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IN THE TWENTY-SIXTH JUDICIAL DISTRICT
DISTRICT COURT, STEVENS COUNTY, KANSAS
CIVIL DEPARTMENT

OPAL LITTELL and CHERRY RIDER, co-trustee of the Opal Littell Family Trust, and BONNIE BEELMAN, individually and as representative plaintiffs on behalf of persons or concerns similarly situated,	)	
Plaintiffs,	)	
v.	)	
OXY USA INC.,	)	
Defendant.	)	**Case No. 98-CV-51**

OXY USA, INC.'S REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO OXY'S MOTION TO DECERTIFY CLASS

Defendant OXY USA Inc. ("OXY") respectfully submits this Reply to Plaintiffs' Memorandum in Opposition to OXY's Motion to Decertify Class ("Plaintiffs' Response").

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INTRODUCTION

Kansas' law with respect to the analysis of the implied covenant to market gas has changed, and that change requires a different analysis of class certification than was used by this Court a year ago. While Plaintiffs' Response makes it clear that Plaintiffs intend simply to ignore the newest teachings of the Kansas Supreme Court, this Court cannot. Under Smith v. Amoco Production Co., ___ Kan. ___, 31 P.3d 255 (2001), the requirements of commonality, typicality and predominance do not exist here, and the Plaintiff class must be decertified.

I. KANSAS LAW ON IMPLIED COVENANT HAS CHANGED

Plaintiffs assert that OXY is not entitled to reconsideration of class certification because OXY has failed to show some change in the law or facts which would warrant revisiting the issue. However, Plaintiffs' own Response acknowledges that a motion for reconsideration of class certification **is properly presented** when there has been a **change in the law**. Plaintiffs' Response at 8.

For nearly a century, Kansas courts have been examining implied covenants in oil and gas leases. See, e.g., Brewster v. Lanyon Zinc Co., 140 F. 801 (8th Cir. 1905); Howerton v. Kansas Natural Gas Co., 81 Kan. 553, 106 P. 47 (1910). Since 1964 in Gilmore v. Superior Oil Co., 192 Kan. 388, 388 P.2d 602 (1964), throught 1995 in Sternberger v. Marathon Oil Co., 257 Kan. 315, 894 P.2d 788 (1995), Kansas courts have treated these covenants as implied in law – judicial devices to "ensure justice or to prevent unjust enrichment." Smith, 31 P.3d at 265. This Court itself, as recently as 1999, reviewed the status of Kansas law and expressly held:

> As to the contention raised by the Plaintiff as to whether the allegedly breached covenants are implied in fact or implied in law, this Court finds that a covenant is implied in fact when its existence is derived from a written instrument and the circumstances surrounding its execution. A covenant is implied in law when it is added by a Court to promote fairness, justice and equity.

> **This Court finds that the implied covenants upon which the Plaintiff Smith Class base their claims against Amoco are, indeed, covenants implied in law, not in fact.**
>
> The causes of action that are asserted by the Smith Class herein are creations of the Courts of Kansas designed to promote fairness and justice between contracting parties in an oil and gas lease. These created causes of action by the courts are specifically designed creatures arising only in oil and gas leases.

Smith v. Amoco Production Company, Case No. 99-CV-21 (Stevens County,Kansas) Order on Defendant's Motion for Partial Summary Judgment on Issue of the Statute of Limitations at 3 (filed June 17, 1999) (emphasis added). But this "implied in law" history was negated on September 21, 2001, when the Kansas Supreme Court expressly held that the implied duty to market in an oil and gas lease was one implied **in fact** and not in law.

Far from "delusional" or "bogus," as Plaintiffs claim in their Response, the Kansas Supreme Court's opinion in Smith has dramatically changed the legal landscape for analyzing royalty interest owners' post-production cost claims. Plaintiffs may not, like so many ostriches, hide their collective heads in the sand, point to pre-Smith law, and hope that Smith will simply go away – it will not. Smith is the new, controlling law of Kansas as to Plaintiffs' claims, and its application precludes a finding of the statutory prerequisites to class treatment. The Plaintiff class must, therefore, be decertified.[1]

