

IN THE DISTRICT COURT STEVENS COUNTY, KANSAS

GILBERT H. COULTER and)
ELIZABETH S. LEIGHNOR, individually)
as represented plaintiffs on behalf of)
persons or companies similarly situated,)
)
Plaintiffs,)
)
v.)
)
ANADARKO PETROLEUM CORPORATION,)
)
Defendant.)
)

FILED BY FAX

Case No. 98-CV-40

**DEFENDANT ANADARKO PETROLEUM CORPORATION'S
MOTION TO RECONSIDER DENIAL OF MOTION TO
DECERTIFY THE CLASS**

Defendant Anadarko Petroleum Corporation ("Anadarko") moves the Court to reconsider its denial of Anadarko's Motion to Decertify Class, filed on February 4, 2002.

IN SUPPORT of this motion, Anadarko states:

1. On February 4, 2002, the first day of the trial of this matter to the Court, Anadarko filed its motion to decertify the class. Before commencing the trial, the Court denied the motion as untimely. TR Vol. I, pp. 4-5, 6-8.

2. A court retains an inherent power to review its own proceedings and to correct errors and to prevent injustice until a final judgment is entered. *Bichelmeyer Meats v. Atlantic Ins. Co.* ___ Kan. ___, 42 P.3d 1191, 1195 (2001); *McTaggart v. Liberty Mutual Insurance Co.*, 267 Kan. 641, 645, 983 P.2d 853 (1999); *see also, City of Wichita v. Rice*, 20 Kan. App. 2d 370, 376, 889 P.2d 789 (1995).

3. Even if the parties stipulate to class certification, the Court still must conduct a

thorough Rule 23 (a) inquiry. *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 480 (5th Cir. 2001); *Hervey v. City of Little Rock*, 787 F.2d 1223, 1227 (8th Cir. 1986). While class stipulations by the parties may be helpful, they are not complete substitutes for “rigorous analysis.” *Hervey*, at 1227. The purpose of this analysis is to protect unknown or unnamed potential class members, and by definition those people do not and cannot participate in any stipulations concocted by the named parties. *Id.* The due process clause requires that the named Plaintiff adequately represent the interest of the absent class members. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985).

4. K.S.A. 60-223 (c) (1) authorizes the Court to alter or amend a class notice certification order at any time before a decision on the merits.

5. As is set out in detail in Anadarko’s memorandum in support of its motion to decertify, the Court should decertify the class for two reasons.

First, because Plaintiffs’ claims are based on the implied covenant to market, a covenant *implied in fact*, to determine whether the covenant should be implied in a given lease the Court must consider the terms of the lease, its negotiating history, and the course of performance thereunder. *Smith v. Amoco Production Co.*, ___ Kan. ___, 31 P.3d 255, 268 (2001). As such, the Court must consider the circumstances of each of the more than 1,000 leases at issue in this case. As a result, the claims of the class representatives are not typical of the claims of the other class members and individual questions of fact predominate over any common issues of fact and law.

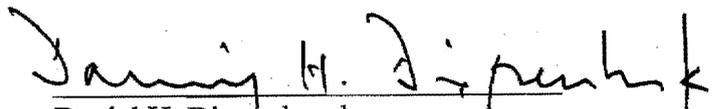
Second, the class representatives in this case cannot adequately represent the interests of the class as a whole. The class representatives contend that Anadarko does not market gas at the well and, therefore, should not calculate and pay royalties to them based on the proceeds from supposed

sales at the well. Under their theory of the case, Anadarko must pay royalties pursuant to lease provisions concerning gas marketed off the leased premises. While that theory, if successful, may benefit the class representatives, it would damage other class members, whose contracts provide for payment of only four or five cents per thousand cubic foot of gas produced when there are no sales at the well. That is far less than Anadarko currently pays those class members. If the class representatives prevail in this case, they will harm members of the class they purport to represent.

6. In a recent case, the Texas Court of Appeals held that because the implied covenant to market is implied in fact, the trial court erred in certifying a class; the implied covenant claim mandated an individualized lease by lease analysis that precluded a finding that common issues predominated. *Union Pacific Resources Group v. Neinast*, 67 S.W. 3d 275 (Tex. App.--Houston (1st Dist.) 2001).

WHEREFORE, for the reasons, arguments and authorities stated above, and for the reasons, arguments and authorities set out in Defendant's Memorandum in Support of Motion to Decertify the Class, Defendant Anadarko Petroleum Corporation respectfully requests the Court to reconsider its denial of Defendant's motion to decertify the class and to decertify the class pursuant to K. S. A. 60-223 (c) (1).

Respectfully Submitted,



Daniel H. Diepenbrock
MILLER & DIEPENBROCK, P.A.
P.O. Box 2677
Liberal, KS 67905-2677
(620) 626-8502
(620) 626-6804 (fax)

and

Edward C. Duckers
Lowell R. Stern
HOGAN & HARTSON, L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-5600
(202) 637-5910 (fax)

*Attorneys for Defendant Anadarko
Petroleum Corporation*

REQUEST FOR ORAL ARGUMENT

Defendant Anadarko Petroleum Corporation requests oral argument on this motion to reconsider.

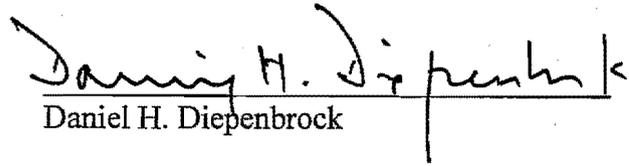
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 3rd day of May, 2002, I mailed a copy of the above and foregoing document to the persons hereinafter named, by depositing the same in the U.S. Mail, postage prepaid, and properly addressed to the following:

Thomas D. Kitch (Also via fax 316-267-1754)
Gregory J. Stucky
David G. Seely
FLEESON, GOOING, COULSON
& KITCH, L.L.C.
125 N. Market, 16th Floor
Wichita, KS 67202

Bernard E. Nordling (Also via fax 620-544-2230)
Erick E. Nordling
KRAMER, NORDLING & NORDLING, L.L.C.
209 E. Sixth Street
Hugoton, KS 67951

Honorable Tom R. Smith
Stevens County Courthouse
200 E. Sixth St.
Hugoton, KS 67951


Daniel H. Diepenbrock

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