

**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

*David S. Stellings, Steven E. Fineman, Daniel E. Seltz and Jennifer Gross, Lief Cabraser Heimann & Bernstein, LLP, New York, New York, for Plaintiff; Wade W. Massie and Mark E. Frye, Penn, Stuart & Eskridge, Abingdon, Virginia, for Defendant EQT Production Company.*

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. Because EQT has identified this conflict, it has either escrowed or suspended royalty payments. The plaintiff claims that EQT’s identification of coal interest owners as conflicting claimants was improper and that EQT failed to properly

calculate and pay her CBM royalties. EQT has moved to dismiss the Complaint, which motion I will grant in part and deny in part for the reasons set forth below.

## 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”). The Lease Agreements all permit EQT to pool the leased interest with other property:

Lessee is hereby given the right at its option, at any time from the date hereof while this agreement shall be in effect and from time to time within such period, to pool all or any part or parts of the leased premises or rights therein with any other land in the vicinity thereof, or with any leasehold, operating or other rights or interests in such other land to create units of such size and surface acreage as Lessee may desire....

(Compl. Exs. A-C; E.) The Lease Agreements also permit EQT to suspend royalty payments in the event of disputed claims of ownership:

[A]nd in case a dispute arises at any time as to the amount of payments or the proper payee thereof, Lessee may withhold the same, without liability or interest on the money withheld, until the right thereto is determined either by written agreement between the disputing parties or by final order of a court of competent and final jurisdiction, in a suit to be filed and prosecuted to judgment by and between the disputing parties, or, in an action of interpleader, instituted by Lessee or its assigns

and until such agreement or certified copy thereof, or certified copy of such judgment be filed with Lessee, its successors or assigns.

(*Id.*) The Lease Agreements state that royalties are to be paid “at the rate of one-eighth (1/8) of the proceeds received by the Lessee at the well,” and that the lessee will have the “exclusive right of operating for, producing and marketing oil and gas.” (*Id.*)

Adkins’ CBM interests were either force-pooled by the Virginia Gas and Oil Board (the “Board”) or voluntarily pooled by EQT into drilling units.<sup>1</sup> EQT identified Adkins’ claim to ownership of the CBM as being in conflict with the claims of certain of the owners of the coal located on the property. EQT therefore escrowed her CBM royalty payments for those interests subjected to force-pooling, as required by the Gas Act. In accord with the language in the Lease Agreements, EQT also suspended her CBM royalty payments for those interests which were part of a voluntary pool.

Adkins filed a class action complaint against EQT and various named and unnamed coal interest owners (the “Coal Owner Defendants”) seeking declaratory

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<sup>1</sup> Forced-pooling occurs when some gas owners in a particular drilling unit have not voluntarily leased their interests to the production company. The Virginia Gas and Oil Act (“Gas Act”), Va. Code Ann. §§ 45.1-361.1 through .44 (2002 & Supp. 2011), provides that in such a case, the production company may file a pooling application with the Board which then will issue an order creating a pool in the drilling unit. § 45.1-361.21. Voluntary pooling occurs when the production company has leases for all of the property in a particular drilling unit. The production company then pools the interests pursuant to the terms of the leases.

relief and alleging claims of breach of contract, conversion, negligence, breach of fiduciary duties, unjust enrichment and seeking punitive damages. The putative class members are those who have entered into lease agreements with EQT and are entitled to receive royalty payments but 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. Because EQT has identified conflicts with their claims, their royalties are either going into escrow (if they are force-pooled) or held in suspense by EQT (if voluntarily pooled). (Compl. ¶ 62.)

The gravamen of the Complaint is that EQT acted wrongfully in identifying this conflict. Adkins argues that since the Virginia Supreme Court's decision in *Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d 234 (Va. 2004), ownership of CBM has been established as lying with the gas interest owners. EQT's continued practice of identifying the coal interest owners as having claims of ownership that conflict with the gas interest owners' claims and, based on that conflict, escrowing or suspending the CBM royalty payments is alleged to be a tactic to avoid paying royalties and is improper. The Complaint also alleges various other wrongdoings by EQT in the manner in which the company has calculated and maintained the royalty payments.

