APPENDIX

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 21-7063

IN RE: SUNOCO, INC. (R&M), n/k/a SUNOCO (R&M), LLC; SUNOCO PARTNERS MARKETING & TERMINALS L.P.,

Petitioners.

Filed: Feb. 2, 2022

Before: MATHESON, MCHUGH, and MORTIZ, *Circuit Judges*.

ORDER

This matter comes before the court on the Petition for Writ of Mandamus ("Petition") Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively "Sunoco") filed after this court dismissed Sunoco's consolidated appeals of the underlying judgment and post-judgment order for failure to establish appellate jurisdiction. *See Cline v. Sunoco Partners Mktg. & Terminals L.P.*, Nos. 20-7064 & 20-7072, 2021 WL 5858399, at *1, *3 (10th Cir. Nov. 1, 2021). The dismissal order expressly declined to decide whether the district court had entered a final, appealable judgment. *Id.* at *3 n.7. Sunoco now seeks a writ of mandamus directing the district court to enter final judgment.

"[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances." *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). "Three conditions must be met before a writ of mandamus may issue." *Id.* at 1187. First, the petitioner must show it has "no other adequate means to attain the relief [it] desires." *Id.* (internal quotation marks omitted). Second, the petitioner must show that its "right to the writ is clear and indisputable." *Id.* (internal quotation marks omitted). Third, the "court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.* (internal quotation marks omitted).

Under this test, "we will grant a writ only when the district court has acted wholly without jurisdiction or so clearly abused its discretion as to constitute usurpation of power." *Id.* at 1186 (internal quotation marks omitted). A court "necessarily abuses its discretion" when it errs in deciding a legal issue, *id.* (internal quotation marks omitted), but "[i]t is not appropriate to issue a writ when the most that could be claimed is that the district court[] ... erred in ruling on matters within [its] jurisdiction," *id.* at 1187 (internal quotation marks omitted).

Having considered the Petition, the underlying orders, and the record, we conclude that Sunoco has not shown either that it has no other adequate means to obtain relief or that its right to the writ is clear and indisputable. We also conclude that issuance of the writ is not appropriate under the circumstances. Accordingly, we deny the Petition, including the request for oral argument.

We grant Sunoco's unopposed motion for leave to file bookmarked attachments to the Petition.

Entered for the Court

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Christopher M. Wolpert, Clerk

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 20-7064 & 20-7072

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff-Appellee,

v.

SUNOCO, INC. (R&M), et al.,

Defendants-Appellants.

Filed: Nov. 1, 2021

Before: TYMKOVICH, *Chief Judge*, MATHESON, and PHILLIPS, *Circuit Judges*.*

ORDER**

Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively "Sunoco"), appeal the district court's judgment and orders in

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of these consolidated appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

** This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

favor of a plaintiff class that sued Sunoco for failure to pay interest on late oil proceeds payments under the Oklahoma Production Revenue Standards Act, Okla. Stat. tit. 52, §570.1 *et seq*. The district court awarded the plaintiff class over $155 million in actual and punitive damages. It also issued a plan of allocation order to divide and distribute the damages. Sunoco appealed. We dismiss these consolidated appeals because Sunoco did not meet its burden to establish appellate jurisdiction.

I. Background

A. Legal Background

"[T]he appellant ... has the duty to establish the existence of this court's appellate jurisdiction." *Vette v. K-9 Unit Deputy Sanders*, 989 F.3d 1154, 1161 (10th Cir. 2021). "It is the appellant's burden, not ours, to conjure up possible theories to invoke our legal authority to hear [its] appeal." *Raley v. Hyundai Motor Co.*, 642 F.3d 1271, 1275 (10th Cir. 2011).

Further, under the Federal Rules of Appellate Procedure,

> [t]he appellant's brief must contain ... a jurisdictional statement, including ... the basis for the court of appeals' jurisdiction ... and ... an assertion that the appeal is from a final order or judgment ... or information establishing the court of appeals' jurisdiction on some other basis.

Fed. R. App. P. 28(a). "It is indisputably within our power as a court to dismiss an appeal when the appellant has failed to abide by the rules of appellate

procedure...." *MacArthur v. San Juan Cty.*, 495 F.3d 1157, 1161 (10th Cir. 2007).

B. Sunoco's Briefing

Sunoco filed four briefs arguing or implying we *lack* jurisdiction.[1]

First, in November 2020, Sunoco argued "[t]he District Court's Plan of Allocation does not result in a final, appealable judgment." Aplt. Mem. Br. at 1.

Second, in December 2020, Sunoco argued "there is yet no final judgment." Aplt. First Suppl. Mem. Br. at 3.[2]

Third, in March 2021, Sunoco filed its merits brief with the following jurisdictional statement:

> There was jurisdiction for this class action. 28 U.S.C. §1332(d). This Court ordered the parties to file memoranda on whether there is a final, appealable judgment. After those memoranda were filed, this Court ordered that the finality-of-judgment issue will be carried with the appeal.

Aplt. Br. at 15.

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[1] In a related earlier appeal (No. 20-7055) filed before the district court issued its plan of allocation order, Sunoco filed two briefs in response to this court's order to address the finality of the district court's judgment. Neither said we had jurisdiction.

[2] Sunoco also stated that language from the district court's opinion denying its post-judgment motions "creates uncertainty on the finality-of-judgment question." Aplt. First Suppl. Mem. Br. at 3.

That same day, Sunoco filed a status report, which asserted that "the appeal should continue to be abated until this Court rules on whether there is a final, appealable judgment in this case." Doc. 10792010 at 1.

Fourth, in October 2021, after reviewing the parties' filings, this court ordered the parties to address: (1) "[w]hether the Sunoco appellants have met their burden to show why the court has appellate jurisdiction?" and (2) "[i]f Sunoco has failed to meet this burden, what action should the court take?" Doc. 10865486 at 2. In response, Sunoco argued "there is appellate jurisdiction if this Court takes the actions requested ... to ensure finality of the judgment." Aplt. Second Suppl. Mem. Br. at 10.[3]

II. Discussion

Sunoco has not met its burden to establish our jurisdiction. Indeed, it has argued the opposite. Sunoco filed four briefs arguing or implying we *lack* jurisdiction because the district court's plan of allocation order does not result in a final, appealable judgment. *See* Aplt. Mem. Br. at 1; Aplt. First Suppl. Mem. Br. at 3; Aplt. Second Suppl. Mem. Br. at 10. Nor does the jurisdictional statement in Sunoco's opening merits brief invoke a basis for our appellate jurisdiction. *See* Aplt. Br. at 15.

