

**CIVIL CASE INFORMATION STATEMENT**

**FILED**  
2018 FEB 27 P 3 22  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**CIVIL CASES**

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**SHONK LAND COMPANY LLC**

**Plaintiff,**

**v.**

**Civil Action No. 18-C-193**  
**Kaufman**

**CABOT OIL & GAS CORPORATION, and  
CARBON WEST VIRGINIA COMPANY LLC,**

**Defendants.**

	<u>Days to Answer</u>	<u>Type of Service</u>
<b>Cabot Oil &amp; Gas Corporation CT Corporation System 5400 D Big Tyler Road Charleston, WV 25313</b>	<b>30</b>	<b>Secretary of State</b>
<b>Carbon West Virginia Company LLC CT Corporation System 5400 D Big Tyler Road Charleston, WV 25313</b>	<b>30</b>	<b>Secretary of State</b>

PYMT Type **K**  
 Rept # **559246** \$200  \$135   
 Iss. Sum. +  Rec  No Sum. Iss  
 Ret. to Atty.  \$20cm X   
 Mailed CM/RM  \$5 clk X   
 Mailed to sos w/ck#   
 Sent to \_\_\_\_\_ w/ck# \_\_\_\_\_  \$15 mdf X **2**

PLAINTIFF: <b>SHONK LAND COMPANY LLC</b>	CASE NUMBER:
DEFENDANTS: <b>CABOT OIL &amp; GAS CORPORATION, and CARBON WEST VIRGINIA COMPANY LLC</b>	

II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Medical Malpractice
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND:  Yes  No  
CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): February 2019

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

YES  NO

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other:

*Attorney Name:* Nicholas S. Johnson (WVSB #10272)  
*Firm Address:* Bailey & Glasser LLP  
1054 31<sup>st</sup> St, NW  
Suite 230  
Washington, DC 20007  
*Telephone:* 202-463-2101  
*Facsimile:* 202-463-2103

*Representing:*  
 Plaintiff  
 Defendant  
 Third-Party Defendant

*Dated:* February 27, 2018

  
\_\_\_\_\_  
Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**FILED**  
*CA*

2018 FEB 27 P 3:22

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**SHONK LAND COMPANY LLC**

**Plaintiff,**

**v.**

Civil Action No. 18-C-193  
*Kaufman*

**CABOT OIL & GAS CORPORATION, and  
CARBON WEST VIRGINIA COMPANY LLC,**

**Defendants.**

**VERIFIED COMPLAINT**

Shonk Land Company LLC (“Shonk” or “Lessor”), Plaintiff, by counsel, Bailey & Glasser, LLP, for its Complaint against Cabot Oil & Gas Corporation (“Cabot” or “Lessee”) and Carbon West Virginia Company LLC (“Carbon West Virginia”), states the following:

**I. Nature of the Dispute**

Shonk was forced to litigate against its Lessee, Cabot, for nearly eight (8) years, over improper royalty calculations and deductions taken under the Larner Lease (defined below), in Boone County Circuit Court Civil Action No. 07-C-174 (“Royalty Litigation”). Shonk and Cabot negotiated a settlement, effective December 31, 2015, that would resolve the disputes brought in the Royalty Litigation. As part of the settlement of the Royalty Litigation, the parties specifically negotiated a restriction on Cabot’s ability to assign the Larner Lease to third-parties. The restriction on assignment was important to Shonk, because, among other reasons, it gave Shonk assurances that the gains it achieved in prosecuting and settling the Royalty Litigation would not be lost if the Larner Lease was assigned without its consent.

In 2017, Cabot assigned the Larner Lease to Carbon West Virginia, over the repeated written objections of Shonk, in violation of the restriction on assignment that Shonk had

specifically negotiated less than two years earlier. And, Shonk's reticence over the assignment has proven prescient, since within a month of gaining purported assignment of the Lease—which Shonk does not recognize as valid—Carbon West Virginia breached the royalty calculation and payment provisions of the Larner Lease. Through this case, Shonk seeks to be restored to the *status quo ante* prior to the invalid assignment, or alternatively, to have the Larner Lease terminated.

## **II. The Parties**

1. Shonk is a West Virginia limited liability company with members domiciled in West Virginia and is the Lessor under the Larner Lease between Shonk and Cabot.

2. Cabot is a Delaware corporation with its principal place of business in Houston, Texas and is the Lessee under the Larner Lease between Shonk and Cabot.

