to the wells identified in Exhibit A [to the Settlement Agreements] located in the State of West Virginia (the “Class Leases”). Excluded from the Class are: (1) agencies of the United States of America; (2) publicly traded oil and gas exploration companies; (3) Defendants, their corporate affiliates, and their current officers and employees; (4) any person whose royalty underpayment claims against Defendants is subject to a binding arbitration provision.

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<sup>1</sup>“Settlement Agreements” collectively refers to the Company Settlement Agreement and the Estate Settlement Agreement, both of which were attached to Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement, Conditional Certification of Settlement Class, and Entry of Scheduling Order (Doc. 604) as Exhibits 1 & 2, respectively. Together, these Settlement Agreements are also referred to herein as the “Settlements.”

<sup>2</sup>Unless otherwise defined herein, all terms used in this Final Approval Order that are defined in either Plaintiffs’ motion for final approval or the Settlement Agreements shall have the meanings set forth in those documents.

### **III. Class Representatives and Class Counsel**

3. The Court continues its appointment of Plaintiffs Brenda Lea Hopper and Debra Lynn Kurfis, as Executrixes of the Estate of Allen Smith, Richard L. Armstrong, Donald R. Reynolds, and Judith E. Ash-Young as Class Representatives.

4. Under Rule 23(g), the appointment of following attorneys and firms as Class Counsel is continued for purposes of effectuating the proposed Settlements:

Brian R. Swiger  
Brian A. Glasser  
Jonathan R. Marshall  
Victor S. Woods  
John A. Budig  
BAILEY & GLASSER LLP  
209 Capitol Street  
Charleston, WV 25301

Timothy R. Linkous  
LINKOUS LAW, PLLC  
10 Cheat Landing, Suite 200  
Morgantown, West Virginia 26508

J. Michael Benninger  
BENNINGER LAW, PLLC  
Post Office Box 623  
Morgantown, West Virginia 26507

Scott A. Windom  
WINDOM LAW OFFICES, PLLC  
101 East Main Street  
Harrisville, WV 26362

William E. Ford III  
FORD LAW OFFICE  
P.O. Box 231  
Hobe Sound, Florida 33475

#### IV. Rule 23 Requirements

5. The Court finds that the requirements of Rule 23(e)(2)(B) have been satisfied in that: (a) the class representatives and class counsel have adequately represented the Settlement Class; (b) the proposal was negotiated at arm's length; (c) the relief provided for the class is adequate, taking into account the fact that (i) the costs, risks, and delay of trial and appeal favor approval of the Settlement Agreements; (ii) Class Counsel and the class representatives have proposed an effective method of distributing relief to the Settlement Class and have proposed a routinely approved method for processing class-member claims; (iii) Class Counsel's proposed award of attorneys' fees and costs is in line with other class settlements, as is the timing of payment, and the attorneys' fee and costs request will be the subject of a separate motion which will be considered by the Court; (iv) there is no agreement required to be identified under Rule 23(e)(3); and (d) the Settlement Agreements treat all class members equitably relative to each other.

6. As the Court previously found in its Order Granting Motion for Class Certification (Doc. 483), and Order Granting Preliminary Approval (Doc. 608), the Court further finds that the proposed Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3), and the Court hereby finds, in the specific context of the Settlements, that:

a. Numerosity: The Settlement Class satisfies the numerosity requirement of Fed. R. Civ. P. 23(a). Joinder of these widely dispersed, numerous members of the Settlement Class into one suit would be impracticable.

b. Commonality: There are questions of law and fact, with regard to the alleged activities of the Settling Defendants, common to the Settlement Class.

c. Typicality: The claims of the Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent. Therefore, in the context of these Settlements the element of typicality is satisfied.

d. Adequate Representation: The Representative Plaintiffs' interests do not conflict with, and are co-extensive with, those of absent members of the Settlement Class. The Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class. Additionally, this Court recognizes the experience of Class Counsel and finds under Fed. R. Civ. P. 23(g) that the requirement of adequate representation of the Settlement Class has been fully met.

e. Predominance of Common Issues: The questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class. In the context of these Settlements, these issues predominate over any individual questions, favoring class treatment.

f. Superiority of the Class Action Mechanism: The class action mechanism is ideally suited for treatment of the settlement of these matters. Class certification promotes efficiency and uniformity of judgment, among other reasons, because the many members of the Settlement Class will not be forced to separately pursue claims or execute settlements in various courts around the country. Therefore, the class action mechanism is superior to other available methods for the fair and efficient adjudication of the controversy.

