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COURT OF APPEALS, STATE OF COLORADO Court Address: Colorado State Judicial Building 2 E. 14th Avenue, 4th Floor Denver, CO 80203	
Appeal From the District Court, City and County of Denver, Colorado Honorable Norman D. Haglund, Presiding Case No. 05CV2753 **Plaintiffs-Appellants:** RICHARD DEVER and DEVER FAMILY MINERALS, LLC v. **Defendant-Appellee:** ENCANA OIL & GAS (USA) INC. **Plaintiffs-Appellees:** RAYMOND and SALLY MILLER, BARCLAY FARMS, L.L.C., JOAN ELAINE BREHON, JANETTE FOOTE, NILES MILLER, U.S. BANK, N.A., as trustee for the T.E. MCCLINTOCK TRUST, and WHITE RIVER ROYALTIES, LLC, on behalf of themselves and all others similarly situated.	**COURT USE ONLY ▲**
George A. Barton, Mo. Bar No. 26249 Law Offices of George A. Barton, P.C. 800 West 47th Street, Suite 700 Kansas City, Missouri 64112 Telephone: (816) 300-6250 Fax: (816) 300-6259 Charles Carpenter, No. 12197 1120 Lincoln St., Suite 1000 Denver, Colorado 80203 Telephone: (303) 831-1745 Fax: (303) 839-5055 **Attorneys for Plaintiffs and the Class**	**Case No. 2008CA2131**
AMENDED ANSWER BRIEF OF THE PLAINTIFFS AND THE CLASS	

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Rules:

The Plaintiffs and the Class submit this Amended Answer Brief in opposition to the Amended Opening Brief filed by Appellants Dever Family Minerals, LLC and Richard Thompson Dever (collectively, "the Devers"). The Plaintiffs and the Class ask this Court to affirm the district court's final judgment, which finally approved the Settlement Agreement between the Plaintiff Class and Defendant EnCana Oil & Gas (USA) Inc. ("EnCana").

ISSUES PRESENTED FOR REVIEW

1. Did the district court abuse its discretion in approving a Class Settlement Agreement which, as part of the forty million dollar settlement of the Class members' royalty underpayment claims through December 31, 2008, includes a release of any natural gas royalty underpayment claims which the Class members could have asserted on EnCana's natural gas production prior to January 1, 2008, and in rejecting the Devers' untimely objection to the release of the Class members' potential "decimal interest" claims, based on its express finding that each Class member's decimal ownership interest is necessarily intertwined with the calculation of the amount to be paid to each Class member pursuant to the Class Settlement?

2. Did the district court abuse its discretion in rejecting the Devers' untimely objection to the Plaintiffs' release of the Class members' potential "decimal interest" claims, where the Devers failed to identify any Class member who has a bona fide

decimal interest dispute with EnCana regarding royalties paid on natural gas production prior to January 1, 2008?

STATEMENT OF THE CASE

A. The Nature of the Case, Course of Proceedings, and Disposition in the Court Below.

This is a class action case in which eight named Plaintiffs, on behalf of themselves and a defined Class of royalty owners, asserted breach of contract claims against EnCana for royalty underpayments on natural gas produced by EnCana in Colorado. Record on Appeal, Vol. 1, pp. 2-39 [cited herein as (Vol. I, pp. 2-39)]. In their class action complaint which was filed in April 2005, Plaintiffs alleged that EnCana underpaid the royalties owed to the Plaintiffs and the Class under lease agreements and overriding royalty agreements (collectively, "the Royalty Agreements") which do not expressly authorize EnCana, in calculating royalties, to deduct the costs incurred to market natural gas after it is severed from the wellhead. (Vol. I, pp. 12-13, 30-32). The Plaintiffs alleged that EnCana has breached its contractual obligations to pay royalties to the Plaintiffs and the Class by failing to pay royalties based on the prices received by EnCana on the sale of the natural gas and natural gas liquids at the commercial market, pursuant to the Colorado Supreme Court's decision in *Rogers v. Westerman Farm Co.*, 29 P.3d 887 (Colo. 2001). (Vol. I, pp. 12-13, 30-32).

After six months of extensive discovery, contested briefing, and a two day evidentiary hearing, the district court granted the Plaintiffs' motion for certification of a C.R.C.P. 23(b)(3) Class, designated the named Plaintiffs as the Class Representatives, and appointed the Plaintiffs' attorneys as Class Counsel. (Vol. IV, pp. 1107-1128). In December 2007, a Notice of the certification of the Rule 23(b)(3) Class was mailed to approximately 6,000 members of the Class, including the Devers, which informed the Class members of their right to exclude themselves from the certified Class. (Vol. V, pp. 1182-1344). Approximately one hundred fifty Class members did elect to opt out of the Class. (Vol. V, pp. 1342-1344). The Devers did not elect to opt out of the certified Class.