EQT has moved to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and for failure to join necessary parties under Federal

Rule of Civil Procedure 12(b)(7). EQT also raises a statute of limitations defense and asserts that Adkins failed to exhaust statutory remedies. Many of the issues raised in this case have already been analyzed and addressed by United States Magistrate Judge Pamela Meade Sargent on motions to dismiss in other CBM cases pending before this court. Her decisions are as follows: *Healy v. Chesapeake Appalachia, LLC*, No. 1:10cv00023, 2011 WL 24261 (W.D. Va. Jan. 5, 2011); *Legard v. EQT Prod. Co.*, No. 1:10cv00041, 2011 WL 86598 (W.D. Va. Jan. 11, 2011); *Adair v. EQT Prod. Co.*, No. 1:10cv000037, 2011 WL 4527433 (W.D. Va. Jan. 21, 2011); *Hale v. CNX Gas Co.*, No. 1:10cv00059, 2011 WL 4527447 (W.D. Va. Jan 21, 2011); and *Addison v. CNX Gas Co.*, No. 1:10cv00065, 2011 WL 4553090 (W.D. Va. May 13, 2011). I previously fully adopted and accepted the magistrate judge's reports and recommendations in those cases and will reference the applicable analysis as is appropriate here.

## II

To survive a motion to dismiss for failure to state a claim under Federal Rule Civil Procedure 12(b)(6), a complaint must present allegations of fact which present plausible grounds for relief, i.e., allegations which “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although the court must generally accept as true all allegations of fact,

this principle does not apply to legal conclusions stated as facts or to “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009) (citing *Twombly*, 550 U.S. at 555).

Adkins attached the relevant Lease Agreements as exhibits to her Complaint and EQT attached the relevant Board pooling notices and orders to its Motion to Dismiss. Although the court does not generally consider matters outside the pleadings upon a motion to dismiss, the court may consider documents that are attached to or referenced in the complaint. *See Moore v. Flagstar Bank*, 6 F. Supp. 2d 496, 500 (E.D. Va. 1997).

Adkins seeks a declaratory judgment pursuant to 28 U.S.C.A. § 2201 (West 2006 & Supp. 2011). She also asserts various state law claims for relief. This court has diversity subject-matter jurisdiction over the action in that the amount in controversy exceeds \$5,000,000 and one or more members of the putative class are diverse in citizenship from one or more defendants. *See* 28 U.S.C.A. § 1332(d)(2) (West 2006 & Supp. 2011). It has supplemental jurisdiction over the state law claims under 28 U.S.C.A. § 1367 (West 2006).

#### A

Adkins seeks a declaratory judgment as follows:

- a. Plaintiff and the Class Members -- not the Coal Owner Defendants -- are the owners of CBM that is

attributable/allocated to those CBM Unit tracts as to which EQT has asserted there are conflicting claims of CBM ownership between Plaintiff and the Class Members (as gas interest owners/lessors) on the one hand, and the Coal Owner Defendants (as coal interest owners) on the other hand;

- b. All royalty payments in the Board's escrow account that are attributable to Plaintiff's and the Class Members' CBM interests must be released from the Board's escrow account and paid over to Plaintiff and the Class Members;
- c. All royalties attributable to Plaintiff's and the Class Members' CBM interests that were not deposited by EQT into the Board's escrow account but have been "suspended" or otherwise held by EQT and not paid to Plaintiff and the Class Members due to alleged conflicting claims of CBM ownership, must be paid by EQT to Plaintiff and the Class Members; and
- d. EQT must fully account for the methodology it used to calculate Plaintiff's and the Class Members' CBM royalties (whether in the Board's escrow account or "in suspense"), must prove that it sold the CBM at the highest price obtainable and otherwise calculated the royalties properly, and must pay over to Plaintiff and the Class Members any royalty underpayments.