7. The Court further finds that: (i) the members of the Settlement Class have a limited interest in individually prosecuting the claims at issue; (ii) the Court is satisfied with Class Counsel's representation that they are unaware of any other litigation commenced regarding the claims at issue by members of the Settlement Class; (iii) it is desirable to concentrate the claims in

this forum; and (iv) it is unlikely that there will be difficulties encountered in administering the Settlements.

## **V. Final Approval of the Settlement**

8. Pursuant to the Company Settlement Agreement, the Jay-Bee Companies have agreed to pay \$38,286,855.02<sup>3</sup> to create the Settlement Fund, \$10,000,000 of which was already funded via an earnest-money payment, leaving a balance of \$28,286,855.02 owed under the Company Settlement Agreement. Pursuant to an election made under Paragraph 5.3 of the Company Settlement Agreement, the Jay-Bee Companies will pay \$4,180,847.39 into the Settlement Fund<sup>4</sup> in satisfaction of the Estate Settlement Payment within ten (10) days of the Final Order and Judgement approving these settlements. Amounts awarded to Class Counsel or the Class Representatives will be paid from the Settlement Fund. Class Members will receive a pro-rata share of the Settlement Fund after attorneys' fees and costs, the Class Representatives' awards, and the costs of notice and administration are deducted.

9. Having considered the motion for final approval, the Settlement Agreements, and the exhibits thereto, the Court finds that the Settlements are fair, adequate, reasonable, and in the best interests of the Settlement Class. This finding is supported by, among other things, the complex legal and factual posture of this case, the fact that the Settlements are the result of arms' length negotiations presided over by a neutral mediator, and the settlement benefits being made available to Settlement Class Members.

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<sup>3</sup>This amount is less than the original Company Settlement Amount of \$38,467,289.04, which reflects a dollar-for-dollar basis reduction of \$180,434.02 to account for the gross settlement payments attributable to claims associated with the 12 Class Members who submitted timely exclusion requests. (See Company Settlement Agreement, Doc. 604-1 ¶ 15.2).

<sup>4</sup>This amount reflects a reduction of \$19,152.61 from the original \$4,200,000 to account for the gross settlement payments attributable to claims associated with the 12 Class Members who submitted timely exclusion requests.

10. The adequacy of the Settlements is supported by the fact that the Settlement Class will receive a one-hundred percent refund—plus interest—for any post-production expenses deducted from their royalties that were not permitted under West Virginia law. This amount will be reduced by 16% based upon the Settling Defendants' agreement to pay Class Members upfront versus paying over time. This compromise, while resulting in some reduction to Participating Class Members' settlement amounts, is warranted considering the financial situation confronting the Jay-Bee Companies and the possibility of a prolonged payout to Participating Class Members over several years. Moreover, and as a practical matter, most Participating Class Members will nonetheless receive full refunds of improper deductions taken due to the addition of accrued interest. Further, beginning with the January 2024 production month (as reflected on royalty statements issued on or after April 15, 2024), royalty payments will be made in accordance with the rulings set forth in this Court's summary judgment ruling (Doc. 491) and the rulings of the Special Master appointed by the Court (Doc. 601), as provided for in the Company Settlement Agreement. In addition, the Estate Settlement Agreement will result in the payment of an additional \$4,180,847.39 to the Class to be paid by the Jay-Bee Companies within ten (10) business days of the Final Order and Judgment approving these settlements.