In March 2008, the parties' attorneys, after engaging in extensive settlement negotiations, reached agreement on the terms of a Class Settlement. (Vol. V, pp. 1350-1354, 1419-1420). The Settlement included EnCana's agreement to pay forty million dollars to settle the Class members' claims for royalty underpayments on natural gas production through December 31, 2008, as well as EnCana's agreement to implement new methods for calculating royalties to the Class members on EnCana's natural gas production in Colorado after January 1, 2009. (Vol. V, pp. 1356-1369, 1421-1422).

On April 11, 2008, the district court entered its Order granting preliminary approval of the Class Settlement. (Vol. VI, pp. 1454-1461). A Notice of the proposed Class Settlement was mailed to approximately 6,500 Class members on May 2, 2008, which specifically informed the Class members about the terms of the Class Settlement, and their right to submit objections to the proposed Class Settlement. (Vol. VI, pp. 1490-1707). The Devers are the only two Class members who objected to final approval of the Class Settlement. (Vol. VII, pp. 1989-1991; Vol. VIII, pp. 2238-2288).

At the August 1, 2008 hearing to consider final approval of the Class Settlement, the Devers were permitted to present evidence and arguments in support of their objections. (Final Fairness Hearing Transcript, p. 6, l.18 - p. 8, l.15 [cited herein as Tr. p. 6, l.18 - p. 8, l.15]; Vol. XI, pp. 2870-2896). The district court, after considering the evidence and arguments presented at the final approval hearing, as well as the parties' and the Devers' briefs on the Class Settlement issues, issued its findings of fact and conclusions of law, which finally approved the Class Settlement Agreement as being fair, reasonable and adequate, and which overruled the Devers' objections to the Class Settlement. (Vol. XI, pp. 2870-2896).

The district court entered its final judgment on August 26, 2008. (Vol. XI, pp. 2870-2896). The Devers filed their Notice of Appeal on October 10, 2008. (Vol. VII, pp. 3375-3380).

B. Statement of the Relevant Facts.

1. The Claims Asserted by the Plaintiffs and the Class.

In their original and first amended complaints, the Plaintiffs alleged that EnCana breached the applicable Royalty Agreements by failing to pay royalties based upon the prices received by EnCana on its sale of natural gas and natural gas liquids at the commercial market. (Vol. I, pp. 2-20, 22-39). The Plaintiffs requested damages for past royalty underpayments, and also requested that the district court enter a declaratory judgment determining the appropriate methods for EnCana's calculation of future royalty payments to the Plaintiff Class. (Vol. I, pp. 15-16, 33-34).

2. The Discovery Conducted by Class Counsel.

For more than six months after the original complaint was filed, Class Counsel engaged in extensive discovery relating to both class certification issues and the claims on the merits. (Vol. V, pp. 1415-1417). This discovery included an extensive review of thousands of royalty agreements, review of voluminous documents produced by EnCana relating to EnCana's production and marketing of the natural gas and natural gas liquids at issue, and analysis of the electronic data detailing EnCana's

methods for calculating royalties paid to the Class members. (Vol. V, pp. 1415-1417). Class Counsel also took extensive depositions of fourteen witnesses, primarily employed by EnCana, on various issues relating to natural gas marketing, royalty accounting, and EnCana's natural gas production operations in Colorado. (Vol. V, pp. 1415-1417).

After the district court entered its class certification Order (Vol. IV, pp. 1107-1128), EnCana produced electronic data detailing EnCana's monthly royalty calculations and payments for all of its statewide production from May 1999 through June 2006, covering approximately twenty-eight different production areas in Colorado, 4,500 wells, and more than 6,000 royalty owner accounts. (Vol. V, pp. 1419-1420). Class Counsel and their accounting expert, Don Phend, analyzed that data, as well as third party purchaser invoices for the natural gas sold by EnCana. (Vol. V, pp. 1419-1420). Utilizing this data, Mr. Phend prepared royalty underpayment damage estimates for the Class based on the Plaintiffs' contention that the commercial market for the natural gas and natural gas liquids sold by EnCana was at or beyond the tailgate of a processing plant or at the entry to a mainline transmission pipeline. (Vol. V, pp. 1419-1420). The electronic royalty payment data produced by EnCana was periodically updated through December 2007. (Vol. XI, p. 2874).

