

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE 30 <sup>th</sup>	<b>SUMMONS AND COMPLAINT</b>	CASE NO. 14- <u>554</u> -CP
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Court Address: 313 W. Kalamazoo Street, Lansing, MI 48901  
 Court telephone no.: 517-483-6500

**CLINTON CANADY III**

Plaintiff name(s), address(es) and telephone no(s).  
 State of Michigan

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Plaintiff attorney, bar no., address, and telephone no.  
 D.J. Pascoe (P54041)  
 Assistant Attorney General - State of Michigan  
 525 W. Ottawa Street, Lansing, MI 48933  
 (517) 373-1160

V Defendant name(s), address(es), and telephone no(s).  
 ENCANA CORPORATION, a Canadian corporation and  
 ENCANA OIL & GAS USA, INC.,  
 The Corporate Company, as Resident Agent  
 30800 Telegraph Road, Suite 2345  
 Bingham Farms, MI 48025

**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>MAY 05 2014</b>	This summons expires* <b>AUG 04 2014</b>	Court clerk <b>FARA DUFFEY</b>
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\*This summons is invalid unless served on or before its expiration date.

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

**Family Division Cases**

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**General Civil Cases**

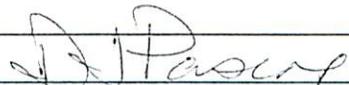
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Ingham County, MI	Defendant(s) residence (include city, township, or village) Ingham County, MI
Place where action arose or business conducted Ingham County, MI	

May 5, 2014  
Date

  
Signature of attorney/plaintiff D.J. Pascoe P54041

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE**

**SUMMONS AND COMPLAINT**

Case No. 14- -CP

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE**

**OFFICER CERTIFICATE**

OR

**AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

I served personally a copy of the summons and complaint,

I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with \_\_\_\_\_

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles Traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with: \_\_\_\_\_  
Attachments

\_\_\_\_\_ on \_\_\_\_\_  
Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_  
Signature

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

STATE OF MICHIGAN,

Plaintiff,

v

ENCANA CORPORATION,  
a Canadian corporation, and

ENCANA OIL & GAS USA INC,  
a Delaware corporation,

Defendants.

No. 14- 584 -CP

HON. CLINTON CANADY III

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Ann Arbor, MI 48104  
(734) 222-1507

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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

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## COMPLAINT

Plaintiff Bill Schuette, Attorney General of the State of Michigan, by the undersigned Assistant Attorney General, brings this lawsuit in his official capacity on behalf of the People of the State of Michigan against Defendants Encana Corporation and Encana Oil & Gas USA Inc. (together, "Encana"), for violations of the Michigan Antitrust Reform Act (MARA), MCL 445.771 *et seq.* In support of the Complaint, the Attorney General alleges:

### INTRODUCTION

1. Defendants and a Co-conspirator entered into and engaged in an anti-competitive, illegal combination and conspiracy to suppress and restrain competition by rigging bids to obtain leases to mineral rights offered by the State of Michigan in an October 26-27, 2010 auction ("October 2010 auction").

2. Defendants and a Co-conspirator artificially suppressed prices of the State's mineral rights leases by agreeing in advance of the auction to geographically allocate bidding territories in the Utica/Collinwood shale formation located in the northern Lower Peninsula of Michigan.

3. By avoiding competition, the Defendants paid the State of Michigan less than what they would have paid had they competed directly in an open and unfettered market.

## PARTIES

4. Plaintiff is the Attorney General of the State of Michigan, appearing on behalf of the People of the State of Michigan pursuant to his statutory and common law authority.

5. Encana Corporation is a Canadian natural gas and oil company with its principal place of business at 1800, 855 2 Street S.W., Calgary, Alberta T2P 2S5.

6. Encana Oil & Gas USA Inc. is a Delaware corporation with its principal place of business and headquarters located at 370 17th Street, Suite 1200, Denver, Colorado 80202. Encana Oil & Gas USA Inc. serves as the entity responsible for the United States operations of Encana Corporation.

## JURISDICTION AND VENUE

7. MCL 600.1631 vests this Court with jurisdiction and venue over the Attorney General's complaint, providing:

The county in which the seat of state government is located is a proper county in which to commence and try the following actions:

(a) when the action is commenced by the attorney general in the name of the state or of the people of the state for the use and benefit thereof.

8. The Michigan Antitrust Reform Act Section 5, MCL 445.775, further vests this Court with jurisdiction and venue.

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## FACTUAL BACKGROUND

9. The State of Michigan owns over 3.8 million acres of combined surface and mineral rights and an additional 2.1 million acres of mineral rights only.

10. The Michigan Department of Natural Resources (DNR) is authorized to enter into oil and gas<sup>1</sup> leases through public auctions.

11. The DNR conducts auctions of the state-owned mineral rights twice yearly; once in the spring and once in the fall.

12. The Collingwood shale is an oil and natural gas producing formation which lies roughly 5,000-7,000 feet below northern Michigan. The thickness of the Collingwood shale varies over northern Michigan. The Utica shale formation is a thicker formation which lies immediately below the Collingwood shale.

13. The eleven counties believed to cover the highest concentrations of oil and gas in the Utica/Collingwood formation include Antrim, Cheboygan, Charlevoix, Crawford, Emmet, Grand Traverse, Kalkaska, Missaukee, Otsego, Presque Isle, and Roscommon.

14. The energy industry began to recognize the commercial viability of the Utica/Collingwood shales in early 2010, based on reports from the field that an exploratory well drilled in the Utica/Collingwood shales in Missaukee County, Michigan, was visibly flaring gas.

