RECEIVED SEP - 8 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **04-F-1224 (CBS)**

UNITED STATES OF AMERICA,
ex rel. **BOBBY L. MAXWELL,**
Plaintiff,
vs.
KERR-McGEE CHEMICAL WORLDWIDE, LLC f/k/a KERR-McGEE OPERATING CORPORATION, f/k/a KERR-McGEE CORPORATION, a Delaware corporation
KERR-McGEE OIL & GAS CORPORATION, a Delaware corporation,
KERR-McGEE WORLDWIDE CORPORATION, a Delaware corporation, and
KERR-McGEE CORPORATION f/k/a KERR-McGEE HOLDCO, a Delaware corporation,
Defendants.

RELATOR BOBBY L. MAXWELL'S AMENDED COMPLAINT AND JURY DEMAND
(FILED UNDER SEAL PURSUANT TO 31 U.S.C. § 3730(b)(2) and (3))

The Relator, Bobby L. Maxwell, by and through his counsel of record, acting as Relator on behalf of the Government of the United States of America (the "Relator"), states the following Amended Complaint against Defendants Kerr McGee Chemical Worldwide, LLC, Kerr McGee Oil & Gas Corporation, Kerr-McGee Worldwide Corporation and Kerr-McGee Corporation [referred to collectively herein as "Kerr McGee"]:

I. INTRODUCTION

1. This lawsuit is brought pursuant to the provisions of the False Claims Act ["FCA"], 31 U.S.C. § 3729, *et. seq.*, to recover monies owed to the United States arising from one or more of the Defendant's obligation to properly pay federal oil royalties. The Relator challenges Defendants' practice of failing to properly market or otherwise obtain the fair market value for oil produced from federal lands, including offshore Gulf of Mexico, and failing to increase the royalty value of said oil to

reflect either the value of the marketing services provided by others, or to reflect the fair market value which the Defendants should have received if they had properly discharged their duty to market this oil for the benefit of the United States or if they had otherwise not engaged in misconduct or sold this oil pursuant to arms-length contracts. As set forth below, Defendants have knowingly (within the meaning of 31 U.S.C. § 3729(b)) underreported, or caused others to underreport, the royalty value of this oil. The result is that for the time period of January 1999 through approximately July of 2003, the Defendants have filed, or caused others to file, false statement with the United States to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government, in violation of 31 U.S.C. § 3729(a)(7).

2. The federal oil and gas leases and/or properties include those identified in the following list. The Relator believes other federal leases and/or properties may be involved and reserves the right to supplement this list. Hereinafter the federal oil and gas leases and/or properties at issue, including those identified below, will be referred to as the "Royalty Properties."

Property No.	Property No.	Property No.
0540010220	0540068990	0540142090
0540010230	0540074610	0540142240
0540010250	0540074620	0540143910
0540015260	0054007760	0540149420
0540020630	0540079230	0540151240
0540024180	0540084830	0540152930
0540026650	0540091830	0540158520
0540031690	0540091840	0550003330
0540042680	0540091910	0550003340
0540044600	0540092160	0550003350
0540048320	0540096310	0550003360
0540049400	0540097710	0550003450
0540050060	0540109680	0550003460
0540056600	0540109880	0550003470
0540057780	0540129800	0550008280

0540058000	0540130790	0550008300
0540058090	0540130810	0550008310
0540061360	0540139680	754393003A
0540068880	0540142050	754396015A
0540068980	0540142080	

3. The time period at issue is from January of 1999 through approximately July of 2003. The end-point of the time period may vary by specific federal property depending upon the date the Defendants' contract with Texon L.P. ["Texon"] for the purchase of crude oil ended with respect to that specific property.

II. PARTIES

4. The Relator, Bobby L. Maxwell, is a senior auditor with the Royalty Management Program of the Minerals Management Service ["MMS"] of the U.S. Department of the Interior. Mr. Maxwell maintains his office at the MMS facility located at the Federal Center in Lakewood Colorado. Through Mr. Maxwell's personal and direct participation in the audit of the Defendants, the wrongful acts complained of herein were discovered.