(Compl. ¶ 77.) Neither party has attached any deeds or other instruments evidencing the chain of title identifying the precise interests owned by either Adkins or the coal owner defendants. However, Adkins has alleged that she owns the gas interests, including the CBM, and that the Coal Owner Defendants own the coal interests. The Lease Agreements state that Adkins (or her deceased husband) is a gas interest owner. (Compl. Exs. A-C; E.) Although there is no way to

determine at this point whether the *Ratliff* case determines the ownership of the CBM rights here, Adkins has made the allegation that she owns the gas rights and other entities own the coal rights. This is sufficient to seek a declaratory judgment of the CBM ownership. *See Addison*, 2011 WL 4553090, at \*6.

EQT argues that the claim for declaratory judgment of CBM ownership should be dismissed for failure to join the necessary coal interest owners as parties. The parties agree that the identities of the “John Doe” Coal Owner Defendants are generally available or would be available to all of the parties. The argument is over whether Adkins should be required to determine and name each of the individual coal owners and then amend her Complaint rather than adding them as defendants at a later point. As before, I will adopt “a pragmatic approach” and will not require dismissal for failure to name each of the individual Coal Owner Defendants at this stage of the litigation. *Id.* at \*7.

EQT also argues that Adkins’ claim for an accounting should be dismissed for failure to exhaust administrative remedies available through the Gas Act. This argument applies only to those interests described in the Lease Agreements subjected to forced-pooling and not to those which were voluntarily pooled. Virginia law allows a party to seek an accounting to determine what, if any,

amounts are owed pursuant to a mineral lease.<sup>2</sup> *Id.* at \*8 (citing *Pepper v. Dixie Splint Coal Co.*, 181 S.E. 406, 412 (Va. 1935)). Nothing in the Gas Act preempts this common law right. The Gas Act does not require exhaustion of administrative remedies and does not provide the Board with the power to entertain a claim for an accounting. *Addison*, 2011 WL 4553090, at \*8. Therefore, the claim for accounting based on the force-pooled Lease Agreements will be allowed to go forward.

## B

Adkins' claim for breach of contract has several prongs.<sup>3</sup> First, she argues that, based on an implied covenant of good faith and fair dealing, EQT had a duty to act reasonably and in good faith in ascertaining whether there was a factual basis to the conflicting claims before suspending royalty payments. EQT's continuing assertion that coal owners have conflicting claims with gas owners after the *Ratliff* decision and escrowing or suspending royalties is alleged to be a breach of this implied covenant. EQT argues that it cannot have breached the Lease Agreements by either escrowing or suspending royalty payments because these agreements

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<sup>2</sup> Based on this common law right, Adkins has stated a claim for accounting of royalties due under those Lease Agreements subjected to voluntary pooling.

<sup>3</sup> Federal courts exercising diversity jurisdiction apply the choice of law rules of the forum state. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496-97 (1941). Virginia law will govern the state law claims in this case. *Addison*, 2011 WL 4553090, at \* 4.

specifically provide that royalties may be withheld when ownership is in dispute and *Ratliff* did not definitively determine CBM ownership in Virginia.

As to Lease Agreements subjected to forced-pooling by order of the Board, the Motion to Dismiss will be granted. Adkins maintains that she is not seeking to attack the Board's orders in this court. However, her claim does challenge the Board's determination, as set forth in the pooling orders, that there are conflicting claims to the CBM ownership. *Addison*, 2011 WL 4553090, at \*10. The Gas Act provides that the Board's orders can be appealed to state circuit court, Va. Code Ann. § 45.1-361.9, and this court thus lacks the jurisdiction to hear this claim and it is dismissed with prejudice. *Id.*