Sunoco's latest brief, rather than argue we have appellate jurisdiction, suggests we resolve the remaining finality issue regarding unidentifiable class members by (1) determining first, before addressing finality, that unidentifiable class members lack

[3] Sunoco also said that, "[u]pon further reflection," the district court had clarified the plan of allocation order's principles for distributing unclaimed funds, and this was "adequate for a final judgment." Aplt. Second Suppl. Mem. Br. at 5-6. But, Sunoco said, this clarification does not extend to the division of damages for unidentifiable class members, which, it contends, is a finality requirement that has not been met. *See id.* at 6-9.

standing; or (2) directing the district court to modify its orders. *See* Aplt. Second Suppl. Mem. Br. at 9-10. Neither suggestion states we have appellate jurisdiction and neither has merit.

First, as to the standing of unidentifiable class members, "[o]n every ... appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quotations omitted). "Thus, the question of this Court's jurisdiction (i.e., our appellate jurisdiction) is *antecedent* to all other questions, including the question of the subject matter [jurisdiction] of the District Court." *In re Lang*, 414 F.3d 1191, 1195 (10th Cir. 2005) (quotations omitted); *see also United States v. Springer*, 875 F.3d 968, 973 (10th Cir. 2017).[4] We cannot address questions of standing if we lack appellate jurisdiction. *Second*, Sunoco attempts to shift the burden of establishing appellate jurisdiction to this court by asking us to "give directions to the District Court." Aplt. Second Suppl. Mem. Br. at 10. It cites no authority to support this approach.[5] Instead, Sunoco asserts "there is

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[4] Although "a federal court has leeway to choose among threshold grounds for denying audience to a case on the merits," *Sinochem Int'l Co., Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (quotations omitted), as *Steel Co.*, 523 U.S. at 94, *Lang*, 414 F.3d at 1195, and *Springer*, 875 F.3d at 973, explain, an appellate court must first consider appellate jurisdiction.

[5] Earlier in its brief, Sunoco quotes *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1093 (10th Cir. 2005), for the rule that "federal courts always have jurisdiction to consider their own jurisdiction." Aplt. Second Suppl. Mem. Br. at 6. But that rule

appellate jurisdiction *if* this Court takes the actions requested ... to ensure finality of the judgment." *Id.* at 10 (emphasis added). But that conditional assertion does not show we have jurisdiction. Sunoco, not us or Appellee Cline, must "conjure up possible theories to invoke our legal authority to hear [its] appeal." *Raley*, 642 F.3d at 1275. Sunoco did not pursue the options available to it to establish appellate jurisdiction.[6]

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does not explain how we have authority to direct the district court to address finality concerns about our appellate jurisdiction.

[6] If, as Sunoco repeatedly argues, the district court has not issued a final, appealable judgment, Sunoco had at least four ways to attempt to invoke our jurisdiction. It pursued none and fails to explain why not. Sunoco could have:

It pursued none and fails to explain why not. Sunoco could have:

> (1) Asked the district court to certify an interlocutory appeal under 28 U.S.C. §1292(b);
> (2) Attempted to invoke the collateral order doctrine exception to 28 U.S.C. §1291's final judgment rule, *see, e.g.*, *Henderson v. Glanz*, 813 F.3d 938, 947 (10th Cir. 2015);
> (3) Filed a petition for a writ of mandamus for the district court to enter final judgment, *see, e.g.*, *United States v. Clearfield State Bank*, 497 F.2d 356, 358 (10th Cir. 1974) ("Appellant ... filed a notice of appeal, and, on the theory that the court's orders were not final and therefore non-appealable, also filed an application for a writ of mandamus ... to require entry of final judgment."); or
> (4) Asked us to "construe the appeal as a petition for a writ of mandamus," *Boughton v. Cotter Corp.*, 10 F.3d 746, 748, 750-51 (10th Cir. 1993); *see also, e.g.*, Opening Br. of Aplts. & Cross Aplees. at 4, *Cook*, 618 F.3d 1127 (Nos. 08-1224, 08-1226, 08-1239), ECF No. 9640935 ("[I]f this Court were to conclude that it lacks appellate jurisdiction here, [appellants] respectfully

"Where an appellant fails to lead, we have no duty to follow." *Id.*

III. Conclusion

Sunoco has repeatedly argued that we lack jurisdiction. It has not therefore met its burden to establish appellate jurisdiction. We thus dismiss these consolidated appeals. *See Stephens v. Jones*, 494 F. App'x 906, 908 (10th Cir. 2012) (unpublished) (cited for persuasive value under 10th Cir. R. 32.1 and Fed. R. App. P. 32.1) (dismissing appeal of two orders for failure to prosecute where appellant "presented no argument, in either his jurisdictional brief or his merits briefs, regarding our jurisdiction over" two of the three orders he appealed); *see also E.E.O.C. v. PJ Utah, LLC*, 822 F.3d 536, 542-43 & n.7 (10th Cir. 2016) (dismissing part of appeal for lack of jurisdiction and declining to address collateral order doctrine because appellant had burden to, and did not, invoke the doctrine).[7]

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Per Curiam

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urge this Court to treat these fully briefed appeals as petitions for mandamus ....").

We do not address whether any of these options would have established our jurisdiction. Nor do we address whether we have sua sponte authority to construe this appeal as a petition for a writ of mandamus. Moreover, we have "discretion to decline to consider waived arguments that might have *supported* ... jurisdiction." *Tompkins v. United States Dep't of Veterans Affs.*, — F. 4th —, 2021 WL 4944641 at *1 n.1 (10th Cir. 2021) (quotations omitted); *see also Colorado Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 544 (10th Cir. 2016) (same).

[7] We do not address whether the district court's plan of allocation order resulted in a final, appealable judgment.

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 20-7064 & 20-7072

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff-Appellee,

v.

SUNOCO, INC. (R&M), et al.,

Defendants-Appellants.

Filed: Nov. 29, 2021

Before: TYMKOVICH, *Chief Judge*, MATHESON, and PHILLIPS, *Circuit Judges*.

ORDER

Appellants' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
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Christopher M. Wolpert, Clerk

Appendix D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 20-7055

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff-Appellee,

v.

SUNOCO, INC. (R&M), et al.,

Defendants-Appellants.

Filed: Nov. 3, 2020

Before: TYMKOVICH, *Chief Judge*, BRISCOE, and EID, *Circuit Judges*.

ORDER

This matter is before the court on the parties' responses to the court's orders of September 18, 2020 and September 22, 2020 directing them to address the finality of the district court's judgment and whether a premature notice of appeal can ripen in these circumstances. Upon consideration of the memorandum briefs filed by the parties, the district court's docket, and applicable circuit precedent, the appeal is dismissed for lack of jurisdiction.