3. The Parties' Negotiation of a Class Settlement Agreement.

In June 2007, the parties' attorneys exchanged correspondence regarding proposals for a Class Settlement, which addressed both compensation to the Class on the claim for past royalty underpayments, and a royalty calculation methodology for future royalty payments to the Class. (Vol. V, p. 1420). In November 2007, the parties and their attorneys also engaged in a formal mediation conference. (Vol. V, p. 1420; Vol. VII, p. 1744). The parties, however, were unable to agree to a Class Settlement at the mediation session, and made no further progress regarding settlement in 2007. (Vol. V, p. 1420; Vol. VII, p. 1744).

In February 2008, after the Class Notice had been mailed to the Class members, and the opt out period had expired, the parties' attorneys resumed their settlement discussions, in a further effort to reach a mutually acceptable Class Settlement. (Vol. V, pp. 1421-1422). As a result of those discussions, in March 2008 the parties were able to reach agreement regarding the terms of a Class Settlement, which included EnCana's agreement to pay forty million dollars to settle the Class members' claims for royalty underpayments on EnCana's natural gas production through December 31, 2008. (Vol. V, pp. 1421-1422). On May 2, 2008, EnCana paid the forty million dollars into an interest bearing escrow account. (Vol. XI, p. 2875).

EnCana and the Class also reached agreement regarding the methods for EnCana's calculation of royalty payments to the Class on the natural gas produced and sold by EnCana on and after January 1, 2009. (Vol. V, pp. 1421-1422; Vol. XI, p. 2875). The terms of the future payment method are specifically described in Paragraph 10 of the parties' Settlement Agreement. (Vol. V, pp. 1363-1366, 1421-1422). The agreed upon methods for EnCana's calculation and payment of future royalties are substantially more favorable to the members of the Class than the methods which EnCana has been utilizing to pay royalties to the Class during the last several years. (Vol. V, p. 1422; Vol. XI, p. 2875). Plaintiffs' accounting expert calculated the economic benefit of the future royalty calculation methods to the Class members, by comparing EnCana's existing royalty payment methodology to the future royalty payment methods which EnCana has agreed to use after January 1, 2009. (Vol. VII, pp. 1761-1764). He determined that the present value benefit to the Class members resulting from the implementation of the future royalty payment methodology is approximately forty-four million dollars. (Vol. VII, pp. 1761-1764; Tr. p. 103, l.2 - 106, l.24). Thus, the Class Settlement has a total economic benefit of approximately eighty-four million dollars, in present value. (Vol. VII, pp. 1761-1764).

4. The District Court's Preliminary Approval of the Class Settlement.

On April 3, 2008, the parties filed their joint motion for preliminary approval of the Class Settlement. (Vol. V, pp. 1350-1412). The Plaintiffs submitted an extensive memorandum in support of the preliminary approval motion. (Vol. V, pp. 1413-1431). After conducting a hearing on the joint motion, on April 11, 2008 the district court entered its Order granting preliminary approval of the Class Settlement, finding that the "Settlement Agreement between the Class and EnCana appears, upon preliminary review, to be fair, reasonable and adequate, and shall be preliminarily approved." (Vol. VI, pp. 1454-1461).

5. The Notice of the Class Settlement Which Was Mailed to the Class Members.

In the April 11, 2008 Order, the district court also approved the form and content of the Notice of Class Settlement ("the Notice") to be mailed to the Class members. (Vol. VI, pp. 1404-1410, 1459). The Notice, which was mailed to approximately 6,500 Class members on May 2, 2008, informed each Class member of the terms of the Settlement Agreement, including EnCana's agreement to pay forty million dollars to settle the Class members' royalty underpayment claims through December 31, 2008, and EnCana's agreement to adopt new methods for its calculation of royalties to the Class members on natural gas production on and after January 1,

2009. (Vol. VI, pp. 1480-1707; Vol. XI, p. 2876). The Notice also informed the Class members that, as part of the Settlement, and in exchange for EnCana's forty million dollar payment to resolve the Class members' natural gas royalty underpayment claims through December 31, 2008, the Class members "would be barred from bringing any claim against EnCana related to royalty calculations which are covered by the Settlement Agreement", except for "claims arising out of mathematical mistakes by EnCana concerning volumes, price, value or decimal interest when calculating royalty payments arising on or after January 1, 2008." (Vol. VI, p. 1496).

