

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

**LADENE RAMSEY BEER, and)
KATHERINE K. BOECK, (collectively)
“Plaintiffs”) on behalf of themselves and)
others similarly situated,)**

Plaintiffs,)

v.)

Case No. CIV-07-798-L

**XTO ENERGY, INC. f/k/a CROSS)
TIMBERS OIL COMPANY, a Delaware)
Corporation (“XTO”),)**

Defendant.)

**MOTION FOR RELIEF FROM ORDER OF DECERTIFICATION AND
DISMISSAL AND TO STAY DISTRIBUTION OF NOTICE TO CLASS**

Intervenors Bill Fankhouser and Tim Goddard (“Intervenors”) respectfully request that the Court grant Intervenors’ Motion for Relief from the Court’s Order of Decertification and Dismissal and to Stay Distribution of Notice to Class pursuant to Rule 60 of the Federal Rules of Civil Procedure and LCvR 62.1(b). In support thereof, Intervenors set forth the following:

1. On October 4, 2004, Plaintiffs Ladene Ramsey Beer and Katherine K Boeck (“Plaintiffs”) filed this class-action lawsuit in the District Court of Texas County, Oklahoma. On July 19, 2007, Defendant XTO Energy, Inc., (“Defendant”) removed the action to this Court. After approximately three and one-half years of conducted discovery and expended

resources by both parties, the Court certified this case as a class action with two subclasses comprising the class, on March 20, 2009. *Beer v. XTO Energy, Inc.*, Case No. CIV-07-798-L, order at 17 (W.D. Okla. Mar. 20, 2009) (Doc. No. 75).

2. On April 13, 2010, the Court ordered the decertification of class and dismissal of the class claims without prejudice, because the Court found the Plaintiffs' and Plaintiffs' counsel's representation of the absent class members to be inadequate. Moreover, in the Court's Order, the Court directed for notice to be sent to all class members within twenty (20) days, or by May 3, 2010, informing the class members of the Court's decertification of the class and dismissal of the class claims.

2. Intervenors, as former class members, filed their Motion to Intervene, on April 26, 2010. In their motion, Intervenors requested that the Court allow Intervenors to intervene, as representatives on behalf of a putative class comprised of the former class members, with new counsel and a proposed amended complaint.

3. Intervenors' present Motion respectfully requests that the Court relieve Intervenors and the putative class of former class members from the Court's Order decertifying the former class and dismissing all former class claims. In addition, Intervenors' Motion seeks a stay of that portion of the Court's Order directing notice to all former class members regarding the Court's decertification of the class and dismissal of the class claims. Plaintiffs and Plaintiffs' counsel do not object to this motion; however, Defendant's counsel does object to this motion.

ARGUMENT

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, “the court may relieve a party or its legal representative from a final judgment, order, or proceeding for” five (5) explicit reasons or “any other reasons that justifies relief.” Fed. R. Civ. P. 60(b)(1)-(6). A motion pursuant to Rule 60(b)(6) must be made within a “reasonable time” after the entry of the order. Fed. R. Civ. P. 60(c)(1); *see United States v. Cleaver*, 319 Fed. Appx. 728, 731 (10th Cir. 2009) (Rule 60(b) motion filed two years after judgment was not filed within a “reasonable time”).

Whether to grant a Rule 60(b) motion is within the sound discretion of the court. *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006). Although the Tenth Circuit has limited the application of Rule 60(b)(6) to more extraordinary circumstances, “Rule 60(b)(6) has been referred to as a grand reservoir of equitable power to do justice in a particular case.” *McGraw*, 450 F.3d at 505 (quoting *Pelican Prod. Co. v. Marino*, 893 F.2d 1143, 1147 (10th Cir. 1990)). Accordingly, Rule 60(b)(6) should be liberally construed to avoid injustice. *McGraw*, 450 F.3d at 505; *cf. In re Four Seasons Securities Laws Litigation*, 63 F.R.D. 422 (W.D. Okla. 1974) (court rejected class member’s Rule 60(b) motion, where such a motion would undermine finality of judgments and settlements in class actions under the circumstances.)