Generally, this court's jurisdiction is limited to review of final decisions of the district court. *See* 28 U.S.C. §1291. A final decision "ends the litigation on

the merits and leaves nothing for the court to do but execute the judgment." *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 204 (1999). In the context of an award of damages in a class action, the judgment is not final until appealable "until the district court establishes both the formula that will determine the division of damages among class members and the principles that will guide the disposition of any unclaimed funds." *Strey v. Hunt Int'l Res. Corp.*, 696 F.2d 87 (10th Cir. 1982); *see also Cook v. Rockwell Int'l Corp.*, 618 F.3d 1127, 1137-38 (10th Cir. 2010) (holding that judgment is final under principles set forth in *Strey* because the district court attached a plan of allocation to its judgment); 15B Fed. Prac. & Proc. Juris. §3915.2 (2d ed. 2020) ("A determination of damages that does not allocate an aggregate sum among claimants similarly is not final.") (citing *Strey*).

Here, the district court had not yet entered a final decision at the time the notice of appeal was filed. The court had entered judgment against Appellants, awarding actual and punitive damages to the certified class. However, the court had not yet issued a plan to allocate the damages it awarded when Appellants filed their notice of appeal.

Because the district court had not yet entered a final decision under §1291 at the time the notice of appeal was filed, the court lacks jurisdiction to consider this appeal. Accordingly, the appeal is dismissed and Appellants' motion to abate is denied as moot.

Appendix E

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

No. 6:17-cv-313-JAG

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SUNOCO, INC. (R&M), et al.,

Defendants.

Filed: Dec. 9, 2020

OPINION

Oklahoma's Production Revenue Standards Act ("PRSA") requires a first purchaser of crude oil-such as Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively, "Sunoco")-to pay promptly for the oil.[1] *See* Okla. Stat. tit. 52, §§570.1-.15. If the purchaser pays late, it must pay interest to the owner of the well that produced the oil.

[1] Oklahoma law calls these payments "proceeds." Okla. Stat. tit. 52, §570.2(8).

This case involves Sunoco's failure to pay that interest to Perry Cline and the class he represents.[2]

In August 2020, the Court found for Cline and awarded him damages. Sunoco, however, does not concede. In September 2020, Sunoco moved for a new trial and to alter the judgment. For the reasons stated below, the Court will deny both motions.

I. Background[3]

Perry Cline represents a class of owners of interests in oil wells in Oklahoma. Cline sued Sunoco under the PRSA for failing to pay the statutory interest on late payments it made on oil proceeds.

On December 10, 2019, the Court concluded that the PRSA requires Sunoco to make statutory interest payments automatically with late payments. (ECF Nos. 231, 232.) The Court held a bench trial on the remaining issues from December 16-19, 2019, and heard closing arguments on June 17, 2020.

On August 17, 2020, the Court announced that Sunoco breached its obligation under the PRSA to pay statutory interest on late payments it made on oil proceeds. (ECF No. 298.) Accordingly, the Court entered judgment against the company, (ECF Nos. 299), and, on August 27, 2020, awarded the plaintiffs "damages in the amount of $80,691,486.00

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[2] Cline serves as the named representative of a class certified by the Court on October 3, 2019. (ECF Nos. 126, 127.) The Court uses the terms "the class" and "Cline" interchangeably.

[3] The Court detailed the background and procedural history of this case in its August 17, 2020 Opinion. *(See* ECF No. 298, at 2-5.)

in actual damages and $75,000,000.00 in punitive damages," (ECF No. 308).

On September 24, 2020, Sunoco filed two motions: one for a new trial and one to alter the judgment. (ECF Nos. 322, 323.) The Court addresses each motion in turn.

II. Motion For A New Trial

Sunoco argues that it "did not have a fair trial" and, therefore, the "Court should order a new" one "to prevent an injustice" and avoid violating its Due Process rights. (ECF No. 322, at 4, 15.) Sunoco makes this argument in two ways. First, Sunoco says that the Court unfairly announced its legal conclusion regarding which party bore the burden of proving marketable-title issues *after* trial. (*Id.* at 9-11, 15-16.) Second, Sunoco claims that when the Court allocated the burden of proving marketable-title issues to Sunoco, it "erred as a matter of law." (*Id.* at 16-19.) Both arguments fail for the reasons detailed below.

A. Post-Trial Announcement of Legal Conclusion

According to Sunoco, "the trial was not fair, and a new trial is required to prevent injustice, because the Court held—for the first time *post*-trial—that Sunoco, *at trial*, bore the burden of proof to show which class members had unmarketable title." (*Id.* at 4-5.) The Court did, indeed, hold "for the first time *post*-trial" that the burden of proof on marketable-title issues fell to Sunoco. (*See* ECF No. 298, at 30-31.) But this post-trial announcement of its "conclusion of law" keeps with Federal Rule of Civil Procedure 52(a). (*See id.* at 2.)

Rule 52(a)(1) provides that "[i]n an action tried on the facts without a jury," courts must state "[t]he findings [of fact] and conclusions [of law] ... on the record after the close of the evidence or ... in an opinion or a memorandum of decision filed by the court." In this case, as Rule 52(a)(1) permits, the Court announced its conclusion as to which party bore the burden of proof on marketable-title issues in its August 27, 2020 Opinion. (ECF No. 298, at 2, 30-31.)

Sunoco claims that the Court's conclusion of law on the marketable-title issue surprised them. (ECF No. 322, at 15 ("Sunoco had no realistic notice that it would bear the burden of proof on the marketable-title issue at trial ....").) But Sunoco *knew* that the question of which party bore the burden of proof regarding marketable-title issues remained in dispute during the trial. In fact, both Sunoco and Cline wrote pretrial briefs on the issue.[4] (ECF Nos. 208, 213.) And the Court's reference to its initial thoughts on the issue during the December 11, 2019 pretrial conference provided further notice to Sunoco that the issue remained undecided. (*See* ECF No. 333, at 12.) The Court, therefore, finds Sunoco's surprise insincere.

The Court also rejects the defendant's claim that the Court deprived it of the opportunity to present evidence about marketable-title issues. (ECF No. 322, at 11.) Not only did Sunoco never ask for a continuance, but it also did not object to finishing trial a day early. (ECF 298, at 18; ECF No. 333, at 10.) Sunoco claims that the Court "cut off" its presentation

[4] The Court permitted both parties to file "pretrial bench briefs on material issues expected to arise at trial." (ECF No. 102 ¶13.)

of evidence when it "attempted, at trial, to adduce evidence to demonstrate that individualized evidence was necessary to prove why particular payments for particular class members were late" and "precluded Sunoco from presenting any 'more [examples] like this.'" (ECF No. 322, at 11 (alteration in original) (quoting Trial Tr. vol. 1, 279:21-280:1).)