3. Carbon West Virginia is a Delaware limited liability company. Upon information and belief, Carbon West Virginia is at least in-part owned, through intermediate subsidiaries, by Carbon Natural Gas Company, a publicly-traded Delaware Corporation trading under the symbol CRBO.

## **III. Jurisdiction and Venue**

4. This Court has jurisdiction to hear this action under W. Va. Code § 51-2-2, which grants circuit courts original and general jurisdiction over “all matters at law where the amount in controversy, excluding interest, exceeds \$7,500” as well as “all cases in equity, including jurisdiction in equity to remove any cloud on the title to real property, or any part of a cloud, or any estate, right or interest in the real property, and to determine questions of title with respect to the real property without requiring allegations or proof of actual possession of the real property.”

5. Venue is proper in this Court since this matter involves an oil and gas lease pertaining to land located within Kanawha and Boone Counties.

#### **IV. History of the Larner Lease**

6. On May 20, 1930, Shonk executed an Agreement of Lease with Larner Gas Company (“Larner”), granting Larner certain rights to oil and gas in and under certain land, together with the exclusive right to drill for, produce and market said oil and gas underlying sixteen thousand (16,000) acres of property situated in Kanawha and Boone Counties (the “Larner Lease”).

7. By court orders set out in a suit in the United States District Court for the Southern District of West Virginia arising from the receivership of Larner, all of Larner’s interest in the Larner Lease was conveyed to Donald C. Shonk by deed dated February 11, 1939.

8. By deed dated April 27, 1939, Donald C. Shonk conveyed and assigned the Lessee’s interest in the Larner Lease to Godfrey L. Cabot, Inc.

9. Upon information and belief, at some point thereafter, Godfrey L. Cabot, Inc. merged with other corporations to be known as Cabot Corporation, a corporation organized and existing under Delaware law.

10. By various mesne intra-company assignments and mergers, in or around 1991, Cabot Oil & Gas Corporation became the Lessee under the Larner Lease.

#### **V. Dispute and Settlement Between Shonk and Cabot**

11. In or around 2007, a dispute arose between Shonk and Cabot regarding royalty calculations and payments under the Larner Lease and another lease between Shonk and Cabot referred to as the “Williams Lease.”

12. As a result, Shonk brought the Royalty Litigation against Cabot, seeking damages for Cabot's improper calculation and payment of royalties under the Larner Lease and the Williams Lease.

13. After years of litigation, on December 23, 2015, Shonk and Cabot entered into a Confidential Settlement Agreement (the "Settlement") whereby the parties agreed to a mutual release of claims in exchange for certain amendments to the Larner and Williams Leases (the "Ratification").

14. On December 31, 2015, Shonk and Cabot executed the Larner Lease Ratification. The parties negotiated a very specific royalty calculation methodology that eliminated Cabot's ability to take certain deductions and volume losses from Shonk's royalty interest. (Section 1).

15. Specifically, Section 1 of the Ratification states:

no other deductions from the royalty due Lessor are authorized or permitted for costs, expenses or other things of value incurred by Lessee or other party for exploring for, marketing or transporting the gas to market including, but not limited to, any costs of production, gathering, transportation, marketing, processing or other post-production expense of any kind.

16. Other provisions of the Ratification definitively secured Cabot's long-term liabilities for pipeline removal and plugging of uneconomic wells that Cabot had drilled on Shonk's property, as well as for providing for insurance and indemnity in favor of Shonk. (Section 4-8).

17. In order to preserve the gains it had achieved through the eight years of litigation, Shonk negotiated and Cabot agreed to Section 9 of the Ratification.

18. Section 9 states in relevant part:

Lessee shall not assign all or a portion of this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed; provided, however, that such consent shall not be required in the event of a merger, a sale of all or substantially all of Lessee's assets[.] . . . Upon receipt of a written

request from Lessor received within five (5) days of the notice of assignment and upon Lessor's execution of a confidentiality agreement produced by Lessee, Lessee shall provide to Lessor relevant non-public information in the possession of Lessee or to which Lessee has access regarding the credit-worthiness of the proposed assignee.

19. Section 9 of the Ratification was an essential provision of the Settlement because, among other reasons, Shonk wanted to ensure it would receive all benefits it had negotiated and received under the Settlement. Specifically, Shonk needed to preserve Cabot's agreements to properly calculate the royalty payment and to stand up for any future plugging and environmental liabilities.

#### **VI. Section 9 and Shonk's Objection to Assignment**

20. By letter dated July 12, 2017, Cabot informed Shonk of its intention to assign the Larner Lease to Carbon West Virginia, requested Shonk's consent to the assignment, and acknowledged that the terms of the Larner Lease require Shonk's consent prior to assignment.

