

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1) DORSEY J. REIRDON,

Plaintiff,

v.

(1) CIMAREX ENERGY CO.,

Defendant.

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Case No. 6:16-cv-00113-KEW

**DECLARATION OF MEDIATOR BRADLEY A. GUNGOLL**

I, BRADLEY A. GUNGOLL, upon personal knowledge and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was selected by the parties to mediate the above-entitled action and did so as an independent mediator. The mediation resulted in a settlement.

2. While the mediation process is confidential, the parties have authorized me to inform the Court of the matters set forth below, to be used in support of Plaintiff’s Motion for Final Approval of Class Settlement.

3. My statements and those of the parties during the mediation are subject to a confidentiality agreement, and I do not intend to waive that agreement. I make this Declaration based on personal knowledge and am competent to so testify.

**QUALIFICATIONS**

4. I am a founding shareholder of Gungoll, Jackson, Box & Devoll, P.C. I practice litigation in all jurisdictions, state and federal. My peers have recognized me as a fellow in the American College of Trial Lawyers. I practice primarily in the areas of energy and natural resources law, environmental law, personal injury and product liability. I further serve regularly as a mediator with Dispute Resolution Consultants and also serve as an

Arbitrator. I frequently mediate cases involving energy law, contract law, insurance law and property issues.

5. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

6. As explained herein, based on my experience as a mediator and arbitrator, it is my opinion that the Settlement in this case is fair, reasonable, and adequate.

**THE SETTLEMENT PROCESS WAS THOROUGH, FAIR, AND ARM'S-LENGTH**

7. Before the mediation, the parties provided to me and exchanged with each other extensive, confidential legal briefing regarding class certification, merits and damages issues supported by evidence and expert opinions. Based on these submissions and discussions during the mediation, I concluded that Class Counsel had performed a thorough examination of the factual discovery and payment data and, with the aid of experts, analyzed it to determine appropriate case valuations. Class Counsel was current and well informed on the law and provided legal research and analysis of Oklahoma law, federal law, and the law of other states. And, Defendant was cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case, and counsel for Defendant had performed considerable work in preparation for the mediation.

8. The mediation occurred at the offices of Gable & Gotwals in Tulsa, Oklahoma on July 25, 2018. Plaintiff and Class Representative, Dorsey Reirdon, attended in-person, along with his counsel, Drew Pate, Trey Duck, Pat Ryan, Jason Ryan, Paula Jantzen, Robert Barnes, and Emily Kitch. Defendant attended through its counsel, Nathan Davis and Bradley Welsh, and in-house counsel, Adam Vela.

9. At the beginning of the mediation session, I asked detailed questions of both sides to expose their strengths and weaknesses, as well as to clarify where substantial disputes on class certification, liability, damages, and certain defenses still existed. The parties were

cooperative and professional throughout this process.

10. The parties were not able to reach a resolution on July 25. However, the parties continued to work together through me to resolve this matter and were ultimately able to reach an agreement in principle on August 9, 2018.

11. After presiding over the mediation process in this case, I am convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiations conducted in good faith. There was no collusion between the parties.

**THE \$9.5 MILLION SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

12. The parties exchanged massive amounts of data for experts to analyze. However, considerable differences continued to exist between the parties on liability, damages, and statute of limitations.

13. For example, the parties presented opposing, good faith arguments as to Cimarex's duty, under Oklahoma oil and gas law, to pay statutory interest on certain types of payments. The parties also disagreed about whether and to what extent Cimarex was the responsible party for certain late payments that occurred during the relevant time period. An adverse ruling on these issues would be devastating to Plaintiff's case.

14. Prior to the Settlement, there were numerous pending litigation issues, including substantial outstanding discovery disputes, that would have long-delayed the resolution of the case. And, the dispute settled prior to class certification, which can often be a substantial hurdle for plaintiffs. Further, following certification, Class Representative and Class Counsel would still have been required to file, respond to, and win motions for summary judgment and ultimately succeed at trial—all for an unknowable amount of money, if any, to be awarded by an unknown jury.