EQT argues that the Lease Agreements specifically provide that it may suspend royalty payments when it is faced with a disputed claim of ownership and that, despite *Ratliff*, the coal owners do have conflicting claims to the CBM ownership. Thus, EQT argues, the claim that it breached the Lease Agreements subject to voluntary pooling is without merit. The Lease Agreements unquestionably give EQT the discretion to suspend royalty payments when faced with disputed ownership claims. This clause does not, however, absolve EQT from its responsibility to exercise that discretion in good faith. Rather, "it is a basic principle of contract law in Virginia, as elsewhere, that although the duty of good faith does not prevent a party from exercising its explicit contractual *rights*, a

party may not exercise contractual *discretion* in bad faith, even when such discretion is vested solely in that party.” *Va. Vermiculite, Ltd. v. W.R. Grace & Co.-Conn.*, 156 F.3d 535, 541-42 (4th Cir. 1998) (italics in original). The Lease Agreements provide EQT with the power to suspend royalty payments based on its own determination of a dispute over ownership. EQT had a duty not to exercise that discretion in bad faith. Adkins’ claim that EQT used its discretion to avoid paying royalties to the alleged owners of the CBM is sufficient to allege bad faith. Although Adkins’ claim that no coal interest owner has any legitimate claim to CBM ownership post-*Ratliff* may be overbroad, the determination of that claim is intertwined with the claim for declaratory judgment and will be allowed to move forward.

Adkins also bases the breach of contract claim on the allegation that EQT has improperly calculated the royalties owed. Specifically, Adkins alleges that EQT deducted improper post-wellhead costs, did not sell the gas in arm’s length transactions, and did not calculate the royalties based on the total volume of CBM produced. Because Virginia courts would follow the “first marketable product” rule, which states that lessees are responsible for incurring any costs necessary to make the gas produced from a well marketable, Adkins’ breach of contract claim based on the deduction of post-wellhead costs will be allowed to proceed. *See Legard*, 2011 WL 86598 at \*10-11.

The Lease Agreements specifically provide that the lessee has the sole right to market the gas produced from the leasehold. (Compl. Exs. A-C.) Virginia courts would also impose an implied duty to market here. *Healy*, 2011 WL 24261, at \*15-16; *Legard*, 2011 WL 86598 at \*10. Adkins' allegation that EQT sold gas on a non-arm's length basis is sufficient to state a claim for breach of the duty to market. *See Addison*, 2011 WL 4553090, at \*11. Adkins' other allegations related to improper calculation of royalties also state a claim of breach of contract. *Id.*

EQT argues that the claims for underpayment of royalties should be dismissed in this case because they are duplicative of the same claims brought in *Adair* and *Legard*. The class in *Adair* "unleased" (deemed leased) gas estate or gas interest owners who EQT has identified as having conflicting claims with coal interest owners. The class in *Legard* is those who have entered into gas leases with EQT but do not have conflicting claims and therefore are getting paid their royalties. The class in this case is voluntary lessors who have been either force-pooled or voluntarily pooled, have been identified as having conflicting claims and whose royalties have been escrowed or suspended.<sup>4</sup>

Though the allegations related to EQT's actions on payment of royalties are essentially the same in each of the cases, the classes are not the same. The case

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<sup>4</sup> It should be noted that it does appear that Adkins may also be a class member in *Adair*. In some of the forced pooling orders attached to EQT's brief in support of its Motion to Dismiss she is listed as an unleased gas owner. (Mem. of EQT Prod. Co., Exs. 4, 7, and 8.)

law cited by the defendant points to dismissal where the duplicitous claims are made by the same plaintiff or putative class member. *See In re Cypress Semiconductor Sec. Litig.*, 864 F. Supp. 957, 959 (N.D. Cal. 1994) (noting that filing of class action tolls running of the statute of limitations for a proposed class member's individual claims); *Curtis v. Citibank, N.A.*, 226 F.3d 133, 136 (2d Cir. 2000) (same plaintiffs, same defendant, same complaint with additional claims added); *Oliney v. Gardner*, 771 F.2d 856, 857 (5th Cir. 1985) (same plaintiff, same defendant, same complaint); *Zerilli v. Evening News Ass'n*, 628 F.2d 217, 222 (D.C. Cir. 1980) (same parties, same claim). Because the plaintiffs are different here, and the proposed classes are different and have not yet been certified, the claims for underpayment of royalties should not be dismissed as duplicitous. The court can address any overlapping of legal or factual issues through its discretion to manage related cases. *See generally* Manual for Complex Litigation (Fourth) § 10.1 (2004).