21. Pursuant to Section 9, by letter dated July 19, 2017, Shonk requested relevant non-public information regarding the credit-worthiness of Carbon West Virginia Company, the proposed assignee.

22. Cabot responded to Shonk's request via email on July 20, 2017, in which Cabot provided Shonk with the publicly-available 10-Q filing of Carbon Natural Gas Company ("Carbon Natural Gas"), the purported partial-owner of the proposed assignee, Carbon West Virginia.

23. By letter dated July 31, 2017 ("Objection Letter"), Shonk declined to grant consent to the assignment due in part to the complete lack of information about the proposed assignee as well as information from the 10-Q that revealed numerous financial problems of Carbon Natural Gas that could impact its ability or willingness to prudently and safely perform its obligations

under the Larner Lease, assuming that Carbon Natural Gas—a partial owner of Carbon West Virginia—was somehow responsible for the proposed assignee’s performance under the Larner Lease.

24. In its Objection Letter, Shonk provided reasons for withholding its consent, including:

- a. The 10-Q supplied by Cabot did not describe or mention Carbon West Virginia, and thus Shonk had no information concerning the status or creditworthiness of the specific entity that would hold the Lessee’s interest under the Larner Lease.
- b. Even if the 10-Q were specific to Carbon West Virginia, neither Cabot nor Carbon had provided the relevant non-public information called for under Section 9 of the Ratification, since the publicly-available 10-Q did not meet the standard set forth in Section 9;
- c. Even so, the 10-Q filed by Carbon West Virginia’s partial owner, revealed that the partial owner was failing its own tests for financial impairment, including the ceiling test for impairment;
- d. The 10-Q further revealed the possibility that Carbon West Virginia’s parent company would fail future ceiling impairment tests,
- e. The 10-Q showed a tightly drawn credit facility, limiting Carbon West Virginia’s partial owner’s ability to access capital; and
- f. Shonk provided its assessment that Carbon Natural Gas, Carbon West Virginia’s partial owner, is a far less creditworthy entity than Cabot.

25. By letter dated August 8, 2017, Cabot requested that Shonk reconsider its request for consent, but still did not provide the relevant non-public information called for in Section 9 of the Larner Lease.

26. In response, by letter dated August 15, 2017, Shonk again declined to consent and further detailed the reasons for its objection to the assignment.

27. Later in August 2017, press releases by Cabot and Carbon Natural Gas, multiple news sources, and industry trade press reported that Cabot was selling certain legacy conventional oil and gas properties located in West Virginia, Virginia and Ohio to an affiliate of Carbon Natural Gas in a transaction that was scheduled to close on September 29, 2017.

28. In response, on or about September 22, 2017, Shonk sent Cabot a letter in advance of the September 29, 2017 closing, reiterating its objection under Section 9 of the Ratification to the proposed assignment.

29. Shonk further requested confirmation that Cabot would not create a lease default by assigning the Larner Lease to Carbon West Virginia over its objection.

30. In the face of Shonk's objection, on September 29, 2017, Cabot purported to convey to Carbon West Virginia all of its right, title and interest in the Larner Lease, effective as of April 1, 2017.

31. Having received no response for over a month to its September 22, 2017 letter, Shonk sent a follow-up letter on or about November 29, 2017 requesting that Cabot either confirm or deny that it had in fact assigned the Larner Lease to Carbon West Virginia over Shonk's objection.

32. A day later, on November 30, 2017, Shonk's attorney, Robert B. Allen, sent a letter directly to Cabot's Chairman and Chief Executive Officer in an effort to attempt to work

things out with Cabot. In the letter, Allen states, “[In] forty years of doing oil and gas deals I have never seen an instance in which parties assigned a lease . . . if the lessor/counterparty affirmatively declined to give its consent.”

33. Mr. Allen further asked for Cabot to provide the information that Shonk was requesting so that it could properly process the request to consent to assignment. And, he told the Chairman and CEO of Cabot that he “would hate for this to deteriorate into litigation, but some communication needs to occur if that is to be avoided.”

34. By letter dated December 7, 2017, Cabot responded to the November 29, 2017 Shonk letter and the November 30, 2017 Allen letter. In the December 7 letter, Cabot confirmed that it had assigned the Larner Lease to Carbon West Virginia without receiving consent from Shonk. Cabot further accused Shonk of acting unreasonably, even though all Shonk had done was to ask for the relevant, non-public information specifically called for under the Lease.