In making this argument, Sunoco boldly mischaracterizes the record. During the incident Sunoco cites, the company's lawyers questioned Eric Koelling, Sunoco's representative at trial, about the "circumstances" of "three royalty owners" that Sunoco planned to call as witnesses. (Trial Tr. vol. 1, 254:19-23). By showing the "circumstances" of these royalty owners, Sunoco intended "to show examples of late payments and what it took to figure out" the reason for the late payment and how much, if anything, Sunoco owed the royalty owner. (*Id.* at 279:18-19.) Sunoco proceeded to ask Koelling questions about the three royalty owners, discussing the difficulties Sunoco had determining what it owed each royalty owner. By the time Sunoco reached its questions about the third royalty owner, the Court had a firm grasp on the difficulty Sunoco has determining how much money the company owes and to whom they owe it. Accordingly, the Court characterized further testimony about the third royalty owner's circumstances as "fairly cumulative." (*Id.* at 279:25.)

Pointing to this exchange for support, Sunoco suggests that the Court would not have permitted its presentation of individualized proof of marketable title for each class member. (ECF No. 322, at 11.) Considering the context surrounding this exchange

and the limited purpose for which Sunoco elicited this testimony, Sunoco's claim rings hollow. The emptiness of Sunoco's claim becomes even clearer upon its confession that it could not have presented individualized proof of marketable title for the class members even if it had tried.

In sum, the Court's post-trial announcement of which party bore the burden on marketable-title issues complied with Federal Rule of Civil Procedure 52, and, therefore, the Court will deny Sunoco's claim that it "did not have a fair trial." (ECF No. 322, at 4.) The Court also rejects Sunoco's claim that this post-trial announcement violated its due process rights because it did not have "an opportunity to present every available defense"—here, the unmarketability of class members' title. (ECF No. 322, at 16 (quoting *Lindsey v. Normet*, 405 U.S. 56, 66 (1972)). The Court did not deny Sunoco the opportunity; Sunoco's records—or lack thereof—denied it the opportunity. Accordingly, the Court finds Sunoco's due process rights remain intact.

B. Sunoco Bore the Burden of Proof on Marketable-Title Issues

Sunoco claims that "a new trial is required because the Court erred as a matter of law by allocating the burden of proof to Sunoco on the marketable-title issue." (ECF No. 322, at 16.) Sunoco says that *In re Tulsa Energy, Inc.*, 111 F.3d 88 (10th Cir. 1997), compels this conclusion. For the same reasons discussed in its August 17 Opinion, the Court disagrees. In *In re Tulsa Energy, Inc.*, the Tenth Circuit explained that "[i]t is the interest owner's responsibility to establish marketable title so that he

can receive *proceeds*." *Id.* at 90 (emphasis added). Here, Sunoco has already paid the class members "proceeds." Sunoco disputes the rate at which it must pay the class members *interest* on those proceeds. *In re Tulsa Energy, Inc.*, therefore, does not compel the conclusion Sunoco says it does.

Sunoco also says the Court erred by allocating "the burden of proof to Sunoco based on [its] analysis of Subsection 'D' of the PRSA." (ECF No. 322, at 18.) Instead, Sunoco points the Court towards Subsection "E," the provision under which the plaintiffs sued and which Sunoco claims "imposes on Plaintiffs the burden of proof" as to which rate of interest applies.[5] (*Id.* at 19.) Again, the Court disagrees and maintains—for all the same reasons announced in its August 17 Opinion—that the first purchasers or holders of proceeds referred to in §570.10(E)(1) bear of the burden of proving that the 12 percent default interest rate set by the PRSA does not apply.[6]

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[5] The Court refers to Subsection "D" not because the Court does not understand which provision creates the right the class members enforced in this suit, but because Subsection "E" directs its readers to Subsection "D."

[6] Although the Court recognizes the general rule that "plaintiffs bear the risk of failing to prove their claims," *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005), the Court declines to place the burden of proving marketable title on royalty owners whose marketable title "[is] not legitimately in question," *Quinlan v. Koch Oil Co.*, 25 F.3d 936, 940 (10th Cir. 1994), and who have gone without interest payments that Sunoco rightfully owes them, §570.10(E)(1). Doing so would undermine the purpose of the PRSA—"to ensure that those entitled to royalty payments would receive proceeds in a timely fashion." *Hull v. Sun Refin. & Mktg. Co.*, 789 P.2d 1272, 1279 (Okla. 1989); *see HB. Krug v.*

C. The Punitive Damages Award is Constitutional

Sunoco argues that the $75,000,000 punitive damages award in this case "is excessive" under the due process clauses of the Fifth and Fourteenth Amendments to U.S. Constitution.[7] (ECF No. 322, at 20.) In support of this position, Sunoco says that its "conduct was not reprehensible under the Supreme Court's standards"; that "[t]he ratio of compensatory to punitive damages is unconstitutionally high"; and that "[t]he damages award exceeds any civil or criminal penalties for comparable misconduct." (ECF No. 322, at 23, 25 (emphasis omitted).) For the following reasons, this Court finds the punitive damages award in this case comports with due process.

1. Degree of Reprehensibility

Regarding the "degree of reprehensibility of the defendant's conduct"—"[p]erhaps the most important indicium" for determining the constitutionality of a punitive damages award—the Court agrees with Sunoco that it caused economic, not physical, harm. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). But Sunoco's practice of "paying statutory interest" only after the royalty owner demanded it amounted to

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Helmerich & Payne, Inc., 362 P.3d 205, 210 (Okla. 2015) ("Legislative intent controls statutory interpretation.").

[7] Although Sunoco also claims that the punitive damages award in this case violates the Eighth Amendment's Excessive Fines Clause, the "Excessive Fines Clause does not apply to awards of punitive damages in cases between private parties." *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 260 (1989).

an enormous loss for the public. (ECF No. 322, at 22.) Although Sunoco may have "acted on the advice of counsel," and although Sunoco's practice "was consistent with the industry practices," its conduct clearly violated the PRSA and kept millions of dollars that belonged to others. (*Id.*) Essentially, Sunoco took the position that it could keep other people's money indefinitely. Its position was reprehensible. The Court did not err in issuing the punitive damages award.

2. **Ratio between Compensatory and Punitive Damages**

As for the ratio between the punitive damages and "the actual harm inflicted on the plaintiff," *Gore*, 517 U.S. at 580, Sunoco suggests that the Court awarded punitive damages twenty-four times greater than "the amount that would fully compensate the plaintiffs for their loss." (ECF No. 322, at 24.) Sunoco reached this conclusion first, by claiming that a market interest rate of 1 percent would "fully compensate the class." (*Id.*) Consequently, the Court's actual damage figure—calculated based on the 12 percent interest rate provided by the PRSA—"is 12 times higher" than the amount "that would fully compensate the class for its actual losses for not receiving interest at the time the proceeds were paid." (*Id.* (emphasis omitted).) Next, Sunoco combines this 12 percent interest with the Court's $75,000,000 punitive damages award, and concludes that "this damage award ... is 24 times larger than the amount that would fully compensate the plaintiffs for their loss." (*Id.* (emphasis omitted).)