## C

Adkins claims that while EQT had the lawful authority to produce CBM, once it was produced, EQT was obligated to properly sell the CBM and remit the lease royalties to Adkins and the other class members. Instead, Adkins alleges, EQT took wrongful possession of and retained the royalties for its own account, use and benefit. As a conversion claim may be pled in conjunction with a breach

of contract claim and Adkins' allegations sufficiently claim that EQT has committed a wrongful exercise over her goods in denial of her rights, this claim will be allowed to proceed. *See Adair*, 2011 WL 4527433, at \*24; *Addison*, 2011 WL 4553090, at \*14; and *Legard*, 2011 WL 86598 at \*14.

#### D

Adkins claims that when EQT undertook to be a gas producer/operator, it undertook to properly identify the people/entities owning the various interests and to do so with reasonable care. When, after *Ratliff*, EQT continued to identify coal owners as claimants to CBM and escrow or suspend royalty payments, it breached this duty of reasonable care.

As to those Lease Agreements subject to a forced-pooling order, this claim is an indirect attack on the Board's conclusions, stated in the pooling orders, that EQT exercised due diligence in identifying the CBM claimants and that there were conflicting claims as to the CBM. (*See e.g.*, Compl. Ex. 4.) Because this court does not have jurisdiction over appeals of the Board's orders, this negligence claim must be dismissed as to the force-pooled Lease Agreements. *See Addison*, 2011 WL 4553090, at \*16-17.

As to the claims of negligence based on voluntary undertaking arising out of the voluntary pools, the question is whether Adkins has stated a tort claim distinct from the breach of contract claim. *Id.* at \*14-15. In order to recover in tort, "the

duty tortiously or negligently breached must be a common law duty, not one existing between the parties solely by virtue of the contract.” *Augusta Mut. Ins. Co. v. Mason*, 645 S.E.2d 290, 293 (Va. 2007) (internal quotation marks and citation omitted). Adkins’ claim of negligent voluntary undertaking is essentially same as her breach of contract claim based on EQT’s post-*Ratliff* identification of conflicting claims. EQT did not undertake to be the gas producer/operator in a vacuum. Rather, it did so as a party to a lease and pursuant to the terms of that lease. Though the Gas Act recognizes voluntary pooling, it does not regulate that relationship and it does not impose any particular duties as a part of the pooling relationship and does not require an operator/producer to suspend royalty payments where there are conflicting claims of ownership. *See* Va. Code Ann. § 45.1-361.18. Thus, Adkins’ claims that EQT failed to perform its undertaking are based solely on the terms of the Lease Agreements. *See Richmond Metro. Auth. v. McDevitt Street Bovis, Inc.*, 507 S.E.2d 344, 347 (Va. 1998). This negligence claim will be dismissed although the factual allegations will be considered within the context of the breach of contract claim.

## E

Adkins also claims that EQT negligently failed to discharge its duty to act as a reasonably prudent operator and to market the CBM gas produced. Although Virginia courts would recognize an implied duty on the part of oil and gas lessees

to operate diligently and prudently, including a duty to market, they would not recognize a cause of action in tort separate from the breach of contract. *See Legard*, 2011 WL 86598 at \*12-13; *Addison*, 2011 WL 4553090, at \*17.

## F

Adkins claims that EQT owed her and the class a fiduciary duty based on its status as a lessee and/or operator, its control over and handling of CBM production and sales and its undertaking to act as Adkins' agent and/or joint venturer. She argues that EQT had an affirmative duty to correctly identify the interest owners in the CBM unit, calculate and pay the correct amount of monies, account for the CBM produced and sold, and fully and accurately report to her.