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[1] Plaintiffs argue that OXY's request for decertification is an improper review of the merits of this action. See Plaintiffs' Response at 6. Plaintiffs' sole citation of authority for this proposition is a single judge's **dissenting** opinion in Union Pacific Resources Group, Inc. v. Neinast, 67 S.W. 3d 275, 2001 W.L. 1098140 (Tex. Civ. App. 2001). Not only was this lone voice in the Texas wilderness rejected by the Texas courts themselves, it is directly contrary to the vast body of class action law requiring review of the analytical framework to be used at trial in determining whether the prerequisites for class certification are met. See C. Wright, A. Miller & M. Kane, Federal Practice & Procedure, § 1785 (2002 Supp.) at 18. Id. (emphasis added). ("In order to effectively make the Rule 23(b)(3) inquiry, it is necessary for the court to consider what will have to be proved at trial and thus whether those matters can be presented by common proof or whether individual proof will be required. Although that inquiry does require an examination of the elements of the claims and defenses, **it does not result in an impermissible examination of the merits of the claims**. The prohibition first . . . adopted by numerous other courts addresses the concern that the parties should not have to show a probability of success on the merits in order to prove class certification; it does not limit the court's **necessary inquiry** into the underlying elements of the case in order to evaluate whether Rule 23 has been met.").

II. PLAINTIFFS' "ALL COVENANTS ARE ALIKE" ARGUMENT DOES NOT AVOID THE REQUIREMENTS OF SMITH

In their Response, Plaintiffs fail to address the requirements that the Kansas Supreme Court has now laid down in Smith, and the significance of those principles to the obligation sought to be implied in this case. Instead, Plaintiffs argue that Smith may simply be ignored because: (a) Kansas has long recognized implied covenants in oil and gas leases, and (b) Kansas has said the implied covenant to market is a part of every oil and gas lease. See Plaintiffs' Response at 4 (citing Brewster v. Lanyon Zinc Co., 140 F. 801 (8th Cir. 1905)). Thus, Plaintiffs argue, they are not required to prove by extrinsic evidence the existence and scope of any implied covenants in their leases. Id. However, this "all covenants are alike" approach ignores the significant differences between those implied covenants with longstanding recognition in Kansas, and the obligations sought to be implied by Plaintiffs here.[2] Contrary to Plaintiffs' representations, **none** of Plaintiffs' offered authorities, **not one of which is post-Smith**, even suggests that a court may ignore Smith and **judicially** create an obligation to compress and transport gas to a distant pipeline.

Brewster, offered by Plaintiffs, **did not deal with the implied covenant to market at all**. Instead, it addressed an implied obligation **to drill additional wells** and fully develop the leasehold. Brewster, thus, provides no support for Plaintiffs.

Similarly, the obligation sought to be imposed by Plaintiffs here is significantly different from the particular implied covenant examined in Smith, and is different from the marketable product obligation dealt with by the Court in Sternberger v. Marathon Oil Co., 257 Kan. 315, 894 P.2d 788 (1995). The implied duty at issue in Smith, was the duty **to find a market** for the

[2] Plaintiffs also fail to recognize that, even the long-standing implied obligations to which they refer, were borne of just the sort of intensive, factual analysis, that must be applied here, before those obligations were allowed to be implied.

gas, to produce and sell the gas in that market, and to obtain the best possible contract price.[3] This obligation to find a market and produce and sell in that market is, without question, far different from an obligation to compress and transport gas to a distant market as Plaintiffs argue here.

An examination of Brewster also demonstrates that a Smith analysis is required before a court may now imply a new obligation to compress and transport gas to a distant pipeline at a lessee's sole expense, as requested by Plaintiffs. In Brewster, the subject lease required either the drilling of one well or the payment of delay rentals during the primary term. In a suit to cancel the lease for failure to develop, the Court found no breach of the lease during the primary term because the number of wells required during that period was dealt with by the lease.[4] In this regard, the Court recognized the principle that an obligation cannot be implied if the contract has express provisions dealing with the subject.[5] However, because the lease contained "no express stipulation" addressing exploration activities **after** the five-year primary term, the Court examined the lease for an implied obligation. In doing so, it applied the same principles and followed the same analysis that are now required by Smith.

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[3] Language from Smith, that Plaintiffs neglected to quote in their Response, clearly demonstrates this. The Court said: "The nature of the duty is that '[o]nce oil and gas is discovered in paying quantities, the lessee has an implied obligation to produce and market production diligently.'" Smith, 31 P.3d at 269.