Sunoco appears to misunderstand the nature of "compensatory damages," which Black's Law Dictionary defines as "sufficient in amount to

indemnify the injured person for the loss suffered." *Damages*, Black's Law Dictionary (11th ed. 2019). Here, Sunoco owes the class members interest on untimely statutory payments. The PRSA sets the rate of interest on these payments at 12 percent, unless the first purchaser or holder of proceeds can prove that it paid the proceeds late because of unmarketable title, in which case a 6 percent rate applies. Sunoco may object to the PRSA and the interest rates it sets, but the law applies "to all owners," and its rates define the amount of loss suffered by the class members. Okla. Stat. tit. 52, §570.3. Consequently, the Court's award of $80,691,486 merely indemnifies the class members for the amount of interest Sunoco owes them under the PRSA.

Sunoco also seems to confuse the ratio courts consider when assessing whether a punitive damages award satisfies due process. Courts do not combine the punitive and compensatory damages awards and compare that sum with what the defendant thinks "would fully compensate the class," as Sunoco suggests. (ECF No. 322, at 24.) Indeed, if courts did as Sunoco suggests, they would often compare damages awards against the defendant's desired award of $0. Such a comparison would render every damages award unconstitutional. This the law does not support.

Instead, courts consider "the ratio between punitive and compensatory damages." *Exxon Shipping Co. v. Baker,* 554 U.S. 471, 507 (2008). Here, that ratio is *less than* 1:1, falling well within the bounds of constitutional permissibility. *See Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1068 (10th

Cir. 2016) (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003)).[8]

3. Penalties for Comparable Misconduct

Finally, Sunoco claims that "[t]he damages award exceeds any civil or criminal penalties for comparable misconduct." (ECF No. 322, at 25.) In support of this, Sunoco cites Oklahoma's 6 percent default legal interest rate. Okla. Stat. tit. 15, §266. The Court calculated both the compensatory and punitive damages awards pursuant to Oklahoma law. Sunoco's gripe about the PRSA's 12 percent default interest rate, therefore, lies with the Oklahoma legislature, not with this Court.

C. The Energy Litigation Reform Act Allows Cline's Recovery

In its reply brief, Sunoco raised again its argument that the Energy Litigation Reform Act ("ELRA"), Okla. Stat. tit. 52, §903, only applies to claims for "proceeds," not "interest," and, therefore, Cline may not recover punitive damages. (ECF No. 338, at 6-8.) For all the reasons stated in its August 17 Opinion, the Court disagrees. (ECF No. 298, at 42-43.)

Sunoco also says that Cline failed to prove, by clear and convincing evidence, that "Sunoco willfully

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[8] '[S]ingle-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution.' This suggests that up to a 9:1 ratio of punitive damages to compensatory damages is likely acceptable in some cases, and that a 10:1 ratio might be permissible because it does not exceed 9:1 to a significant degree.

Id. (quoting *Campbell,* 538 U.S. at 425).

deprived Plaintiffs of proceeds knowing that Plaintiffs were legally entitled thereto—*i.e.,* knowing Plaintiffs had marketable title." (ECF No. 338, at 7 (emphases omitted).) Sunoco mischaracterizes Cline's burden under §903.

In order to recover punitive damages under §903, Cline needed to prove that Sunoco failed to pay interest "with the actual, knowing[,] and willful intent ... to deprive" the interest from Cline, who Sunoco "knows, or is aware, is legally entitled thereto." For all the reasons stated in its August 17 Opinion, the Court finds that Cline satisfied this burden. (ECF No. 298, at 42-43.) Sunoco attempts to heap onto Cline the additional burden of proving marketable title, contending that the class could not prove their legal entitlement to the interest otherwise. But Sunoco *knew* it owed interest to royalty owners for late payments. (Trial Tr. vol. 1, 82:20-85:19.) And Cline introduced other evidence, such as emails, that established Sunoco' s awareness of its legal obligation to pay interest and its intent to keep the interest absent a demand, thereby depriving owners of the interest owed them. (*See, e.g.*, Pl.'s Ex. 38.) Consequently, the Court again finds that Cline satisfied his burden under §903 and, therefore, the ELRA permits punitive damages in this case.

III. Motion To Alter Or Amend The Judgment

Sunoco asks the Court to eliminate, or at least reduce, the damages awards in this case. First, Sunoco argues that the punitive damages award exceeds what the Constitution permits. The Court disagrees for the same reasons discussed above. Second, Sunoco contends that "[b]ased on all the arguments Sunoco

has made to date—including ... that plaintiffs failed to prove liability on a class-wide basis—the Court should alter or amend the judgment" pursuant to Federal Rule of Civil Procedure 59(e). (ECF No. 323, at 9.) Finding that Cline *did* prove class-wide liability for the reasons outlined below, the Court will decline to alter or amend the judgment.

A. The Punitive Damages Award is Constitutional

Sunoco raises arguments identical to those in its briefing in support of its motion for a new trial regarding the punitive damages award. (*Id.* at 4-9; ECF No. 322, at 20-25). For all the reasons set forth in Section 11.C, the Court finds that the punitive damages award in this case comports with due process.

B. The Class Proved Class-Wide Liability

Sunoco says that "[b]ased on all the arguments Sunoco has made to date," the Court should alter the judgment by lowering the damages awards. (ECF No. 323, at 9.) But Sunoco specifically identifies one argument for the Court to consider: Cline's alleged failure to prove liability on a class-wide basis. (*Id.*) Sunoco argues that Cline failed to prove that all the members of the class "are the true owners 'legally entitled' to interest." (*Id.*)

The Court disagrees, and again finds that Cline met his burden of proving, by a preponderance of the evidence, class-wide liability. The certified class in this case includes only those who "received Untimely Payments from Defendants ... for oil proceeds" after a certain date, and "who have not already been paid statutory interest on the Untimely Payments." (ECF

No. 127.) These limitations—narrowing the class to those who have already received[9] untimely payments for oil proceeds but have not received the statutory interest payments—ensure the legal entitlement of each member of the class to interest payments under the PRSA. (*See* Trial Tr. vol. 1, 159:03-159:12.) Sunoco's contention that its payment of proceeds does not demonstrate legal entitlement defies logic. The Court finds implausible that Sunoco paid people money that it did not owe them, especially considering the company's policy of withholding interest payments from their rightful owners in contravention of clear Oklahoma law. The Court, therefore, finds again, by a preponderance of the evidence, that Cline demonstrated Sunoco's liability to the entire class.