15. Throughout the mediation process, I developed an understanding of the

dispute, the respective positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal.

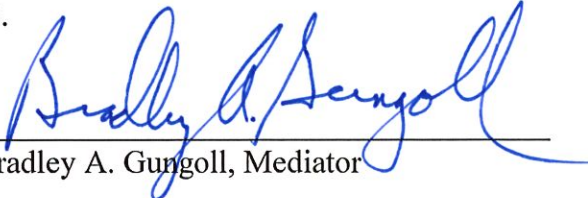
16. Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and at the mediation, the rigor of the negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits achieved in the Settlement, I believe that the terms of the \$9.5 million settlement are fair, adequate, reasonable and in the best interests of the Class. Moreover, the Settlement goes even further by requiring Cimarex to implement new procedures and policies with respect to payment of statutory interest on late royalty payment. This is an outstanding result for the Class. It is my understanding that this change to Cimarex's interest-payment practices confers on the Class an additional estimated \$11 million in present value, according to Plaintiff's experts.

17. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation session, as well as from my numerous discussions with them, that Class Counsel performed a thorough examination of the documents and data produced in this litigation. It is also my opinion that Class Counsel performed substantial work and effort in preparing their case for mediation and in presenting their claims in such a way to produce a valuable settlement for the Class.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Dated this 14<sup>th</sup> day of November 2018.

  
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Bradley A. Gungoll, Mediator

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Bradley A. Gungoll is a founding shareholder of Gungoll, Jackson, Box & Devoll, P.C. He practices litigation in all jurisdictions, state and federal. His peers have recognized him as a fellow in the American College of Trial Lawyers.

Gungoll practices primarily in the areas of energy and natural resources law, environmental law, personal injury and product liability. He further serves regularly as a mediator with Dispute Resolution Consultants and also serves as an Arbitrator. Regular Mediation disputes include Energy law, Contract law, Insurance law and Property issues.

Gungoll is a fellow of the Oklahoma Bar Foundation and past chairman of the Mineral Law section of the Oklahoma Bar Association. He has served as President and as a member of the Board of Directors of the Oklahoma Association for Justice formerly the Oklahoma Trial Lawyers Association. He is past Chair of the Energy and Natural Resources Section of the Oklahoma Bar Association and has been a member of the Access to Justice Committee of the State Bar. Gungoll further serves on the Alternative Dispute Resolution Committee for the American College of Trial lawyers and the Oklahoma Bar Association. Gungoll has served as President of the Garfield County Bar and currently serves the Oklahoma County Bar on the Fee and Grievance Committee.

**Areas of Practice:**

- Civil and Commercial Litigation • Energy and Natural Resources • Mediation and Arbitration • Environmental Law

**Education:**

- Oklahoma State University, B.S., 1975  
American University, International School of Law; Oklahoma City University, J.D., 1979

**Court Admissions:**

- United States Supreme Court
- United States Court of Appeals, Tenth Circuit

- United States District Court Western District of Oklahoma
- United States District Court Northern District of Oklahoma
- United States District Court Eastern District of Oklahoma

**Other Affiliations:**

- American Bar Association
- American Association for Justice
- Oklahoma Bar Foundation
- Past Chairman of the Board of the Oklahoma Sports Hall of Fame and the Jim Thorpe Association.
- Past Associate Board of Directors of the National Cowboy and Western Heritage Museum.
- Oklahoma City Mineral Lawyers Society

**Subject:** Activity in Case 6:16-cv-00113-KEW Reirdon v. Cimarex Energy Co. Declaration  
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U.S. District Court

Eastern District of Oklahoma

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**Case Number:** [6:16-cv-00113-KEW](#)  
**Filer:** Dorsey J. Reirdon  
**Document Number:** [62](#)

#### Docket Text:

**[DECLARATION of Mediator Bradley A. Gungoll by Dorsey J. Reirdon \(With attachments\)\(Ryan, Patrick\)](#)**

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