[4] "[T]he measure of diligence which the lessee was required to exercise in prosecuting the work of exploration and development during the first five years was expressly and definitively prescribed, and was not left to any implication which might otherwise arise from the nature of the lease or from the other stipulations therein." 140 F. at 808.

[5] In acknowledging that courts will not imply an obligation where the matter has been expressly dealt with, the court quoted from Rose v. Lanyon Zinc Co., 68 Kan. 126, 134, 74 P. 625, 628 (1903), that "having deliberately made a contract [specifying the period within which to drill a well], they have no right to call upon a court to declare that it is of the other kind, merely because generally it might seem to be better for farmers not to encumber their lands with mineral leases . . .."

Initially, the Court noted that an implied obligation was a product of the intent of the parties.[6] The court then conducted an individual examination of the lease language and of the purposes to be accomplished by the lease based upon that language. From this analysis the Court concluded:

> The implication necessarily arising from these provisions – the **intention** which they obviously reflect – is that if, at the end of the five-year period prescribed for original exploration and development, oil and gas, one or both, had been found to exist in the demised premises in paying quantities, the work of exploration, development and production should proceed with reasonable diligence for the common benefit of the parties, or the premises be surrendered to the lessor. That this was of **the very essence of the contract** is shown by the extensive character of the grant, which was without limit as to time and included all the oil and gas in or obtainable through the demised premises; by the provisions for the payment of substantial royalties in kind and in money on oil produced and saved and the gas used off the premises, which, as contrasted with the consideration paid when the lease was executed, shows that the **promise of these royalties was the controlling inducement to the grant** . . .

140 F. at 810 (emphasis added). See Howerton v. Kansas Natural Gas Co., 81 Kan. 553, 106 P. 47 (1910) (as a matter of intent of the parties, an obligation was implied to diligently market the gas). These cases, thus, **require, not avoid**, the very fact-intensive analysis that precludes continued certification here.

In an attempt to argue a **pre-**Smith analysis in a **post-**Smith world, Plaintiffs next attempt to continue to rely upon Gilmore and Sternberger. These attempts fail. First, to the extent that it addresses the same implied covenant, the analysis of Gilmore simply cannot stand after Smith. In Gilmore, the Court merely adopted Professor Merrill's position that the lessee's obligation to market the product required the lessee to "prepare it for market, if it is unmerchantable in its natural form." Gilmore at 607 (citing Merrill, Covenants Implied In Oil and Gas Leases, § 85 (2d ed). Smith, however, has now expressly rejected both Professor Merrill's and the implied in

[6] The court went so far as to say that: "[i]mplication is but another name for **intention** . . .." 140 F. at 809 (emphasis added).

law approach. Thus, the conclusion reached by the Court in Gilmore can no longer be supported absent the implied covenant analysis required by Smith.

Nor does Sternberger assist Plaintiffs in a post-Smith world. First, in deciding Sternberger, the Court expressly held that the precedent established in Scott v. Steinberger, 113 Kan. 67, 213 P. 646 (1923); Voshell v. Indian Territory Illuminating Oil Co., 137 Kan. 160, 19 P.2d 456 (1933) and Molter v. Lewis, 156 Kan. 544, 134 P.2d 404 (1943), was controlling.[7] Thus, the Sternberger Court's subsequent discussion about a "marketable product" is, by its own admission, mere dicta.

Most importantly though, Sternberger's marketable product discussion assumed the validity of Gilmore. Like Gilmore, Sternberger engaged in none of the analysis conducted in Brewster and Howerton (and now Smith) to test for the existence of an obligation to render a marketable product. Because Gilmore can no longer serve as support, the Sternberger Court's statements about marketable product requirements – **in the absence of a Smith analysis** – have lost their effect.[8]

A Smith analysis is required here because an implied obligation to compress and transport the gas to a distant pipeline has not been found to exist under Kansas law, nor under an implied in fact analysis in any other jurisdiction.[9] This purported obligation that Plaintiffs seek

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[7] "Scott, Voshell and Molter are dispositive of the issue in this case. These cases clearly show that where royalties are based on market price 'at the well' or where the lessor receives his or her share of the oil or gas 'at the well' the lessor must bear a proportionate share of the expenses in transporting the gas or oil to a distant market." Sternberger, 894 P.2d at 796. Later, the Court added Matzen v. Hugoton Production Co., 182 Kan. 456, 321 P.2d 576 (1958) to Scott, Voshell, and Molter as "stand[ing] for the proposition that reasonable transportation expenses are shared by lessor and the lessee where royalties are paid (in oil or gas or in money) 'at the well' but there is no market at the well." 894 P.2d at 797.

