

IN THE DISTRICT COURT OF TEXAS COUNTY, OKLAHOMA

Hitch Enterprises, Inc. )  
on behalf of itself and )  
all others similarly situated, )  
  
Plaintiffs, )  
  
v. )  
  
Key Production Company, Inc.; )  
  
Defendants. )

TEXAS COUNTY  
**FILED**  
  
JAN - 3 2017  
  
M. RENEE ELLIS  
COURT CLERK  
By \_\_\_\_\_ Deputy

Case No. CJ-2017-01

**CLASS ACTION COMPLAINT**

Plaintiffs bring this claim on behalf of themselves and the Class of all other persons similarly situated against Defendants and in support of these claims states as follows:

**NATURE OF THE ACTION**

1. Plaintiffs and the Class bring claims based upon Defendants' underpayment by taking improper Midstream Service Cost deductions or non-payment of royalties on natural gas and/or constituents of the gas stream produced from wells in Oklahoma (essentially Processing Costs since Defendants have a corporate policy not to deduct or allow the deduction of the other Midstream Service Costs). This is Round 2 of a similar but smaller case settled class-wide in *Hitch Enterprises, Inc., et al. v. Cimarex Energy Co., et al.*, Case No. 5:11-cv-00013-W (W.D. Okla. Judge West).

**1. VENUE AND JURISDICTION**

2. This Court has jurisdiction over Defendant in that its wrongful acts occurred and caused damages to Plaintiff and Class members in this State.

3. Venue is proper in this Court for one or more of the following reasons: (i) many of the wells and royalties therefrom are located in this judicial district; (ii) Class members reside in this judicial district; and (iii) Defendant does substantial continuous business in this judicial district.

### **PARTIES**

4. Plaintiff Hitch Enterprises, Inc. is a family owned and operated entity. It is a citizen of Oklahoma. It owns royalty interests in the Hitch JR 1 -20 and the Hitch Trust 2-29 wells in Texas County, Oklahoma. Key Production Company, Inc. holds the lease, operates the well, and contracts with Cimarex Energy Co. to pay the royalty on these two wells.

5. Defendant Key Production Company, Inc. (“Key” or “Defendants”) is a significant subsidiary of Cimarex Energy. Key is believed to be a citizen of Colorado where its corporate headquarters are located and a citizen of Delaware where it is incorporated, and is doing business in the State of Oklahoma. Key has designated an agent for service of process in Oklahoma and can be served with process at the office of its resident agent Corporation Service Company, 115 SW 89th Street, Oklahoma City, OK 73139-8511. Key is sometimes referred to herein as “Cimarex”, “Cimarex Energy”, or “Defendants”.

6. Key is sued herein as a lessee and/or operator of Class Wells. Key holds Oklahoma leases, operates Oklahoma wells, but does not pay royalty (that is done by Cimarex Energy).

7. Cimarex Energy uses “netback pricing” as the methodology to pay royalty owners, but does not deduct from royalties for Gathering, Compression, Dehydration, or

Treatment, or the fuel used for those activities, so it only deducts from royalties for Processing (and Plant Fuel) which includes TF&S for NGLs and the percentages of products retained by third party processors.<sup>1</sup>

8. The acts charged in this Petition as having been done by Defendants were authorized, ordered, or done by their officers, agents, affiliates, employees, or representatives while actively engaged in the conduct or management of Defendants' business or affairs, and within the scope of their employment or agency with Defendants.

### **CLASS ACTION ALLEGATIONS**

9. Plaintiffs bring this action individually and, pursuant to 12 O.S. §2023(a) and (b)(3), as representatives of a Class defined as follows:

All royalty owners in Oklahoma wells operated or leased by Key Production Company, Inc. that have produced gas or gas constituents (such as residue gas, natural gas liquids, or helium) from January 1, 2013 to January 1, 2017.

Excluded from the Class are: (1) the Mineral Management Service (Indian tribes and the United States); (2) Defendants, their affiliates, and employees, officers and directors; (3) Any NYSE or NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; (4) all royalty owners to the extent they have sued Defendants for underpayment of royalties from January 1, 2013 to the present before this suit was filed; and, (5) all royalty owners that expressly authorized in their leases the deduction of processing costs from royalties.

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<sup>1</sup> A prior putative class case has been filed against Cimarex Energy Company and Cimarex Energy Co. of Colorado (but not against Key) to recover for FL&U and Plant Fuel deductions from royalties but only for leases that expressly state that royalty will be paid on gas used off the lease premises and/or in the manufacture of products. *See Reirdon v. Cimarex Energy Company and Cimarex Energy Co. of Colorado*, Case No. 16-cv-445-SPS (E.D. Okla.). Plaintiff and the Class do not sue at this time in this case at all for FL&U due to the belief that FL&U was not deducted from royalties by Key. But Plaintiff and the Class do sue for the failure to pay for royalties on Class Gas used for Plant Fuel under either express lease language or implied covenants.

10. The prior settlement in *Hitch v. Cimarex Energy Co.* releases Defendants and their affiliated entities before January 1, 2013.

11. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. For instance, Defendants have operated over 100 wells producing gas in Oklahoma and many more in which it holds a working interest, with at least one, and usually more, royalty owners for each well. There are more than 200 royalty owners. While many royalty owners remain in Oklahoma, many others reside in numerous other states, and perhaps countries. Defendants have within their possession or control records that identify all persons to whom it has paid royalties from wells located within Oklahoma from January 1, 2013 to January 1, 2017.

12. The questions of fact or law common to Plaintiffs and the Class include, without limitation, one or more of the following:

- (a) Whether Plaintiffs and the Class members are the beneficiaries of an implied duty to market obligating Defendants to place the gas (and its constituents) from Class Wells into Marketable Condition;
- (b) Determining the point at which the gas (and its constituents) that Defendants produce becomes commercially marketable;
  - (i) Whether Marketable Condition for residue gas occurs at transmission pipeline quality as Plaintiffs contend or earlier;
  - (ii) Whether Marketable Condition for NGLs occurs at fractionation quality as Plaintiffs contend or earlier; and
  - (iii) Whether Marketable Condition for helium occurs at Grade A quality as Plaintiffs contend or earlier;
- (c) Whether Defendants deducted or allowed hired third parties to deduct (in cash or in kind) amounts for placing the gas (and its constituents) into

Marketable Condition before paying royalty to Plaintiffs and the Class members.

13. Plaintiffs are typical of other Class members because Defendants pay royalty to Plaintiffs and other Class members using a common method. Defendants pay royalty based on the net revenue Defendants receive under their marketing contracts. The marketing contract terms are unknown to and unapproved by royalty owners. The contracts are necessary to place the gas and its constituent parts into marketable condition. Plaintiffs are also typical of the other Class members because their leases do not contain an express provision authorizing deductions of Processing Costs (Residue retained or Plant Fuel; NGLs retained, TF&S; Helium retained or not paid for at all).

14. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs are royalty owners paid by Defendants, understand their duties as Class representatives, and their interests in recovering for improper deductions do not conflict with the recovery of improper deductions by the Class. Plaintiffs have retained counsel competent and experienced in class action and royalty owner litigation.

