

IN THE SUPREME COURT OF THE STATE OF KANSAS

TIMOTHY J. COULTER, individually and as  
representative plaintiff on behalf of persons or  
persons or companies similarly situated,

Plaintiff/Appellee,

v.

ANADARKO PETROLEUM CORPORATION,

Defendant/Appellee.

v.

STAN R. BOLES, on behalf on himself and all  
similarly situated royalty owners,

Intervenor/Appellant.

Case No. 103310-A

**MOTION TO TRANSFER**

COME NOW the Plaintiff and the Plaintiff Class (hereinafter collectively referred to as "Plaintiffs"), as appellees in this matter, and respectfully request that this appeal be transferred to the Supreme Court of Kansas pursuant to KAN. SUP. CT. R. 8.02. Plaintiffs seek this relief to avoid any further delay in this class action, which has now lasted more than ten years.

In support of said motion, the Plaintiffs state as follows:

1. Plaintiffs filed this action on October 7, 1998.

2. The District Court certified this case as a class action on August 23, 2000. The Plaintiff Class consists of 6,469 persons or entities who have received royalty payments from Defendant Anadarko Petroleum Corporation (Anadarko).

3. The District Court heard the liability evidence presented by the parties in a bench trial in February, 2002, but never issued a decision.

4. In June, 2008, the parties executed a Stipulation of Settlement, which obligates Anadarko to pay \$33 million to settle claims through December 31, 2008, and to pay royalties thereafter on the basis of a formula which will benefit the Plaintiffs.

5. On June 22, 2009, the District Court entered a Notice Order conditionally approving the Stipulation of Settlement, establishing the procedure for mailing and publishing notice to the Plaintiff Class, and setting the matter for a Fairness Hearing.

6. On September 15, 2009, the District Court conducted the Fairness Hearing. Appellant filed the only objection to the settlement, entitled "Notice of Intention to Appear and Object to Final Approval of the Proposed Class Settlement and Brief in Support." The District Court conducted the Fairness Hearing on September 15, 2009. Appellant presented evidence in support of his objection at the Fairness Hearing.

7. After hearing the evidence, the District Court made findings of fact and conclusions of law, overruled the appellant's objection, and approved the Stipulation of Settlement in the Journal Entry of Judgment, which it filed on September 17, 2009.

8. On September 30, 2009, appellant filed “Objector’s Motion to Enter Findings of Fact and Conclusions of Law as Required and, to the Extent the Journal Entry of Judgment Contains Some, to Amend and/or Make Additional Findings of Fact and Conclusions of Law Regarding Settlement Class Certification and Settlement Approval,” which is scheduled for hearing in the District Court on November 23, 2009.

9. Appellant filed his Notice of Appeal herein on October 13, 2009. The Notice of Appeal appears to be premature.

10. As recited in the Stipulation of Settlement, the \$33 million being paid by Anadarko to settle this dispute includes a smaller sum (\$250,000) which represents interest for the period from the date of execution until 60 days after the expected date of the Fairness Hearing (which was subsequently set for September 15, 2009), which was “the period of time estimated to complete the settlement approval process in the event that there are no objections to the Settlement or no appeals of any order of the Court approving the Settlement.” (Stipulation of Settlement, ¶2.1). The Stipulation of Settlement does not require Anadarko to pay any further interest on that amount after that date. Thus, as of November 14, 2009, the Plaintiffs will begin suffering economic loss, since the \$33 million will not be distributed until this appeal is resolved and the lower court’s approval of the settlement becomes final.

11. Transferring this appeal will limit the economic loss suffered by the Plaintiffs as the result of the delay in implementation of the settlement agreement.

12. This case has significant public interest, because it directly affects the interests of the Plaintiff Class, which consists of more than 6,000 persons and entities, and tens of thousands of other gas royalty owners in the State of Kansas, who have been or are members of plaintiff classes in other similar lawsuits.

13. The expeditious administration of justice requires that this appeal be disposed of as promptly as possible, so that a final, enforceable, and non-reviewable judgment might be obtained, enabling the Plaintiffs to obtain the benefits of this settlement.

14. Plaintiffs' claims in this case are substantially the same as those in *Littell et al. v. OXY USA, Inc.*, Case No. 98 CV 51, Stevens County, Kansas. As in this case, in *Littell* the District Court approved a class settlement and overruled the objections of a single class member represented by Rex Sharp, who also represents the sole objector herein, and Mr. Sharp's client appealed.<sup>1</sup> Thereafter, by transfer, the Kansas Supreme Court accepted the *Littell* appeal as Case No. 08-100349-AS.

15. This Motion seeks substantially the same relief granted by this Court in *Littell*. As the Court may recall, shortly after oral argument in *Littell*, the objector voluntarily dismissed its appeal. (Order, Case No. 08-100349-AS, January 22, 2009).

WHEREFORE, for all of the foregoing reasons, the Plaintiff and Plaintiff Class respectfully request that their Motion to Transfer be granted.

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<sup>1</sup>Appellant has seen fit to style his appeal as "Stan R. Boles, on behalf of himself and all similarly situated royalty owners." (Docketing Statement, p. 1). Because appellant was the sole objector, he can only represent himself in this appeal. It is obvious that Mr. Sharp, through the vehicle of an objector, is merely attempting to usurp this class action lawsuit.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this 5th day of November, 2009, a copy of the foregoing **Motion to Transfer** was placed in the United States mail in Wichita, Kansas, first-class, postage prepaid, addressed to:

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