5. The original Kerr-McGee Corporation was incorporated in 1932. On August 1, 2001, this Kerr-McGee Corporation changed its name to Kerr-McGee Operating Corporation [KMOC]. On December 31, 2002 KMOC merged into a newly formed entity, Kerr-McGee Chemical Worldwide, LLC, a Delaware limited liability corporation. For brevity, this entity will be referred to as the "old Kerr-McGee Corporation." At all times material hereto, the old Kerr-McGee Corporation maintained its principal place of business at the Kerr-McGee Center, Oklahoma City, OK 73125. At all times material hereto, the old Kerr-McGee Corporation transacted business within the District of Colorado.

6. Kerr McGee Oil & Gas Corporation is a Delaware corporation with its principal place of business located at the Kerr-McGee Center, Oklahoma City, OK 73125. Kerr-McGee Oil & Gas

Corporation was incorporated on July 15, 1997. At one or more times material hereto, Kerr-McGee Oil & Gas Corporation was the responsible federal lessor and payor for the Royalty Properties. At all times material hereto, Kerr-McGee Oil & Gas Corporation was wholly owned and dominated by one or more Kerr-McGee entity. From January 1999 through September 30, 2002, Kerr-McGee Oil & Gas Corporation was wholly owned and dominated by the old Kerr-McGee Corporation. On September 30, 2002, the old Kerr-McGee Corporation distributed Kerr-McGee Oil & Gas Corporation to a new entity, the Kerr-McGee Worldwide Corporation, which wholly owned and dominated the Kerr-McGee Oil & Gas Corporation through the remainder of the time period at issue. At all times material hereto, Kerr-McGee Oil & Gas Corporation designated the Kerr-McGee Corporation as the entity responsible for federal royalty payments for the Royalty Properties.

7. Kerr-McGee Worldwide Corporation is a Delaware corporation and was incorporated on September 30, 2002. Kerr-McGee Worldwide Corporation maintains its principal place of business at the Kerr-McGee Center, Oklahoma City, OK 73125. From September 30, 2002 through the balance of the time period at issue, Kerr-McGee Worldwide Corporation wholly owned and dominated Kerr-McGee Oil & Gas Corporation.

8. The new Kerr McGee Corporation was originally incorporated as Kerr-McGee Holdco on May 11, 2001 as a Delaware corporation. On July 31, 2001, Kerr-McGee Holdco changed its name to the Kerr-McGee Corporation. For brevity, this entity will be referred to as the "new Kerr-McGee Corporation." The new Kerr-McGee Corporation maintains its principal place of business at the Kerr-McGee Center, Oklahoma City, OK 73125. Since May 11, 2001, the new Kerr-McGee Corporation has been the ultimate parent corporation of all Kerr-McGee entities, including the Kerr McGee Oil & Gas Corporation and indirectly wholly owns and dominates this subsidiary.

9. At all times material hereto, the parent corporations of Kerr-McGee Oil & Gas Corporation have created or implemented, or caused others to create or implement certain policies, standards, objectives and goals which caused Kerr McGee Oil & Gas Corporation to make the acts and omissions complained of herein. For example, this action arises out of Kerr-McGee's decision to maintain a contract for the sale of this federal oil with Texon, whereby, *inter alia*, Texon purchased this oil at below market price in exchange for incurring the expense to market this federal oil. This Texon contract originated with the old Kerr-McGee Corporation, and the old Kerr-McGee Corporation made the decision in 1996, prior to the incorporation of Kerr-McGee Oil & Gas Corporation, to renew this contract and maintain the policy of not maintaining an extensive marketing department and incurring the expense of marketing this federal oil. The old Kerr-McGee Corporation caused Kerr-McGee Oil & Gas Corporation to adopt and maintain this contract and policy.

10. In addition, at all time material hereto, the parent corporations of Kerr-McGee Oil & Gas Corporation exercised complete dominion and control over Kerr McGee Oil & Gas Corporation and Kerr McGee Oil & Gas Corporation has been the alter ego of its parent corporations. As such, the parent corporations of Kerr-McGee Oil & Gas Corporation are fully responsible for the conduct of Kerr McGee Oil & Gas Corporation, as well as all injuries and damages caused by Kerr McGee Oil & Gas Corporation, and all penalties, awards and judgments entered against this subsidiary.