Sunoco also contends that because it will remit a portion of the judgment to state unclaimed property funds due to the number of unidentified or unlocated class members, "the judgment will order a 'fluid' recovery that violates Due Process." (ECF No. 323, at 10.) For all the reasons discussed in its August 17 Opinion, the Court disagrees. (ECF No. 298, at 40-42.) Because Cline has demonstrated Sunoco's liability to each member of the class and because Sunoco had the opportunity to rebut Cline's assertions, recovery in this case does not "mask the prevalence of individual issues [such that] it is an impermissible affront to

[9] Although Sunoco directed the proceeds it owed to some class members to an unclaimed property fund, that does not negate the right of those unidentified or unlocated class members to the proceeds—a right that they could vindicate at any time by collecting the proceeds from their respective state. (ECF No. 298, at 33-43.)

defendants' due process rights." *McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215, 232 (2d Cir. 2008), *abrogated on other grounds by Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639 (2008).

The Court also rejects Sunoco's claims that it "would be compelled to pay damages to class members that lack standing to sue, ... and [that] Sunoco may be improperly bound by a judgment to thousands of unknown persons." (ECF No. 323, at 10.) First, for the same reasons detailed in its August 17 Opinion, the Court finds that the class members-including those who remain unlocated and unidentified-had standing to seek damages in this case. (ECF No. 298, at 31-34.) Second, the Court's judgment does not bind Sunoco to *unknown* persons as Sunoco alleges. The company anticipates difficulty determining "who is a party to the judgment, and against whom it could assert estoppel or res judicata if future lawsuits against Sunoco for PRSA interest are filed." (ECF No. 321, at 20.) Although the judgment binds Sunoco to unidentified and unlocated persons, a class member's status as unlocated or unidentified does not render them *unknown* to Sunoco. · The Court, therefore, finds that the judgment does *not* bind Sunoco to unknown persons, and it does not place Sunoco at risk for subsequent, duplicative claims. Indeed, Sunoco itself paid these unidentified or unlocated class members by remitting payment to the relevant state unclaimed property fund.

Finally, Sunoco "renews ... its prior arguments ... that Sunoco is not liable for, and class members cannot recover for, alleged untimely payments of proceeds to states under their unclaimed property statutes." (ECF

No. 323, at 11.) As the Court confirmed above, owners entitled to unclaimed funds had standing to seek damages in this case. (*See also* ECF No. 298, at 31-34.) In addition, the PRSA compels the conclusion that Sunoco must timely pay proceeds to "persons legally entitled thereto" unless one of the exceptions provided in §570.10(B)(3) applies. Because the statute does not list unclaimed funds among its exceptions, the Court finds that the PRSA's timing requirements do, in fact, apply to unclaimed funds. (*See* ECF No. 298, at 34-35.) Accordingly, Sunoco "is ... liable for, and class members can[] recover for, ... untimely payments of proceeds" to state unclaimed property funds. (ECF No. 323, at 11.)

IV. Conclusion

For the foregoing reasons, the Court will deny Sunoco's motion for a new trial and its motion to alter or amend the judgment.[10] (ECF Nos. 322, 323.)

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[10] On November 25, 2020, Sunoco renewed its motion for a new trial and its motion to alter the judgment. (ECF Nos. 347, 348.) Challenging the Plan of Allocation, Sunoco argues that because the Court should either order a new trial or alter the judgment, the Court should also vacate or amend the Plan of Allocation. Sunoco also reasserts that the Plan of Allocation "does not adequately (1) address the method for distributing funds that go unclaimed by class members ... or (2) allocate, to identified class members, the 10% of the damages awarded to class members whose interests were combined with Sunoco's 'undivided' account." (ECF No. 347, at 3; ECF No. 348, at 3.)

The Court dismisses both arguments. Sunoco's first argument fails because the Court will deny Sunoco's motion for a new trial and its motion to alter the judgment. The Court also finds the Plan of Allocation adequate as it provides for the distribution of funds to state unclaimed property funds if the class member does not claim their funds or remains unidentified or unlocated.

The Court will issue an appropriate Order.

Let the Clerk send a copy of this Order to all counsel of record.

[handwritten: date]	[handwritten: signature]
9 December, 2020	John A. Gibney, Jr.
Richmond, VA	United States District Judge

Accordingly, the Court will deny Sunoco's renewed motion for a new trial and its motion to alter the judgment. (ECF Nos. 347, 348.)

Appendix F

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

No. 6:17-cv-313-JAG

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SUNOCO, INC. (R&M), et al.,

Defendants.

Filed: Oct. 30, 2020

PLAN OF ALLOCATION ORDER

This matter comes before the Court on class counsel's proposed plan of allocation of the damages award. (ECF No. 317.) The Court, being fully advised on the issues before it, hereby ORDERS as follows:

A. Definitions of Terms

1. For the purposes of this Order:

   a. The term "Judgment Fund" means the sum of all actual and punitive damages awarded following the trial in this matter and allowed after any appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time),

inclusive of any attorneys' fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to the class representative and the class, and inclusive of any interest earned through such investments as the Court may direct following the defendants' payment of the judgment.

b. The term "Judgment Administrator" means the officer appointed by the Court pursuant to this Order to execute the Plan of Allocation and to perform such incidental and additional duties as are set forth in this Order or as the Court may subsequently direct.

c. The term "Net Class Award" means the Judgment Fund, less any: (i) case contribution award to Class Representative; (ii) attorneys' fees, expenses, and costs awarded from the Judgment Fund to counsel for the class Representative and the class; (iii) compensation and expenses paid or reimbursed to the Judgment Administrator; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court's direction.

d. The term "Residual Unclaimed Funds" means the amount of the Net Class Award remaining as a result of uncashed distribution checks, inability to locate class members, and/or other such reasons after the Judgment Administrator distributes the Net Class Award to all class members using commercially reasonable efforts according to the Final Distribution Order.

B. The Formula That Will Determine the Division of Damages

2. The Court adopts the proposed allocation found in Exhibit 1 to the Declaration of Barbara Ley (Class Representative's damages expert), (ECF No. 317-1), as the Court's Plan of Allocation of the Net Class Award. The methodology Ms. Ley used to prepare the proposed allocation was derived from, and consistent with, the methodology that this Court previously approved in support of the plaintiff's motion to certify the class, (ECF No. 91), and admitted into evidence at the trial in this matter in order to determine the total amount of actual damages.[1] Ms. Ley calculated the amount of damages owed to each individual class member, and then summed those figures to determine the amount of damages owed to the class. Ms. Ley then updated those amounts, at the Court's direction, to reflect the time that had elapsed and the interest that had accrued since her original

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[1] Ms. Ley's methodology here is also consistent with the methodology that has been approved by this Court and used to distribute tens-of-millions of dollars to settlement class members. *See Reirdon v. XTO Energy*, No. 6:16cv87, Final Plan of Allocation Order, ECF No. 141 (E.D. Okla. June 12, 2018); *Reirdon v. Cimarex Energy Co.*, No. 6:16cv113, Final Plan of Allocation Order, ECF No. 114 (E.D. Okla. Apr. 25, 2019); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 6:17cv334, Final Plan of Allocation Order, ECF No. 127 (E.D. Okla .. June 11, 2019); *Chieftain Royalty Co. v. Newfield Expl. Mid-Continent Inc.*, No. 6: 17cv336, Final Plan of Allocation Order, ECF No. 75 (June 4, 2020); *DASA Invs., Inc. v. EnerVest Operating*, No. 6:18cv83, Final Plan of Allocation Order, ECF No. 124 (E.D. Okla. June 25, 2020); *McClintock v. Continuum Producer Servs, L.L.C.,* No. 6:17cv259, Initial Plan of Allocation Order, ECF No. 64 (E.D. Okla. June 4, 2020).

calculation. Ms. Ley then divided the updated damage figure for each class member by the total amount of damages awarded to the class, and thereby determined each class member's proportional share of the Judgment. The result of this formulaic approach is a list containing each class member's fractional share of the total amount of damages. The Judgment Administrator need only multiply the fractional share for each class member expressed in Ms. Ley's Declaration by the Net Class Award in order to arrive at the exact dollar amount that each class member shall be paid.

C. Procedures for Distribution

3. The Court appoints JND Legal Administration to serve as "Judgment Administrator" in this matter. At such time as the Court directs, the Judgment Administrator, in consultation with class counsel, shall be responsible for applying the mathematical principles established in the Plan of Allocation to ascertain the precise amounts of the Net Class Award allocable to each class member. The result of the Judgment Administrator's calculations shall be submitted to the Court for approval as the Final Plan for Distribution.

4. Prior to any disbursement to Class Members, the Court will establish appropriate procedures for approval of the Final Plan for Distribution. Upon approval, the Court will enter a Final Distribution Order establishing the allocation for purposes of disbursements to Class Members.

5. The Judgment Administrator will also be responsible for distributing the Net Class Award

pursuant to such further orders as the Court shall issue.

6. The Judgment Administrator shall report to the Court from time to time to advise the Court of its progress in discharging its responsibilities under this Order, on such occasions and at such intervals as the Judgment Administrator may deem appropriate or as the Court may direct. The Judgment Administrator is authorized to make reasonable expenditures to secure the resources and assistance reasonably necessary to the performance of its duties. Such expenses, and the compensation of the Judgment Administrator at its usual and customary hourly rates, will be paid and reimbursed from the Judgment Fund periodically, as incurred.

7. The Judgment Administrator shall not commence the performance of its duties under this Order until such time as the case is remanded to this Court from any appeal (or until after the expiration of the time allowed for filing such appeal, if no appeal is filed within that time).

D. Procedures and Principles for the Distribution of any Unclaimed Funds

8. The distribution of any residual unclaimed funds, if any, shall be determined by the Court following the completion of the distribution process outlined in the Final Distribution Order and upon the submissions by any interested parties. The Court concludes that that determination is most appropriately made at that time, as the amount of any residual unclaimed funds may bear on the Court's determination. Consistent with the Court's prior statements on the matter, (*see* ECF No. 298, at 42), the

Court anticipates that any residual unclaimed funds will be sent to the same place that Sunoco remitted the underlying proceeds payments, including the appropriate state accounts for unclaimed property. But the Court retains discretion to select a different method of distribution that best serves the interests of the class once all relevant information is available. To facilitate that determination, after the Judgment Administrator has used commercially reasonable efforts to complete the distribution process outlined in the Final Distribution Order, class counsel shall file a motion stating the amount of any residual unclaimed funds and recommending a method of distribution of those funds, with due consideration given to the Court's anticipated method described above. The Court will then set a deadline for any responses or comments from interested parties.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

[handwritten: date]	[handwritten: signature]
30 October, 2020	John A. Gibney, Jr.
Richmond, VA	United States District Judge

Appendix G

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

No. 6:17-cv-313-JAG

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SUNOCO, INC. (R&M), et al.,

Defendants.

Filed: Aug. 27, 2020

JUDGMENT ORDER

This matter comes before the Court following a bench trial. The Court held a trial in this case on December 16-19, 2019, and heard closing arguments on June 17, 2020. For the reasons stated in the Court's August 17, 2020 Opinion, pursuant to Federal Rule of Civil Procedure 58, the Court ENTERS JUDGMENT against the defendants as to Count One. The Court AWARDS damages in the amount of $80,691,486.00 in actual damages and $75,000,000.00 in punitive damages.

It is so ORDERED.

Let the clerk send a copy of this Order to all counsel of record.

[handwritten: date]	[handwritten: signature]
27 August, 2020	John A. Gibney, Jr.
	United States District Judge

Appendix H

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

No. 6:17-cv-313-JAG

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SUNOCO, INC. (R&M), et al.,

Defendants.

Filed: Aug. 17, 2020

ORDER

This matter comes before the Court following a bench trial. The Court held a trial in this case on December 16-19, 2019, and heard closing arguments on June 17, 2020. For the reasons stated in the accompanying Opinion, the Court ORDERS as follow:

1. The Court GRANTS the plaintiffs motion to strike Eric Krause (Dk. No. 207) and SUSTAINS the plaintiffs objections to Krause's testimony at trial.
2. The Court ENTERS JUDGMENT against the defendants as to Count One in the amount of $74,763,113.00 as of December 16, 2019, plus any additional interest that has accrued on each

payment at a rate of 12 percent, compounding annually, from December 17, 2019, to the date of this Order, subject to the modifications as set forth below. The Court, however, withholds entering a final judgment order pursuant to Federal Rule of Civil Procedure 58 until counsel has provided the Court with an updated damages calculation.

3. The Court AWARDS punitive damages in the amount of $75,000,000, pursuant to Okla. Stat. tit. 23, §9.1(B).
4. The Court CONCLUDES that the defendants have not committed fraud as alleged in Count Two.
5. The Court DENIES the requests for an accounting, disgorgement, and a permanent injunction set forth in Counts Three and Four.
6. Except as otherwise indicated, the Court OVERRULES all outstanding objections to the exhibits, witnesses, deposition designations, and other evidence.
7. Within seven (7) days of this Order, counsel shall confer and fi le a notice that sets forth the following calculations:
    a. The total amount of actual damages, to include the total additional interest that has accrued on each payment between the date of trial and the date of this Order. Counsel shall subtract the interest due for any

timely exclusion requests not accounted for in the plaintiffs trial calculations, and add the interest due to the class members who timely withdrew their exclusion requests. (See Dk. No. 271.)

b. The combined total of the updated damages calculation plus $75,000,000.00 in punitive damages.