15. This action is properly maintainable as a class action. Common questions of law *or* fact exist as to all members of the Class and those common questions predominate over any questions solely affecting individual members of such Class. *See* ¶ 32 above. There is no need for individual Class members to testify in order to establish Defendants' liability or even damages to the Class.

16. Class action treatment is appropriate in this matter and is superior to the alternative of numerous individual lawsuits by members of the Class. Class action

treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without duplication of time, expense and effort on the part of those individuals, witnesses, the courts and/or Defendants. Likewise, class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative forum exists for the fair and efficient adjudication of the claims of all Class members.

17. Class action treatment in this matter is further superior to the alternative of numerous individual lawsuits by the members of the Class because joinder of all members of those Class would be either highly impracticable or impossible and because the amounts at stake for individual Class members, while significant in the aggregate, are not great enough to enable them to enlist the assistance of competent legal counsel to pursue their claims individually. In the absence of a class action in this matter, Defendants will likely retain the benefit of their wrongdoing.

### **GAS INDUSTRY BACKGROUND**

18. The members of the Plaintiff Class own interests in wells that produce gas and constituent products that are subject to uniform accounting methods and to applicable implied marketable product law that require the lessee to bear all of the costs of placing the products, whether gas or its constituent parts, in "Marketable Condition."

19. The lessee under an oil and gas lease has the duty to produce marketable products, and the lessee alone bears the expense in making all products marketable.

20. Gas and its constituent parts are marketable only when in the physical condition to be bought and sold in a commercial marketplace, which for gas needing processing is after processing.

21. Only after a given product is marketable does a royalty owner have to pay its proportionate share of the reasonable costs to get a higher enhanced value or price for that particular product.

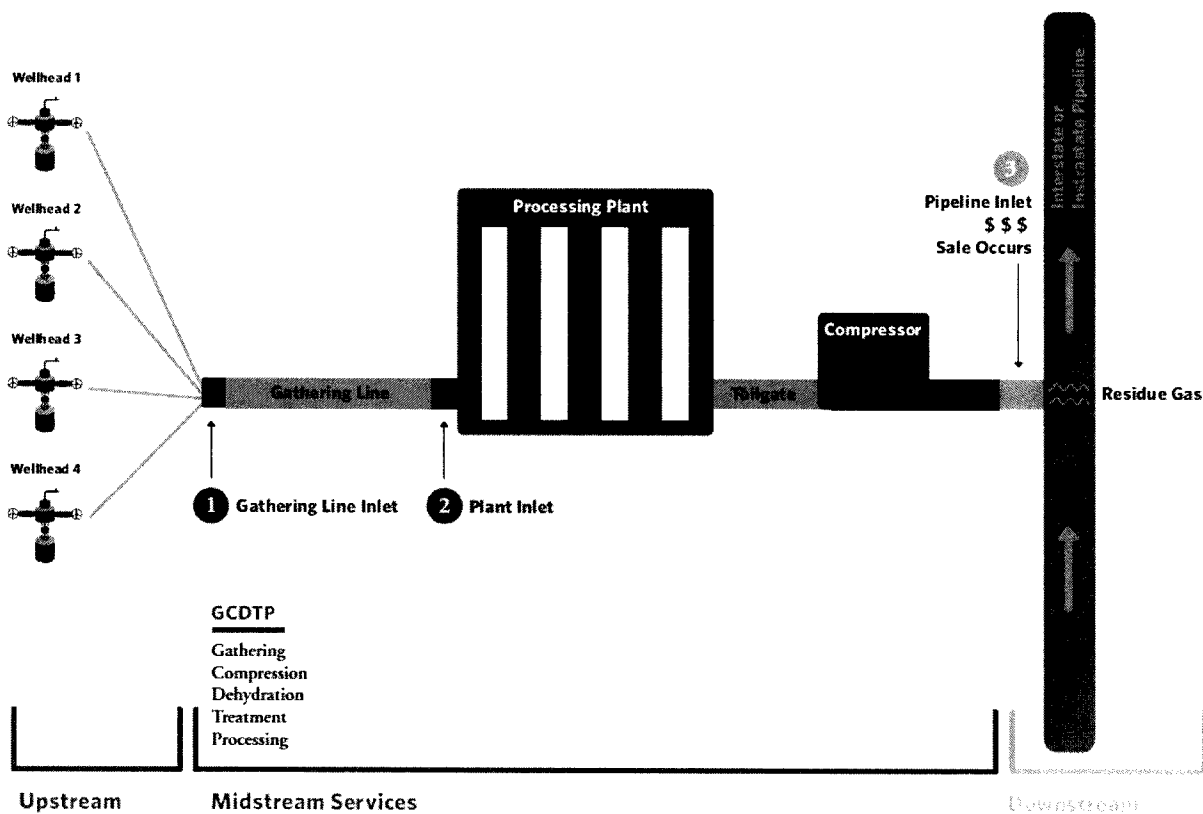
### **The Lessor-Lessee Relationship**

22. The lessor owns minerals, including oil and gas, and the lessee has the money, labor, and know-how to extract, condition, and market those minerals. The lessor and lessee enter into a lease that allows the lessee to take the minerals from the lessor's land. The usual revenue split from a well was 1/8th to the lessor (royalty owner) and 7/8ths to the lessee. As the risk of finding oil and gas has diminished over time, due to the prevalence of wells delineating the field, better seismic technology to find oil and gas, and drilling rigs becoming more efficient, royalty owners on more recent leases have received 3/16th or even 1/4th of the revenue. The oil and gas companies through undisclosed internal accounting practices have tried to keep as much of the well revenue as possible. These accounting practices are at the heart of every oil and gas royalty owner case.

### **Residue Gas, Helium, and Natural Gas Liquids Production**

23. The gas is gathered from each well, dehydrated and compressed, through gathering lines that are buried underground and cross many miles of land. The three primary well gas products--methane, natural gas liquids ("NGLs"), and helium--are further

processed at processing plants before being trucked or piped to the commercial market and on to the end-user. A diagram illustrating a part of this process is below:



### Wellhead (Basic Separation and Gas Measurement)

24. Wells produce oil, gas, and a host of other products, such as water, helium, nitrogen, etc., all mixed together in the gas stream.<sup>2</sup> After the stream comes out of the ground, it enters the free water knockout (a/k/a three-phase separator) which separates the products by gravity, water at the bottom, oil in the middle, and gas going out the top. Due

<sup>2</sup> Hydrocarbons can vary in chemical makeup (from simple methane to complex octane) and in form (from a pure gaseous state to liquid condensate). The non-hydrocarbon makeup of the well-stream that includes natural gas can also include gases such as helium, sulfur, carbon dioxide and nitrogen. This mixture of many gaseous elements and substances is often referred to as the “gas stream” or just “gas”.



to the low technology, the separator is not expensive (the “separation cost”). The gaseous mixture (with helium, nitrogen, NGLs, and other gaseous substances) passes from the separator into the gas line.<sup>3</sup> The remaining fluid goes through the heater-treater where heat, gravity segregation, chemical additives and electric current break down the mixture more clearly into oil and water. The heater-treater is installed, maintained and takes fuel to operate (the “heater-treater cost”). The water is drained off and sent for salt water disposal. The oil that is separated at the wellhead is collected in a tank, usually trucked out and sold. [The payment of oil royalties is not at issue in this lawsuit.]