11. In addition, the parent corporations of Kerr-McGee Oil & Gas Corporation have been unjustly enriched by the acts and omissions of Kerr McGee Oil & Gas Corporation and have maintained possession, custody or control of certain property or money which should have been paid to the United States Government.

III. JURISDICTION AND VENUE

12. This action is brought on behalf of the United States Government under 31 U.S.C. § 3729, see et seq., commonly known as the False Claims Act. The Relator brings this action under 31 U.S.C. § 3730(b) to recover for "false claims" which were made, used, or caused to be made or used by Defendants in violation of 31 U.S.C. § 3729(a)(7). This Court has jurisdiction over such claims pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3730(b).

13. *In personem* jurisdiction is appropriate in this District because the FCA provides for nationwide service of process, 31 U.S.C. § 3732(a). In such circumstances, the relevant inquiry is whether a given defendant has sufficient contacts with the United States as a whole. *Appl. to Enforce Admin. Subp. of S.E.C. v. Knowles,* 87 F.3d 413, 417-419 (10th Cir. 1996). The Kerr-McGee Defendants are all domestic corporations with abundant national contacts.

14. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a), because one or more Kerr-McGee Defendant can be found or transacts business in this District and because one or more acts proscribed by the False Claims Act occurred within this District. For example, at all times material hereto, the old Kerr-McGee Corporation transacted business within the District of Colorado and maintained a registered agent for service of process.

15. In addition, the false statements complained of herein concern Kerr-McGee's monthly submission of Form MMS-2014, Report of Sales and Royalty Remittance ["2014"]. Kerr-McGee's 2014s were transmitted to, processed and evaluated at the MMS facility located in Lakewood, Colorado. The 2014s include Kerr-McGee's certification that its royalty reporting and payments complied with the applicable federal laws and regulations. Thus, one or more acts proscribed by the False Claims Act occurred within the District of Colorado. *See, Pickens v. Kanawha River Towing,*

916 F. Supp. 702, 709 (S.D. Ohio 1996).

16. Appropriate jurisdiction exists under the limiting provisions of 31 U.S.C. § 3730. There are no other related actions based on the facts underlying this action, per 31 U.S.C. § 3730(b)(5).

17. There are no pending government civil suits or administrative civil money penalty proceedings, per 31 U.S.C. § 3730(e)(3).

18. There has been no "public disclosure" of these allegations or transactions, per 31 U.S.C. § 3730(e)(4). *See, e.g.,* United *States ex rel. Holmes v. Consumer Insurance Group*, 318 F.3d 1199 (10th Cir. 2003). Moreover, even assuming *arguendo* a sufficient "public disclosure," Mr. Maxwell qualifies as an original source, per 31 U.S.C. § 3730(e) (4) (B). Mr. Maxwell has direct and independent knowledge of the information upon which his allegations are based. Mr. Maxwell was directly involved, including participating in the field investigation of Kerr-McGee. Mr. Maxwell authored the November 15, 2002 MMS letter which placed this matter at issue. Furthermore, Mr. Maxwell voluntarily provided the information on which his allegations are based to the Government before filing this action.

IV. FACTS AND BACKGROUND

A. Overview of federal oil and gas leases and regulations:

19. Under various statutes, including the Mineral Lands Leasing Act of 1920, 30 U.S.C. § 181, *et seq.,* the Acquired Lands Leasing Act, 30 U.S.C. §351-359, the Right-of-Way Leasing Act of 1930, 30 U.S.C. §301, *et seq.*, and the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. §1331, *et seq.,* (as those Acts have been amended over time), the United States is authorized to lease federally-owned properties for mineral exploration, development, and production.

20. Pursuant to these and other sources of authority, the United States has entered, and continues to enter, into many oil and gas leases affecting federal lands located onshore and offshore.