35. As part of the Cabot-Carbon West Virginia transaction, Cabot did not sell all or substantially all of its assets. In fact, in announcing the sale to Carbon West Virginia, Cabot noted that it was selling only “non-core assets,” retaining “the deep rights across this approximately 780,000 net acre position,” and “focusing” on continued drilling in its retained position in the Marcellus and Eagle Ford shale formations.

36. Shonk has not unreasonably refused consent to the proposed assignment, since it (a) failed to receive the information specifically called for under Section 9 of the Ratification and (b) expressed valid concerns about Carbon West Virginia’s creditworthiness and ability to safely and responsibly perform the Lessee’s obligations under the Lease.

## **VII. The Lessee Has Breached the Royalty Provision of the Lease**

37. Under the terms of the Larner Lease, payment of royalties by Lessee is required on a monthly basis, due on or before the 25th day of each month for all gas produced during the month immediately preceding.

38. Shonk did not receive a royalty payment from Cabot for November 2017 production on December 25, 2017, the date on which such payment was due under the Larner Lease.

39. Shonk did not receive a royalty payment from Cabot for December 2017 production on January 25, 2018, the date on which such payment was due under the Larner Lease.

40. Starting in January 2018, Carbon West Virginia, purporting to have assumed Cabot's duties under the Larner Lease, began making royalty payments to Shonk for past due royalties under the Larner Lease.

41. By letter dated January 25, 2018,<sup>1</sup> Carbon West Virginia remitted a royalty payment for November 2017 production, payment for which was due on or before December 25, 2017.

42. In the same January 25, 2018 letter, Carbon West Virginia communicated to Shonk its intention to continue making late royalty payments, in violation of the terms of the Larner Lease.

43. In addition, the volumes upon which Carbon West Virginia has tendered royalty payments do not comply with the Ratification.

44. Carbon West Virginia's first months of calculating royalty payments was November 2017.

45. In January 2018, Carbon West Virginia finally submitted (albeit late) royalty statements. The volume calculations for the month of November 2017 show a 94% drop in volume

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<sup>1</sup> The January 25, 2018 letter is erroneously dated January 25, 2017, presumably by mistake.

across 55 wells. Some of those wells showed negative volume, which only leads to the conclusion that deductions are being taken. Over the two-month period, November and December 2017, the average reported monthly production over those two months was less than half of the monthly production in October 2017.

46. There is no rational explanation for the precipitous drop in volumes in one month other than the fact that Carbon West Virginia's royalty calculations violate the Ratification's prohibition of post-production deductions for expenses and volume losses.

47. Shonk specifically asked for information regarding the royalty calculations, but both Cabot and Carbon have refused to answer with any information.

**COUNT I – Breach of Lease for Assignment Without Lessor's Consent**

48. Shonk incorporates the allegations in Paragraphs 1 – 47 as if fully set forth here.

49. Under Section 9 of the Ratification to the Larner Lease, Cabot is obligated to provide, upon Shonk's request, relevant non-public information regarding the credit-worthiness of any proposed assignee.

50. Cabot breached the Larner Lease by failing to provide relevant non-public information regarding the credit-worthiness of Carbon West Virginia to Shonk in response to Shonk's request.

51. Under Section 9 of the Ratification to the Larner Lease, Cabot "shall not assign all or a portion of the [Larner] Lease without the prior written consent of Lessor."

52. Cabot breached the Larner Lease by assigning all its right, title and interest in the Larner Lease to Carbon West Virginia without obtaining Shonk's consent.

53. Cabot did not sell all or substantially all of its assets in the transaction with Carbon West Virginia.

54. Shonk did not unreasonably refuse to grant its consent to the proposed assignment.

55. Cabot willfully breached its duty by assigning the Larner Lease to Carbon West Virginia over Shonk's numerous written objections to the assignment.

56. As a result of Cabot's willful breach, Shonk is now forced to take legal action to enforce its rights under the Larner Lease.

57. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court rescind the assignment to Carbon West Virginia made in violation of the Larner Lease and award Shonk its reasonable attorneys' fees and costs.

**COUNT II – Breach of Lease for Non-Payment and Late Payment of Royalties**

58. Shonk incorporates the allegations in Paragraphs 1 – 57 as if fully set forth here.

59. Cabot owes a duty to Shonk under the Larner Lease to make monthly royalty payments on or before the 25th day of each month for all gas produced during the month immediately preceding.