25. Since the pressure of many wells has depleted over the decades of production, sometimes wellhead compressors have been installed to suction gas out of the well or just to move the gaseous mixture. These wellhead compressors are installed, maintained and use fuel (the “wellhead compression” or “vacuum compression” cost). The gaseous mixture produced from a single well cannot be processed economically, so the mixtures are ‘gathered’ together through gathering lines and the aggregate mixture is put through a processing plant.

#### **Gathering Lines (Dehydration, Compression, Condensate)**

26. As the gaseous mixture from each well enters the gathering line it is measured, both volume (in Mcf) and in quality (Btu content) (combined, “gas measurement” done in MMBtu). This is done in a meter run which must be constantly

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<sup>3</sup> A minute portion of this raw or mixed gaseous product may be used on the leased land to heat the farm house pursuant to a free gas clause in the lease or sometimes sold to a small, limited local market with a finite demand to local irrigators near the wellhead. This limited local market accounts for less than 3% of a producer’s gas production.

maintained to preserve accuracy (the “measurement cost”). Gathering pipelines are made of metal that could be corroded by any remaining water vapor (and other corrosive gases) in the gaseous mixture, so a glycol dehydrator is used to remove the water vapor (“dehydrator cost”). Of course, gas cannot move unless it is pressurized, so large gas compressors are installed to move the gas down the gathering line. The gas must be pressurized high enough to overcome the back-pressure in the line and friction. These compressors are expensive and require fuel to operate (together, “gathering or field compression fee” and/or “gathering fuel”). The gathering pipelines themselves cost money to lay and maintain (“gathering cost”). Gas condensate (gas condensed into liquid as it cools) is collected at points along the gathering lines as a result of cleaning or “pigging the line” (“Condensate” or “drip condensate”), and is captured for fractionation later.<sup>4</sup> Finally, gathering lines leak, especially as they age, resulting in lost and unaccounted for gas (“L&U”).

### **Natural Gas Processing**

27. Once the gas mixture is gathered from a sufficient number of wells (and often from multiple gathering systems), it enters the inlet of the processing plant. To process the gas into methane, crude helium, and mixed NGLs, lessees, such as Defendants, use gas processing plants. Sometimes the processing plant is owned by an unrelated third party and sometimes it is owned in whole or in part by lessees. Sometimes other impurities in the mixture must be removed such as carbon dioxide, nitrogen, or sulfur (the “treatment

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<sup>4</sup> Plaintiff and the Class do not sue for underpayment or non-payment for drip condensate at this time.

cost”). Methane gas (sometimes called “residue gas”) must meet the quality standards for long-haul pipeline transmission set by the Federal Energy Regulatory Commission (FERC) which is called “pipeline quality gas”. NGLs are used as a feedstock in the petrochemical and oil refining industries, and are worth more than methane. NGLs are separated from the gaseous mixture by cooling the mixture until the NGLs become separated. This cooling or Cryogenic recovery method usually takes place at temperatures lower than minus 150°F (the “Cryogenic or cooling process”). The mixture of NGLs is further moved down a liquids pipeline and processed by a fractionator for separation of the NGLs into their component parts (“T&F” or “fractionation”). Helium is processed into a crude mixture known as “raw helium” or “crude helium”. Raw helium contains impurities and must be further processed into Grade A helium for commercial sale and use. This total processing system involves expensive equipment and requires fuel to operate (collectively, the “processing charge” and/or “plant fuel”).

28. At the tailgate of the processing plant, at least three products emerge: (1) crude helium; (2) residue gas (or methane gas); and, (3) NGLs (usually a mixture of NGLs, known as “raw make” or “Y” grade). None are commercially marketable at that point.

### **Marketable Condition for the Products**

29. *Helium.* The Class Wells in the Oklahoma Panhandle contain recoverable helium. Crude helium (about 50%-80% pure) has little commercial use; instead, it has to be further processed into Grade-A helium (99.9% pure). <http://minerals.usgs.gov/minerals/pubs/commodity/helium/heliumcs05.pdf> The crude helium from the processing plant is then piped to one of the Grade A helium processing

plants. Helium is extracted at the processing plants, but Defendants do not pay royalty at all, or not completely, on the helium from Class members' wells from which it is recovered.

30. *Methane Gas.* Methane gas (or residue gas) is commercial quality (a/k/a "pipeline quality") at the tailgate of the processing plant only after it is further pressurized to enter the transmission line by a booster compressor (the "booster compression" cost).

31. *NGLs.* The raw mixture of NGLs at the tailgate of the processing plant is not commercially marketable. It must be fractionated into commercially marketable products—ethane, propane, butane, isobutane, natural gasoline, etc. Defendants improperly deduct, in computing royalty for NGLs, processing fees and/or other costs (such as transportation and fractionation, T&F, sometimes called TF&S) needed to reach commercially marketable fractionated NGLs. Such deductions are improper.

### **Sale of Products**

32. To turn the gas *products* into money, the producer then sells the products. One would expect that such sales would occur in the commercial market place in an arm's length transactions. That, in fact, occurs, but lessees attempt to cover up and manipulate that fact by self-serving language in marketing contracts about title transfers or even by creating wholly owned affiliates to manufacture a fictitious "sale" before the gas reaches commercial quality for sale.

33. The "starting price" for gas products is most often established by the lessee through a "weighted average sales price" or an "index price". If Defendants have the market power to, over time, obtain above "index price" in its arm's length sales, then as an

agent for the royalty owner, the royalty owner is entitled to this higher price over time as well.

### **Different Ways Defendants Underpay Royalty Owners**

34. Defendants underpay Plaintiffs and the Class in one or more of the following ways, without limitation:

(a) Helium. Helium is contained in commercial quantities in the well-stream produced from Plaintiffs' and Class members' wells and is recovered in the Oklahoma Panhandle, but Defendants: (i) fail to pay royalty for all of the helium produced; (ii) deducts processing fees and costs even though the helium is not yet in commercial grade; and, (iii) pays at a lower than commercial Grade A price.

(b) Natural Gas Liquids (NGLs). Defendants: (i) fail to pay royalty for all of the NGLs produced (some is retained by the processor to pay for processing); (ii) deduct processing fees and expenses; (iii) and reduce payment by TF&S all before obtaining commercially marketable fractionated NGLs.

(c) Residue Gas. Defendants: (i) fail to pay royalty for all of the Residue produced (some is retained by the processor to pay for processing); (ii) deduct processing fees and expenses; and, (iii) fail to pay royalty at all for Plant Fuel, all before obtaining commercially marketable Residue.