[8] Plaintiffs have also argued that the post-production activities of OXY are factually different from those involved in Sternberger. If this were so, then those material differences also render Sternberger inapplicable to this case.

[9] The analysis in Brewster and in Howerton do not support the existence of such an obligation. The primary factor from which the Brewster Court determined an implied intent to develop more fully the premises, and in Howerton to use diligence in marketing the gas, was the lessor's retention of a royalty on production from which the lessor expects to derive his or her principal compensation – no wells drilled, no royalty; no marketing of gas, no royalty.

to impose here, does not go to the **marketing** of the gas, but to the **amount of royalty** to be paid to lessors – an entirely different issue. In this post-Smith world, only a rigorous factual investigation will ultimately determine whether such an obligation may be implied in fact, and if so, to what extent.[10]

In order to create the obligation they seek, under the principles of Smith, Plaintiffs will have to successfully show here that the obligation is "necessary to give effect to the actual intention of the parties, as reflected by the contract," Smith, 31 P.3d at 265 (quoting Danciger 154 S.W.2d at 635), that such obligation "was in the minds of the parties and became a part of the written contract," id., 31 P.3d at 265 (quoting Texas Pacific Coal & Oil Co. v. Stuard, 7 S.W.2d 878, 881 (Tex. Div. App. 1928)), and why this obligation "was so clearly within contemplation of the parties that they deemed it unnecessary to express it, and therefore omitted to do so, or . . . that it is necessary to infer such a covenant in order to effectuate the fully purpose of the contract as a whole as gathered from the written instrument." Danciger, 154 S.W.2d at 635.[11] This they cannot do on a common basis, thus requiring decertification.

[10] As OXY has long argued, the presence in its royalty clause of terms requiring payment based upon "market value" or "market price" or "proceeds" are express terms on value and leave no room for such implication. However, that issue does not need to now be decided by this Court. For the purposes of OXY's current motion, it is sufficient that no court has undertaken the analysis required by Smith necessary to imply the obligations sought here to be imposed on OXY. As argued in OXY's Brief in Support of its Motion to Decertify, that determination requires an analysis of each of the leases at issue in this case – and at a minimum, each of the different types of lease forms at issue in this case – before any such determination can be made.

[11] This analysis requires examination of hundreds if not all of the leases involved in this action. Unlike the historical implied duty to "find a market and produce and sell that market" which arises from the lessor's retention of a royalty as his or her primary consideration, the lessor's mere retention of a royalty does not imply **how** that royalty is to be calculated. Moreover, the basic royalty clauses found here – requiring royalty to be based on "market value," "market price" or "proceeds" – foreclose any covenant of the sort urged by Plaintiffs because they are express clauses on the amount of royalty due and Plaintiffs' asserted covenant would change the manner in which royalty is calculated from that specified in the royalty clauses. Nevertheless, if Plaintiffs are to prevail and can overcome that "no implied covenant in the face of express provision" rule (see Havens v. Safeway Stores, 235 Kan. 226, 230-231, 678 P.2d 625, 629-30 (1984)), they will, at a minimum, be required to deal with the myriad variations of royalty clauses, term by term and lease by lease, as unquestionably the terms of those clauses will impact the extent of any obligation sought to be imposed by Plaintiffs bearing on royalty calculation.

Finally, Plaintiffs' argument that extrinsic circumstances are not to be considered, is barred by the express language of Smith. As explained by the Kansas Supreme Court, an obligation implied in fact is to be "inferred from the facts and circumstances of the case." Smith, 31 P.3d at 265 (quoting from Atchison County Farmers' Union Co-op Ass'n. v. Turnbull, 241 Kan. 357, 363, 736 P.2d 917 (1987)). See id. at 267 (a covenant implied in fact is "derived from the written agreement and the circumstances surrounding its execution.") (quoting from 5 Williams & Meyers, § 803 at 18). Thus, consideration of extrinsic evidence is not only proper – it is required.