Here, Intervenor’s Rule 60(b)(6) Motion is warranted by the extraordinary circumstances of this case. At the time the Court entered its Order for decertification and dismissal, the Court had previously certified Plaintiffs’ class and granted summary judgment

with respect to Plaintiffs individual claims, and Plaintiffs and Defendant were preparing for trial. Based on these circumstances, the Court should grant Intervenors' Rule 60(b)(6) Motion for the following reasons.

First, the underlying reasons for the Court's Order of decertification and dismissal can be resolved by allowing Intervenors and Intervenors' counsel to represent the putative class of former class members. Intervenor, Bill Fankhouser, owns mineral interests within the State of Oklahoma, and Intervenor, Tim Goddard, owns mineral interests within the State of Kansas. Thus, Intervenors would adequately represent the interests of both former subclasses under the previously certified class definition. Furthermore, Intervenors' counsel has substantial experience in representing royalty owners in class action lawsuits with the same or substantially similar issues presented in this case.¹

Second, the interests of Intervenors and the members of the former class would best be served by the Court's grant of Intervenors' Motion. Plaintiffs and Defendant have litigated this matter for approximately four and one-half (4 1/2) years. If the Court grants Intervenors' Motion, then the Court: (1) could avoid the inevitable waste of Plaintiffs' and Defendant's time, resources and expenses expended and incurred over the past few years; (2) could

¹ Intervenors' counsel currently represents royalty owners in the following class action lawsuits currently pending in the United States District Court for the Western District of Oklahoma: (1) *Naylor Farms, Inc. v. Anadarko OGC Co., et al.*, Case No. CIV-08-668-R; (2) *Jennifer McKnight and Scott McKnight v. Linn Operating, Inc.*, Case No. CIV-10-30-R; and (3) *Sherry Morrison v. Anadarko Petroleum Corp.*, Case No. CIV-10-135-M. Intervenors' counsel also represents royalty owners in pending state class action lawsuits and various other matters.

promote the efficient use of such time, resources and expenses by allowing Intervenors to benefit from the discovery that has already been conducted in this case.²

Third, the Court's grant of Intervenors' Motion would represent and promote the most efficient and effective use of judicial time and resources under the circumstances. Intervenors are presently ready, willing and able to file an amended complaint and seek re-certification of the class in a manner that best represents the potential claims and interests of Intervenors and all former class members from both subclasses. Accordingly, the Court's familiarity with this case will aid in expediting all matters that would need to be resolved prior to re-certification. Thus, the Court's grant of Intervenors' Motion would be the most efficient means of producing a final resolution of this case.

Third, although Defendant opposes this Motion, Defendant's interests can also be served by the Court's grant of Intervenors' Motion. Defendant would not have to expend the time, resources and expenses of reproducing essential discovery materials.

Thus, the Court should grant Intervenors' Motion for Relief from the Court's Order of decertification and dismissal. Moreover, Intervenors submit that it would be more efficient and less confusing to the potential class members to stay the notice of the decertification and dismissal pending the outcome of Intervenors' Motion pursuant to LCvR 62.1(b).

² Intervenors note that documents and other discovery materials in this case are presently subject to a confidentiality and protective order. If Intervenors are not granted relief from Court's Order, Intervenors will have no choice but to start from scratch regarding all phases of discovery.

Relief Requested: Intervenors, Bill Fankhouser and Tim Goddard, respectfully request that the Court grant Intervenors Motion for Relief from the Court's Order of decertification and dismissal entered on April 13, 2010, and Intervenors seek the Court's stay of its Order directing notice of decertification and dismissal to all former class members during the pendency of this matter, as well as, all other relief deemed just and equitable.

Respectfully submitted,

s/Gary Underwood

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CERTIFICATE OF SERVICE

I hereby certify that on this 30TH of April, 2010, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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