### **COUNT I—BREACH OF LEASE**

35. Plaintiffs and the Class incorporate by this reference the allegations in ¶¶ 1-34 and 40-50.

36. Plaintiffs and the Class (or their predecessors in title) entered into written, fully executed, oil and gas leases with Defendants (or their predecessors in title) and at least one lease for each Plaintiff is attached and incorporated by reference.<sup>5</sup> The attached lease and Class leases include implied covenants requiring Defendants to place the gas and its constituent parts in “Marketable Condition” at Defendants’ exclusive cost. The leases also place upon Defendants the obligation to properly account for and pay royalty interests to royalty owners under the implied mutual benefit rule.

37. At all material times, Plaintiffs and the Class have performed their terms and obligations under the leases.

38. Defendants breached the implied covenants of the leases by its actions and/or inactions.

39. As a result of Defendants’ breaches, Plaintiffs and the Class have been damaged through underpayment of the actual amounts due.

## **COUNT II—UNJUST ENRICHMENT**

40. Plaintiffs and the Class incorporate by this reference the allegations in ¶¶ 1-39 and 44-50.

41. Defendants received the benefit of or retained monies due and owing to Plaintiffs and the Class. Defendants were thereby able to use for their own purpose monies that in equity and good conscience, and as a matter of law, belonged to royalty owners.

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<sup>5</sup> For Hitch, the lease was with Cabot Oil, assigned to Phillips Petroleum, and then assigned to Key Production Company, Inc. which also operates the two Hitch wells. *See Ex. A*, attached and incorporated by reference.

42. The existence and ongoing retention of these monies by Defendants affected an immediate and measurable increase in Defendants' cash, revenue, and profits.

43. Defendant's retention of such monies is unjust and unwarranted for all of the reasons set forth herein and damaged Plaintiffs and the Class. Additionally, Defendants are liable for the profits it made from the unlawful and improper retention and use of monies that should have been paid to Plaintiffs and the Class.

### **COUNT III-BREACH OF FIDUCIARY DUTY**

44. Plaintiffs and the Class members incorporate by this reference the allegations in ¶¶ 1-43.

45. Plaintiffs and the Class members have wells that have unitized under 52 O.S. §§ 287.1-287.15 and/or 52 O.S. § 87.1.

46. Defendants have a fiduciary duty as a result of the above mentioned statutes, the Oklahoma Corporation Commission (OCC) orders made pursuant to those statutes, and/or the unitization order and agreement with Plaintiffs and the Class members based on field-wide units or secondary recovery under 52 O.S. §§ 287.1-287.15 and also by the creation of drilling and spacing units under 52 O.S. § 87.1.

47. Defendants are the unit operator by appointment from the Oklahoma Corporation Commission for Plaintiffs' wells and the Class members.

48. Defendants breached their fiduciary duty to Plaintiffs and the Class members by failing to properly report, account for, and distribute gas proceeds to Plaintiffs and the Class members for their proportionate royalty share of gas production.

49. Defendants' conduct in breaching its fiduciary duties to Plaintiffs and the Class members was done intentionally, maliciously, or in reckless disregard for the rights of Plaintiffs and the Class members.

50. As a direct and proximate result of Defendants' breach of fiduciary duty, Plaintiffs and the Class members are entitled to recover actual damages from Defendants. Plaintiffs reserve the right to re-plead for punitive damages in the event such is warranted by the evidence.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs prays for an Order and Judgment against Defendants as follows:

a. Certifying this action pursuant to 12 O.S. Sec. 2023(a) and (b)(3) as a class action, appoint Plaintiffs as Class representatives, and Plaintiffs' Counsel as Class counsel with reasonable notice to be given to members of the Class;

b. Awarding Plaintiffs and the Class members actual damages, including interest thereon, for Defendants' breach of lease, unjust enrichment, and breach of fiduciary duty;

c. Granting Plaintiffs and the Class the costs of prosecuting this action together with reasonable attorney's fees, expenses, and costs out of the recovery; and,

d. Granting such other relief as this Court may deem just, equitable and proper.

### **JURY DEMAND**



Plaintiffs and the Class demand trial by jury regarding all issues that can be tried to a jury under applicable law.

**ATTORNEYS' LIEN CLAIMED.**



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Rex A. Sharp OBA#011990  
Rex A. Sharp, PA  
5301 W. 75<sup>th</sup> Street  
Prairie Village, KS 66208  
(913)901-0505  
(913) 901-0419 fax  
[rsharp@midwest-law.com](mailto:rsharp@midwest-law.com)

Plaintiff's Counsel

Hitch Trust #2-29  
Sec. 29-2N-16ECM  
Texas Countv. OK

FILE DATE: 02/12/1998 FILE TIME: 01:16  
TEXAS COUNTY, LINDA BOWMAN - COUNTY CLERK  
Suite 515  
Tulsa, OK 74103-4110

BOOK: 963 PAGE: 746  
REC #: 1998 637996  
G. F. 54805  
45505-000

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE (OR LEASES)

3/12.00

KNOW ALL MEN BY THESE PRESENTS:

THIS ASSIGNMENT, made and entered into the 3rd day of February, 1998, but made effective as of the 22nd day of January, 1998, by and between PHILLIPS PETROLEUM COMPANY, a Delaware corporation, with an operating office at Bartlesville, Oklahoma, hereinafter referred to as "Assignor", and

KEY PRODUCTION COMPANY  
427 South Boston Avenue, Suite 515  
Tulsa, Oklahoma 74103-4110

hereinafter referred to as "Assignee", whether one or more.

WITNESSETH:

THAT, Assignor is the owner of a certain oil and gas lease (or leases) insofar as the same covers the lands described in Exhibit "A" hereto attached and by this reference made a part hereof, which oil and gas lease (or leases) is briefly described in Exhibit "A". Reference is here made to said oil and gas lease (or leases) and to the record thereof for all of the terms and covenants thereof.

THAT, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and subject to the conditions, covenants, reservations and exceptions set forth herein and in the agreement hereinafter referred to, Assignor does hereby assign and transfer unto Assignee, without representation or warranty of title, either express or implied, all of its right, title and interest in and to the oil and gas lease (or leases) described in Exhibit "A" insofar as said oil and gas lease (or leases) covers and pertains to the oil, gas and casinghead gas, and all rights pertaining thereto in the lands specifically described in Exhibit "A" from the base of the Permian formation (3,511') down to the base of the Basal Morrow formation (6,840') as identified on the electric log of the Hitch Trust #2-29 well located in the center of the NW/4 of Section 29-2N-16ECM, Texas County, Oklahoma, the rights herein assigned will hereinafter sometimes be referred to as the "assigned premises".

Assignor excepts from the within assignment and reserves and retains unto itself, its successors and assigns, all rights under said oil and gas lease (or leases) not herein expressly assigned unto Assignee.

Assignor also excepts from the within assignment and reserves and retains unto itself, its successors and assigns, as an overriding royalty:

Fifteen percent (15%), exclusive of any existing excess burdens over and above the normal landowner's royalty.

In the event the assignment provided for herein covers less than the full and undivided oil, gas and casinghead gas leasehold estate, the overriding royalty herein reserved shall be proportionately reduced.