III. PLAINTIFFS' ATTACKS ON ANALOGOUS TEXAS LAW FAIL

Plaintiffs attack OXY's reliance on Union Pacific Resources Group, Inc. v. Neinast, 67 S.W.3d 275, 2001 W.L. 1098140 (Tex. Civ. App. 2001). Plaintiffs' first attack, that Union Pacific Resources is an unpublished decision, is now in error.[12] OXY offers Union Pacific Resources because it is illustrative of the application of the principles embodied in Smith, of the result which should obtain in Kansas by application of those principles, and how those principles foreclose class certification.

Attacking Union Pacific Resources on its merits, Plaintiffs argue that there is a "presumption" in favor of implied covenants, claiming that the Union Pacific Resources Court misread Danciger Oil & Ref. Co. v. Powell, 154 S.W.2d 632 (Tex. 1941) and HECI Exploration Co. v. Neel, 982 S.W.2d 881 (Tex. 1998). Plaintiffs' argument is both misleading and incomplete. In Danciger, the principle at issue was that an implied covenant "must rest entirely in the presumed intention of the parties as gathered from the terms as actually expressed in the

[12] At the time of the filing of OXY's Brief in Support of its Motion for Decertification, a petition for rehearing had been filed in that case. However, on March 7, 2002, a majority of the justices of the full Texas Court of Civil Appeals **denied** the Motion for *En Banc* Reconsideration. Thus, Union Pacific Resources is now a final decision in Texas.

written instrument itself . . ." Danciger, 154 S.W.2d at 635. Thus, **it is not the implied covenant** which is presumed. Instead, "presumed intention" refers to a mutual state of mind of the contracting parties which a court is required to find **before** any implied obligation may be found.[13]

Plaintiffs also argue that Union Pacific Resources's reliance upon HECI is inappropriate because "HECI involved a novel claim of an implied duty" and thus, assert Plaintiffs, Union Pacific Resources failed to recognize the distinction between implied covenants advanced for the first time and those that are well established.[14] This distinction, if it exists at all, **requires** a Smith analysis here. The obligation urged by Plaintiffs here is not the tried and true, time-tested implied covenant identified in Brewster and Howerton to "find a market and produce and sell in that market." Instead, Plaintiffs urge "a novel claim" to **extend** the implied duty to market to include a duty to compress the gas and deliver it to a distant pipeline at lessee's sole cost. Such a claim is irrefutably "novel" because there is no Kansas, or other precedent, applying a Smith analysis – an implied in fact analysis – to the existence of any such obligation.

IV. PLAINTIFFS' ATTEMPT TO AVOID THE INDIVIDUAL TREATMENT REQUIRED BY THE APPLICABLE ROYALTY CLAUSES IS UNAVAILING

The implied in fact approach to implied covenants required by Smith resurrects the primary importance of the language of the various lease royalty clauses – a matter which had been lost in the implied in law approach of Gilmore. This occurs because of the basic tenet of the implied in fact approach that no obligation may be implied where the contract contains

[13] As stated in Danciger, this "presumed intention" – to create the implied obligation whose existence is under examination – must be "so clearly within contemplation of the parties that they deemed it unnecessary to express it, and therefore omitted to do so, or it must appear that it is necessary to infer such a covenant in order to effectuate the full purpose of the contract as a whole as gathered from the written instrument." Danciger, 154 S.W.2d at 635.

[14] The novelty presented in Union Pacific Resources was that plaintiffs sought to apply the implied duty to market under oil and gas leases with at least 150 variations to specific marketing scenarios – **the same type of variations present here.**

express terms dealing with the same subject matter.[15] The "market value," "market price" and "proceeds" terms of the various Plaintiffs' royalty clauses foreclose the implication of any implied covenant, that any recovery by Plaintiffs would have to be based upon a determination that OXY breached the requirements of its individual royalty clauses and those determinations were not suitable for class adjudication.

In an attempt to avoid this conclusion, Plaintiffs rely on the statement in Sternberger that "market price at the well . . . is silent as to deductions." Plaintiffs' Response at 9. This position misreads Sternberger. The referenced statement means no more than that there is no express mention in the lease of compression, gathering or other such post-production activities. It does not mean that (and the court was not asked to decide whether) the "market price at the well" stipulation in the royalty clause permitted the implication of an obligation which changed the location at which the royalty was to be valued. To the contrary, in reaching its conclusion that Scott, Voshell, Molter and Matzen were dispositive of the case,[16] the Sternberger Court, three times, emphasized the importance of the "at the well" language:

> The lease's silence on the issue of post-production deductions does not make the lease ambiguous. The lease clearly specifies that royalties are to be based on "market price at the well."
>
> * * *
>
> These cases clearly show that where royalties are based on market price "at the well," or where the lessor receives his or her share of the oil or gas "at the well," the lessor must bear a proportionate part of the expenses in transporting the gas or oil to a distant market.
>
> * * *

[15] Yzaguirre v. KCS Resources, Inc., 53 S.W.3d 368, 373 (Tex. 2001); Connolly v. Samuelson, 671 F.Supp. 1312, 1318 (D. Kan. 1987); Williams v. Safeway Stores, Inc., 198 Kan. 331, syl. 1, 424 P.2d 541 (1967).

