

IN THE COURT OF COMMON PLEAS
OF BRADFORD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

Plaintiff,


v.

CHESAPEAKE ENERGY CORP.;
CHESAPEAKE APPALACHIA, LLC;
CHESAPEAKE OPERATING, LLC;
CHESAPEAKE ENERGY MARKETING,
LLC; ANADARKO PETROLEUM
CORPORATION and ANADARKO E&P
ONSHORE, LLC,

Defendants.

CIVIL COMPLAINT

Case No: 2015IR0069



2015IR0069-0029 5/3/2016 11:20 AM # 1302454
AMENDED COMPLAINT FILED WITH NOTICE TO
PLEAD

Bradford County Prothonotary

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing, in writing with the court, your defenses or objections to the

claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PROTHONOTARY
Bradford County Courthouse
301 Main Street
Towanda, Pennsylvania 18848
(570) 265-1705

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SECOND AMENDED COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, by the Office of Attorney General (hereinafter "Commonwealth" or "Plaintiff"), and brings this action pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("UTCPL"), to restrain unfair methods of competition and

unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the UTPCPL.

The UTPCPL authorizes the Office of Attorney General to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary or permanent injunction unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of the UTPCPL.

The Commonwealth has reason to believe that Defendants used methods, acts or practices declared unlawful by Section 201-3 of the UTPCPL; and that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of are enjoined. The Commonwealth believes that the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts and practices of the Defendants as hereinafter set forth. Further, the Commonwealth requests statutory restoration, civil penalties, costs and other appropriate equitable relief as redress for violations of the UTPCPL.

The Commonwealth also brings this action pursuant to Pennsylvania antitrust common law proceeding under the Commonwealth Attorneys Act, 71 P.S. § 732-204 (c) to restrain anticompetitive conduct proscribed by the common law doctrine against restraints of trade. The Commonwealth also requests a permanent

injunction to restrain such anticompetitive conduct of the Defendants as hereinafter set forth. The Commonwealth further requests damages, monetary and non-monetary equitable relief as appropriate as redress for violations of Pennsylvania antitrust common law.

In support of this action, the Commonwealth respectfully represents the following:

INTRODUCTION

1. This action seeks to recover for Pennsylvania Landowners money wrongfully deducted from royalty checks as a result of the wrongful conduct of Defendants detailed herein.
2. Pennsylvania Landowners entered into lease agreements¹ with the Chesapeake Defendants and the Anadarko Defendants seeking to commercially exploit Marcellus Shale under the leased surfaces for royalty payments in reliance on representations that their royalty payments would not be reduced by deductions for post-production costs.
3. Chesapeake Defendants induced Pennsylvania Landowners to enter into lease agreements through a bait and switch scheme involving the Market Enhancement Clause and similar types of royalty provisions as detailed herein.

¹ The Commonwealth will obtain these agreements through discovery and present them at trial. Chesapeake Defendants and Anadarko Defendants possess these agreements.

4. Defendant Chesapeake Energy also engaged in a self-dealing scheme, which resulted in increased deductions being passed on to Pennsylvania Landowners as detailed herein.

5. Chesapeake Defendants engaged in a scheme in which it failed to disclose it was reducing certain landowner royalty payments for deductions paid to affiliated entities, when the landowners' leases provided deductions could only be made for costs paid to non-affiliated third parties.

6. Defendant Chesapeake Energy engaged in a scheme in which it failed to disclose revenues received from its former midstream unit to Pennsylvania Landowners who are to receive royalties based on all revenue realized as detailed herein.

7. Anadarko Defendants and Chesapeake Defendants agreed to allocate certain territories in certain counties for the acquisition of leases resulting in lower bonus payments and lower royalty rates as detailed herein.

8. The impact of unfair and deceptive conduct alleged herein is not limited to Marcellus Shale but also Utica Shale and any other Natural Gas Play because the oil and gas leases remain effective while production continues regardless of the geologic horizon being extracted.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over this action pursuant to 42 Pa. C.S. § 931(a).

10. Venue is proper pursuant to Pa. R.C.P. No. 1006 (a) (1), because each Defendant transacts business within Bradford County, Pennsylvania and/or some of the transactions out of which this action arose occurred in Bradford County, Pennsylvania.

11. This Court has personal jurisdiction over each Defendant either because the Defendant resides in Pennsylvania, does business in Pennsylvania and/or has the requisite minimum contacts with Pennsylvania necessary to constitutionally permit the Court to exercise jurisdiction, pursuant to 42 Pa. C.S. § 5322.

12. This Court has personal jurisdiction over each of the Chesapeake Defendants because each Chesapeake Defendant has registered as a foreign entity to conduct business in the Commonwealth and because each Chesapeake Defendant has designated an in-state registered agent, pursuant to 42 Pa. C.S. § 5301 (a)(2)(i) and (ii).

13. This Court has personal jurisdiction over each of the Anadarko Defendants because each Anadarko Defendant has registered as a foreign entity to conduct business in the Commonwealth and because each Anadarko Defendant has

designated an in-state registered agent, pursuant to 42 Pa. C.S. § 5301 (a)(2)(i) and (ii).

14. The Commonwealth brings this action exclusively under the common law and statutes of the Commonwealth of Pennsylvania. No federal claims are being asserted. No aspect of the claims asserted herein is brought pursuant to the Guaranteed Minimum Royalty Act ("GMRA"). To the extent that any claim or factual assertion set forth herein may be construed to have stated any claim under federal law or the GMRA, such claim is expressly and undeniably disavowed and disclaimed by the Commonwealth. This action excludes any claim the Commonwealth may bring in its proprietary interest.

PLAINTIFF

15. Plaintiff is the Commonwealth of Pennsylvania, by the Office of Attorney General, 14th Floor, Strawberry Square, Harrisburg, Dauphin County, Pennsylvania 17120.

16. The Office of Attorney General is statutorily authorized to bring this action pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-103 and 732-204, and the UTPCPL, 73 P.S. § 201-4.

17. The Office of Attorney General has determined that bringing this action is in the public interest pursuant to 73 P.S. § 201-4.

DEFENDANTS

18. The Defendants named in this Complaint include all of their predecessor entities and all their past and present component, subsidiary and affiliate entities.

19. Defendant Chesapeake Energy Corporation ("Chesapeake Energy") is an Oklahoma for-profit corporation, registered as a foreign entity and designated CT Corporation as its in-state registered service agent with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section (herein referred to as "Corporations Bureau"), with a business office address of 6100 North Western Avenue, Oklahoma City, Oklahoma 73118. Dun & Bradstreet lists Chesapeake Energy with a branch location at 1 Fox Chase Drive, Towanda, Pennsylvania 18848.² Chesapeake Energy, through 2011, once maintained an office at 208 North 3rd Street, Harrisburg, Pennsylvania 17101-1512.³ Chesapeake Energy currently maintains a field office at 300 North 2nd Street, Harrisburg, Pennsylvania 17101. Chesapeake Energy, itself and through and with its subsidiaries, engages in trade or commerce in the Commonwealth of Pennsylvania through the exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and through the advertisement and solicitation of oil and gas leases for value in the form of

² The Dun & Bradstreet record is attached hereto as Exhibit A

³ The Dun & Bradstreet record is attached hereto as Exhibit B

royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play.

20. Chesapeake Energy's employees, as identified by Chesapeake Energy's 2009 and 2011 Annual Reports,⁴ using business cards further identifying themselves as Chesapeake Energy employees⁵ solicited and negotiated natural gas leases within the Commonwealth of Pennsylvania.

21. These same employees wore clothing with Chesapeake Energy logos and arrived in vehicles emblazoned with the Chesapeake Energy logo on the door in holding out to the public that Chesapeake Energy has a business presence within the Commonwealth of Pennsylvania relative to soliciting and negotiating natural gas leases within the Commonwealth of Pennsylvania.

22. Chesapeake Energy's 2009 Annual Report depicts significant swaths of the Commonwealth of Pennsylvania on a map on page 16 under the heading of "Operating Areas." That same report goes on state on page 18, under the heading "Marcellus Shale," that "Chesapeake is the largest leasehold owner and most active driller in the Marcellus Shale play" which includes "much of Pennsylvania." Chesapeake Energy's 2011 Annual Report makes similar claims on pages 16 and 18.

⁴ Chesapeake Energy's 2009 and 2011 Annual Reports are attached hereto as Exhibits C and D, respectively),

⁵ Examples are attached hereto as Exhibit E. The names of which may be found in Exhibits C and D in the employees sections.

23. Defendant Chesapeake Appalachia, LLC ("Chesapeake Appalachia"), is an Oklahoma limited liability company, registered as a foreign entity and designated CT Corporation as its in-state registered service agent with the Corporations Bureau, with a business office address of 6100 North Western Avenue, Oklahoma City, Oklahoma 73118. Chesapeake Appalachia is the nominal lessee of oil and gas leases secured within any Natural Gas Play on behalf of Chesapeake Energy. Chesapeake Appalachia is a wholly-owned subsidiary of Chesapeake Energy.

24. Defendant Chesapeake Operating, LLC ("COLLC"), successor by conversion to Chesapeake Operating, Inc. is an Oklahoma limited liability company, registered as a foreign entity and designated CT Corporation as its in-state registered service agent with the Corporations Bureau, with a business office address of 6100 North Western Avenue, Oklahoma City, Oklahoma 73118. COLLIC is the arm of Chesapeake Energy for the drilling and operation of producing wells in any Natural Gas Play. COLLIC is a wholly-owned subsidiary of Chesapeake Energy.

25. Defendant Chesapeake Energy Marketing, LLC ("CEMI"), successor by conversion to Chesapeake Energy Marketing, Inc. is an Oklahoma limited liability company, registered as a foreign entity and designated CT Corporation as its in-state registered service agent with the Corporations Bureau, with a business

office address of 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

CEMI is the arm of Chesapeake Energy for the marketing of oil and gas extracted from oil and gas leaseholds ultimately owned by Chesapeake Energy in any Natural Gas Play. CEMI is a wholly-owned subsidiary of Chesapeake Energy.

26. At all times relevant and material hereto, Chesapeake Energy Corporation, Chesapeake Appalachia, LLC, Chesapeake Operating, LLC and Chesapeake Energy Marketing, LLC (collectively, the "Chesapeake Defendants") engaged, and continues to engage, in trade or commerce in the Commonwealth of Pennsylvania through the exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and through the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play.

27. At all times relevant and material hereto, Chesapeake Energy exercised ultimate control over Chesapeake Appalachia, COLLC and CEMI.

28. Defendant Anadarko Petroleum Corporation ("Anadarko Petroleum") is a Delaware for-profit corporation, registered as a foreign entity and designated CT Corporation as its in-state registered service agent with the Corporations Bureau, with a business office address of 1201 Lake Robbins Drive, The Woodlands, Texas 77380. Anadarko Petroleum maintains a business office at 33

West 3rd Street, Williamsport, Pennsylvania 17701.⁶ Anadarko Petroleum maintains a page⁷ on its website which shows, in part, its business activities within the Commonwealth of Pennsylvania and which provides a link to its "Marcellus Fact Sheet"⁸ and a link to a picture⁹ showing an employee wearing clothing embroidered with the Anadarko Petroleum logo holding himself out to the public as an Anadarko Petroleum employee on a jobsite within the Commonwealth of Pennsylvania. Anadarko Petroleum contracted with independent Landmen to acquire leases within the Commonwealth of Pennsylvania.¹⁰ Anadarko Petroleum, itself and through and with its subsidiaries, engages in trade or commerce in the Commonwealth of Pennsylvania through the exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and through the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play.

29. Defendant Anadarko E&P Onshore, LLC, successor by conversion to Anadarko E&P Company, LP ("Anadarko E&P"), is a Delaware limited liability

⁶ The Dun & Bradstreet record is attached as Exhibit T.

⁷ The URL of the page is

<http://www.anadarko.com/Operations/Upstream/Pennsylvania/>

⁸ A copy of the Marcellus Fact Sheet is attached as Exhibit R.

⁹ A copy of the picture is attached as Exhibit S.

¹⁰ An example of one such Landman is shown through a business card attached hereto as Exhibit U.

company, registered as a foreign entity and designated CT Corporation as its in-state registered service agent with the Corporations Bureau, with a business office address of 1201 Lake Robbins Drive, The Woodlands, Texas 77380. Anadarko E&P is the nominal lessee of oil and gas leases secured within any Natural Gas Play on behalf of Anadarko Petroleum. Anadarko E&P is the arm of Anadarko Petroleum for the drilling and operation of producing wells in any Natural Gas Play. Anadarko E&P is a wholly-owned subsidiary of Anadarko Petroleum.

30. At all times relevant and material hereto, Anadarko Petroleum and Anadarko E&P (collectively, the "Anadarko Defendants") engaged, and continues to engage, in trade or commerce in the Commonwealth of Pennsylvania through the exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and through the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play.

31. At all times relevant and material hereto, Anadarko Petroleum exercised ultimate control over Anadarko E&P.

DEFINITIONS

32. Unless otherwise specified, whenever reference is made in this complaint to "Landman" or "Landmen," such term shall mean an agent who works for an exploration and production company or who is contracted by an exploration

and production company or broker to negotiate with landowners to enter into a lease for the exploration and production of natural gas.

33. Unless otherwise specified, whenever reference is made in this complaint to "Dry Gas," such term shall mean natural gas from the well free of liquid hydrocarbons, such as ethane, propane, butanes and pentanes, composed mainly of methane.

34. Unless otherwise specified, whenever reference is made in this complaint to "Natural Gas Liquids" or "NGL," such term shall mean components of natural gas that are separated from the gas state in the form of liquid hydrocarbons, such as ethane, propane, butanes and pentanes.

35. Unless otherwise specified, whenever reference is made in this complaint to "Drilling Unit," such term shall mean the area from which a well drains natural gas as designated by the exploration and production company.

36. Unless otherwise specified, whenever reference is made in this complaint to "Midstream Services," such term shall mean the gathering, storing, separating, treating, dehydrating, compressing, processing, transporting and marketing of oil, natural gas and natural gas liquids.

37. Unless otherwise specified, whenever reference is made in this complaint to "Natural Gas Play," such term shall mean any geologic horizon

including, but not limited to, Marcellus Shale and Utica Shale containing reserves, proven or otherwise, of oil, Dry Gas and Natural Gas Liquids in Pennsylvania.

38. Unless otherwise specified, whenever reference is made in this complaint to "Pennsylvania Landowner,"¹¹ such term shall mean any Pennsylvania landowner leasing oil and gas rights to an exploration and production company for the extraction of oil, Dry Gas and Natural Gas Liquids from any Natural Gas Play.

BACKGROUND

39. The Office of Attorney General has received landowner complaints against the Defendants indicating they engaged in unfair and deceptive acts and practices in violation of the UTPCPL, as described more fully herein.

40. Among the Pennsylvania Landowners who have filed complaints against the Defendants are persons who are sixty (60) years of age or older.

41. The Commonwealth believes and therefore avers that there may be additional Pennsylvania Landowners who have not filed complaints with the Office of Attorney General and who have been harmed due to the methods, acts and practices of the Defendants, which include, but are not limited to, the practices alleged herein.

¹¹ The identities of each such Pennsylvania Landowner are better known to the Chesapeake Defendants and the Anadarko Defendants than to the Commonwealth. Such detail will be obtained through discovery and presented at trial.

42. At all times relevant and material hereto, each of the Defendants authored, approved, endorsed, formulated, directed, controlled, ratified, benefitted from and/or participated in their respective conduct alleged herein.

43. At all times relevant and material hereto, the unfair or deceptive methods, acts, and practices complained of herein, have been willfully used by Defendants.

44. Unless otherwise specified, whenever reference is made in this complaint to any act of any of the Defendants or any employee and/or agent of the Defendants, such allegations shall be deemed to mean the act of Defendants, acting individually, collectively or in any combination.

45. The Commonwealth seeks legal redress for any claim based on a violation of the UTPCPL and Pennsylvania's antitrust common law.

MARCELLUS SHALE

46. Marcellus Shale is a strata of rock found in Pennsylvania ranging in depth from an outcropping to 9,000 feet below the surface.

47. The thickness of Marcellus Shale in Pennsylvania ranges from 49 feet at the western border to 790 feet to the northeast.

48. Marcellus Shale is found throughout the Allegheny Plateau of the northern Appalachian Basin beginning in southern New York and extending

through northern and western Pennsylvania, eastern Ohio, western Maryland, most of West Virginia and ending in western Virginia.

49. Marcellus Shale encompasses an area of approximately 95,000 square miles or 60.8 million acres.

50. Marcellus Shale is but one of many geologic horizons found under the surface of Pennsylvania.

51. There are other geologic horizons including, but not limited to, Utica Shale offering the potential of commercially viable extraction of oil, Dry Gas and Natural Gas Liquids within Pennsylvania.

52. Marcellus Shale is the largest gas play in the United States with proven reserves of 42.8 trillion cubic feet of which approximately 32.7 trillion cubic feet is in Pennsylvania.

53. The Marcellus Shale gas play began in 2004 in Washington County, Pennsylvania.

54. Early drillers applied lessons learned in the Barnett Shale gas play in Texas and applied them to the Marcellus Shale gas play in Pennsylvania.

55. Early drillers used hydraulic fracturing technology to crack the rock with a mixture of water, sand and chemicals at high pressure down a vertical shaft.

56. To improve results, these early drillers switched to a horizontal drilling process, which begins with drilling a typical vertical well and then turning

the drill 90° to bore through the desired gas bearing strata, allowing the well to run along the length of the geologic seam as opposed to bisecting it.

57. Unlike vertical drilling, horizontal drilling allows for several wells to be drilled from the same well pad in a radial pattern.

58. Individual horizontal wells may extend over one mile in length.

59. Horizontal drilling enables gas companies to drain gas from one square mile or 640 acres from a single well pad, corresponding to the industry convention for size of a Drilling Unit.

60. Commercialization of the Marcellus Shale gas play began ramping up following the issuance of a press release¹² by Penn State on January 17, 2008, claiming Marcellus Shale contains 50 trillion cubic feet of gas.

61. Future commercialization of other geologic horizons including, but not limited to, Utica Shale can leverage the existing infrastructure in place for past, current and future Marcellus Shale production in Pennsylvania.

62. The future as to the commercialization of Utica Shale is approaching as one test tract in Tioga County is estimated to contain one trillion cubic feet of gas.

¹² The Penn State press release is attached as Exhibit F.

PAST LEASING PRACTICES

63. Prior to the Penn State press release, gas companies with information about the potential of the Marcellus Shale gas play quietly entered into leases with Pennsylvania Landowners for what had been the standard \$25 per acre signing bonus and 12.5% royalty.

64. On information and belief, large Pennsylvania Landowners, such as farmers and ranchers, leased oil and gas rights for decades, if not generations, to exploration and production companies.

65. Prior to the advent of the economic feasibility of fracking to extract natural gas, such large landowners had no expectation that exploration and production companies would attempt gas production under such oil and gas leases.

66. Most Pennsylvania Landowners relied on payments made by the exploration and production companies such as the bonus for signing such leases as a means of paying property taxes during the term of their respective leases.

67. On information and belief, many landowners and landowners from preceding generations repeated the practice of using such signing bonus from the exploration and production companies to pay property taxes for decades, if not generations, leading up to the advent of fracking.

68. Most, if not all, Pennsylvania Landowners lack access to proprietary information concerning the commercial viability of drilling for oil and gas.

69. Conversely, the exploration and production companies are in the business of acquiring, developing and maintaining proprietary information concerning the commercial viability of drilling for oil and gas.

LEASE ACQUISITION DURING THE MARCELLUS SHALE BOOM

70. Exploration and production companies leveraged their access to proprietary geologic information to identify the commercially viable core of Marcellus Shale in northeast Pennsylvania for exploration and production of natural gas.

71. To fully exploit the commercial opportunity of Marcellus Shale in northeast Pennsylvania, exploration and production companies had to acquire as much oil and gas rights acreage as possible.

72. Exploration and production companies employed Landmen or contracted with independent land services companies to deploy teams of Landmen to identify parcels within the commercially viable core of Marcellus Shale in northeast Pennsylvania, to conduct title searches related to those parcels to identify owners of the respective mineral estates and ultimately to contact those identified owners to secure leases of the mineral estate.

73. At the beginning of the Marcellus Shale boom, exploration and production companies competed vigorously against each other to acquire leases for oil and gas rights in northeast Pennsylvania.

74. Such competition benefited Pennsylvania Landowners in obtaining higher bonus payments, higher royalties and enhanced protections in addenda such as surface rights.

75. Exploration and production companies incentivized Landmen to secure as many leases as they could on a daily and weekly basis on behalf of the exploration and production company.

76. The exploration and production companies' urgency to secure leases to establish market position in the vacuum of a finite number of mineral estates within the commercially viable core of Marcellus Shale in northeast Pennsylvania provided the conditions necessary for the unscrupulous procurement of oil and gas leases from Pennsylvania Landowners.

77. An oil and gas lease is a misnomer as it operates as a fee simple determinable for the mineral estate.

78. A fee simple determinable for the mineral estate operates to sever the ownership of certain minerals from the ownership of the surface of the land.

79. The mineral estate conveyed by Pennsylvania Landowners typically includes all geologic horizons including, but not limited to, Marcellus Shale and Utica Shale.

80. The exploration and production companies authorized independent Landmen or directed company employed Landmen to use oil and gas lease forms,

containing language drafted and approved by the exploration and production companies, to acquire oil and gas leases with Pennsylvania Landowners for the purpose of exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale under the land of each such Pennsylvania Landowner.

81. The oil and gas lease forms varied, immaterially, with respect to general formatting and the ordering of the usual boilerplate.

82. However, the oil and gas lease forms also varied, materially, with respect to the royalty clause.

83. Upon information and belief, there is a subset of oil and gas leases with royalty clauses that are ostensibly silent to the unsophisticated landowner on the subject of costs, if any, being charged as deductions against royalties accruing to the landowner.¹³

84. Upon information and belief, there is a subset of oil and gas leases which only permit deductions for costs paid to non-affiliated third parties.¹⁴

¹³ One such lease is attached as Exhibit Q. Chesapeake Defendants and Anadarko Defendants possess other leases with Pennsylvania Landowners and the Commonwealth will obtain these leases through discovery and present same at trial.

¹⁴ One such lease is attached as Exhibit G. Chesapeake Defendants and Anadarko Defendants possess other leases with Pennsylvania Landowners and the Commonwealth will obtain these leases through discovery and present same at trial.

85. Upon information and belief, there is a subset of oil and gas leases with royalty clauses which purport to be "free of cost."¹⁵

86. Upon information and belief, there is a subset of oil and gas leases with royalty clauses which expressly provide for the deduction of costs against royalties accruing to the landowner.

87. Landmen presented the oil and gas lease forms as part of a pitch to a Pennsylvania Landowner either at a landowner group meeting, a landowner residence or a Landman office to secure leases.

88. Landmen generally pitched the positive monetary aspect to a Pennsylvania Landowner as an inducement to secure a lease.

89. Landmen responded to questions regarding surface rights concerns of landowners to secure a lease.

90. Landmen fielded demands from landowners on the amount of the bonus based on acreage to secure a lease.

91. Landmen fielded demands from landowners on the royalty percentage to secure a lease.

92. Landmen also fielded demands from landowners to receive royalties free of cost or to otherwise avoid deductions.

¹⁵ One such lease is attached as Exhibit H. Chesapeake Defendants and Anadarko Defendants possess other leases with Pennsylvania Landowners and the Commonwealth will obtain these leases through discovery and present same at trial.

93. In each such case, Landmen exercised the flexibility of adapting the standard pre-printed lease form through various addenda to address a given concern or demand of a landowner to secure a lease.

94. Upon information and belief, Landmen retrieved a lease addendum most closely adapted to address a given concern or demand, for example, from a set of folders in the trunk of a Landman's car to secure a lease.

95. Upon information and belief, Landmen alternatively made edits to a lease form using a word processor program on a laptop and then printed a revised lease form from a printer connected to the laptop based, for example, in the Landman's car to secure a lease.

96. Included among the changes Landmen could and did make with blanket permission from the exploration and production companies was the incorporation of addenda which were authorized to be given as a matter of course to landowners who requested them as part of the negotiation process with the Landmen, without further authorization by the exploration and production companies.

97. One example of a term given as a matter of course to Pennsylvania Landowners who requested them is an increase in the royalty from 12.5% to as much as 20%.

98. Landmen negotiated with certain Pennsylvania Landowners who made demands regarding financial terms and surface rights, concerns which exceeded their blanket authority to make certain changes to secure leases.

99. In such cases, Landmen had to obtain the express authority from the exploration and production companies to modify certain financial and surface rights terms to secure leases.

100. The exploration and production companies gave such permission depending on the value of the land owned by the hard-bargaining landowner to the exploration and production companies.

101. Included among the changes Landmen could and did make with express permission from the exploration and production companies was the incorporation of a certain set of addenda which was only conceded to landowners who strenuously insisted on such terms.

102. One example of a term conceded by an exploration and production company in an addendum to a lease to satisfy a Pennsylvania Landowner who strenuously objected to receiving royalty payments reduced by deductions for post-production costs is the Market Enhancement Clause.

103. The Market Enhancement Clause typically contains the following language:

It is agreed between the Lessor and Lessee that, notwithstanding any language herein to the contrary, all

oil, gas or other proceeds accruing to the Lessor under this lease or by state law shall be without deduction, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting and marketing the oil, gas and other products produced hereunder to transform the product into marketable form; however, any such costs which result in enhancing the value of the marketable oil, gas or other products to receive a better price may be deducted from Lessor's share of production so long as they are based on Lessee's actual cost of such enhancements. However, in no event shall Lessor receive a price that is less than, or more than, the price received by Lessee.¹⁶

104. Such terms were offered as an inducement to Pennsylvania Landowners to secure leases of highly valued mineral estates within the commercially viable core of Marcellus Shale in northeast Pennsylvania.

**SPECIFIC CONDUCT OF CHESAPEAKE DEFENDANTS
CONCERNING INFLATED MIDSTREAM SERVICES PRICES
IN VIOLATION OF UTPCPL**

105. Chesapeake Defendants engaged in the assessment of inflated prices for Midstream Services and the concealment of such inflation.

106. Upon information and belief, Chesapeake Energy, through its effort to expand its activities in the exploration and drilling for natural gas in the United States, overleveraged its balance sheet with excessive debt by the end of 2011.

¹⁶ Another example of a Market Enhancement Clause is contained in paragraph 4(e) of the lease attached as Exhibit G.

107. Upon information and belief, Chesapeake Energy faced a projected cash-flow shortage of approximately \$10 billion in 2012.

108. Upon information and belief, Chesapeake Energy planned to divest approximately \$11.5 billion to cover its operations in 2012.

109. Upon information and belief, Chesapeake Energy expected to raise \$4.9 billion from the sale of its entire oil and gas gathering and processing business.

110. Chesapeake Energy divested its midstream assets in a series of transactions.

111. On June 8, 2012, Global Infrastructure Partners, a private equity firm, acquired all of Chesapeake Energy's interest in Chesapeake Midstream Partners, LP for \$2.2 billion.

112. On July 24, 2012, Chesapeake Midstream Partners, LP changed its name to Access Midstream Partners, LP ("Access Midstream").

113. On December 11, 2012, Williams agreed to acquire a 50% stake in Access Midstream GP, LLC ("Access GP"), the general partner of Access Midstream, and approximately 25% of the limited partner units of Access Midstream for \$2.4 billion.

114. On December 11, 2012, Access Midstream announced an agreement to acquire Chesapeake Midstream Operating, LLC from Chesapeake Energy for \$2.16 billion.

115. Chesapeake Midstream Operating, LLC owned Chesapeake Energy's natural gas gathering and processing assets in various gas plays, including Marcellus in Pennsylvania.

116. Upon information and belief, the book value for the aforementioned divested assets was approximately \$2.4 billion, thus resulting in a premium of approximately \$1.76 billion to Chesapeake Energy.

117. Prior to the dropdown, Chesapeake Energy and its midstream unit executed a series of contracts¹⁷ which provided for a guaranteed minimum rate of return with low risk to interest potential purchasers of the midstream assets.

118. Upon information and belief, the contracts between Chesapeake Energy and its midstream unit were not negotiated at arm's length; thus, resulting in a scheme of artificially inflated and/or unreasonably excessive post-production costs to be passed on to Pennsylvania Landowners.

119. The series of transactions constituting the dropdown of the midstream assets from Chesapeake Energy to Access Midstream have the effect of a financial loan.

¹⁷ The Commonwealth will obtain these agreements through discovery and present same at trial. Chesapeake Defendants possess these contracts.

120. Upon information and belief, the costs for Midstream Services increased significantly and materially following the dropdown of the midstream assets.

121. Upon information and belief, the artificially inflated post-production costs were passed on to and continue to be passed on to Pennsylvania Landowners.

122. Chesapeake Defendants funded the debt service on what is effectively a loan using royalty funds payable to Pennsylvania Landowners.

123. Upon information and belief, contemporaneously with the dropdown, Chesapeake Energy and Access Midstream executed transition service agreements¹⁸ in which Access Midstream paid Chesapeake Defendants to provide management, labor and other related services on behalf of Access Midstream to facilitate continued operations of Midstream Services.

124. Upon information and belief, Chesapeake Defendants did not disclose to Pennsylvania Landowners the transition services agreements in which Chesapeake Defendants received a premium in excess of the actual cost of Midstream Services purportedly borne by both the Chesapeake Defendants and Pennsylvania Landowner as allocated by royalty interest; thus, resulting in a scheme of artificially-deflated royalty payments to Pennsylvania Landowners, who are to share in revenue realized related to the sale of gas.

¹⁸ The Commonwealth will obtain these agreements through discovery and present same at trial. Chesapeake Defendants possess these agreements.

COUNT I

COMMONWEALTH V. CHESAPEAKE DEFENDANTS VIOLATION OF UTPCPL 73 P.S. § 201-2(4)(v),(vii) and (xxi)

125. The preceding paragraphs are incorporated herein as though fully set forth below.

126. In exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under land leased from Pennsylvania Landowners, and in otherwise engaging in the conduct more fully described herein with respect to any Natural Gas Play, Chesapeake Defendants are engaging in trade or commerce that directly or indirectly harmed Pennsylvania Landowners in this Commonwealth, including, but not limited to, Bradford County, within the meaning of 73 P. S. § 201-2(3).

127. By reason of the foregoing, Chesapeake Defendants assessed inflated deductions for Midstream Services against royalty checks payable to Pennsylvania Landowners.

128. By misrepresenting and/or omitting material facts concerning the inflated deductions for Midstream Services, Chesapeake Defendants misled Pennsylvania Landowners into believing they were being charged deductions for Midstream Services borne of a free and fair market.

129. Specifically, Chesapeake Defendants, by engaging in the practices set forth above, have:

- a. Deceptively entered into oil and gas leases, extracted, marketed and sold Marcellus Shale natural gas by misleading Pennsylvania Landowners that royalties paid to each such landowner were reduced by deductions for Midstream Services borne of a free and fair market;
- b. Deceptively concealed from Pennsylvania Landowners the significant and material amount by which deductions from royalties to be paid to each such landowner to satisfy a guaranteed rate of return to Williams Partners¹⁹ or to otherwise cover inflated inter-affiliate transactions, while indicating that the deductions for Midstream Services result from arm's length negotiations, thereby causing a likelihood of confusion or misunderstanding for such landowners who are led to believe that deductions for Midstream Services result from arm's length negotiations;
- c. Deceptively concealed from Pennsylvania Landowners the significant and material amount by which payments from

¹⁹ Williams Partners is the successor entity to Access Midstream.

Williams Partners to Chesapeake Defendants in excess of the actual cost for Midstream Services constitute revenues realized, while indicating gross sales reported to each such landowner reflect all revenue realized in connection with the sale of gas, thereby causing a likelihood of confusion or misunderstanding for such landowners who are led to believe that gross sales reflect all revenues realized.

- d. As a result of Chesapeake Defendants' acts in deceiving Pennsylvania Landowners that royalties paid to each such landowner were reduced by deductions for Midstream Services borne of a free and fair market, landowners who believed they were being paid their bargained for royalties reduced by deductions for Midstream Services resulting from arm's length negotiations, in fact, were charged with knowingly duplicitous deductions resulting from inflated charges for certain Midstream Services to satisfy a guaranteed rate of return to Williams Partners or to otherwise cover inflated inter-affiliate transactions.

130. Chesapeake Defendants violated the UTPCPL:

- a. Each time a Pennsylvania Landowner was assessed an inflated deduction for midstream services;
- b. Each time a Pennsylvania Landowner was assessed a retroactive deduction for midstream services to satisfy a guaranteed rate of return to Williams Partners and based on the *Kilmer* decision which did not have any collateral estoppel effect on each such landowner;
- c. Each time a Pennsylvania Landowner failed to receive a royalty payment as retaliation for complaining against assessment of inflated deductions;
- d. Each time a Pennsylvania Landowner received a royalty statement wherein gross sales did not include the premium Chesapeake Defendants received in excess of the actual cost of Midstream Services;
- e. Each time an artificially high drilling, extraction, processing, compression or transportation payment was made to an affiliate causing inflated deductions against royalty payments to Pennsylvania Landowners;
- f. Each time an artificially high drilling, extraction, processing, compression or transportation payment was made to a

purported third-party in a supposedly arm's length transaction causing inflated deductions against royalty payments to Pennsylvania Landowners; and

- g. Each time Chesapeake Defendants sent a letter²⁰ to a Pennsylvania Landowner stating a purported reason for wrongfully taking deductions.

131. Chesapeake Defendants' conduct more fully described herein is, accordingly, proscribed and unlawful pursuant to 73 P. S. § 201-3.

132. The aforesaid methods, acts or practices constitute unfair or deceptive acts or practices within the meaning of Section 201-2(4) of the UTPCPL, including, but not limited to:

- a. "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services" in violation of 73 P.S. § 201-2(4)(ii);
- b. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a

²⁰ One such letter is attached as Exhibit I. Chesapeake Defendants possess other letters sent to Pennsylvania Landowners and the Commonwealth will obtain these letters through discovery and present same at trial.

sponsorship, approval, status affiliation or connection that he does not have" in violation of 73 P.S. § 201-2(4)(v);

- c. "Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another" in violation of 73 P.S. § 201-2(4)(vii); and
- d. "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding" in violation of 73 P.S. § 201-2(4)(xxi).

133. The above described conduct has been willful within the meaning of 73 P.S. § 201-8 and is unlawful under the UTPCPL.

134. The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts and practices described herein, as well as seeking restitution for Pennsylvania Landowners and civil penalties for violations of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the methods, acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter an Order:

A. Declaring the Chesapeake Defendants' conduct to be in violation of the UTPCPL;

B. Permanently enjoining the Chesapeake Defendants and any agents, successors, assigns, and employees acting directly or through any corporate or business device from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the UTPCPL;

C. Directing the Chesapeake Defendants to restore to Pennsylvania Landowners any moneys which may have been acquired by means of any violation of the UTPCPL pursuant to Section 201-4.1 of the UTPCPL;

D. Directing the Chesapeake Defendants pursuant to Section 201-8(b) of the UTPCPL to pay civil penalties in the amount of One Thousand Dollars (\$1,000) for each and every violation of the UTPCPL, increasing to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older, and such other victims as may be discovered between the date of the filing of this complaint and trial of this matter;

E. Directing the Chesapeake Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices as set forth in this complaint pursuant to Section 201-4.1 of the UTPCPL;

F. Directing the Chesapeake Defendants to pay the Commonwealth all costs for the investigation and prosecution of this action pursuant to Section 201-4.1 of the UTPCPL;

G. Directing the Chesapeake Defendants to forfeit their right or franchise to engage in any business involving exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and involving the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties; and

H. Providing any other such relief as the Court may deem necessary and appropriate.

SPECIFIC CONDUCT OF CHESAPEAKE DEFENDANTS
CONCERNING LEASING PRACTICES
IN VIOLATION OF UTPCPL

135. Chesapeake Defendants engaged in the following conduct.

136. Upon information and belief, Chesapeake Defendants entered into oil and gas leases with Pennsylvania Landowners for the purpose of exploring,

drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under the land of each such Pennsylvania Landowner.

137. Upon information and belief, Chesapeake Defendants deployed Landmen, including Chesapeake Energy personnel, to obtain oil and gas leases from Pennsylvania Landowners owning land over commercially viable Marcellus Shale gas play.

138. Chesapeake Energy deployed a team of employees, with titles including, but not limited to Landman, Assistant Landman, Landowner Relations Manager, Senior Landman, Division Order Technician and Owner Relations to interact with Pennsylvania Landowners and to negotiate and secure leases nominally executed by Defendant Chesapeake Appalachia. These employees were located both within Pennsylvania and in Oklahoma.

139. The Chesapeake Defendants empowered the Landmen to use unfair and deceptive negotiation tactics with Pennsylvania Landowners such as:

- a. Failure to disclose facts material to making a decision as to signing an oil and gas lease; and
- b. Making affirmative statements containing a falsity or prevarication.

140. The sales pitches by Landmen to Pennsylvania Landowners included:

- a. Unfair and high pressure;
- b. Leveraging information advantage;
- c. Dissuading contact with other landowners to compare terms;
- d. Dissuading contact with anyone else to discuss terms;
- e. Presenting 'take it or leave it' contracts; and
- f. Limiting time for consideration of contract.

141. Chesapeake Defendants, directly or indirectly through Landmen, made the following misrepresentations to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to making the decision to sign an oil and gas lease:

- a. Stating that if anyone in the drilling unit were to sign the lease now, the money would be placed in escrow for future payment; otherwise, if anyone signed later, such person would lose out on the money or otherwise receive much less;
- b. Representing that all the neighboring properties were leased and the gas company would drill to capture the gas whether the landowner signed or not;
- c. Stating that if the landowner did not sign the lease that day, it would be the landowner's last chance to sign and the gas company would extract the gas one way or another;

- d. Telling a landowner an attorney was not necessary when signing a lease because the landowner would get a 12.5% royalty because that was the law in Pennsylvania;
- e. Representing to a landowner that all of the neighboring properties were leased and that royalties totaling \$500,000 at 20% could be expected without disclosing any impact from deductions;
- f. Agreeing in negotiations to a 20% royalty and a no deduction clause; instead, presenting a lease for signing that provided for only a 12.5% royalty and permitted deductions;
- g. Telling a landowner, in response to a question about the possibility of the price per acre increasing, that the price per acre for the signing bonus does not increase despite knowing that it may;
- h. Showing landowners copies of spreadsheets called "royalty calculators," which reflect how much money a landowner can expect to make in royalty payments each year over a twenty year period based on the number of acres in production and the price of gas, with no references to deductions;

- i. Coercing a landowner to agree in writing to permit a pipeline running diagonally across a landowner's field;
- j. Taking \$3,000 in deductions from a Pennsylvania Landowner who was not previously informed that it might purportedly cost the landowner money in deductions if the gas had to be shipped farther away;
- k. Charging a Pennsylvania Landowner deductions for compression when such service was not being done; and
- l. To avoid complying with a recently-enacted setback requirement, seeking a waiver from an 89-year old Pennsylvania Landowner as purportedly being necessary to proceed on the existing lease.

Chesapeake Defendants Use of Advertisements as an Unfair and Deceptive Inducement to Secure Leases

142. Chesapeake Defendants advertised through brochures²¹ to solicit oil and gas leaseholds.

143. The advertisements targeted Pennsylvania Landowners.²²

²¹ The brochure is attached as Exhibit J.

²² The distribution of the brochure throughout the Natural Gas Play will be shown at trial as a pattern or practice of engaging in unfair or deceptive conduct throughout the Natural Gas Play through a representative sample of Pennsylvania Landowners.

144. The brochure identifies Defendant Chesapeake Energy as making the solicitation. There is no mention, by name of any other corporate entity.

145. The brochure's title is "Partners for the Future, Chesapeake's Commitment to Mineral Owners, Pennsylvania."

146. The brochure claims that Defendant Chesapeake Energy is "The Nation's Most Active Driller" and "A Champion of the Environment," while stating "Five Reasons to Lease with Chesapeake."

147. On the page titled, "The Drilling & Production Process" and under the subheading, "2. Signing the leasing agreement, Chesapeake Defendants "incurs all risks and costs associated with drilling and producing the well."

148. The brochure makes no reference to post-production costs or deductions.

149. Chesapeake Defendants, directly or indirectly through Landmen, concealed material facts from Pennsylvania Landowners concerning the applicability of deductions against prospective royalty payments.

150. Pennsylvania Landowners relied on the affirmative statements or the omission of information material to making the decision to sign an oil and gas lease in connection with the brochure.

**Chesapeake Defendants Use of Royalty Calculator as an
Unfair and Deceptive Inducement to Secure Leases**

151. Chesapeake Defendants authorized the use of royalty calculators by Landmen as part of negotiations to secure a lease with Pennsylvania Landowners.²³

152. A customized royalty calculator was presented to Pennsylvania Landowners to project how much royalty could be received over the life of the lease based on three price points for natural gas.

153. Upon information and belief, Landmen, including Chesapeake Energy personnel, at the direction of Chesapeake Defendants, failed to disclose the economic effect of deductions in royalty spreadsheet calculators²⁴ when pitching the potential ranges of royalty payments based on a certain percentage and anticipated production levels as consideration for signing the oil and gas lease.

154. The royalty spreadsheet calculators, as used by Landmen, lacked any field for any type of deduction against any hypothetical royalty for review by a Pennsylvania Landowner prior to entering into an oil and gas lease.

155. Upon information and belief, Chesapeake Defendants, directly or indirectly through Landmen, concealed material facts from Pennsylvania

²³ The use of the royalty calculator throughout the Natural Gas Play will be shown at trial as a pattern or practice of engaging in unfair or deceptive conduct throughout the Natural Gas Play through a representative sample of Pennsylvania Landowners.

²⁴ One such printing of a royalty calculator is attached as Exhibit K.

Landowners concerning the applicability of deductions against prospective royalty payments.

**Chesapeake Defendants Created a Likelihood of Confusion or of
Misunderstanding as to Which Party Is the
Offeror and the Offeree as an Unfair and Deceptive Inducement to
Forbear from Considering Competing Offers**

156. Most, if not all, landowners lack sophistication in understanding that the oil and gas leases presented by the Landmen at the direction of Chesapeake Defendants to the landowners for execution was construed by Chesapeake Defendants as an offer by the landowners to be accepted by the Chesapeake Defendants and not the converse.

157. The dynamic of the Landman knocking, often unannounced and unscheduled, on the door of a landowner's house to pitch an oil and gas lease with the Chesapeake Defendants with lease forms authorized by Chesapeake Defendants in the hands of the Landman would reasonably confuse most, if not all, landowners, that the Chesapeake Defendants were making the offer and that upon execution by the landowner, the deal was struck as the grant of a fee simple determinable was conveyed.

158. Instead, Chesapeake Defendants maintained that they could and, in fact, did reject oil and gas leases with Pennsylvania Landowners who believed that they had a deal which foreclosed each such landowner from considering or accepting offers from any other gas exploration and production company.

**Chesapeake Defendants Used Affiliate Transactions as an Artifice to
Inflate Costs and Reduce Royalty Payments**

159. Most, if not all, landowners lack sophistication in understanding that the oil and gas leases presented by the Landmen at the direction of Chesapeake Defendants provided Chesapeake Defendants with free rein to structure the sale of natural gas from the wellhead through a series of affiliate transactions before being sold to an unrelated third party.

160. Upon information and belief, Landmen, at the direction of Chesapeake Defendants, failed to disclose the degree of self-dealing by Chesapeake Defendants in selling natural gas to an unrelated third party.

161. Upon information and belief, Landmen, at the direction of Chesapeake Defendants, failed to disclose the opportunity by Chesapeake Defendants to inflate the reporting of post-production costs at each step of a series of affiliate transactions which had the effect of reducing royalty payments to Pennsylvania Landowners.

162. Upon information and belief, Chesapeake Defendants, directly or indirectly through Landmen, concealed material facts from Pennsylvania Landowners concerning the structure of the sale of natural gas from the wellhead through a series of affiliate transactions before being sold to an unrelated third party to inflate costs; thus, reducing royalty payments to Pennsylvania Landowners.

163. Chesapeake Defendants assessed the inflated costs as deductions against the royalty checks payable to Pennsylvania Landowners.

164. Upon information and belief, Chesapeake Defendants issued division orders which underreported the decimal interest of Pennsylvania Landowners in a drilling unit resulting in a smaller royalty payment.

Chesapeake Defendants Use of Market Enhancement Clause as an Unfair and Deceptive Inducement to Secure Leases

165. Most, if not all, Pennsylvania Landowners lack sophistication related to the applicability of deductions against prospective royalty payments.

166. Most, if not all, landowners lack sophistication related to the drafting of industry-specific oil and gas lease terms.

167. Conversely, the exploration and production companies have the sophistication relative to the drafting of industry-specific oil and gas lease terms due to years of experience in executing oil and gas leases.

168. Some landowners wanted further assurance in the contract that deductions would not be assessed against royalty payments resulting from the sale of natural gas.

169. Upon information and belief, Chesapeake Defendants, directly or indirectly through Landmen, offered the Market Enhancement Clause to certain Pennsylvania Landowners to overcome their objections to being assessed deductions against royalties resulting from the sale of natural gas.

170. Chesapeake Defendants sent a letter²⁵ on October 22, 2008. This letter, sent in the first year of the ramp-up period in natural gas leasing within the Commonwealth, interprets the market enhancement clause as "a provision in the addendum of your lease that states we are not permitted to make any types of deductions" and states that the landowner will "receive 15% of the gross and not the net." This type of interpretation made the Market Enhancement Clause attractive to Pennsylvania Landowners.

171. The Market Enhancement Clause is typically found in the addendum to a lease with standard language otherwise providing for deductions against royalties resulting from the sale of natural gas.

172. Chesapeake Defendants used language in the Market Enhancement Clause which, in its plain language meaning to an average person, ostensibly conveyed the requested assurance against the assessment of deductions.

173. The language in the Market Enhancement Clause which was the proverbial bait to induce certain Pennsylvania Landowners to sign oil and gas leases was:

...all oil, gas or other proceeds accruing to the Lessor under this lease or by state law ***shall be without deduction***, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting and marketing the oil, gas and other products produced

²⁵ The letter is attached as Exhibit L.

hereunder to transform the product into marketable form...

(emphasis added)

174. On information and belief, Chesapeake Defendants believed that the Market Enhancement Clause would not negate the permissive deduction language in the standard lease form in giving the Pennsylvania Landowner, who bargained hard for it, a hollow victory.

175. Chesapeake Defendants made the following misrepresentations relating to the Market Enhancement Clause to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to making the decision to sign an oil and gas lease:

- a. Representing that the Market Enhancement Clause benefitted the landowner;
- b. Representing that the Market Enhancement Clause protected the landowner from deductions;
- c. Stating that it was beneficial for the landowner to have the Market Enhancement Clause because enhancement meant making the gas better and more valuable;
- d. Claiming that the Market Enhancement Clause meant that landowners would not be charged deductions to make the gas

marketable because the gas was already marketable from the wellhead;

- e. Assuring that the landowner would receive at least 12.5% in royalties because that is "state law;"
- f. Telling a landowner that because natural gas is dry in northeast Pennsylvania, it would be unlikely and remote to incur expenses for enhancement to process wet gas to market NGLs ("Remote Situations");
- g. Stating that the Market Enhancement Clause meant that the landowner could possibly receive more money for the gas if Chesapeake Defendants were able to get a higher price through enhancement;
- h. Stating that enhancement under the Market Enhancement Clause refers to transformative processes such as conversion to liquefied natural gas (LNG), which would substantially increase the value of the natural gas by allowing access to markets not reachable by pipeline; and
- i. Leading a landowner to believe that there would be no post-production costs deductions due to Chesapeake Defendants' silence on the subject during negotiations.

176. In practice, regardless of the representations made by Chesapeake Defendants, directly or indirectly through Landmen, to such landowners, Chesapeake Defendants charged deductions against royalties to be paid to those very landowners, who had sought and received assurances that they would be insulated from deductions, on the premise that the Market Enhancement Clause permitted all the deductions the Pennsylvania Landowners were led to believe were excluded by the terms of the oil and gas lease.

177. Chesapeake Defendants have willfully resorted to taking such deductions despite representing otherwise to generate cash needed to cover losses, debt service or negative cash flows due to Chesapeake Defendants' past spending practices.

Chesapeake Defendants Unfair and Deceptive Reinterpretation of Leases

178. Due to noticing unexpected deductions on royalty check statements resulting from production on an oil and gas lease believed by Pennsylvania Landowners to be protected from deductions by the Market Enhancement Clause or to be otherwise free of cost, Pennsylvania Landowners contacted the Chesapeake Defendants to dispute the deductions.

179. The Chesapeake Defendants replied, by letter,²⁶ to those Pennsylvania Landowners with the explanation that the gas was marketable at the wellhead and the post-production services enhanced the value of the gas.

180. Pennsylvania Landowners were the unwitting victims of a bait and switch as the Chesapeake Defendants misled such landowners into believing that such post-processing services done to transform the gas into a marketable form would not be deducted between the wellhead and the market.

181. Pennsylvania Landowners also contacted the Chesapeake Defendants to dispute increased deductions.

182. Pennsylvania Landowners with non-Chesapeake leases, which were subsequently acquired by the Chesapeake Defendants, found those leases subject to reinterpretation by the Chesapeake Defendants as well.²⁷

183. The Chesapeake Defendants replied, by letter,²⁸ to those Pennsylvania Landowners with the explanation that such landowners would receive no more than or no less than the price received by Chesapeake Defendants for the gas.

184. The Chesapeake Defendants further explained, by letter,²⁹ to those Pennsylvania Landowners that the gas is sold at the wellhead to its affiliate CEMI

²⁶ One such letter is attached as Exhibit M.

²⁷ See the lease attached as Exhibit H and the letter attached as Exhibit N.