Said overriding royalty shall be delivered to Assignor in the pipe line to which the well or wells on said assigned premises may be connected, free and clear of all risks incident to and all expense of drilling, testing, developing, operating and maintaining the assigned premises, and free and clear of all liens, transportation charges, storage charges and other charges and expenses, and free and clear of all taxes, except that said overriding royalty interest shall bear its proportionate part of any gross production, severance and ad valorem taxes. The proceeds of said overriding royalty interest shall be paid monthly direct to Assignor at its office at Bartlesville, Oklahoma, by the purchaser or purchasers of said production.

Hitch Trust #2-29

WHEN RECORDED MAIL TO:  
Key Production Co  
427 S Boston  
Suite 515  
Tulsa Ok 74103-4110  
(encl)



Exhibit A

This assignment is made expressly subject to all of the conditions, covenants, reservations and exceptions set forth in that certain Agreement between Assignor and Assignee dated the 10th day of July, 1997, reference to which is here made for all purposes and which is hereby adopted and incorporated herein by reference as though fully set out herein.

SIGNED, EXECUTED AND DELIVERED this 3rd day of February, 1998.

PHILLIPS PETROLEUM COMPANY

By J. P. Gregory  
J. P. Gregory, Attorney-in-Fact

THE STATE OF TEXAS                    )  
                                                  )  
COUNTY OF HUTCHINSON            )

This instrument was acknowledged before me on the 3rd day of February, 1998, by J. P. Gregory, as Attorney-in-Fact on behalf of PHILLIPS PETROLEUM COMPANY.



Patricia D. Stegelman  
Patricia D. Stegelman, Notary Public in  
and for State of Texas

My Commission Expires:  
August 30, 2001

**EXHIBIT "A"**

**DESCRIPTION OF ACREAGE AND OIL AND GAS LEASE IN ASSIGNMENT  
BETWEEN PHILLIPS PETROLEUM COMPANY AND  
KEY PRODUCTION COMPANY  
DATED THE 3RD DAY OF FEBRUARY, 1998**

**DESCRIPTION OF ACREAGE TO BE ASSIGNED**

From the base of the Permian formation (3,511') down to the base of the Basal Morrow formation (6,840') as identified on the electric log of the Hitch Trust #2-29 well located in the center of the NW/4 of Section 29-2N-16ECM:

All of Phillips' oil and gas rights in and to:

All of Section 29-2N-16ECM  
Texas County, Oklahoma

**DESCRIPTION OF OIL AND GAS LEASE**

Lease No.:	45505-000
Dated:	August 6, 1940
Lessor:	Henry C. Hitch and wife, Christine W. Hitch
Lessee:	Cabot Carbon Company
Description:	Section 29-2N-16ECM, Texas County, Oklahoma, among other lands not affected hereby
Encumbrances:	1/4 x 7/8 at 4¢ per MCF reserved by Cabot Carbon Company per contract with Phillips Petroleum Company Dated March 10, 1944
Lessor's Royalty:	1/8
Recorded:	Volume 219, Page 456

Company, a Massachusetts corporation, as Lessee, covering the following described lands in the County of Texas, State of Oklahoma:

Ten (10) acres out of the Northwest Corner of the Northwest One-quarter of the Southwest One-quarter (NW $\frac{1}{4}$  of SW $\frac{1}{4}$ ) of Section Thirty-six (36), Township One (1) North, Range Fifteen (15), E.C.M.,

said lease having been filed for record and recorded in the Records of said County in Book at Page

That for and in consideration of the sum of --Ten-- Dollars and other good and valuable considerations, receipt whereof is hereby acknowledged, the undersigned, does hereby bargain, sell, assign, and deliver unto Phillips Petroleum Company, a Delaware corporation, and its assigns and successors in interest, subject to the reservation set forth below, without warranty of title, either express or implied,

the above described oil and gas lease,

together with the same interest in all personal property and lease equipment of whatsoever nature situated thereon or appurtenant thereto or used in connection with the development and operation thereof for oil and gas mining purposes.

Assignor hereby reserves unto itself and its successors and assigns an undivided interest in the natural gas underlying the lands covered by this assignment and produced therefrom equal to one-fourth (1/4) of seven-eighths (7/8) of all gas produced from said lands under the terms of the oil and gas lease hereby assigned. Said reservation shall be free of development and operating costs. This assignment and the reservation of gas as hereinabove provided shall be subject to all the provisions of a certain Agreement between the parties hereto dated March 10, 1944, pursuant to which this assignment is made and delivered.

Signed, executed, and delivered this 5th day of August, 1944.

(SEAL)

ATTEST:

Fred C. Fernald  
Secretary

CAHOT CARBON COMPANY  
By Ralph Bradley  
Vice President

COMMONWEALTH OF MASSACHUSETTS, COUNTY OF SUFFOLK ) SS.

Before me, the undersigned, a Notary Public in and for said County and State, on this 5th day of August, 1944, personally appeared Ralph Bradley to me known to be the identical person who subscribed the name of Cahot Carbon Company to the within and foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses, purposes and consideration therein expressed and set forth.

My Commission expires-Oct. 15, 1948

Warren F. Rideout  
Notary Public

STATE OF OKLAHOMA, COUNTY OF TEXAS ) SS

This instrument was filed for record on Sep-5 1944 at 9 o'clock A M and duly recorded in Book 242 of Page 537.

Fee \$1.05

(SEAL)

Bessie M. Stice  
County Clerk

\*\*\*\*\*

ASSIGNMENT OF OIL AND GAS LEASE TC-115  
45505

KNOW ALL MEN BY THESE PRESENTS:

That under date of August 6, 1940, an oil and gas lease was made and entered into by and between Henry C. Hitch and wife, Christine F. Hitch, as Lessors, and Cahot Carbon Company a Massachusetts Corporation, as Lessee, covering the following described lands in the County of Texas, State of Oklahoma:

All of Section Thirty-three (33);  $\frac{1}{2}$  of Section Twenty-eight (28); East One-half (E $\frac{1}{2}$ ) of Section Twenty (20); all of Section Seventeen (17); all of Section Seven (7), except the  $\frac{1}{2}$  of E $\frac{1}{2}$ ; Northwest One-quarter of Northwest One-quarter (NW $\frac{1}{4}$  of NW $\frac{1}{4}$ ) of Section Six (6); all in Township One (1) N., Range Sixteen (16) E.C.M.; All of Section One (1), Township One (1), Range Fifteen (15), except S $\frac{1}{2}$  of SW $\frac{1}{4}$ ; All of Section Thirty-six (36); South One-half of Southeast One-quarter (S $\frac{1}{2}$  of SE $\frac{1}{4}$ ) of Section Twenty-five (25), all in Township Two (2), Range Fifteen (15); All of Section Thirty-one (31) except the E $\frac{1}{2}$  of SE $\frac{1}{4}$ ; all of Section Thirty (30) except the  $\frac{1}{2}$  of NW $\frac{1}{4}$ ; all of Section Twenty-nine (29); and South One-half (S $\frac{1}{2}$ ) and South One-half of Northwest One-quarter (S $\frac{1}{2}$  of NW $\frac{1}{4}$ ) of Section Nineteen (19), all in Township Two (2), Range Sixteen (16), Texas County, Oklahoma. Southeast Quarter (SE $\frac{1}{4}$ ) of Section Twenty (20); Southeast Quarter (SE $\frac{1}{4}$ ) of Section Twenty-eight (28); all in Township Two (2) North, Range Sixteen (16) E.C.M. Texas County, Oklahoma and containing 6280 acres, more or less,

said lease having been filed for record and recorded in the Records of said County in Book 219, at Page 456.