[16] 257 Kan. at 324, 894 P.2d at 796; 257 Kan. at 326, 894 P.2d at 797.

> Scott, Voshell, Molter and Matzen all stand for the proposition that reasonable transportation expenses are shared by the lessor and the lessee where royalties are paid (in oil or gas or in money) "at the well" but there is no market at the well.

257 Kan. at 323-26, 894 P.2d at 794-97. There is thus, no support for Plaintiffs here.

Finally, Plaintiffs attempt to build an argument based on Colorado law, citing Rogers v. Westerman Farm Co., 29 P.3d 887 (Colo. 2001) where the Colorado court ignored "at the well" language and held that the implied duty to market not only required the lessee to produce gas in marketable condition but also required the lessee must take the gas at its sole expense to a commercial marketplace. Colorado law – and specifically Rogers – is, however, barred by Smith.

A review of Rogers shows that the Colorado Court adopted an implied in law approach to covenants rather than the implied in fact approach required by Smith. As a result, Rogers is wholly devoid of any of the analysis required by Smith. Instead, Rogers utilizes the court's notion of judicial fairness – the hallmark of an implied in law approach.[17] Rogers is, thus, of no value to Plaintiffs in Kansas.[18]

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[17] David Pierce, Professor of Law at Washburn University, recently wrote that "Rogers creates a **judicial** covenant to market, not an implied covenant to market. The 'implied' is merely a jurisprudential vehicle for the court to impose its view of how gas royalties should be calculated in Colorado." Pierce, Recent Developments in Non-Regulatory Oil and Gas Law: Unfinished Business, § 1.02[2][d], 53rd Oil and Gas Law Inst., Center for American and International Law (formerly Southwestern Legal Foundation) (February 2002) (pre-print). Owen Anderson, Eugene Kuntz Professor of Oil, Gas and Natural Resources Law at the University of Oklahoma, has also opined that Rogers is "unconvincing," "revers[es] the normal approach" by permitting implied covenants to override express terms and "upset[s] well established principles." Professor Anderson further stated that Rogers has taken "the implied covenant to market on an odyssey to a new and distant galaxy." Anderson, 2001: A Royalty Odyssey, § 1.03 at 13, 24, 25, 53rd Oil and Gas Law Inst., Center for American and International Law (formerly Southwestern Legal Foundation) (February 2002) (pre-print).

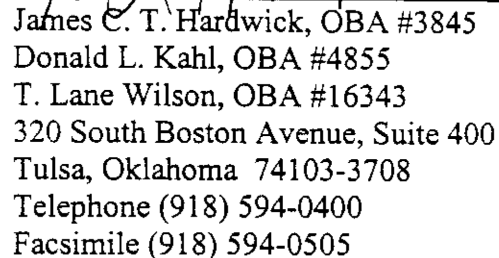
[18] Rogers, of course, is also antithetical to Kansas law on the substantive issue of what might constitute a marketable product, holding that a lessee must not only place natural gas in a marketable condition, but must take the gas at its sole expense to a commercial marketplace. Id. Sternberger precludes such a conclusion under Kansas law, finding that a marketable product could exist **even in the complete absence of a commercial market**. Id., 257 Kan. At 317, 894 P.2d at 800.

CONCLUSION

Plaintiffs' Response **never** addresses the critical issue here – that the new analytical framework required by Smith precludes the existence of commonality, typicality and predominance – without which class certification is unquestionably improper. Based on the foregoing, OXY's Motion to Decertify Class should be granted.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.



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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the ______ day of April, 2002, a true and correct copy of the above and foregoing OXY USA, INC.'S REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO OXY'S MOTION TO DECERTIFY CLASS was sent by U.S. Mail, with proper postage thereon fully paid, to:

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