11. The Court finds that the notice to the Settlement Class was the best notice practicable under the circumstances and satisfies fully the requirements of Rule 23(c)(2). The record shows that notice has been given to the Settlement Class, in accordance with the Notice Plan in the Settlement Agreements and the Preliminary Approval Order. The Notice Plan consisted of mailed notice along with newspaper and digital publication notice. The Court finds that the notices disseminated pursuant to the Notice Plan were stated in concise, plain, easily understood language and described the nature of the action, the definition of the class certified, the class claims

and defenses, that a class member may enter an appearance through counsel if the class member so desires, that any class member who requests exclusion will be excluded by the Court, the time and manner of requesting exclusion, as well as the binding effect of a class judgment under Rule 23(c)(3). The Notice satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law.

12. The Court finds that the Settling Defendants properly and timely notified the appropriate state and federal officials of the Settlement Agreements on behalf of the Parties, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. The Court finds that the notice provided satisfied the requirements of 28 U.S.C. § 1715(b) and that more than ninety (90) days have elapsed since the required notice was provided, as required by 28 U.S.C. § 1715(d).

13. In the event that settlement payments exceed the threshold amounts that must be reported to the Internal Revenue Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all necessary and reasonable steps to obtain Form W-9s from Class Members and to comply with applicable IRS regulations on issuing Form 1099s without a social security number or tax entity identification number, and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Settlement Fund, including, but not limited to limiting payments below the reportable threshold and/or withholding of taxes and any applicable penalties

14. All persons who made timely and valid requests for exclusion are excluded from the Settlement Class and are not bound by this Final Approval Order and Judgment. A list of the twelve (12) individuals who excluded themselves from the Settlement Class was previously filed with the Court under Docket Nos. 617 and 618-1.



15. Neither this Final Approval Order nor the Settlement Agreements are an admission or concession by the Settling Defendants or any of the other Released Parties of the validity of any claims or of any liability or wrongdoing or of any violation of law. This Final Approval Order and the Settlement Agreements do not constitute a concession and shall not be used as an admission or indication of any wrongdoing, fault or omission by the Settling Defendants or any of the other Released Parties or any other person in connection with any transaction, event or occurrence, and neither this Final Approval Order nor the Settlement Agreements nor any related documents in this proceeding, nor any reports or accounts thereof, shall be offered or received in evidence in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to consummate or enforce this Final Approval Order, the Settlement Agreements, and all releases given thereunder, or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims released in the Settlement Agreements. This Final Approval Order also does not constitute any opinion or position of the Court as to the merits of the claims and defenses in this case.

16. The Parties, their counsel, and the Settlement Administrator shall fulfill their obligations and duties under the Settlement Agreements. The Settlement Agreements shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

## **VI. Release**

17. The Court dismisses with prejudice this Lawsuit. By this order, the claims of Plaintiffs and Participating Class Members are released in accordance with terms of the Settlement Agreements and as to the released parties specified therein (the "Released Parties").

18. Plaintiffs and the Participating Class Members are deemed to have fully, finally, completely, and forever released, relinquished, and discharged the claims released in the respective Settlement Agreements.

19. Plaintiffs and the Participating Class Members are permanently enjoined and barred from asserting, initiating, prosecuting, or continuing any of the released claims against the Released Parties, as set forth in the respective Settlement Agreements.

20. Plaintiffs and Participating Class Members will be deemed to have agreed and covenanted not to sue any Released Party with respect to any of the released claims and are forever enjoined and barred from doing so, in any court of law or equity, or any other forum, as set forth in the Settlement Agreements. Participating Class Members are not precluded from addressing, contacting, dealing with, or complying with requests or inquiries from any governmental authorities relating to the issues raised in the Settlement Agreements.

## **VII. Attorneys' Fees, Expenses and Class Representative Awards**

21. The Court approves payment of attorneys' fees to Class Counsel in the requested amount of \$14,032,660.71, which is approximately one-third of the combined total of the Settlements,<sup>5</sup> together with out-of-pocket attorneys' costs and expenses incurred in prosecuting the action as requested in Class Counsel's previous filings, which shall be paid from the Settlement Fund.