That for and in consideration of the sum of --Ten-- Dollars and other good and valuable considerations, receipt whereof is hereby acknowledged, the undersigned, does hereby bargain, sell, assign, and deliver unto Phillips Petroleum Company, a Delaware Corporation, and its assigns and successors in interest, subject to the reservation set forth below, without warranty of title, either express or implied.

the above described oil and gas lease,

together with the same interest in all personal property and lease equipment of whatsoever nature situated thereon or appurtenant thereto or used in connection with the development and operation thereof for oil and gas mining purposes.

Assignor hereby reserves unto itself and its successors and assigns an undivided interest in the natural gas underlying the lands covered by this assignment and produced therefrom equal to one-fourth (1/4) of seven-eighths (7/8) of all gas produced from said lands under the terms of the oil and gas lease hereby assigned. Said reservation shall be free of development and operating costs. This assignment and the reservation of gas as hereinabove provided shall be subject to all the provisions of a certain Agreement between the parties hereto dated March 10, 1944, pursuant to which this assignment is made and delivered.

Signed, executed, and delivered this 14th day of August, 1944.

(SEAL)  
ATTEST: Fred C. Fernald  
Secretary

CABOT CARBON COMPANY  
By- R. C. Allen  
Vice President

COMMONWEALTH OF MASSACHUSETTS, COUNTY OF Suffolk) SS.

Before me, the undersigned, a Notary Public in and for said County and State, on this 14th day of August, 1944, personally appeared R. C. Allen to me known to be the identical person who subscribed the name of Cabot Carbon Company to the within and foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses, purposes and consideration therein expressed and set forth.

My Commission expires  
Oct. 15, 1948 (SEAL) Warren F. Rideout  
Notary Public

STATE OF OKLAHOMA, COUNTY OF TEXAS ) SS

This instrument was filed for record on Sep-5 1944 at 9 o'clock AM and duly recorded in Book 242 of Page 538.

Fee \$2.45 (SEAL) Bessie W. Stice  
County Clerk  
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ASSIGNMENT OF OIL AND GAS BONUSES,  
RENTALS AND ROYALTIES 45505  
TC-115

WHEREAS, the undersigned, Henry C. Hitch, is the owner and holder of a certificate of purchase issued by the Commissioners of the Land Office of the State of Oklahoma, covering among other lands, the following described real estate, situated in Texas County, Oklahoma, to-wit:

Southeast Quarter (SE $\frac{1}{4}$ ) of Section One (1), Township One (1) North,  
Range Fifteen (15) E.C.M. (CSI 1453)

And, WHEREAS, a portion of the principal sum due upon said certificate of purchase contract remains due and unpaid.

WHEREAS, the said Henry C. Hitch and Christine F. Hitch, his wife, have executed an oil and gas lease upon said premises to said Cabot Carbon Company, which lease is dated the 6th day of August, 1940; said lease containing the usual provisions for payment of royalties and delay rentals.

WHEREAS, it is desired by the makers of said oil and gas lease that all rentals, bonuses and royalties accruing under said oil and gas lease in so far as said bonuses, delay rentals and royalties accrue from the premises above described, covered by said certificate of purchase contract shall be paid to the Commissioners of the Land Office of the State of Oklahoma and by them applied upon the certificate of purchase indebtedness hereinbefore mentioned.

NOW THEREFORE, the grantors of said oil and gas lease as above named, for One Dollar and other valuable consideration do hereby transfer and assign to the Commissioners of the Land Office of the State of Oklahoma, all bonuses, delay rentals and royalties accruing under said lease in so far as said bonuses, delay rentals and royalties accrue from the premises covered by said certificate of purchase and the said grantors do hereby direct the holder of said lease to make any and all such payments direct to the Commissioners of the Land Office of the State of Oklahoma, such payments to be applied upon the certificate of purchase indebtedness hereinbefore mentioned, and this assignment to become null and void upon said certificate of purchase indebtedness being paid in full and receipt for any such payments so made shall be effective as if signed by the undersigned.

Dated this 27 day of November, 1940.

Henry C. Hitch  
Christine F. Hitch

STATE OF OKLAHOMA, COUNTY OF TEXAS, SS:

Before me, a Notary Public, in and for said county and state, on this 27 day of November, 1940, personally appeared Henry C. Hitch and Christine F. Hitch, his wife, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth,

(SEAL) C. F. Sturdivan  
My commission expires - 11-25-1944. Notary Public

STATE OF OKLAHOMA, COUNTY OF TEXAS ) SS

This instrument was filed for record on Sep-5 1944 at 9 o'clock A M and duly recorded in Book 242 of Page 539.

Fee \$1.05 (SEAL) Bessie W. Stice  
County Clerk  
\*\*\*\*\*

ASSIGNMENT OF OIL AND GAS BONUSES,  
RENTALS AND ROYALTIES. TC-115  
45505

WHEREAS, the undersigned, Henry C. Hitch, is the owner and holder of a certificate of purchase issued by the Commissioners of the Land Office of the State of Oklahoma covering among other lands, the following described real estate, situated in Texas County, Oklahoma, to-wit:

Lots one (1), Two (2), Three (3) and Four (4) and the  
South half (S $\frac{1}{2}$ ) of the North Half (N $\frac{1}{2}$ ) of the South half (S $\frac{1}{2}$ )  
(SW $\frac{1}{4}$ ) of Section One (1), Township One (1) North, Range Fifteen  
(15) E.C.M. (UNIV 445)

And, WHEREAS, a portion of the principal sum due upon said certificate of purchase contract remains due and unpaid.

WHEREAS, the said Henry C. Hitch and Christine F. Hitch, his wife, have executed an oil and gas lease upon said premises to said Cabot Carbon Company, which lease is dated the 6th day of August, 1940; said lease containing the usual provisions for payment of royalties and delay rentals.