The Notice informed the Class members that in addition to the summary of the terms of the Class Settlement Agreement set forth in the Notice, Class members could also review the entire Settlement Agreement by accessing the website maintained by Class Counsel relating to the Class Settlement, by making a written request to Class Counsel for a copy of the Settlement Agreement, or by reviewing the district court's file. (Vol. VI, pp. 1494-1498).

6. The Devers' Objections to the Class Settlement.

Pursuant to the Court's April 11, 2008 Order, the Notice informed the Class members that the deadline for their submission of any objections to the Class Settlement was June 30, 2008. (Vol. VI, pp. 1459, 1497). The Notice also informed

the Class members that any written objection must include: (a) a written statement of the position that the objector wishes to assert; (b) a written statement of the grounds for that objection; and (c) copies of any papers, briefs or other documents the objector may submit in support of his or her objection. (Vol. VI, p. 1497). On July 1, 2008, the Devers filed their objections to final approval of the Class Settlement. (Vol. VII, pp. 1989-1991). No other Class member filed any objection to final approval of the Class Settlement, nor did any other Class member make any objection to final approval of the Class Settlement at the August 1, 2008 final approval hearing. (Vol. VIII, pp. 2238-2288).

The Devers' July 1, 2008 objections to final approval of the Class Settlement set forth three basic arguments: (a) the Notice was insufficient because it did not include a Preliminary Allocation Schedule, and because the described terms of the Class Settlement did not fairly apprise Class members of what they were receiving and what they were giving up under the proposed Class Settlement; (b) the Class Settlement is unfair because EnCana can take future deductions it would not be allowed to take under all of the Class members' leases, and the release of the Class members' claims is too broad; and (c) there may have been "collusion" between Class Counsel and EnCana's counsel regarding the Notice of Class Certification sent to Class members in December 2007, allegedly to encourage Class members to remain

in the Class. (Vol. VII, pp. 1989-1991; Vol. XI, p. 2877). The Devers' July 1, 2008 objections, however, did not include an objection to the release of the Class members' "decimal interest" claims. (Vol. VII, pp. 1989-1991).

On July 11, 2008, Class Counsel and EnCana filed timely responses to the Devers' objections. (Vol. VIII, pp. 2238-2307; Vol. XI, p. 2877). In their July 11, 2008 responses to the Devers' objections, neither Class Counsel nor EnCana addressed the release of the Class members' decimal interest claims, because the release of such claims had not been referenced in the Devers' July 1, 2008 objections.

On July 31, 2008, more than thirty days after the June 30, 2008 deadline for objector briefs, and on the eve of the August 1, 2008 hearing to consider final approval of the Class Settlement ("the Hearing"), the Dever objectors filed a reply brief. (Vol. IX, pp. 2459-2466). In their reply brief, the Devers raised several new objections to the Class Settlement which had not been asserted in their July 1, 2008 objections. (Vol. IX, pp. 2459-2466). The new objections set forth in the Devers' reply brief included their objection that potential "decimal interest" claims should not be released as part of the Class Settlement. (Vol. IX, pp. 2464-2465). In making this objection, however, the Devers did not allege that they had been damaged by EnCana's use of an incorrect decimal interest in calculating the Devers' royalties. (Vol. IX, pp. 2464-2465).

The Devers' reply brief also raised other new arguments which: (a) questioned the fairness of any compromise with EnCana in light of the decisions in *Savage v. Williams Prod. RMT Co.*, 140 P.3d 67 (Colo. App. 2005), and *Clough v. Williams Prod. RMT Co.*, 179 P.3d 32 (Colo. App. 2007); and (b) stated that the Devers "intend to present rebuttal evidence at the fairness hearing that the amount to be paid under the proposed Settlement Agreement is only a small fraction of the amount owed by EnCana to the Class Members," without explaining what that evidence would be, or how it would be presented. (Vol. IX, pp. 2459-2466; Vol. XI, pp. 2877-2878). In their reply brief, the Devers withdrew their "collusion" allegation made in their July 1, 2008 objections. (Vol. IX, pp. 2459-2466; Vol. XI, pp. 2877-2878).

7. The Evidence Presented by the Plaintiffs at the Final Approval Hearing.

At the Hearing, the Plaintiffs called Ms. Susan Jerman, the owner and manager of Class representative White River Royalties, LLC ("White River"), to testify. (Tr. p. 4, l.1 - p. 49, l.16). She explained that under White River's lease agreements with EnCana, White River has been paid royalties on EnCana's production in the Mamm Creek area, which includes production in what is commonly described as the Hunter Mesa Unit. (Tr. p. 14, l.2-22). Ms. Jerman, who has been actively involved in working with Class counsel throughout this litigation, believes the Class Settlement is a fair and adequate resolution of the Class members' claims, with respect to both the

past royalty underpayment claims, and the claim regarding the appropriate methods for EnCana's calculation of future royalties. (Tr. p. 14, l.23 - p. 31, l.23).