60. Cabot breached its duty to Shonk by failing to remit royalty payments for November 2017 and December 2017 production.

61. Even if Carbon West Virginia were a valid assignee, which Shonk disputes, Carbon West Virginia's late payment of royalties is a breach of the terms of the Larner Lease for which Cabot is liable.

62. Furthermore, even if Carbon West Virginia were a valid assignee, which Shonk disputes, Carbon West Virginia has repudiated the Larner Lease by communicating to Shonk its intention to continue making late royalty payments in breach of the Larner Lease.

63. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court terminate the Larner Lease due to the non-payment of royalties in accordance with its terms

and conditions, and, alternatively, to award damages in an amount to be determined by the Court for Cabot's breach of the payment obligations under the Larner Lease.

**Count III – Breach of the Ratification's Royalty Calculation Methodology.**

64. Shonk incorporates the allegations in Paragraphs 1-63 as if fully set forth here.
65. The Ratification specifically set forth the methodology for calculating royalty payments.
66. The Ratification prohibits post-production deductions for expenses and volume losses.
67. Cabot and Carbon West Virginia are taking post-production deductions in violation of the Ratification.
68. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court:
  - a. Order an accounting of all royalty calculations conducted since October 2017 including documentation of the deductions and/or costs taken by Carbon West Virginia;
  - b. terminate the Larner Lease due to the non-payment and miscalculation of royalties in accordance with its terms and conditions;
  - c. and, alternatively, award damages in an amount to be determined by the Court for Cabot's breach of the payment obligations under the Larner Lease.

WHEREFORE, based upon all of the foregoing, Shonk respectfully demands judgment against the Defendants declaring their rights under the Larner Lease as set forth above, rescinding Cabot's assignment of the Larner Lease to Carbon West Virginia, ordering an accounting,

terminating the Larner Lease—or, alternatively, awarding Shonk damages—for breaching the payment provisions, and awarding Shonk its reasonable attorneys’ fees and costs.

**SHONK LAND COMPANY LLC,**

By Counsel



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Nicholas S. Johnson (WVSB # 10272)  
Bailey & Glasser LLP  
1054 31<sup>st</sup> St, NW  
Suite 230  
Washington, DC 20007  
(202) 463-2101

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SHONK LAND COMPANY LLC

Plaintiff,

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Civil Action No. \_\_\_\_\_

CABOT OIL & GAS CORPORATION, and  
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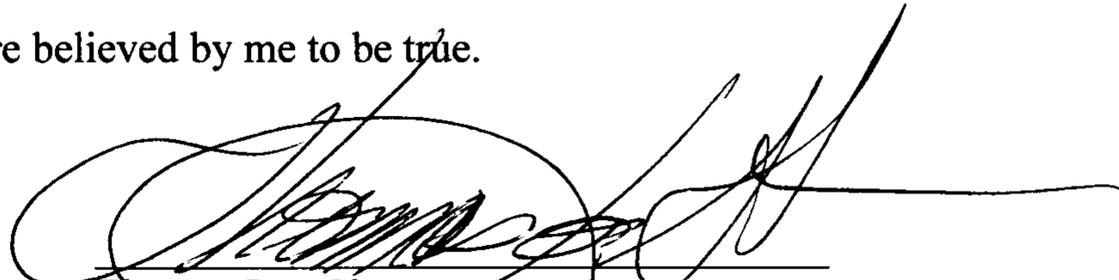
Defendants.

VERIFICATION

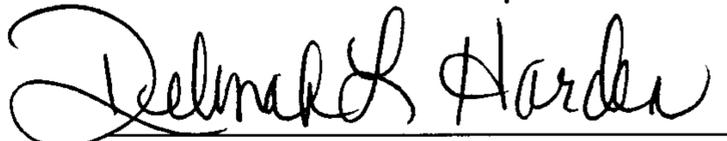
I, Thomas Lon Shannon, state that I am the Special Assistant to the Manager of Shonk Land Company LLC – Plaintiff in the above-captioned proceeding.

I have read the foregoing Verified Complaint and affirm: (i) that the factual allegations contained therein, insofar as they concern my acts are true and correct, except, that in the case of allegations based upon information and belief, I believe such allegations to be true and (ii) insofar as they relate to the acts of any other person, are believed by me to be true.

Dated: February 27, 2018

  
Thomas Lon Shannon  
Special Assistant to the Manager  
of Shonk Land Company LLC

SUBSCRIBED TO AND SWORN before me this 27th day of February, 2018.

  
Notary Public

My commission expires: 12/20/19