OIL AND GAS MINING LEASE

THIS AGREEMENT made and entered into this 6th day of August, 1940, between Henry C. Hitch and wife, Christine W. Hitch, of Guymon, Texas County, Oklahoma hereinafter called Lessor (whether one or more), and CABOT CARBON COMPANY, a Massachusetts Corporation hereinafter called Lessee,

## DOES WITNESS:

1. That Lessor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid; and of the covenants and agreements herein after contained to be performed by the Lessee, has this day granted and leased and hereby grants, leases, and lets unto the Lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas, and casinghead gasoline, laying pipe lines, building tanks, storing oil, building powers, stations, telephone lines, and other structures thereon to produce, save, take care of, and manufacture all of such substances, and for housing and boarding employees, the following described tract of land in Texas County, State of Oklahoma, to-wit;

All of Section Thirty-three (33);  $\frac{1}{2}$  of Section Twenty-eight (28); East One-half ( $\frac{1}{2}$ ) of Section Twenty (20); all of Section Seventeen (17); all of Section Seven (7), except the  $\frac{1}{2}$  of NE $\frac{1}{4}$ ; Northwest One-quarter of Northwest One-Quarter (NW $\frac{1}{4}$  of NW $\frac{1}{4}$ ) of Section Six (6); all in Township One (1) N., Range Sixteen (16) E.C.M.; All of Section One (1), Township One (1), Range Fifteen (15), except S $\frac{1}{2}$  of SW $\frac{1}{4}$ ; All of Section Thirty-six (36); South One-half of Southeast One-Quarter (S $\frac{1}{2}$  of SE $\frac{1}{4}$ ) of Section Twenty-five (25), all in Township Two (2), Range Fifteen (15); All of Section Thirty-one (31) except the E $\frac{1}{2}$  of SE $\frac{1}{4}$ ; all of Section Thirty (30) except the  $\frac{1}{2}$  of NW $\frac{1}{4}$ ; all of Section Twenty-nine (29); and South One-half (S $\frac{1}{2}$ ) and South One-half of Northwest One-Quarter (S $\frac{1}{2}$  of NW $\frac{1}{4}$ ) of Section Nineteen (19), all in Township Two (2), Range Sixteen (16), Texas County, Oklahoma. Southeast Quarter (SE $\frac{1}{4}$ ) of Section Twenty (20); Southeast Quarter (SE $\frac{1}{4}$ ) of Section Twenty-eight (28); all in Township Two (2) north, Range Sixteen (16) E.C.M. Texas County, Oklahoma

and containing 6280 acres, more or less.

2. This lease shall remain in force for a term of ten (10) years and as long thereafter as oil, gas, casinghead gas, casinghead gasoline, or any of them is produced.

3. The Lessee shall deliver to the credit of the Lessor as royalty, free of cost, in the pipe line to which Lessee may connect its wells; the equal one-eighth (1/8) part of all oil produced and saved from the leased premises, or, at the Lessee's option, may pay to the Lessor for such one-eighth (1/8) royalty the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipe line or into storage tanks.

4. The Lessee shall pay Lessor, as royalty, one-eighth (1/8) of the market value at the well of the gas, as such, for gas sold from wells where gas only is found, and where not sold shall pay Fifty Dollars (\$50.00) per annum as royalty from each such well, and while such royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof. The Lessor to have gas free of charge from any gas well on the leased premises for stoves and inside lights in the principal dwelling house on said land by making his own connections with the well, the use of said gas to be at the Lessor's sole risk and expense. The Lessee shall pay to Lessor for gas produced from any oil well and used by the Lessee for the manufacture of gasoline, or any other product, as royalty, one-eighth (1/8) of the market value of such gas. If said gas is sold by the Lessee, then a royalty one-eighth (1/8) of the proceeds of the sale thereof.

5. If operations for the drilling of a well for oil or gas are not commenced on said land on or before one year from this date, this lease shall terminate, as to both parties, unless the Lessee shall, on or before one (1) year from this date, pay or tender to the Lessor or for the Lessor's credit in the City National Bank at Guymon, Oklahoma, or its successor or successors, or any bank with which it may be merged, or consolidated, or which succeeds to its business or assets, or any part thereof, by purchaser or otherwise, which bank and its successors are the Lessor's agent and shall continue as the depository of any and all sums payable under this lease, regardless of change of ownership in said land or in the oil and gas, or in the rentals to accrue thereunder, the sum of Three Thousand One Hundred Forty and no/100 Dollars (\$3,140.00), which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one (1) year. In like manner and upon like payments of tenders, the commencement of drilling operations may be further deferred for like periods successively. All payments or tenders may be made by check or draft of Lessee or any assignee thereof, mailed or delivered on or before the rental paying date. Notwithstanding the death of the Lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors, and administrators of such person.

6. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, the Lessee shall drill a dry hole, or holes, on this land, this lease shall not terminate, provided operations for the drilling of a well shall be commenced by the next ensuing rental paying date, or provided the Lessee begins or resumes the payment of rentals in the manner and amount hereinabove provided (and in this event the preceding paragraphs hereof governing the payment of rentals and the manner and effect thereof shall continue in force).

7. In the event said Lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said Lessor only in the proportion which his interest bears to the whole and undivided fee.

8. The Lessee shall have the right to use, free of cost, gas, oil, and water found on said land for its operations thereon, except water from the wells of the Lessor. When required by Lessor, the Lessee shall bury pipe lines below plow depth and shall pay for damage caused by its operations to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the Lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings, and other structures placed on said premises, including thereto to draw and remove all casing.

9. The rights of either party hereunder may be assigned in whole or in part. By an assignment in part is meant an assignment as to only part of said land, or an assignment as to only oil or only gas, or an assignment as to only one of said minerals in part of said land. The provisions hereof shall extend to the heirs, successors and assigns of the parties hereto, but no change or division in the ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish

the rights and privileges of Lessee; offsetting shall never be required to protect one portion of the leased premises against drainage through a well or wells on another portion of the leased premises, nor shall separate measurement of the production of any particular well or wells on the leased premises be in any event obligatory. No change or division in the ownership of the land or royalties shall be binding on Lessee for any purpose until Lessee shall be furnished with satisfactory written evidence thereof, including the muniments of title or certified copies thereof. Should Lessee assign this lease in whole or in part, Lessor shall look solely to the assignee for the performance of its terms, or (if the assignment was in part) for the performance of its terms as to the acreage covered by the assignment, but in either case only as to the mineral specified in the assignment, if the assignment was limited to a certain mineral (either oil or gas). Drilling or production on any portion of the leased premises shall (so far as concerns the continuance of this lease) inure to the benefit of the owners of the lease upon all portions of the leased premises. Lessee may at any time, and from time to time, execute and deliver to Lessor or place of record a release covering all or any portion or portions of the leased premises as to oil and gas or as to only one of said minerals, and thereupon shall be relieved of all obligations as to the acreage surrendered, or as to that acreage as to only the particular mineral specified, as the case may be.

10. If the leased premises shall now or hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire leased acreage. It is hereby agreed that, in the event this lease shall be assigned as to a part or as to parts of the above described lands, and the holder or owner of any such part or parts shall fail or make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part of parts of said land upon which the said Lessee or any assignee hereof shall make due payment of said rentals. If at any time there be as many as four parties entitled to rentals or royalties, Lessee may withhold payments thereof unless and until all parties designate, in writing, in a recordable instrument to be filed with the Lessee, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties and their respective successors in title.

11. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands, and, in event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rental accruing hereunder.

12. In case of suit, adverse claim, dispute or question as to the ownership of the royalties (or some part thereof) payable under this lease, Lessee shall not be held in default in payment of such royalties (or the part thereof in doubt) until such suit, claim, dispute or question has been finally disposed of, and Lessee shall have thirty (30) days after being furnished with the original instrument or instruments disposing of such suit, claim, or dispute (or a certified copy or copies thereof), or after being furnished with proof sufficient, in Lessee's opinion, to settle such question, within which to make payment. Should the right or interest of Lessee hereunder be disputed by Lessors, or any other person, the time covered by the pendency of such dispute shall not be counted against Lessee either as affecting the term of the lease or for any other purpose, and Lessee may suspend all payments without interest until there is a final adjudication or other determination of such dispute.

13. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if Lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and its term shall continue so long as such operations are prosecuted, and, if production results therefrom, then as long as production continues only insofar as 640 acres for each well upon which drilling operations have been commenced is concerned, such 640 acre tract or tracts to be designated as set forth in Paragraph 15 hereof.

14. If within the primary term of this lease production on the leased premises shall cease from any cause, this lease shall not terminate, provided operations for the drilling of a well shall be commenced before or on the next ensuing rental paying date; or, provided Lessee begins or resumes the payment of rentals in the manner and amount hereinabove provided. If, after the expiration of the primary term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided Lessee resumes operations for drilling a well within sixty (60) days from such cessation, and this lease shall remain in force during the prosecution of such operations, and, if production results therefrom, then as long as production continues, only insofar as 640 acres for each well upon which drilling operations have been commenced is concerned, such 640 acre tract or tracts to be designated as set forth in Paragraph 15 hereof.

15. Anything herein to the contrary notwithstanding, the drilling of a well on any part of the land above described, capable of producing oil or gas in commercial quantities, shall cause this lease to remain in full force and effect for its primary term, and as long thereafter as oil or gas in commercial quantities is produced therefrom, insofar as 640 acres, to be designated by Lessee and to include the land upon which such well is situated, is concerned; and each additional well shall have the same effect as to an additional 640 acres. As to such 640 acre tract or tracts, Lessee shall be relieved from all the obligations, express or implied, created by this lease, save and except the payment of royalties hereinabove provided to be paid, and it is expressly understood that Lessee will never be obligated to pay rental on such 640 acre tract or tracts after the completion of said well or wells, nor will Lessee ever be obligated to drill any additional wells on such 640 acre tract or tracts, and the failure to pay rental as to such 640 acre tract or tracts shall not terminate this lease as to such tract or tracts, upon which wells have been drilled and designated as aforesaid, but said lease shall terminate as to the remainder of the land not so embraced in such tract as designated for failure to pay the proportionate rental thereon, as above provided, subject to the provisions of Paragraph 16 hereof.

16. The Lessee is expressly granted the right and privilege to consolidate the leasehold estate created by the execution and delivery of this lease or any part or parts thereof in adjacent lands, provided any resulting consolidated estate shall not cover and include more than 640 acres consisting of contiguous tracts or tracts that are adjoining. Any consolidation of estates herein authorized shall be consummated when the owner of the leasehold estate created hereby shall have executed and filed for record in



the office of the County Clerk of the County in which same is located a statement designating and describing such properties so consolidated and declaring his intention to consolidate same, and in the event of any such consolidation, it is agreed: (a) Whether before or after the expiration of the primary term hereof, this lease shall be continued in full force and effect as to the land covered hereby and included in any such consolidation of estates so long as gas is or can be produced from any well located on any part of the land included in such consolidation (whether on lands covered hereby or not) or oil is or can be produced from any well drilled on the portion of the land covered hereby and included in such consolidation. (b) During the primary term hereof the Lessee shall be privileged to pay the annual delay rentals stipulated herein ratably on any part of this leasehold included in a consolidation of estates or not so included, and thereby continue this lease in full force and effect as to the part or portions thereof upon which rentals are so paid, but this lease, insofar as it covers any tract or tracts not included in a consolidation of estates held in force by production as herein provided, shall terminate at the expiration of the primary term hereof unless oil or gas is or can be produced from a well or wells thereon. (c) The payment of royalty to Lessor herein on gas produced from a well or wells located on any part of a consolidation of estates shall be in the proportion that the acreage covered by this lease and included in the consolidation bears to the total acreage in such consolidation of estates, but notwithstanding any consolidation, there shall be no apportionment of royalty payable on oil, and the Lessor shall receive the entire royalty payable on oil from wells drilled on the lands of the Lessor and covered hereby.

17. It is agreed that this lease shall never be forfeited or cancelled for failure to perform in whole or in part any of its implied covenants, conditions, or stipulations until it shall have first been finally judicially determined that such failure exists, and after such final determination, Lessee is given a reasonable time therefrom to comply with any such covenants, conditions, or stipulations.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

HCH Henry C. Hitch.  
 CWL Christine W. Hitch

ATTEST

CABOT CARBON COMPANY  
 BY \_\_\_\_\_ President

\_\_\_\_\_  
 Secretary

STATE OF OKLAHOMA }  
 COUNTY OF TEXAS } SS

Before me, the undersigned, a Notary Public, in and for said County and State; on this \_\_\_\_\_ day of October, 1940, personally appeared Henry C. Hitch and wife, Christine W. Hitch, to me personally known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.  
 Given under my hand and seal the day and year last above written.

(SEAL) C. E. Studdivan, Notary Public.  
 My commission expires 11-25-1940

STATE OF OKLAHOMA }  
 COUNTY OF TEXAS } SS

This instrument was filed for record on Nov. 29, 1940, at 2 o'clock P.M. and duly recorded in book 219 page 456.  
 Fee \$4.85 (SEAL) Anna Lee Williamson, County Clerk.

OIL AND GAS MINING LEASE

THIS AGREEMENT made and entered into this 6th day of August, 1940, between The Hitch Land and Cattle Company, a corporation, hereinafter called Lessor (whether one or more), and CABOT CARBON COMPANY, a Massachusetts Corporation, hereinafter called Lessee,

DOES WITNESS:

1. That Lessor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, and of the covenants and agreements hereinafter contained to be performed by the Lessee, has this day granted and leased and hereby grants, leases, and lets unto the Lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas, and casinghead gasoline, laying pipe lines, building tanks, storing oil, building powers, stations, telephone lines, and other structures thereon to produce, save, take care of, and manufacture all of such substances, and for housing and boarding employees, the following described tract of land in Texas County, State of Oklahoma, to-wit:

East One-half (E/2) of Section Thirty-two (32); North One-half of Northeast One-quarter (NE 1/4 of NE 1/4) of Section Seven (7); all of Section Six (6), except the NW 1/4 of NW 1/4 thereof; all in Township One (1), Range Sixteen (16); and East One-half of Southeast One-quarter (E 1/2 of SE 1/4) of Section Thirty-one (31); Township Two (2), Range Sixteen (16), Texas County, Oklahoma;

and containing 1080 acres, more or less.

2. This lease shall remain in force for a term of ten (10) years and as long thereafter as oil, gas, casinghead gas, casinghead gasoline, or any of them is produced.

3. The Lessee shall deliver to the credit of the Lessor as royalty, free of cost, in the pipe line to which Lessee may connect its wells; the equal one-eighth (1/8) part of all oil produced and saved from the leased premises, or, at the Lessee's option, may pay to the Lessor for such one-eighth (1/8) royalty the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipe line or into storage tanks.

4. The Lessee shall pay Lessor, as royalty, one-eighth (1/8) of the market value at the well of the gas, as such, for gas sold from wells where gas only is found, and where not sold shall pay Fifty Dollars (\$50.00) per annum as royalty from each such well,