21. Under the terms of these leases, pursuant to 30 C.F.R. § 202.100(a), the United States is ordinarily entitled to receive anywhere from 12.5% to 16.66% of the value of the oil produced from the leased acreage. For competitively bid leases, the royalty can be in excess of 35%. On occasion, the United States has taken its royalties in kind by physically receiving a certain portion of the oil so produced. See 30 C.F.R. § 202.100(a). However, the Government generally receives royalties in the form of cash (or other consideration besides the physical hydrocarbons themselves) based upon the reported "sales value" of oil produced from Royalty Properties.

22. The Department of the Interior ("DOI") is an agency and instrumentality of the United States, and the Mineral Management Service ("MMS") is a component agency of DOI which had responsibility, among other duties, to timely and accurately collect, distribute, account and audit revenues owed to the United States because of the production of minerals from leases on federal land.

23. The MMS requires each lessee to file a monthly report (Form MMS-2014; "Report of Sales and Royalty Remittance") of oil sale remittances for the preceding production month,

which requires the lessee to report the "sales value" in compliance with the applicable regulations and pay royalties upon this reported "sales value."

24. Form MMS-2014 notifies lessees of the legal requirements to make accurate and timely reports:

> "WARNING: This is to inform you that failure to report accurately and timely in accordance with the statutes, regulations, or terms of the lease, permit, or contract may result in late payment charges, civil penalties or liquidated damages being assessed without further notification. Intentional false or inaccurate reporting is subject to criminal prosecution in accordance with applicable federal law(s)."

25. Form MMS-2014 requires a signatory to affirm that all statements in the report are accurate and complete.

26. Furthermore, all persons dealing with the Government are presumed to have knowledge of relevant regulations. *Walter Oil and Gas Corp.* 111 IBLA 260, 265 (October 25, 1989).

27. The applicable federal oil and gas regulations, as well as the case law interpreting and enforcing these regulations, placed an affirmative duty upon the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, to prudently market this federal oil at the highest price obtainable for the mutual benefit of the lessee and lessor. *ARCO Oil & Gas Corp.*, 112 IBLA 8, 11 (November 9, 1989); *Texaco Exploration & Production, Inc.,* Docket No. MMS-92-0306-O&G (May 18, 1999). *See also, California v. Udall*, 256 F.2d 384, 387 (D. C. Cir. 1961).

28. The Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, were prohibited from reducing the price and

having the purchaser market the gas, or accepting less than full market price as an accommodation for the purchaser's marketing expense. *See, Walter Oil and Gas Corp.* 111 IBLA 260 (October 25, 1989); *Arco Alaska, Inc.* MMS -92-0089- O & G (December 5, 1995).

29. The principle that the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, were required to base its royalty value on the fair market value of the oil, and not on a significantly reduced price which incorporated the buyer's expense to market the oil, was clear from the federal oil and gas regulations. For example, Title 30 CFR § 206.102(i) (1999) provided:

> The lessee is required to place oil in marketable condition at no cost to the Federal Government . . . Where the value established under this section is determined by a lessee's gross proceeds, *that value shall be increased to the extent that the gross proceeds have been reduced* because the purchaser, or any other person, is providing services the cost of which ordinarily is the responsibility of the lessee to place oil in marketable condition. [emphasis supplied].

30. Placing the oil in marketable condition had been held to include the expense of marketing the oil. *See, e.g., Walter Oil and Gas Corp.*, 111 IBLA 260 (October 25, 1989); *ARCO Oil & Gas Co.*, 112 IBLA 8 (November 9, 1989).

31. The regulations effective June 1, 2000 maintained this principle. 30 CFR § 206.106 (2000) provides:

> ...If you use gross proceeds under an arm's length contract in determining value, *you must increase those gross proceeds to the extent that the purchaser*, or any other person, *provides services* that the seller normally would be responsible to perform to place the oil in marketable condition or *to market the oil* [emphasis added].

32. Similarly, 30 C.F.R. § 206.102 (1999). "Valuation Standards" provided in subpart (b)(1)(iii):

> If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's length contract *do not reflect the reasonable value of the production because of misconduct by or between two contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production* for the mutual benefit of the lessee and the lessor, then MMS shall require that the oil production be valued pursuant to the first applicable of paragraph (c) (2), (3), (4) or (5) of this section. [emphasis supplied].