22. Pursuant to Rule 23(h)(3) and 52(a), the Court makes the following findings of fact and conclusions of law regarding this award of attorneys' fees:

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<sup>5</sup>This requested fee amount is less than one-third of the total settlement, having been reduced by Class Counsel to provide funds to ensure that all Settlement Class Members receive the \$100.00 minimal payments without any reductions for costs or expenses. This adjustment is approximately \$123,240.09 in total.

a. It is appropriate to award fees as a percentage of the common fund established for the benefit of the Settlement Class. *Dijkstra v. Carenbauer*, No. 5:11-CV-00152, 2016 WL 6804980, at \*4 (N.D. W.Va. July 12, 2016) (approving settlement and attorneys' fee application in consumer class action); *see also Muhammad v. Nat'l City Mortg., Inc.*, 2:07-0423, 2008 WL 5377783, at \*6 (S.D. W.Va. Dec. 19, 2008) ("Where there is a common fund in a class settlement, application of a percentage method to calculate an attorney's fee award is now favored."); *Hoskins v. AB Resources, LLC*, 5:12-cv-78, 2014 WL 12756365, at \*3 (N.D. W. Va. Nov. 17, 2014) ("The contingent or percentage method is now the preferred method to be used in determining attorneys' fees in a class action case").

b. The approved fee represents one third of the Settlement Fund. The Court finds this amount reasonable considering the result Class Counsel obtained on behalf of the Settlement Class, negotiating a minimum \$42,467,702.41 settlement in a case involving substantial risk.

c. Class Counsel used their expertise in oil and gas and class action litigation to prosecute this case. Class counsel dedicated over 15,598.55 hours of attorney and paralegal time to this case over the course of several years.

23. The Court awards Class Counsel their requested costs and expenses in the amount of \$1,317,036.33, which the Court finds to be reasonable under the circumstances of this case.

24. Any administrative expenses incurred in connection with the administration of the Settlements, including but not limited to the work of the Special Master, the Settlement Administrator, and Stout Risius Ross, LLC, shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreements. The Court approves the \$842,395.09 to date that

has been paid or authorized for payment from the Settlement Fund for settlement expenses including the forensic accounting work of Stout Risius Ross, LLC, and the fees charged by Special Master David Hendrickson. *See* Doc. 610 (order authorizing the payment of expenses from qualified settlement fund). Also, the Court authorizes an additional amount up to \$335,000 to be paid from the Settlement Fund for costs related to settlement administration, forensic accounting, the services of the Special Master, and other expenses or fees that may arise during the administration and distribution of this settlement.

25. After considering past awards and awards throughout the country, the Court approves incentive awards of \$30,000 for each of the class representatives<sup>6</sup>—\$25,000 of which is provided for in the Company Settlement Agreement and \$5,000 of which is provided for in the Estate Settlement Agreement. The Court specifically finds the Incentive Awards to be reasonable in light of the service performed by Plaintiffs for the class and as partial reimbursement for the costs and expenses they incurred as named Plaintiffs. The Incentive Awards shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreements. Any Incentive Award will be reported as “other income” in Box 3 of Form 1099-MISC.

26. There were no objections to the Settlements, to Class Counsel’s request for an award of attorneys’ fees and costs, or to the requested incentive awards to Plaintiffs.

27. The Court finds that no justifiable reason exists for delaying entry of this Final Approval Order and, good cause appearing, it is expressly directed that this Final Approval Order and separate Judgment be entered as final and appealable, and the case dismissed with prejudice.

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<sup>6</sup>Plaintiffs Brenda Lea Hopper and Debra Lynn Kurfis, who appear as Co-Executrixes of the Estate of Allen Smith, have agreed to share a single proposed award of \$30,000.

28. The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlements.

DATED: December 12, 2024.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE