

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

**EVA MARIE ADKINS, ON BEHALF
OF HERSELF AND ALL OTHERS
SIMILARLY SITUATED,**)

Plaintiff,)

v.)

**EQT PRODUCTION COMPANY,
ET AL.,**)

Defendants.)

Case No. 1:11CV00031

OPINION AND ORDER

By: James P. Jones
United States District Judge

Brian Herrington, Don Barrett, David M. McMullan, Jr., Katherine B. Riley, Barrett Law Group P.A., Lexington, Mississippi, for Plaintiff; Eric D. Whitesell, Gillespie, Hart, Altizer & Whitesell, P.C., Tazewell, Virginia, and Blair M. Gardner, Jackson Kelly PLLC, Charleston, West Virginia, for Defendants ACIN, LLC, Buckhorn Coal Co., LLLP, and Harrison-Wyatt, LLC.

This case is one of several proposed class actions before this court related to the production and ownership of coalbed methane gas (“CBM”). The putative class members are gas owners who have leased their interests to defendant EQT Production Company (“EQT”), but who EQT has identified as having CBM ownership claims that conflict with those of various defendant coal owners (the “Coal Owner Defendants”), including ACIN, LLC (“ACIN”), Buckhorn Coal Co., LLLP (“Buckhorn”) and Harrison-Wyatt, LLC (“Harrison-Wyatt”). ACIN, Buckhorn, and Harrison-Wyatt have filed two separate motions to dismiss. The

first seeks dismissal pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(7). The second seeks dismissal for misjoinder of parties, pursuant to Federal Rule of Civil Procedure 21. For the reasons below, I will deny the Rule 12 motion to dismiss. I will grant the motion to dismiss for misjoinder as to Buckhorn and Harrison-Wyatt and will deny the motion as to ACIN.

I

Eva Mae Adkins, the plaintiff, is the owner of real property in Dickenson Country, Virginia. Adkins claims ownership of the CBM located on this property, which she leased to defendant EQT by separate written agreements between 1981 and 2005 (the “Lease Agreements”). In the context of pooling Adkins’ interests with other interests into drilling units, EQT identified Adkins’ CBM ownership claim as conflicting with the ownership claims of certain Coal Owner Defendants. Because of this conflict in CBM ownership, EQT either escrowed Adkins’ royalty payments pursuant to the Virginia Gas and Oil Act, Va. Code Ann. §§ 45.1-361.1 through 44 (2002 & Supp. 2011), or suspended them pursuant to the terms of the Lease Agreements. Adkins filed her Complaint against EQT and various named and unnamed Coal Owner Defendants seeking, among other things, declaratory relief determining that she and the class members own the CBM rights and that the Coal Owner Defendants do not. The putative class members are those who have

entered into lease agreements with EQT and are entitled to receive royalty payments and who have been identified by EQT as having claims to CBM ownership that conflict with the claims of the Coal Owner Defendants in the same tracts. Adkins' Complaint identified various coal interest owners, including ACIN, Buckhorn and Harrison-Wyatt, having claims to CBM ownership that EQT identified as conflicting with Adkins' claims and the claims of class members.

ACIN, Buckhorn and Harrison-Wyatt have moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim and under Rule 12(b)(7) for failure to join necessary parties as required by Rule 19. The arguments raised in this motion are addressed in the court's Opinion and Order resolving a motion to dismiss filed by EQT, issued contemporaneously with this Opinion and Order. For the reasons stated there, the present Rule 12 motion to dismiss will be denied.

ACIN, Buckhorn and Harrison-Wyatt have also moved to dismiss for misjoinder of parties under Federal Rule of Civil Procedure 21. Though they moved together, the factual bases for the motion are slightly, but importantly, distinct as between Buckhorn and Harrison-Wyatt on the one hand, and ACIN on the other. Buckhorn and Harrison-Wyatt assert that they have reviewed their business records and concluded that they have not entered in to any lease with EQT to develop CBM in any coal that they own. They state that "[t]hey have not

been identified as a conflicting claimant by EQT on the property owned by the Plaintiff individually, nor can they be on any lands that are the subject of this action.”¹ (Mem. of Law in Supp. of Defs.’ Mot. for Dismissal for Misjoinder (“Misjoinder Mot.”) 5; see also Hart Aff. ¶ 4 and Willis Aff. ¶ 5.) The plaintiff does not object to the dismissal of Buckhorn and Harrison-Wyatt as parties.

ACIN concedes that it has been identified by EQT as a conflicting claimant with Adkins by virtue of its ownership of the coal in certain of the tracts at issue. However, it states that “further review of the deed by which ACIN acquired its coal revealed that it did not in fact own the CBM in the coal.” (Misjoinder Mot. 7; see also Wall Aff. ¶ 5.) The plaintiff objects to ACIN’s motion, arguing that, despite its statement that it does not own the CBM, ACIN’s status as a conflicting claimant means that it is a proper defendant in this action. The plaintiff argues that ACIN’s disclaimer of ownership is an admission of the ultimate issue of legal ownership before the court in this case and is better determined on summary judgment.

¹ Buckhorn and Harrison-Wyatt note that they are lessors to another CBM producer and therefore may properly be joined as coal owner defendants in another CBM case pending before this court, *Addison v. CNX Gas Co., et al.*, No. 1:10CV00065. In their reply, they ask the court to order them joined in that action. However, it is more appropriate for Buckhorn and Harrison-Wyatt to make a motion in that action for joinder so that the other parties can have the opportunity to respond.

II

Federal Rule of Civil Procedure 21 gives the court the discretion, on just terms, to dismiss a party to an action where they have not been properly joined. In determining whether a misjoinder has occurred, courts refer to the preconditions for permissive joinder of parties laid out in Federal Rule of Civil Procedure 20(a). *See Bear Creek Techs., Inc. v. RCN Commc'ns*, No. 2:11cv103, 2011 WL 3626787, at *1 (E.D. Va. Aug. 17, 2011). Rule 20(a)(2) provides that defendants may be joined in an action if:

- (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
- (B) any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a)(2).

It is clear, and the plaintiff agrees, that the claims against Buckhorn and Harrison-Wyatt should be dismissed. The crux of the plaintiff's claim is that EQT's identification of the Coal Owner Defendants as conflicting claimants worked an injustice against her and the putative class members. As Buckhorn and Harrison-Wyatt have not entered into any leases with EQT and have not been identified as conflicting claimants, the plaintiff has no right to relief from them and

they do not share any common questions of law or fact with EQT or the other coal owner defendants.²

However, the same is not true for ACIN. ACIN has never contested the fact that it has been named a conflicting claimant by EQT. The argument that its title records did not grant it any interest in the CBM is essentially that EQT erroneously identified it as a conflicting claimant. But the fact remains that EQT did so identify it and ACIN's status as a conflicting claimant means that it is still a proper defendant in this case. Until ACIN either reaches an agreement determining ownership with the other claimants or there is a judicial determination of ownership, ACIN will remain a conflicting claimant.

III

For the reasons stated it is **ORDERED** as follows:

1. Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(b)(7) (ECF No. 41) is DENIED;

² The plaintiff requests that dismissal of Buckhorn and Harrison-Wyatt be without prejudice, arguing that the parties could later discover that Buckhorn and/or Harrison-Wyatt do have conflicting claims over CBM ownership with the plaintiff or other Class Members. As noted, neither Buckhorn nor Harrison-Wyatt has entered into any leases and they have not been identified as conflicting claimants by EQT. However, it is possible that they could enter into lease agreements with EQT in the future and their status as coal owners could lead EQT to identify them as conflicting claimants. Therefore dismissal will be without prejudice.

2. Defendants' Motion for Dismissal for Misjoinder (ECF No. 86) is GRANTED as to Defendants Buckhorn Coal Co., LLLP and Harrison-Wyatt, LLC, and those defendants are DISMISSED without prejudice; and
3. Defendants' Motion for Dismissal for Misjoinder (ECF No. 86) is DENIED as to Defendant ACIN, LLC.

ENTER: December 13, 2011

/s/ James P. Jones
United States District Judge