15. On April 24, 2010, that speculation heightened even further when the results of the initial flowback tests on the State Pioneer 1-3 well, an exploratory Utica/Collingwood shale well drilled in Missaukee County, Michigan, became public and indicated that the Utica/Collingwood shales may present a commercially viable

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<sup>1</sup> "Mineral" and "oil and gas" are used interchangeably throughout this Complaint.

oil and natural gas play. Eventually, it was disclosed that Encana, through a related company, was the entity that drilled the State Pioneer 1-3 well.

16. Expensive, advanced drilling technologies and techniques are needed to exploit the Utica/Collingwood formations. The technologies needed to reach and produce these formations include deep horizontal drilling techniques and extensive hydraulic fracturing technologies. As a result, the exploration and exploitation of these shales is capital intensive, requiring years of experience and millions of dollars in investment.

17. For this reason, bidders for these Utica/Collingwood leases were limited in 2010.

18. Encana and a Co-conspirator were two of only a few industry players active in northern Michigan that had the capital and expertise necessary to exploit the Utica/Collingwood shales.

19. Encana and its co-conspirator competed vigorously at the May 2010 Auction, causing lease prices to skyrocket.

20. Twenty bidders acquired leases to 118,117 acres for \$178,377,990.56, averaging approximately \$1,510 per acre. By contrast, at the DNR auction on October 27, 2009, seven bidders leased approximately 6,147 acres for \$176,014, averaging approximately \$29 per acre.

## DEFENDANTS' ANTICOMPETITIVE CONDUCT

21. After the May 2010 auction, Encana USA's CEO communicated with the Co-conspirator's CEO via telephone conversations and emails on the topic of how to suppress lease competition and pay the State less than what they would under unrestrained, competitive market conditions:

22. Telephone calls and emails between the executives of Encana and its Co-conspirator continued through October of 2010, where the executives discussed allocating the counties each company would bid within at the State's October 2010 auction, always with the primary purpose of depressing prices at which each could acquire leases.

23. On October 19, 2010, Encana and its Co-conspirator exchanged a written proposal to illegally allocate bidding responsibilities at the State's October 2010 Auction by county.

24. At the State's October 2010 auction, lease prices were substantially reduced compared to the State's May 2010 Auction.

25. The State leased more than twice the acreage at the October 2010 auction than at the May 2010 Auction, but raised almost \$170 million less.

26. At the State's October 2010 Auction, Encana did not acquire leases in any of the counties in which its co-conspirator acquired leases and vice versa.

27. Encana and its Co-conspirator purposefully did not compete against each other at the October 2010 Auction.

28. Encana's illegal agreement to not compete against its Co-conspirator at the October 2010 Auction achieved its purpose of lowering the prices Defendants paid to the State for mineral leases at the Auction.

29. But for Encana's colluding with its Co-conspirator to not compete against each other at the October 2010 Auction, the State of Michigan would have received higher prices for its mineral leases.

### VIOLATIONS ALLEGED

#### COUNT I

30. The State of Michigan incorporates the preceding paragraphs of the Complaint as though fully restated here.

31. This is an action that alleges violations of Section 2 of the Michigan Antitrust Reform Act, M.C.L. § 445.772.

32. The relevant geographic market consists of acreage from which the Utica/Collingwood shales may be explored and developed in the State of Michigan, and the relevant product market consists of leases for oil and gas rights.

33. Defendants knowingly entered into a continuing agreement, understanding, and conspiracy to fix, control, and lower the price paid for mineral rights leases in Michigan during the relevant period.

34. The agreement caused the State of Michigan to suffer an injury to its property, persons, and general economy for the following reasons:

- a. Defendants leased mineral rights to land directly from the State of Michigan at DNR auctions.

- b. Defendants restrained, suppressed, and/or eliminated competition for the leases of mineral rights in the Utica/Collingwood shale formation in the State of Michigan.
- c. The State of Michigan and its State agencies have been deprived of the benefits of competition.

**PRAYER FOR RELIEF**

Accordingly, the State of Michigan requests that this Court:

- a. Adjudge and decree that Defendants violated Section 2 of the Michigan Antitrust Reform Act, M.C.L. § 445.772;
- b. Enjoin and restrain, pursuant to state law, Defendants, their affiliates, assignees, subsidiaries, successors, and transferees, and their officers, directors, partners, agents, and employees, and all other persons acting or claiming to act on their behalf or in concert with them, from continuing to engage in any anticompetitive conduct and from adopting in the future any practice, plan, program, or device having a similar purpose or effect to the anticompetitive actions set forth above;
- c. Award to the State of Michigan and its State agencies damages under MARA Section 8, MCL § 445.778, for underpayments Defendants made to the State of Michigan and its State agencies for leases of mineral rights;

- d. Award to the State of Michigan and its State agencies any other statutory damages, restitution, or equitable disgorgement for the benefit of the State as appropriate;
- e. Award to the State of Michigan the maximum civil penalties under Section 7 of the Michigan Antitrust Reform Act, M.C.L. § 445.777, for each contract, combination, or conspiracy in restraint of trade;
- f. Award to the State of Michigan its costs, including reasonable attorneys' fees, as provided under Section 8 of the Michigan Antitrust Reform Act, M.C.L. § 445.778; and
- g. Order any other relief that this Court deems proper.

Respectfully submitted,

Bill Schuette  
Attorney General



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Dated: May 5, 2014