33. 30 C.F.R. § 206.102(c) (1999) provides that if the oil is not sold pursuant to an arm's length contract it shall be attributed a reasonable value pursuant to subparagraphs (c) (2), (3), (4) or (5) which identify the use of, *inter alia*, posted or spot prices to determine the fair market value of the oil. *See also*, 30 C.F.R. § 206.103 (2000).

34. The regulations effective June 1, 2000. CFR § 206.102(c)(2)(2000) stated:

> (2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:
>
> (i) Misconduct by or between the parties to the arm's length contract; or
> (ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

35. Here, the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, were required to either market this federal oil and obtain at least the fair market price, or to the extent it elected to not market the gas and sell it to a marketer at less than the fair market price, they were required to "gross up" the proceeds, for federal royalty reporting purposes, to reflect either the fair market value of the oil or the value of the marketing services provided by the purchaser.

36. The Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation failed to discharge their duty to market the gas, failed to gross up

the sale proceeds-or otherwise failed to ensure the federal royalties were based on at least the fair market value of the oil.

37. The regulations and principles stated above were well known by the responsible Kerr-McGee entities. The Relator believes Kerr-McGee's acts and omissions were "knowingly" as defined by 31 U.S.C. § 3729(b) because, *inter alia,* the responsible Kerr-McGee entities knew their royalty reporting, certification and payments were false and/or they submitted their federal royalty reports, certification and payments with either deliberate ignorance or reckless disregard for the truth or falsity of said information.

B. <u>Kerr-McGee's actions:</u>

38. At all times material hereto, one or more of the Kerr-McGee entities identified as Defendants in this action, including Kerr-McGee Oil & Gas Corporation, was the responsible lessee and/or was required to properly report and pay federal oil royalties with respect to the Royalty Properties during the time period at issue.

39. At all times material hereto, oil was produced from the Royalty Properties.

40. In the early 1990's, the old Kerr-McGee Corporation entered into a contract with Texon to exclusively sell the oil produced from the Royalty Properties. Kerr-McGee agreed to sell this federal oil at less than fair market price because, *inter alia,* Texon agreed to incur the obligation and expense to market this federal oil. As a result, Kerr-McGee did not maintain a marketing department for this federal oil and did not incur the significant expense associated with marketing the oil produced from the Royalty Properties.

41. In 1996 the Texon contract was due to expire. Kerr-McGee engaged in an economic analysis of the benefit of selling this federal oil to Texon at below market price in contrast to Kerr-

McGee's cost of marketing this oil. The ultimate conclusion Kerr-McGee reached was that: (1) the differential between the fair market price and the sales price was less dollars than Kerr-McGee's cost to market the gas; and (2) Kerr-McGee would realize greater profits if it sold the oil at below market prices but did not incur any marketing expense.

42. The old Kerr-McGee Corporation thereafter renewed the Texon contract and said contract, or a renewal or extension of said contract, was in force and effect at all times material to this action.

43. Upon the incorporation of the Kerr-McGee Oil & Gas Corporation on July 15, 1997, the Royalty Properties were transferred or assigned to Kerr-McGee Oil & Gas Corporation and this Kerr-McGee entity assumed the Texon contract as well as the responsibility to report and pay the correct federal royalties emanating from the production of oil from the Royalty Properties.

44. At all times material hereto, one or more Kerr-McGee entity, including the Kerr-McGee Oil & Gas Corporation, sold the oil produced from the Royalty Properties to Texon, pursuant to the Texon contract, at prices which were substantially below the fair market price for this oil.

45. At all times material hereto, one or more Kerr-McGee entity, including the Kerr-McGee Oil & Gas Corporation, violated the applicable federal royalty regulations by failing to prudently market this federal oil at the highest price obtainable for the mutual benefit of the lessee and lessor or otherwise by engaging in misconduct or entering into non-arm's length transactions with Texon which resulted in the oil being sold for less than its fair market value.