On cross-examination, the Devers' attorney questioned Ms. Jerman regarding EnCana's determination of White River's decimal ownership interest in the Hunter Mesa Unit. (Tr. p. 41, l.3 - p. 43, l.25). Ms. Jerman confirmed that the term "decimal interest" refers to White River's percentage ownership interest in the entire Hunter Mesa Unit which EnCana operates in Garfield County, Colorado. (Tr. p. 41, l.17-24). She explained that EnCana, as the operator, calculated White River's decimal interest in the Unit, and then mailed a division order to her, which reflected White River's decimal interest, along with a request that White River verify that decimal interest. (Tr. p. 42, l.1-9). When EnCana sent her White River's division order for the Hunter Mesa Unit, EnCana also enclosed a copy of the entire Unit Agreement, as well as a schedule of each lease agreement in the Hunter Mesa Unit, and the acreage of each such lease agreement. (Tr. p. 42, l.7-16). The information which EnCana provided allowed Ms. Jerman to verify White River's decimal ownership interest in EnCana's gas production in the Hunter Mesa Unit. (Tr. p. 42, l.7-22). The other royalty owners in the Unit received the same information along with the division orders which EnCana sent to them. (Tr. p. 42, l.22 - p. 43, l.5).

Ms. Jerman stated that on one occasion, White River's decimal interest was not correctly determined by EnCana, but that after Ms. Jerman brought that error to EnCana's attention, it was promptly corrected. (Tr. p. 43, l.12-25).

The Plaintiffs then presented the testimony of Mr. Mark Springston, the Chief Operating Officer of Aristocrat Angus Ranch, LLP, the Class member which will receive the largest share – approximately 5.9 percent – of the net Class Settlement Fund. (Tr. p. 49, l.22 - p. 63, l.20). Mr. Springston testified that Aristocrat Angus Ranch, LLP is very satisfied with the proposed Class Settlement, and fully supports final approval of the Class Settlement. (Tr. p. 57, l.10-12).

The Plaintiffs also presented the testimony of Don Phend, their expert accountant. (Tr. p. 64, l.1- p. 146, l.25). Mr. Phend testified that he had prepared a "best case" calculation of royalty underpayments to the members of the Class for the period of April 1, 1999 through December 31, 2008, which he estimated to be approximately 58.5 million dollars, without interest. (Tr. p. 82, l.16 - p. 83, l.5). Mr. Phend acknowledged that his "best case" estimate does not give EnCana any credit or setoff for severance tax or ad valorem tax adjustments which might be warranted. (Tr. p. 78, l.9 - p. 82, l.25). He also acknowledged that he and EnCana have significant differences regarding the amount of royalty underpayments sustained by the Class, even assuming that royalties should have been paid based on the proceeds received by

EnCana beyond the tailgate of a processing plant, or at the entry to a mainline transmission pipeline. (Tr. p. 80, l.9 - p. 82, l.15).

8. The Evidence Presented by the Devers at the Hearing.

At the Hearing, the Devers presented the testimony of one witness, certified public accountant Mary Ellen Denomy. (Vol. XI, p. 2880; Tr. p. 149, l.18 - p. 212, l.9). The primary focus of her testimony was her opinion that EnCana has systematically underpaid royalties on natural gas produced in the Piceance Basin of Western Colorado (where the Devers' mineral interests are located) by a minimum of thirty percent. (Tr. p. 168, l.16 - p. 169, l.13). Ms. Denomy stated that the largest factor affecting this purported underpayment is EnCana's alleged use of affiliate sales prices to calculate royalties, rather than the higher prices which Ms. Denomy claims EnCana ultimately receives when its affiliate sells the natural gas to unaffiliated third party purchasers. (Tr. p. 169, l.15 - p. 171, l.12). Ms. Denomy's opinion testimony was based on audits she had conducted several years ago of EnCana for certain royalty owners, who were not identified by name. (Tr. p. 188, l.16 - p. 189, l.20). Ms. Denomy acknowledged that she had not brought any documents to the Hearing to substantiate her testimony. (Tr. p. 189, l.9-14). She also admitted that she had never informed EnCana during the audits about her belief that EnCana was substantially underpaying royalties by allegedly using an affiliate sale price in the calculation of

royalties, and that none of her audit clients ever asserted any royalty underpayment claim against EnCana. (Tr. p. 188, l.16 - p. 189, l.20; p. 192, l.3-7; p. 196, l.21- p. 197, l.20).