8. Within fourteen (14) days of filing the updated calculations, class counsel shall file a brief setting forth its proposed plan for distribution of the damages award. The defendants shall respond within fourteen (14) days after class counsel files the proposed plan. Class counsel may file a reply six (6) days thereafter.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

[handwritten: date]	[handwritten: signature]
17 August, 2020	John A. Gibney, Jr.
Richmond, VA	United States District Judge

Appendix I

RELEVANT STATUTES
Oklahoma's Production Revenue Standards Act
52 O.S. §570.10(A)-(E)

A. All proceeds from the sale of production shall be regarded as separate and distinct from all other funds of any person receiving or holding the same until such time as such proceeds are paid to the owners legally entitled thereto. Any person holding revenue or proceeds from the sale of production shall hold such revenue or proceeds for the benefit of the owners legally entitled thereto. Nothing in this subsection shall create an express trust.

B. Except as otherwise provided in this section:

1. Proceeds from the sale of oil or gas production from an oil or gas well shall be paid to persons legally entitled thereto:

a. commencing not later than six (6) months after the date of first sale, and

b. thereafter not later than the last day of the second succeeding month after the end of the month within which such production is sold.

2. Notwithstanding paragraph 1 above, royalty proceeds from the sale of gas production from an oil or gas well remitted to the operator pursuant to subsection B of Section 570.4 of this title shall be paid to persons legally entitled thereto:

a. commencing not later than six (6) months after the date of first sale, and

b. thereafter not later than the last day of the third succeeding month after the end of the month within which such production is sold; provided, however, when proceeds are received by the operator in its capacity as a producing owner, the operator may pay the royalty share of such proceeds to the royalty interest owners legally entitled thereto at the same time that it pays the royalty proceeds received from other producing owners for the same production month, but not later than the last day of the third succeeding month after the end of the month within which such production was sold.

3.a. Proceeds from production may be remitted to the persons entitled to such proceeds annually for the twelve (12) months accumulation of proceeds totaling at least Ten Dollars ($10.00) but less than One Hundred Dollars ($100.00). Amounts less than Ten Dollars ($10.00) may be held but shall be remitted when production ceases or by the payor upon relinquishment of payment responsibility.

b. Proceeds totaling less than One Hundred Dollars ($100.00) but more than Twenty-five Dollars ($25.00) shall be remitted monthly if requested by the person entitled to the proceeds. Amounts less than Ten Dollars ($10.00) shall be remitted annually if requested by the person entitled to the proceeds.

c. Before proceeds greater than Twenty-five Dollars ($25.00) may be accumulated, payor shall provide notice to the person owning interest as defined in Section 570.2 of this title, entitled to such proceeds that there is an option to be paid monthly for proceeds greater than Twenty-five Dollars ($25.00). Such notice to the person shall also provide directions for requesting monthly payment, and constitutes notice to all heirs, successors, representatives, and assigns of the person.

4. Any delay in determining the persons legally entitled to proceeds from production caused by unmarketable title shall not affect payments to persons whose title is marketable.

C.1. A first purchaser that pays or causes to be paid proceeds from production to the producing owner of such production or, at the direction of the producing owner, pays or causes to be paid royalty proceeds from production to:

a. the royalty interest owners legally entitled thereto, or

b. the operator of the well,

shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

2. A working interest owner that pays or causes to be paid royalty proceeds from production to:

a. the royalty interest owners legally entitled thereto, or

b. the operator of the well,

shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

3. An operator that pays or causes to be paid royalty proceeds from production, received by it as operator, to the royalty interest owners legally entitled thereto shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

4. Where royalty proceeds are paid incorrectly as a result of an error or omission, the party whose error or omission caused the incorrect royalty payments shall be liable for the additional royalty proceeds on such production and all resulting costs or damages incurred by the party making the incorrect payment.

D.1. Except as otherwise provided in paragraph 2 of this subsection, where proceeds from the sale of oil or gas production or some portion of such proceeds are not paid prior to the end of the applicable time periods provided in this section, that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum to be compounded annually, calculated from the end of the month in which such production is sold until the day paid.

2.a. Where such proceeds are not paid because the title thereto is not marketable, such proceeds shall earn interest at the rate of six percent (6%) per annum to be compounded annually, calculated from the end of the month in which

such production was sold until such time as the title to such interest becomes marketable. Marketability of title shall be determined in accordance with the then current title examination standards of the Oklahoma Bar Association.

b. Where marketability has remained uncured for a period of one hundred twenty (120) days from the date payment is due under this section, any person claiming to own the right to receive proceeds which have not been paid because of unmarketable title may require the holder of such proceeds to interplead the proceeds and all accrued interest into court for a determination of the persons legally entitled thereto. Upon payment into court the holder of such proceeds shall be relieved of any further liability for the proper payment of such proceeds and interest thereon.

E.1. Except as provided in paragraph 2 of this subsection, a first purchaser or holder of proceeds who fails to remit proceeds from the sale of oil or gas production to owners legally entitled thereto within the time limitations set forth in paragraph 1 of subsection B of this section shall be liable to such owners for interest as provided in subsection D of this section on that portion of the proceeds not timely paid. When two or more persons fail to remit within such time limitations, liability for such interest shall be shared by those persons holding said proceeds in proportion to the time each person held such proceeds.

2. When royalty proceeds on gas production are remitted pursuant to subsection B of Section 570.4 of this title:

a. A first purchaser that causes such proceeds to be received by the operator or by a producing owner in the well for distribution to the royalty interest owner legally entitled thereto within the first month following the month in which such production was sold shall not be liable for interest on such proceeds.

b. A producing owner receiving royalty proceeds that causes such proceeds to be received by the royalty interest owner legally entitled thereto or by the operator for distribution to the royalty interest owner legally entitled thereto not later than the end of the first month following the month in which proceeds for such production was received by the producing owner from the purchaser shall not be liable for interest on such proceeds.

c. An operator receiving royalty proceeds that causes such proceeds to be received by the royalty interest owner legally entitled thereto, not later than the end of the first month following the month in which proceeds for such production was received by the operator from the purchaser or producing owner shall not be liable for interest on such proceeds.

d. Liability for interest provided in subsection D of this section shall be borne

solely by the person, or persons, failing to remit royalty proceeds within the time limitations set forth in subsection B of this section. When two or more persons fail to remit within such time limitations, liability for such interest shall be shared by such persons in proportion to the time each person held such proceeds.