46. At all times material hereto, the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, were sophisticated entities that had sufficient knowledge and expertise to market the subject federal oil and receive a fair market value. In

the event any portion of the difference between this oil's fair market value and the price Kerr-McGee received is not attributable to Kerr-McGee's breach of its duty to market this oil, then such portion of the difference is due to "misconduct by and between Kerr-McGee and Texon" as referenced by 30 C.F.R. § 206.102(b)(1)(iii) (1999) or 30 C.F.R. § 206.102(c)(2) (2000), or is due to the fact that the contract by and between Kerr-McGee and Texon was not "arms-length," as reflected in 30 C.F.R. § 206.102(c) (1999) or 30 C.F.R. § 206.103 (2000).

47. At all times material hereto, the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, reported the "sales value" for federal royalty purposes, and paid the federal royalties accordingly, based upon the actual sales price received from Texon for the federal oil produced from the Royalty Properties.

48. By so doing, the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, explicitly violated the applicable federal royalty regulations by failing to "gross up" the actual sales proceeds to reflect either the fair market value of the oil or the value of the marketing services provided by Texon.

49. At all times material hereto, the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, made these false statements via the monthly Form MMS-2014 they submitted concerning the Royalty Properties to the MMS office located at the Federal Center in Lakewood, Colorado.

50. The end result is that the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation significantly understated and underpaid the federal royalties due from the production of federal oil from the Royalty Properties.

51. All Kerr-McGee entities identified as Defendants herein, who did not possess a direct

responsibility to report or pay federal royalties, caused those Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, to engage in the actions complained of herein.

52. All wrongful actions complained of herein, were performed "knowingly", as that term is defined by 31 U.S.C. § 3729(b).

D. The MMS' actions:

53. In approximately 2002, the MMS began an audit of Kerr-McGee's federal royalty reporting for the Royalty Properties. During the course of this audit, the Kerr-McGee entities responsible for reporting and paying federal royalties, including Kerr-McGee Oil & Gas Corporation, designated the Kerr-McGee Corporation as the entity responsible for federal royalty payments for the Royalty Properties.

54. The Relator, Bobby Maxwell, was the senior auditor assigned to this audit. Mr. Maxwell personally visited the Kerr-McGee facilities, personally reviewed Kerr-McGee documents and records and personally directed other field personnel in the pursuit of this audit.

55. Among other actions, the course of this audit uncovered a 1996 memo authored by the old Kerr-McGee Corporation which conducted an economic analysis of the benefit of maintaining the existing Texon contract to sell the federal oil at below market price yet let Texon incur the expense of marketing this federal oil. The memo recommended renewal of the Texon contract because the Kerr-McGee Corporation's cost to market, approximately $1.50 per barrel, was more than the difference between the fair market value and the price received from Texon, approximately $1.25 per barrel.

56. Mr. Maxwell personally reached the conclusion that Kerr-McGee had substantially underpaid its federal oil royalties because Kerr-McGee accepted less than market price in exchange

for Texon incurring the expense of marketing the crude oil.

57. The MMS conducted a reasonable and fair economic analysis of Kerr-McGee's federal royalty deficiency for the audit period of January 1, 2000 through December 31, 2000. The MMS compared the fair market value of this oil with the Texon sales price and concluded that Kerr-McGee owed the federal government approximately $7.6 million for the audit period.

58. On November 15, 2002 the Relator, Bobby Maxwell, authored a letter to the Kerr-McGee Corporation which requested that Kerr-McGee pay additional royalties of approximately $7.6 million for the time period of January 1, 2000 through December 31, 2000 because Kerr-McGee accepted less than market price in exchange for Texon incurring the expense of marketing the crude oil. Mr. Maxwell identified the applicable federal regulations and decisions and how the MMS reached its conclusion.

59. The Kerr-McGee Corporation responded to Mr. Maxwell's November 15, 2002 letter and denied the responsibility to pay additional royalties.

60. Mr. Maxwell thereafter prepared two proposed Orders to Report and Pay Additional Royalties. The scope of these proposed Orders was the time period of January 1, 1999 through December 31, 2002. The first proposed Order evaluated the difference between the fair market price and the actual sales price, with accommodation for a reasonable transportation allowance, and concluded that Kerr-McGee owed approximately $9.2 million in unpaid federal royalties for this time period.