Where the parties' relationship is established by written lease and the lease does not impose any fiduciary duties on the lessee, none exist under Virginia law. *See Legard*, 2011 WL 86598, at \*13-14. The Lease Agreements between Adkins and EQT do not impose any fiduciary duties on EQT. Further, though Adkins' alleges that EQT was her agent/joint venturer, the allegations are wholly conclusory. Adkins has not alleged any facts, particularly facts showing Adkins' had control over EQT, indicating an agency/joint venture relationship. *Id.* Thus, as to those Lease Agreements included in a voluntary pool, this claim will be dismissed.

As for those Lease Agreements subject to forced-pooling, the parties' relationship is not entirely defined by the Lease Agreements because of the overarching scheme of the Gas Act and the involvement of the Board. *Addison*, 2011 WL 4553090, at \*18. Because under the Gas Act, the unit operator acts much like a trustee, a fiduciary relationship does exist in this situation. *Id.* The claim for breach of fiduciary duties will be allowed to proceed as to those Lease Agreements subject to forced-pooling.

## G

Adkins claims that EQT has been unjustly enrichment by its conduct. However, there is an express and enforceable contract governing the relationship between Adkins and EQT and Adkins does not challenge the validity of that contract itself. Because Adkins does not question the validity of the leases, she cannot bring a claim based on quasi-contract or implied contract. *Id.* Adkins' claim for unjust enrichment will be dismissed.

## H

EQT argues that Adkins' claim for punitive damages should be dismissed. However, Adkins has sufficiently pled the independent tort of conversion. Her request for punitive damages will be allowed to move forward. *Id.* at \*19.

## I

EQT also argues that Adkins' claims are barred by the statute of limitations. The bar of the applicable statute of limitations is an affirmative defense and EQT bears the burden of proving that Adkins' claims are time-barred. *See Id.* at \*12. Adkins' claims each hinge on her ability to establish her legally enforceable ownership rights in the CBM gas. *Id.* at 13. Under both the Gas Act and the Lease Agreements, Adkins does not have a right to the CBM royalties until she can legally establish her ownership interest in the CBM. EQT itself maintains that *Ratliff* has not established Adkins' ownership of the CBM and thus fails to prove that Adkins' claims based on that ownership are time-barred. *See Hale*, 2011 WL 4527447, at \*29.

The claims for breach of contract based on underpayment of royalties are slightly different. As in *Healy*, Adkins has alleged discrete breaches of contract for which she can recover up to five years before her complaint was filed. *Healy*, 2011 WL 24261, at \*10. Further, she has alleged sufficient facts to toll the statute of limitations pursuant to the equitable estoppel or fraudulent concealment doctrine. *Id.* at \*11.

## III

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

1. Defendant EQT's Motion to Dismiss (ECF No. 56) is GRANTED in part and DENIED in part;
2. Defendant's Motion to Dismiss Count I "Declaratory Judgment" is DENIED;
3. Defendant's Motion to Dismiss Count II "Breach of Contract" is:
  - A. GRANTED to the extent that Adkins' claims are based on the assertion that there are no conflicting claims as to the Lease Agreements subjected to forced-pooling;
  - B. DENIED to the extent that Adkins' claims are based on Lease Agreements in the voluntary pools; and
  - C. DENIED to the extent that Adkins' claims are based on improper calculation and payment of royalties, whether from forced-pooled or voluntarily pooled Lease Agreements;
4. Defendant's Motion to Dismiss Count III "Conversion" is DENIED;
5. Defendant's Motion to Dismiss Count IV "Negligence: Voluntary Undertaking" is GRANTED;
6. Defendant's Motion to Dismiss Count V "Negligence: Duties as a Unit Operator" is GRANTED;

7. Defendant's Motion to Dismiss Count VI "Breach of Fiduciary Duties" is DENIED as to those Lease Agreements subjected to forced-pooling and GRANTED as to those Lease Agreements in voluntary pools;
8. Defendant's Motion to Dismiss Count VII "Unjust Enrichment" is GRANTED;
9. Defendant's Motion to Dismiss Adkins' demand for punitive damages is DENIED;
10. Defendant's Motion to Dismiss based upon the statute of limitations is DENIED.

ENTER: December 13, 2011

/s/ James P. Jones  
United States District Judge