²⁸ See Exhibit I.

²⁹ See Exhibit M.

which takes title and possession and sells it downstream at the connection point of the interstate pipeline.

185. Upon information and belief, this explanation is belied by the contract between Chesapeake and CEMI that provides that CEMI does not take title and possession of the gas at the wellhead, but rather at the connection point of the interstate pipeline, the market, when CEMI sells the gas to a third party.

186. The explanation given by the Chesapeake Defendants to such landowners misrepresents the operation of the Market Enhancement Clause or free of cost leases to mollify those into accepting the deductions as appropriate.

187. Pennsylvania Landowners also contacted the Chesapeake Defendants to dispute royalty statements which reflected a zero or negative balance payable to such landowners.

188. The Chesapeake Defendants replied, by letter,³⁰ to those Pennsylvania Landowners with the explanation that the holding in *Kilmer v. Elexco Land Services, Inc.*, 605 Pa. 413 (March 24, 2010) permitted the taking of deductions in January 2012.

189. The Chesapeake Defendants sent such letters³¹ to Pennsylvania Landowners who had previously relied on the representations of the Chesapeake

³⁰ One such letter is attached as Exhibit O.

³¹ See Exhibit O.

Defendants to be protected from such deductions by the Market Enhancement Clause or to be otherwise free of cost.

190. The Chesapeake Defendants informed Pennsylvania Landowners that it would, and did, take deductions for post-productions services retroactively to March 24, 2010.

191. Upon information and belief, this explanation is belied by the conduct of the Chesapeake Defendants which had paid royalties without taking deductions for years including the almost two years between the issuance of the *Kilmer* decision and the notice of taking.

192. The Chesapeake Defendants knew that the Kilmer lease expressly provided for the deduction of post-production costs unlike many of the leases from which Chesapeake Defendants unilaterally decided to take retroactive deductions and deductions on a going forward basis.

193. Chesapeake Defendants made the following misrepresentations to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to accepting the truth or accuracy of the deductions:

- a. Representing that the gas was marketable at the wellhead in order to justify taking deductions for purported value enhancements between the wellhead and the point of sale to a third party, despite stating, prior to entering into the lease, that

such deductions would not be taken because their gas is marketable at the wellhead;

- b. Representing that CEMI is a Chesapeake affiliate that acquires title and possession of the gas at the wellhead without disclosing that CEMI actually acquires title and possession at the interconnection point where the gas is sold;
- c. Representing that a sale to an affiliate to effect an end-run around the Market Enhancement Clause and a subsequent sale to a third party resulted in the Pennsylvania Landowner receiving no more than or no less than the price received by Chesapeake Defendants; and
- d. Representing that the *Kilmer* decision permitted the taking of deductions from Pennsylvania Landowners who believed, in reliance of representations made by Chesapeake Defendants to sign a lease, to be protected from deductions by the Market Enhancement Clause or to be otherwise free of cost.

194. Chesapeake Defendants have willfully made such representations to justify continuing to take such deductions

COUNT II

COMMONWEALTH V. CHESAPEAKE DEFENDANTS

VIOLATION OF UTPCPL

73 P.S. § 201-2(4)(v),(vii) and (xxi)

195. The preceding paragraphs are incorporated herein as though fully set forth below.

196. In exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under land leased from Pennsylvania Landowners, and in advertising and soliciting of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from Marcellus Shale or any other Natural Gas Play, and in otherwise engaging in the conduct more fully described herein with respect to any Natural Gas Play, Chesapeake Defendants are engaging in trade or commerce that directly or indirectly harmed Pennsylvania Landowners in this Commonwealth, including, but not limited to, Bradford County, within the meaning of 73 P. S. § 201-2(3).

197. By reason of the foregoing, Chesapeake Defendants misrepresented the applicability of deductions, the degree of self-dealing and the meaning of the Market Enhancement Clause to Pennsylvania Landowners.

198. By misrepresenting and/or omitting material facts concerning the applicability of deductions, the degree of self-dealing and the meaning of the

Market Enhancement Clause, Chesapeake Defendants misled Pennsylvania Landowners into believing they were signing leases free of deductions, were reaping the full benefit of a sale to an unrelated third party and were otherwise insulated from deductions through the Market Enhancement Clause.

199. Specifically, Chesapeake Defendants, by engaging in the practices set forth above, have:

- a. Deceptively entered into oil and gas leases, extracted, marketed and sold Marcellus Shale natural gas by promising to Pennsylvania Landowners that royalties paid to each such landowner was transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations;
- b. Deceptively concealed from Pennsylvania Landowners that deductions would be taken from royalties to be paid to each such landowner based on the need to generate cash to cover losses, debt service or negative cash flows due to Chesapeake Defendants' past spending practices, while indicating that royalties are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations, thereby causing a likelihood of

confusion or misunderstanding for landowners who are led to believe that the royalties paid to them are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations;

- c. Deceptively concealed from Pennsylvania Landowners that deductions would be taken from royalties to be paid to each such landowner based on a latent meaning of industry terms not at the time fully developed under Pennsylvania jurisprudence, while indicating that royalties are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations, thereby causing a likelihood of confusion or misunderstanding for landowners who are led to believe that the royalties paid to them are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations; and
- d. As a result of Chesapeake Defendants' acts in deceiving Pennsylvania Landowners that royalties are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations,

landowners who believed they were being paid their bargained for royalties, in fact, received less royalties and continue to receive less royalties than promised resulting from the taking of deductions.

200. Chesapeake Defendants violated the UTPCPL:

- a. Each time a Pennsylvania Landowner was assessed a deduction based on a Market Enhancement Clause expense;
- b. Each time a Pennsylvania Landowner was assessed an inflated deduction;
- c. Each time a Pennsylvania Landowner was assessed a retroactive deduction based on the *Kilmer* decision which did not have any collateral estoppel effect on each such landowner;
- d. Each time a Pennsylvania Landowner failed to receive a royalty payment as retaliation for complaining against assessment of Market Enhancement Clause deductions;
- e. Each time a Pennsylvania Landowner failed to receive a royalty payment as retaliation for complaining against assessment of inflated deductions;
- f. Each time an artificially high drilling, extraction, processing, compression or transportation payment was made to an affiliate

causing inflated deductions against royalty payments to Pennsylvania Landowners;

- g. Each time an artificially high drilling, extraction, processing, compression or transportation payment was made to a purported third-party in a supposedly arm's length transaction causing inflated deductions against royalty payments to Pennsylvania Landowners;
- h. Each time a Pennsylvania Landowner received a smaller royalty payment because Chesapeake Defendants underreported the decimal interest the landowner holds in a drilling unit;
- i. Each time Chesapeake Defendants distributed a brochure which failed to disclose that any deductions might be taken;
- j. Each time Chesapeake Defendants sent a letter³² to a Pennsylvania Landowner stating a purported reason for wrongfully taking deductions;
- k. Each time a representation was made to a Pennsylvania Landowner to use a certain amount of acreage for a well pad but more land was used instead;

³² See Exhibit I.

- l. Each time a representation was made to a Pennsylvania Landowner to use a certain area of land for a well pad but another area was used instead;
- m. Each time a representation was made to a Pennsylvania Landowner that land would not be destroyed for a well pad but land was destroyed regardless;
- n. Each time a royalty was paid to a Pennsylvania Landowner without deducting Market Enhancement Clause expenses and without disclosing that deductions may be taken retroactively and with interest; and
- o. Each time unfair and high pressure sales tactics were employed to coerce a Pennsylvania Landowner to sign an oil and gas lease or a modification to an existing oil and gas lease.

201. Chesapeake Defendants' conduct more fully described herein is, accordingly, proscribed and unlawful pursuant to 73 P. S. § 201-3.

202. The aforesaid methods, acts or practices constitute unfair or deceptive acts or practices within the meaning of Section 201-2(4) of the UTPCPL, including, but not limited to:

- a. "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services" in violation of 73 P.S. § 201-2(4)(ii);
- b. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status affiliation or connection that he does not have" in violation of 73 P.S. § 201-2(4)(v);
- c. "Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another" in violation of 73 P.S. § 201-2(4)(vii); and
- d. "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding" in violation of 73 P.S. § 201-2(4)(xxi).

203. The above described conduct has been willful within the meaning of 73 P.S. § 201-8 and is unlawful under the UTPCPL.

204. The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts and practices described herein, as well as seeking restitution for Pennsylvania

Landowners and civil penalties for violations of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the methods, acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter an Order:

- A. Declaring the Chesapeake Defendants' conduct to be in violation of the UTPCPL;
- B. Permanently enjoining the Chesapeake Defendants and any agents, successors, assigns, and employees acting directly or through any corporate or business device from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the UTPCPL;
- C. Directing the Chesapeake Defendants to restore to Pennsylvania Landowners any moneys which may have been acquired by means of any violation of the UTPCPL pursuant to Section 201-4.1 of the UTPCPL;
- D. Directing the Chesapeake Defendants pursuant to Section 201-8(b) of the UTPCPL to pay civil penalties in the amount of One Thousand Dollars (\$1,000) for each and every violation of the UTPCPL, increasing to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60)

or older, and such other victims as may be discovered between the date of the filing of this complaint and trial of this matter;

E. Directing the Chesapeake Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices as set forth in this complaint pursuant to Section 201-4.1 of the UTPCPL;

F. Directing the Chesapeake Defendants to pay the Commonwealth all costs for the investigation and prosecution of this action pursuant to Section 201-4.1 of the UTPCPL;

G. Directing the Chesapeake Defendants to forfeit their right or franchise to engage in any business involving exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and involving the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties; and

H. Providing any other such relief as the Court may deem necessary and appropriate.

**SPECIFIC CONDUCT OF CHESAPEAKE DEFENDANTS AND
ANADARKO DEFENDANTS IN VIOLATION OF UTPCPL
AND PENNSYLVANIA ANTITRUST COMMON LAW**

205. Chesapeake Defendants and Anadarko Defendants (collectively, the "Joint Venture Defendants") engaged in the following conduct.

206. Upon information and belief, the Joint Venture Defendants entered into a joint venture concerning an area of mutual interest in 2006.

207. The area subject to the joint venture constituted certain counties in northeast Pennsylvania within the Marcellus Shale gas play, including Bradford, Centre, Clinton, Lycoming, Potter, Sullivan, Tioga and Wyoming.

208. The joint venture included collaboration concerning the commercialization of acquired leases within the area of mutual interest.

209. Prior to the joint venture, both the Chesapeake Defendants and Anadarko Defendants independently secured leases for the exploration of natural gas within the Marcellus Shale gas play for their respective portfolios.

210. Prior to the joint venture, Pennsylvania Landowners enjoyed competition between the Chesapeake Defendants and Anadarko Defendants for the leasing of the mineral estate.

211. Following the consummation of the joint venture, the Chesapeake Defendants and Anadarko Defendants assigned territories to each other for the acquisition of oil and gas leases as part of a separate market allocation agreement.³³

³³ Upon information and belief, the agreement to allocate territories, also referred to as a market allocation agreement, is understood to be oral.

212. Anadarko Defendants agreed to allocate the Counties of Bradford, Sullivan, Tioga and Wyoming to Chesapeake Defendants as exclusive territories for the acquisition of oil and gas leases.

213. In turn, Chesapeake Defendants agreed to allocate the Counties of Clinton, Lycoming and Potter to Anadarko Defendants as exclusive territories for the acquisition of oil and gas leases.

214. Each Joint Venture Defendant had the option of partnering on the leases secured by the other.

215. Upon information and belief, Landmen, at the direction of Chesapeake Defendants, failed to disclose the existence of the joint venture agreement, the market allocation agreement and the option of Anadarko Defendants to acquire an interest in the lease.

216. Upon information and belief, Landmen, at the direction of Anadarko Defendants, failed to disclose the existence of the joint venture agreement,³⁴ the market allocation agreement and the option of Chesapeake Defendants to acquire an interest in the lease.

217. Upon information and belief, Landmen, at the direction of the Joint Venture Defendants, failed to disclose the economic effect of the joint venture and

³⁴ The Commonwealth will obtain this agreement through discovery and present same at trial. Chesapeake Defendants and Anadarko Defendants possess this agreement.

the market allocation agreement on the acreage signing bonus and the royalty terms when pitching an oil and gas lease to Pennsylvania Landowners.

218. Upon information and belief, the Joint Venture Defendants, directly or indirectly through Landmen, concealed material facts from Pennsylvania Landowners concerning the absence of competition or other interested persons in the securing of an oil and gas lease.

219. The Joint Venture Defendants have willfully engaged in unfair and deceptive conduct directed at Pennsylvania Landowners to drive down lease acquisition costs to deprive each such landowner the benefits of a fair and open market.

COUNT III

COMMONWEALTH V. JOINT VENTURE DEFENDANTS VIOLATION OF UTPCPL 73 P.S. § 201-2(3)

220. The preceding paragraphs are incorporated herein as though fully set forth below.

221. In exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under land leased from Pennsylvania Landowners, and in advertising and soliciting of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from Marcellus Shale or any other Natural Gas Play,

and in otherwise engaging in the conduct more fully described herein with respect to any Natural Gas Play, the Joint Venture Defendants are engaging in trade or commerce that directly or indirectly harmed Pennsylvania Landowners in this Commonwealth, including, but not limited to, Bradford County, within the meaning of 73 P. S. § 201-2(3).

222. By reason of the foregoing, the Joint Venture Defendants impaired Pennsylvania Landowner choice in the market for the acquisition of oil and gas leases through the agreement to allocate territories within the area of mutual interest.

223. By impairing choice in what should have been a freely competitive marketplace for the acquisition of oil and gas leases through the agreement to allocate territories within the area of mutual interest, the Joint Venture Defendants deprived Pennsylvania Landowners from being able to meaningfully choose from among the options the market would have provided absent the agreement to allocate territories.

224. The Joint Venture Defendants agreed to and did, in fact, act in restraint of trade or commerce in the oil and gas lease acquisition market that includes Pennsylvania, by affecting, fixing, controlling and/or maintaining at artificial and non-competitive levels, the acreage signing bonus and the royalty for

oil and gas leases within the area of mutual interest covering the Marcellus Shale gas play in Pennsylvania by means of the agreement to allocate territories.

225. The Joint Venture Defendants impaired the competitive process which deprived Pennsylvania Landowners from receiving an acreage signing bonus and royalty which would have been competitive and fair absent the agreement to allocate territories.

226. The Joint Venture Defendants' impairment of choice and the competitive process had the following effects: (1) acreage signing bonus and royalty competition was restrained, suppressed and/or eliminated throughout Pennsylvania; (2) acreage signing bonus and royalty were lowered, fixed, maintained and stabilized at artificially-low levels throughout Pennsylvania; (3) Pennsylvania Landowners were deprived of free and open markets; and (4) Pennsylvania Landowners received infracompetitive, artificially deflated prices for acreage signing bonus and royalty for oil and gas leases within the area of mutual interest covering the Marcellus Shale gas play in Pennsylvania.

227. The Joint Venture Defendants' impairment of choice and the competitive process have caused Pennsylvania Landowners to suffer and to continue to suffer loss of money or property, real or personal, by means of Joint Venture Defendants' use or employment of unfair methods of competition as set forth above.

228. Joint Venture Defendants violated the UTPCPL:

- a. Each time a Joint Venture Defendant leveraged or otherwise used the benefit of the market allocation agreement in the course of negotiating and securing an oil and gas lease with a Pennsylvania Landowner within the area of mutual interest covering the Marcellus Shale gas play;
- b. Each time a Pennsylvania Landowner received an artificially deflated acreage signing bonus from a Joint Venture Defendant in connection with the execution of an oil and gas lease secured by means of the market allocation agreement; and
- c. Each time a Pennsylvania Landowner received an artificially deflated royalty from a Joint Venture Defendant in connection with the production of an oil and gas lease secured by means of the market allocation agreement.

229. The Joint Venture Defendants' conduct more fully described herein is, accordingly, proscribed and unlawful pursuant to 73 P.S. § 201-3.

230. The aforesaid methods, acts or practices constitute unfair methods of competition and/or unfair or deceptive acts or practices in accord with federal jurisprudence interpreting Section 5 of the Federal Trade Commission Act, 15 U.S.C § 45 and Supreme Court jurisprudence interpreting Sections 3 and the

relevant definitions of the UTPCPL pursuant to Com., by Creamer v. Monumental Properties, Inc., 459 Pa. 450 (1974), including, but not limited to:

- a. Violating Section 1 of the Sherman Act, 15 U.S.C § 1, through engaging in a *per se* unlawful market allocation agreement;
- b. Violating Pennsylvania antitrust common law through engaging in a *per se* unlawful market allocation agreement; and
- c. Violating Section 5 of the Federal Trade Commission Act, 15 U.S.C § 45, through engaging in unfair methods of competition and/or unfair or deceptive acts or practices.

231. The above described conduct not insubstantially injured the general economy of the Commonwealth and Pennsylvania Landowners.

232. The above described conduct created the likelihood of confusion and misunderstanding relative to Pennsylvania Landowners seeking to exercise a meaningful choice in a market expected to be free of impairment to the competitive process.

233. The above described conduct has been willful within the meaning of 73 P.S. § 201-8 and is unlawful under the UTPCPL.

234. The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts and practices described herein, as well as seeking restitution for Pennsylvania

Landowners and civil penalties for violations of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the methods, acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter an Order:

- A. Declaring the Joint Venture Defendants' conduct to be in violation of the UTPCPL;
- B. Permanently enjoining the Joint Venture Defendants and any agents, successors, assigns, and employees acting directly or through any corporate or business device from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the UTPCPL;
- C. Directing the Joint Venture Defendants to restore to Pennsylvania Landowners any moneys which may have been acquired by means of any violation of the UTPCPL pursuant to Section 201-4.1 of the UTPCPL;
- D. Directing the Joint Venture Defendants pursuant to Section 201-8(b) of the UTPCPL to pay civil penalties in the amount of One Thousand Dollars (\$1,000) for each and every violation of the UTPCPL pursuant to 1 Pa. C.S.A. §

1930, increasing to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older, and such other victims as may be discovered between the date of the filing of this complaint and trial of this matter;

E. Directing the Joint Venture Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices as set forth in this complaint pursuant to Section 201-4.1 of the UTPCPL;

F. Directing the Joint Venture Defendants to pay the Commonwealth all costs for the investigation and prosecution of this action pursuant to Section 201-4.1 of the UTPCPL;

G. Directing the Joint Venture Defendants to forfeit their right or franchise to engage in any business involving exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and involving the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties; and

H. Providing any other such relief as the Court may deem necessary and appropriate.

COUNT IV

COMMONWEALTH V. JOINT VENTURE DEFENDANTS

VIOLATION OF UTPCPL

73 P.S. § 201-2(4)(v),(vii) and (xxi)

235. The preceding paragraphs are incorporated herein as though fully set forth below.

236. In exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under land leased from Pennsylvania Landowners, and in advertising and soliciting of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from Marcellus Shale or any other Natural Gas Play, and in otherwise engaging in the conduct more fully described herein with respect to any Natural Gas Play, the Joint Venture Defendants are engaging in trade or commerce that directly or indirectly harmed Pennsylvania Landowners in this Commonwealth, including, but not limited to, Bradford County, within the meaning of 73 P. S. § 201-2(3).

237. By reason of the foregoing, the Joint Venture Defendants unfairly and deceptively misrepresented the absence of competition for the acquisition of oil and gas leases and the related agreement allocating territories for the acquisition of oil and gas leases within the area of mutual interest to Pennsylvania Landowners.

238. By unfairly and deceptively misrepresenting and/or omitting material facts concerning the absence of competition for the acquisition of oil and gas leases and the related agreement allocating territories for the acquisition of oil and gas leases within the area of mutual interest to Pennsylvania Landowners, the Joint Venture Defendants misled Pennsylvania Landowners into believing there were either fewer or no other persons interested in competing for the oil and gas leases.

239. The Joint Venture Defendants agreed to and did, in fact, act in restraint of trade or commerce in the oil and gas lease acquisition market that includes Pennsylvania, by affecting, fixing, controlling and/or maintaining at artificial and non-competitive levels, the acreage signing bonus and the royalty for oil and gas leases within the area of mutual interest covering the Marcellus Shale gas play in Pennsylvania by means of the agreement to allocate territories.

240. The Joint Venture Defendants unfairly and deceptively misrepresented to Pennsylvania Landowners that Joint Venture Defendants' acreage signing bonus and royalty for oil and gas leases within the area of mutual interest covering the Marcellus Shale gas play in Pennsylvania were competitive and fair.

241. The Joint Venture Defendants' unfair and deceptive misrepresentation and failure to disclose material facts had the following effects: (1) acreage signing bonus and royalty competition was restrained, suppressed and eliminated

throughout Pennsylvania; (2) acreage signing bonus and royalty were lowered, fixed, maintained and stabilized at artificially-low levels throughout Pennsylvania; (3) Pennsylvania Landowners were deprived of free and open markets; and (4) Pennsylvania Landowners received infracompetitive, artificially deflated prices for acreage signing bonus and royalty for oil and gas leases within the area of mutual interest covering the Marcellus Shale gas play in Pennsylvania.

242. The Joint Venture Defendants' unfair and deceptive misrepresentation and failure to disclose material facts have caused Pennsylvania Landowners to suffer and to continue to suffer loss of money or property, real or personal, by means of Joint Venture Defendants' use or employment of unfair or deceptive commercial practices as set forth above.

243. Joint Venture Defendants violated the UTPCPL:

- a. Each time a Joint Venture Defendant failed to disclose the existence of the joint venture agreement, the market allocation agreement and the option of the other Joint Venture Defendant to acquire an interest in the lease in the course of negotiating an oil and gas lease with a Pennsylvania Landowner within the area of mutual interest covering the Marcellus Shale gas play;

- b. Each time a Pennsylvania Landowner received an artificially deflated acreage signing bonus from a Joint Venture Defendant;
and
- c. Each time a Pennsylvania Landowner received an artificially deflated royalty from a Joint Venture Defendant.

244. The Joint Venture Defendants' conduct more fully described herein is, accordingly, proscribed and unlawful pursuant to 73 P. S. § 201-3.

245. The aforesaid methods, acts or practices constitute unfair or deceptive acts or practices within the meaning of Section 201-2(4) of the UTPCPL, including, but not limited to:

- a. "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services" in violation of 73 P.S. § 201-2(4)(ii);
- b. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status affiliation or connection that he does not have" in violation of 73 P.S. § 201-2(4)(v);
- c. "Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style

or model, if they are of another" in violation of 73 P.S. § 201-2(4)(vii); and

- d. "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding" in violation of 73 P.S. § 201-2(4)(xxi).

246. The above described conduct has been willful within the meaning of 73 P.S. § 201-8 and is unlawful under the UTPCPL.

247. The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts and practices described herein, as well as seeking restitution for Pennsylvania Landowners and civil penalties for violations of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the methods, acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter an Order:

- A. Declaring the Joint Venture Defendants' conduct to be in violation of the UTPCPL;

B. Permanently enjoining the Joint Venture Defendants and any agents, successors, assigns, and employees acting directly or through any corporate or business device from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the UTPCPL;

C. Directing the Joint Venture Defendants to restore to Pennsylvania Landowners any moneys which may have been acquired by means of any violation of the UTPCPL pursuant to Section 201-4.1 of the UTPCPL;

D. Directing the Joint Venture Defendants pursuant to Section 201-8(b) of the UTPCPL to pay civil penalties in the amount of One Thousand Dollars (\$1,000) for each and every violation of the UTPCPL, increasing to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older, and such other victims as may be discovered between the date of the filing of this complaint and trial of this matter;

E. Directing the Joint Venture Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices as set forth in this complaint pursuant to Section 201-4.1 of the UTPCPL;

F. Directing the Joint Venture Defendants to pay the Commonwealth all costs for the investigation and prosecution of this action pursuant to Section 201-4.1 of the UTPCPL;

G. Directing the Joint Venture Defendants to forfeit their right or franchise to engage in any business involving exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and involving the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties; and

H. Providing any other such relief as the Court may deem necessary and appropriate.

COUNT V

COMMONWEALTH V. JOINT VENTURE DEFENDANTS VIOLATION OF PENNSYLVANIA ANTITRUST COMMON LAW DOCTRINE AGAINST UNREASONABLE RESTRAINT OF TRADE

248. The preceding paragraphs are incorporated herein as though fully set forth below.

249. The relevant market is the acquisition of oil and gas leases in the Counties of Bradford, Centre, Clinton, Lycoming, Potter, Sullivan, Tioga and Wyoming comprising an area of mutual interest within the Marcellus Shale gas play in Pennsylvania.

250. The agreement to allocate territories is separate and in addition to the joint venture agreement between the Chesapeake Defendants and Anadarko Defendants whereby each has an option to acquire an interest in oil and gas leases secured by the other in its allocated territory within the area of mutual interest.

251. Such an agreement to allocate territories constitutes a *per se* unreasonable restraint of trade in violation of Pennsylvania antitrust common law.

252. Unless its overall anticompetitive scheme is enjoined, the Joint Venture Defendants will continue to illegally restrain trade in the relevant market in concert with another in violation of the Pennsylvania common law doctrine against unreasonable restraint of trade.

253. Joint Venture Defendants' conduct in engaging in a contract to unreasonably restrain trade for the acquisition of oil and gas leases in the Counties of Bradford, Centre, Clinton, Lycoming, Potter, Sullivan, Tioga and Wyoming comprising an area of mutual interest within the Marcellus Shale gas play in Pennsylvania threatens injury to the Plaintiff and Pennsylvania Landowners.

254. Joint Venture Defendants' anticompetitive and unlawful conduct alleged herein has injured, is injuring and will injure competition in the relevant market by denying landowner choice and otherwise thwarting competition in the relevant market.

255. The Joint Venture Defendants' contract in restraint of trade had the following effects: (1) acreage signing bonus and royalty competition was restrained, suppressed and eliminated throughout Pennsylvania; (2) acreage signing bonus and royalty were lowered, fixed, maintained and stabilized at artificially-low levels throughout Pennsylvania; (3) Pennsylvania Landowners were deprived of free and open markets; and (4) Pennsylvania Landowners received infracompetitive, artificially deflated prices for acreage signing bonus and royalty for oil and gas leases within the area of mutual interest covering the Marcellus Shale gas play in Pennsylvania.

256. The Joint Venture Defendants' illegal conduct has had a substantial effect on Pennsylvania Landowners.

257. As a direct and proximate result of the Joint Venture Defendants' unlawful conduct, the Plaintiff and Pennsylvania Landowners have been injured in their business and property.

258. By reason of the foregoing, the Joint Venture Defendants have entered into an agreement in restraint of trade constituting a *per se* violation of Pennsylvania common law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter an Order:

A. Declaring the Joint Venture Defendants' conduct to be in violation of Pennsylvania common law doctrine against unreasonable restraint of trade;

B. Permanently enjoining the Joint Venture Defendants and any agents, successors, assigns, and employees acting directly or through any corporate or business device from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the Pennsylvania common law doctrine against unreasonable restraint of trade;

C. Directing the Joint Venture Defendants, jointly and severally, to pay damages to Pennsylvania Landowners for any violation of the Pennsylvania common law doctrine against unreasonable restraint of trade;

D. Directing the Joint Venture Defendants, jointly and severally, to restore to Pennsylvania Landowners any moneys which may have been acquired by means of any violation of the Pennsylvania common law doctrine against unreasonable restraint of trade;

E. Directing the Joint Venture Defendants, jointly and severally, to disgorge and forfeit all profits they have derived as a result of their anticompetitive acts and practices as set forth in this complaint;

F. Directing the Joint Venture Defendants, jointly and severally, to pay landowners all damages suffered by landowners as a result of their anticompetitive acts and practices as set forth in this complaint;

G. Directing the Joint Venture Defendants, jointly and severally, to pay the Commonwealth all costs of for the investigation and prosecution of this action pursuant to 42 Pa. C.S. § 1726 (a);

H. Directing the Joint Venture Defendants to forfeit their right or franchise to engage in any business involving exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and involving the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from any Natural Gas Play within the Commonwealth of Pennsylvania until such time as all monies have been paid for damages, restitution and costs; and

I. Providing any other such relief as the Court may deem necessary and appropriate.

SPECIFIC CONDUCT OF ANADARKO DEFENDANTS
CONCERNING LEASING PRACTICES
IN VIOLATION OF UTPCPL

259. Anadarko Defendants engaged in the following conduct.

260. Upon information and belief, Anadarko Defendants entered into a joint venture with the Chesapeake Defendants in 2006.

261. Upon information and belief, the joint venture between Anadarko Defendants and the Chesapeake Defendants concerned the exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from

Marcellus Shale under land leased from Pennsylvania Landowners in eight counties in northeast Pennsylvania comprising an area of mutual interest.

262. The area subject to the joint venture constituted certain counties in northeast Pennsylvania within the Marcellus Shale gas play, including Bradford, Centre, Clinton, Lycoming, Potter, Sullivan, Tioga and Wyoming.

263. Upon information and belief, both the Anadarko Defendants and the Chesapeake Defendants contributed capital in the form of services, skill, material and money to the joint venture.

264. Upon information and belief, both the Anadarko Defendants and the Chesapeake Defendants coordinated, as alleged, as to the allocation of territories for the acquisition of leases in furtherance of the joint venture.

265. Upon information and belief, both the Anadarko Defendants and the Chesapeake Defendants commercially exploited the leases acquired through the market allocation agreement by drilling and producing wells on such leases in furtherance of the joint venture.

266. Upon information and belief, the Anadarko Defendants and the Chesapeake Defendants shared profits from the joint venture from the sale of natural gas.

267. Upon information and belief, both the Anadarko Defendants and the Chesapeake Defendants exercised control over the joint venture.

268. Under Pennsylvania law, parties to a joint venture are vicariously liable for the harms caused by the joint venture.

Anadarko Defendants Direct and Joint Venture Vicarious Liability

269. Upon information and belief, Anadarko Defendants entered into oil and gas leases with Pennsylvania Landowners for the purpose of exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under the land of each such Pennsylvania Landowner.

270. Upon information and belief, Anadarko Defendants acquired interest, in whole or in part, from Chesapeake Defendants through assignment as provided in their joint venture in oil and gas leases with Pennsylvania Landowners for the purpose of exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale under the land of each such Pennsylvania Landowner within the delineated area of mutual interest.

271. Upon information and belief, Anadarko Defendants deployed Landmen to obtain oil and gas leases from Pennsylvania Landowners owning land over commercially viable Marcellus Shale gas play.

272. Upon information and belief, Anadarko Defendants authorized, through the joint venture, Chesapeake Defendants' deployment of Landmen to

obtain oil and gas leases from Pennsylvania Landowners owning land over commercially viable Marcellus Shale gas play.

273. The Anadarko Defendants empowered the Landmen to use unfair and deceptive negotiation tactics with Pennsylvania Landowners such as:

- a. Failure to disclose facts material to making a decision as to signing an oil and gas lease; and
- b. Making affirmative statements containing a falsity or prevarication.

274. The sales pitches by Landmen to Pennsylvania Landowners included:

- a. Unfair and high pressure;
- b. Leveraging information advantage;
- c. Dissuading contact with other landowners to compare terms;
- d. Dissuading contact with anyone else to discuss terms;
- e. Presenting 'take it or leave it' contracts; and
- f. Limiting time for consideration of contract.

275. Anadarko Defendants, directly or indirectly through Landmen, made the following misrepresentations to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to making the decision to sign an oil and gas lease:

- a. Stating that if anyone in the drilling unit were to sign the lease now, the money would be placed in escrow for future payment; otherwise, if anyone signed later, such person would lose out on the money or otherwise receive much less;
- b. Representing that all the neighboring properties were leased and the gas company would drill to capture the gas whether the landowner signed or not;
- c. Stating that if the landowner did not sign the lease that day, it would be the landowner's last chance to sign and the gas company would extract the gas one way or another;
- d. Telling a landowner an attorney was not necessary when signing a lease because the landowner would get a 12.5% royalty because that was the law in Pennsylvania;
- e. Telling a landowner, in response to a question about the possibility of the price per acre increasing, that the price per acre for the signing bonus does not increase despite knowing that it may;
- f. Showing landowners copies of spreadsheets called "royalty calculators," which reflect how much money a landowner can expect to make in royalty payments each year over a twenty

year period based on the number of acres in production and the price of gas, with no references to deductions; and

- g. Charging a landowner deductions for compression when such service was not being done.

276. Anadarko Defendants authorized, through the joint venture, Chesapeake Defendants to make the following misrepresentations, directly or indirectly through Landmen, to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to making the decision to sign an oil and gas lease:

- a. Stating that if anyone in the drilling unit were to sign the lease now, the money would be placed in escrow for future payment; otherwise, if anyone signed later, such person would lose out on the money or otherwise receive much less;
- b. Representing that all the neighboring properties were leased and the gas company would drill to capture the gas whether the landowner signed or not;
- c. Stating that if the landowner did not sign the lease that day, it would be the landowner's last chance to sign and the gas company would extract the gas one way or another;

- d. Telling a landowner an attorney was not necessary when signing a lease because the landowner would get a 12.5% royalty because that was the law in Pennsylvania;
- e. Representing to a landowner that all of the neighboring properties were leased and that royalties totaling \$500,000 at 20% could be expected without disclosing any impact from deductions;
- f. Agreeing in negotiations to a 20% royalty and a no deduction clause; instead, presenting a lease for signing that provided for only a 12.5% royalty and permitted deductions;
- g. Telling a landowner, in response to a question about the possibility of the price per acre increasing, that the price per acre for the signing bonus does not increase despite knowing that it may;
- h. Showing landowners copies of spreadsheets called "royalty calculators," which reflect how much money a landowner can expect to make in royalty payments each year over a twenty year period based on the number of acres in production and the price of gas, with no references to deductions;

- i. Coercing a landowner to agree in writing to permit a pipeline running diagonally across a landowner's field;
- j. Taking \$3,000 in deductions from a landowner who was not previously informed that it might purportedly cost the landowner money in deductions if the gas had to be shipped farther away;
- k. Charging a landowner deductions for compression when such service was not being done; and
- l. To avoid complying with a recently-enacted setback requirement, seeking a waiver from an 89-year old Pennsylvania Landowner as purportedly being necessary to proceed on the existing lease.

**Anadarko Defendants Use of Royalty Calculator as an
Unfair and Deceptive Inducement to Secure Leases**

277. Anadarko Defendants authorized the use of royalty calculators by Landmen as part of negotiations to secure a lease with Pennsylvania Landowners.³⁵

³⁵ The use of the royalty calculator throughout the Natural Gas Play will be shown at trial as a pattern or practice of engaging in unfair or deceptive conduct throughout the Natural Gas Play through a representative sample of Pennsylvania Landowners.

278. A customized royalty calculator was presented to Pennsylvania Landowners to project how much royalty could be received over the life of the lease based on three price points for natural gas.

279. Upon information and belief, Landmen, at the direction of Anadarko Defendants, failed to disclose the economic effect of deductions in royalty spreadsheet calculators when pitching the potential ranges of royalty payments based on a certain percentage and anticipated production levels as consideration for signing the oil and gas lease.

280. The royalty spreadsheet calculators, as used by Landmen, lacked any field for any type of deduction against any hypothetical royalty for review by a Pennsylvania Landowner prior to entering into an oil and gas lease.

281. Upon information and belief, Anadarko Defendants, directly or indirectly through Landmen, concealed material facts from Pennsylvania Landowners concerning the applicability of deductions against prospective royalty payments.

**Anadarko Defendants Created the Likelihood of Confusion or of
Misunderstanding as to Which Party Is the
Offeror and the Offeree as an Unfair and Deceptive Inducement to
Forbear from Considering Competing Offers**

282. Most, if not all, landowners lack sophistication in understanding that the oil and gas leases presented by the Landmen at the direction of Anadarko Defendants to the landowners for execution was construed by Anadarko

Defendants as an offer by the landowners to be accepted by Anadarko Defendants and not the converse.

283. The dynamic of the Landman knocking, often unannounced and unscheduled, on the door of a Landowner's house to pitch an oil and gas lease with Anadarko Defendants with lease forms authorized by Anadarko Defendants in the hands of the Landman would reasonably confuse most, if not all, landowners, that Anadarko Defendants were making the offer and that upon execution by the landowner, the deal was struck as the grant of a fee simple determinable was conveyed.

284. Instead, Anadarko Defendants maintained that they could and, in fact, did reject oil and gas leases with Pennsylvania Landowners who believed that they had a deal which foreclosed each such landowner from considering or accepting offers from any other gas exploration and production company.

Anadarko Defendants Vicarious Use of Market Enhancement Clause as an Unfair and Deceptive Inducement to Secure Leases

285. Most, if not all, Pennsylvania Landowners lack sophistication related to the applicability of deductions against prospective royalty payments.

286. Most, if not all, landowners lack sophistication related to the drafting of industry-specific oil and gas lease terms.

287. Conversely, the exploration and production companies have the sophistication relative to the drafting of industry-specific oil and gas lease terms due to years of experience in executing oil and gas leases.

288. Some landowners wanted further assurance in the contract that deductions would not be assessed against royalty payments resulting from the sale of natural gas.

289. Upon information and belief, Anadarko Defendants authorized, through the joint venture, Chesapeake Defendants to offer the Market Enhancement Clause, directly or indirectly through Landmen, to certain Pennsylvania Landowners to overcome their objections to being assessed deductions against royalties resulting from the sale of natural gas.

290. The Market Enhancement Clause is typically found in the addendum to a lease with standard language otherwise providing for deductions against royalties resulting from the sale of natural gas.

291. Anadarko Defendants authorized, through the joint venture, Chesapeake Defendants to use language in the Market Enhancement Clause which, in its plain language meaning to an average person, ostensibly conveyed the requested assurance against the assessment of deductions.

292. The language in the Market Enhancement Clause which was the proverbial bait to induce certain Pennsylvania Landowners to sign oil and gas leases was:

...all oil, gas or other proceeds accruing to the Lessor under this lease or by state law *shall be without deduction*, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting and marketing the oil, gas and other products produced hereunder to transform the product into marketable form...

(emphasis added)

293. On information and belief, Anadarko Defendants knew that the Market Enhancement Clause would not negate the permissive deduction language in the standard lease form in giving the Pennsylvania Landowner, who bargained hard for it, a hollow victory.

294. Anadarko Defendants authorized, through the joint venture, Chesapeake Defendants to make the following misrepresentations relating to the Market Enhancement Clause to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to making the decision to sign an oil and gas lease:

- a. Representing that the Market Enhancement Clause benefitted the landowner;

- b. Representing that the Market Enhancement Clause protected the landowner from deductions;
- c. Stating that it was beneficial for the landowner to have the Market Enhancement Clause because enhancement meant making the gas better and more valuable;
- d. Claiming that the Market Enhancement Clause meant that landowners would not be charged deductions to make the gas marketable because the gas was already marketable from the wellhead;
- e. Assuring that the landowner would receive at least 12.5% in royalties because that is "state law;"
- f. Stating that the Market Enhancement Clause meant that the landowner could possibly receive more money for the gas if Anadarko Defendants were able to get a higher price through enhancement;
- g. Telling a landowner that because natural gas is dry in northeast Pennsylvania, it would be unlikely and remote to incur expenses for enhancement to process wet gas to market NGLs; and

- h. Leading a landowner to believe that there would be no post-production costs deduction due to Anadarko Defendants' silence on the subject during negotiations.

295. In practice, regardless of the representations made by Anadarko Defendants, directly or indirectly through Landmen as authorized through the joint venture with Chesapeake Defendants, to such landowners, Anadarko Defendants charged deductions against royalties to be paid to those very landowners, who had sought and received assurances that they would be insulated from deductions, on the premise that the Market Enhancement Clause permitted all the deductions the landowners were led to believe were excluded by the terms of the oil and gas lease.

296. Anadarko Defendants have willfully resorted to taking such deductions despite representing otherwise.

Anadarko Defendants Unfair and Deceptive Reinterpretation of Leases

297. Due to noticing unexpected deductions on royalty check statements resulting from production on an oil and gas lease believed by Pennsylvania Landowners to be protected from deductions by the Market Enhancement Clause or to be otherwise free of cost, Pennsylvania Landowners contacted Anadarko Defendants to dispute the deductions.

298. Anadarko Defendants replied to those Pennsylvania Landowners with the explanation in a letter³⁶ that it could sell the gas at the wellhead and receive a lower price or, in the alternative, move the gas downstream to receive a better price.

299. The explanation given by Anadarko Defendants to such landowners misrepresents the operation of the Market Enhancement Clause to mollify those into accepting the deductions as appropriate.

300. Anadarko Defendants made the following misrepresentations to Pennsylvania Landowners who relied on the affirmative statements or the omission of information material to accepting the truth or accuracy of the deductions:

- a. Disregarding the fact that the market is downstream at the interconnection point with the interstate pipelines where gas is sold to third parties; and
- b. Representing that transporting gas to market is an enhancement.

301. Anadarko Defendants have willfully made such representations to justify continuing to take such deductions.

³⁶ One such letter is attached as Exhibit P. Anadarko Defendants possess other letters sent to Pennsylvania Landowners and the Commonwealth will obtain these letters through discovery and present same at trial.

COUNT VI

COMMONWEALTH V. ANADARKO DEFENDANTS VIOLATION OF UTPCPL

73 P.S. § 201-2(4)(v),(vii) and (xxi)

302. The preceding paragraphs are incorporated herein as though fully set forth below.

303. In exploring, drilling, extracting, gathering, compressing, transporting and selling natural gas from Marcellus Shale and any other Natural Gas Play under land leased from Pennsylvania Landowners, and in advertising and soliciting of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted from Marcellus Shale or any other Natural Gas Play, and in otherwise engaging in the conduct more fully described herein with respect to any Natural Gas Play, Anadarko Defendants are engaging in trade or commerce that directly or indirectly harmed Pennsylvania Landowners in this Commonwealth, including, but not limited to, Bradford County, within the meaning of 73 P. S. § 201-2(3).

304. By reason of the foregoing, Anadarko Defendants misrepresented the applicability of deductions and the meaning of the Market Enhancement Clause to Pennsylvania Landowners.

305. By misrepresenting and/or omitting material facts concerning the applicability of deductions and the meaning of the Market Enhancement Clause,

Anadarko Defendants misled Pennsylvania Landowners into believing they were signing leases free of deductions and were otherwise insulated from deductions through the Market Enhancement Clause.

306. Specifically, Anadarko Defendants, by engaging in the practices set forth above, have:

- a. Deceptively entered into oil and gas leases, extracted, marketed and sold Marcellus Shale natural gas by promising to Pennsylvania Landowners that royalties paid to each such landowner was transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations;
- b. Deceptively concealed from Pennsylvania Landowners that deductions would be taken from royalties to be paid to each such landowner based on a latent meaning of industry terms not at the time fully developed under Pennsylvania jurisprudence, while indicating that royalties are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations, thereby causing a likelihood of confusion or misunderstanding for landowners who are led to believe that the royalties paid to

them are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations; and

- c. As a result of Anadarko Defendants' acts in deceiving Pennsylvania Landowners that royalties are transparently based on a certain, agreed upon percentage either free of deductions or otherwise prohibited except for Remote Situations, landowners who believed they were being paid their bargained for royalties, in fact, received less royalties and continue to receive less royalties than promised resulting from the taking of deductions.

307. Anadarko Defendants violated the UTPCPL:

- a. Each time a Pennsylvania Landowner was assessed a deduction based on a Market Enhancement Clause expense;
- b. Each time a Pennsylvania Landowner was assessed an inflated deduction;
- c. Each time a Pennsylvania Landowner was assessed a retroactive deduction based on the *Kilmer* decision which did not have any collateral estoppel effect on each such landowner;

- d. Each time a Pennsylvania Landowner failed to receive a royalty payment as retaliation for complaining against assessment of Market Enhancement Clause deductions;
- e. Each time a Pennsylvania Landowner failed to receive a royalty payment as retaliation for complaining against assessment of inflated deductions;
- f. Each time an artificially high drilling, extraction, processing, compression or transportation payment was made to an affiliate or Joint Venture Defendant affiliate causing inflated deductions against royalty payments to landowners;
- g. Each time an artificially high drilling, extraction, processing, compression or transportation payment was made to a purported third-party in a supposedly arm's length transaction causing inflated deductions against royalty payments to landowners;
- h. Each time a Pennsylvania Landowner received a smaller royalty payment because Anadarko Defendants underreported the decimal interest the landowner holds in a drilling unit;

- i. Each time Anadarko Defendants sent a letter³⁷ to a Pennsylvania Landowner stating a purported reason for wrongfully taking deductions;
- j. Each time a representation was made to a Pennsylvania Landowner to use a certain amount of acreage for a well pad but more land was used instead;
- k. Each time a representation was made to a Pennsylvania Landowner to use a certain area of land for a well pad but another area was used instead;
- l. Each time a representation was made to a Pennsylvania Landowner that land would not be destroyed for a well pad but land was destroyed regardless;
- m. Each time a royalty was paid to a Pennsylvania Landowner without deducting Market Enhancement Clause expenses and without disclosing that deductions may be taken retroactively and with interest; and
- n. Each time unfair and high pressure sales tactics were employed to coerce a Pennsylvania Landowner to sign an oil and gas lease or a modification to an existing oil and gas lease.

³⁷ See Exhibit P.

308. Anadarko Defendants' conduct more fully described herein is, accordingly, proscribed and unlawful pursuant to 73 P. S. § 201-3.

309. The aforesaid methods, acts or practices constitute unfair or deceptive acts or practices within the meaning of Section 201-2(4) of the UTPCPL, including, but not limited to:

- a. "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services" in violation of 73 P.S. § 201-2(4)(ii);
- b. "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status affiliation or connection that he does not have" in violation of 73 P.S. § 201-2(4)(v);
- c. "Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another" in violation of 73 P.S. § 201-2(4)(vii);
and
- d. "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding" in violation of 73 P.S. § 201-2(4)(xxi).

310. The above described conduct has been willful within the meaning of 73 P.S. § 201-8 and is unlawful under the UTPCPL.

311. The Commonwealth believes that the public interest is served by seeking a permanent injunction from this Honorable Court to restrain the methods, acts and practices described herein, as well as seeking restitution for Pennsylvania Landowners and civil penalties for violations of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the methods, acts and practices complained of herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to enter an Order:

- A. Declaring Anadarko Defendants' conduct to be in violation of the UTPCPL;
- B. Permanently enjoining Anadarko Defendants and any agents, successors, assigns, and employees acting directly or through any corporate or business device from engaging in the acts and practices alleged in this complaint and any other acts and practices which violate the UTPCPL;

C. Directing Anadarko Defendants to restore to Pennsylvania

Landowners any moneys which may have been acquired by means of any violation of the UTPCPL pursuant to Section 201-4.1 of the UTPCPL;

D. Directing Anadarko Defendants pursuant to Section 201-8(b) of the UTPCPL to pay civil penalties in the amount of One Thousand Dollars (\$1,000) for each and every violation of the UTPCPL, increasing to Three Thousand Dollars (\$3,000.00) for each violation involving a victim age sixty (60) or older, and such other victims as may be discovered between the date of the filing of this complaint and trial of this matter;

E. Directing Anadarko Defendants to disgorge and forfeit all profits they have derived as a result of their unfair and deceptive acts and practices as set forth in this complaint pursuant to Section 201-4.1 of the UTPCPL;

F. Directing Anadarko Defendants to pay the Commonwealth all costs for the investigation and prosecution of this action pursuant to Section 201-4.1 of the UTPCPL;

G. Directing Anadarko Defendants to forfeit their right or franchise to engage in any business involving exploration, drilling, extraction, gathering, compression, transportation and sale of natural gas from any Natural Gas Play and involving the advertisement and solicitation of oil and gas leases for value in the form of royalties from the sale of oil, Dry Gas and Natural Gas Liquids extracted

from any Natural Gas Play within the Commonwealth of Pennsylvania until such time as all monies have been paid for restitution, costs and civil penalties; and

H. Providing any other such relief as the Court may deem necessary and appropriate.

Respectfully submitted,

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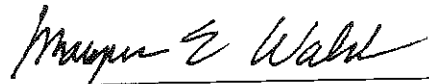
COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF DAUPHIN)

SS

AFFIDAVIT OF VERIFICATION

I, Maryann E. Walsh, depose and state that I am a Senior Civil Investigator for the Office of Attorney General, Antitrust Section, and that I am authorized to make this affidavit and that the factual allegations contained within the Second Amended Complaint are true and correct to the best of my knowledge, information and belief.

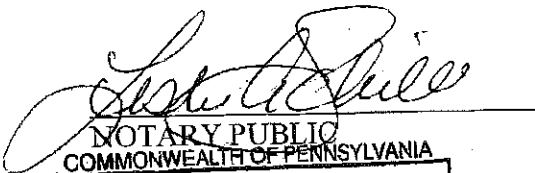


Maryann E. Walsh
Senior Civil Investigator

Sworn to and subscribed before

me this 2 day

of May, 2016.


NOTARY PUBLIC
COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
LESLIE A. SCHILD, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires November 18, 2018

IN THE COURT OF COMMON PLEAS
OF BRADFORD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

Plaintiff,

v.

CHESAPEAKE ENERGY CORP.;
CHESAPEAKE APPALACHIA, LLC;
CHESAPEAKE OPERATING, LLC;
CHESAPEAKE ENERGY MARKETING,
LLC; ANADARKO PETROLEUM
CORPORATION and ANADARKO E&P
ONSHORE, LLC,

Defendants.

CIVIL COMPLAINT

Case No: 2015IR0069

CERTIFICATE OF SERVICE

I hereby certify that on this date, May 3, 2016, a true and correct copy of the Commonwealth's Second Amended Complaint was served on the parties listed below by electronic mail and UPS, Return Receipt Requested, satisfying the requirements of Pa. R.C.P. 403, 404, 424 and 440.

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joseph S. Betsko", written over a horizontal line.

Joseph S. Betsko
Senior Deputy Attorney General