61. The second proposed Order added back the reasonable cost of marketing this federal oil and concluded that Kerr-McGee owed the federal government approximately $10 million in unpaid federal royalties for this time period.

62. Mr. Maxwell estimates that the amount of unpaid federal royalties with respect to the Royalty Properties, for the time period in question, is approximately $12 million.

63. After Mr. Maxwell prepared these two proposed Orders, he requested the authority to transmit these Orders to Kerr-McGee. Mr. Maxwell was expressly dissuaded by his superiors from pursuing any action against Kerr-McGee; to the best of Mr. Maxwell's knowledge neither the MMS nor any other federal agency has taken any action against Kerr-McGee concerning the issues which are the subject matter of this action.

V. CLAIM FOR RELIEF — VIOLATION OF THE FALSE CLAIMS ACT (31 U.S.C. §3729)

64. The Relator incorporates by reference the prior allegations of this Complaint, as though more fully set forth herein.

65. By engaging in the actions specified above, the Defendants have knowingly made, used, or caused to be made or used false records or statements to convert, conceal, avoid, or decrease an obligation to pay or transmit money for payment of royalties to the United States Government, in violation of 31 U.S.C. § 3729(a)(7).

66. As a direct and proximate result of the Defendants' actions, the United States Government has not been paid full and appropriate royalties due and owing for the production of oil from the Royalty Properties, the exact amount of which will be proven at trial.

67. Accordingly, the United States is entitled to judgment against one or more of the Defendants for the full amount of unpaid royalties, plus treble damages and penalties.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bobby L. Maxwell, on behalf of the United States, requests (a) that the United States Government recover from Defendants all royalties which the Government should have received if the Defendants had discharged their duty to market the subject oil for the benefit of the Government or had properly "grossed up" the actual sales proceeds to reflect the fair market value of the oil or to reflect the value of the marketing services provided by Texon as provided by, *inter alia*, 30 C.F.R. § 206.102 (1999) and 30 C.F.R. § 206.102 and § 206.103 (2000); (b) that the damages described in (a) be trebled as provided in 31 U.S.C. §3729(a); (c) that a civil penalty of no less than $5,000 and no more than $10,000, for the time period of January 1, 1999 through September 28, 1999, and of no less than $5,500 and no more than $11,000, for the time period of September 29, 1999 through approximately July of 2003 be assessed against Defendants for each false statement submitted to the Government; (d) that the Court award the Relator all amounts as are permitted under 31 U.S.C. §3730(d), including an appropriate share of any sums recovered and benefits obtained in this action, now or in the future, along with the Relator's reasonable expenses, attorney fees, and costs incurred herein; and (e) that the Court grant any additional appropriate relief.

THE RELATOR DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted 8th day of September, 2004.

THE LAW FIRM OF MICHAEL S. PORTER

By:________________________
Michael S. Porter, Esq.
4465 Kipling Street
Wheat Ridge, Colorado 80033
(303) 940-8370

Richard C. LaFond, Esq.
LaFond & Sweeney, L.L.C.
1756 Gilpin Street
Denver, CO 80218
(303) 388-4551

ATTORNEYS FOR THE PLAINTIFF/RELATOR BOBBY L. MAXWELL

Relator's address:
P. O. Box 261342
Lakewood, CO 80226

CERTIFICATE OF MAILING

I hereby certify that on Wednesday, September 8, 2004 a true and correct copy of the foregoing was placed in the U.S. Mail, postage pre-paid, addressed to the following:

Lisa Christian, Esq.
Deputy Chief, Civil Division
U.S. Attorney's Office
1225 17th Street, Suite 700
Denver, CO 80202

William Edgar, Esq.
Assistant United States Attorney
950 Pennsylvania Avenue
Washington, D.C. 20530

Richard C. LaFond, Esq.
LaFond & Sweeney, L.L.C.
1756 Gilpin Street
Denver, CO 80218

Yvonne Greenbaum