Although the primary subject matter which Ms. Denomy addressed in her testimony was the alleged "affiliate sales" issue, she also briefly addressed the subject of her past experience with EnCana royalty owner "decimal interest" issues.[1] Ms. Denomy testified that: (1) she had previously been involved in a couple of audits of EnCana's records for EnCana royalty owners, and had also reviewed decimal interest issues for ten to fifteen other EnCana royalty owners; (2) the Hunter Mesa Unit and the Grass Mesa Unit which EnCana operates in Garfield County are relatively large units which are subject to periodic expansions of the size of the participating area, thus causing the decimal ownership interests of the participating royalty owners to be periodically adjusted; and (3) Ms. Denomy has "occasionally" encountered a situation

[1] Although the Devers initially asserted their objection to the release of "decimal interest" claims in the reply brief which they filed on July 31, 2008, that objection was not the primary focus of the Devers' argument at the August 1, 2008 Hearing. Instead, the primary objection which the Devers addressed at the Hearing was the "affiliate sales" issue. (Tr. p. 149, l.24 - p. 211, l.23). Indeed, in the closing arguments which the Devers' attorney presented at the Hearing, he made no reference at all to the Devers' decimal interest objection, nor did he make any reference to any objection that the release of claims in the Settlement Agreement was too broad. His entire closing argument was instead focused on the "affiliate sales" issue, an issue which the Devers did not address in their Amended Opening Brief. (Tr. p. 252, l.25 - p. 259, l.18).

where an EnCana royalty owner's decimal interest in such Units was not accurately determined by EnCana, and required adjustment. (Tr. p. 160, l.18 - p. 162, l.12).

In her testimony on the decimal interest issue, however, Ms. Denomy did not claim that the decimal ownership interest used by EnCana to calculate the royalties paid to the Devers was inaccurate. (Tr. p. 161, l.15 - p. 162, l.12; p. 183, l.16-20). Moreover, Ms. Denomy did not identify any Class member who she believed had a "decimal interest" problem with EnCana in the past, or any other Class member who she believed had a "decimal interest" problem with EnCana at the time of the Hearing. (Tr. p. 149, l.18 - p. 211, l.25). Nor did Ms. Denomy give any description of the economic significance of the "decimal interest" inaccuracies which she had "occasionally" encountered in her earlier work on behalf of EnCana royalty owners. (Tr. p. 149, l.18 - p. 211, l.25).

9. The District Court's Findings Regarding the Devers' Objection to the Release of "Decimal Interest" Claims.

In its findings of fact and conclusions of law which finally approved the Class Settlement, the district court specifically addressed the Devers' contention that the Class Settlement Agreement is unfairly broad because it includes a release of "decimal interest" claims on EnCana's natural gas production prior to January 1, 2008. (Vol. XI, pp. 2893-2894). In rejecting the Devers' objection on this issue, the district court noted that a class settlement release appropriately "includes claims that are

alleged or 'could' have been alleged in the class complaint". (Vol. XI, p. 2893). The district court further found that the release of claims related to a Class member's decimal interest is appropriate because such decimal interest "is necessarily intertwined with the calculation of the amount to be paid to each Class member pursuant to the Settlement Agreement, as reflected in the Preliminary Allocation Schedule." (Vol. XI, p. 2893). As the district court emphasized, "[w]ithout reliance on the decimal interest shown in EnCana's records, it would be impossible to determine how much to pay each of the Class members under the Settlement." (Vol. XI, p. 2893). Thus, the district court determined that "the release of decimal interest claims prior to January 1, 2008 is appropriate in this case." (Vol. XI, pp. 2893-2894). Accordingly, the district court concluded that the release of claims set forth in the Class Settlement is not unduly broad, and rejected the Devers' objection to the scope of the release of claims set forth in the parties' Settlement Agreement. (Vol. XI, p. 2894).

10. The District Court's Findings Regarding the Fairness of the Class Settlement, and Regarding the Devers' Other Objections to the Class Settlement.

In its Order finally approving the Class Settlement, the district court evaluated the factors which this Court has recognized are relevant to a determination of the fairness of a proposed class settlement, including: (1) the strength of the Plaintiffs'