7-15-2021

Brief for the National Stripper Well Association as Amicus Curiae, L. Ruth Fawcett Tr. v. Oil Producers, Inc. of Kansas

Joseph A. Schremmer

Charles C. Steincamp

No. 120611

IN THE SUPREME COURT
OF THE STATE OF KANSAS

L. RUTH FAWCETT TRUST, CINDY K. PAGE-COLMER
Trustee, on behalf of itself and all other similarly situated,

Plaintiff/Appellate/Petitioner,

vs.

OIL PRODUCERS INC. OF KANSAS,

Defendant/Appellee/Respondent

BRIEF OF AMICUS CURIAE NATIONAL STRIPPER WELL ASSOCIATION

Appeal from the District Court of Seward County, Kansas
The Honorable Linda P. Gilmore, Judge
District Court Case No. 2011-CV-000090

Charles C. Steincamp, #16086
Depew Gillen Rathbun & McInteer, LC
8301 E. 21st St. N., Suite 450
Wichita, KS 67206
(316) 262-4000, telephone
Co-Counsel for NSWA

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I. Arguments and Authorities

Founded in 1934, the National Stripper Well Association ("NSWA") is the only national association solely representing the interests of the nation's smallest and most economically vulnerable oil and natural gas wells—commonly called "stripper" wells. While the idea of having an oil or gas well on one's property might conjure visions of Jed Clampett striking it rich in the backwoods, most gas operations operate on slim margins. Stripper wells, in particular, operate on particularly small profit margins. A "stripper" well is one that ekes out such small volumes of oil or gas "that the gross income therefrom provides only a small margin of profit...." 8 WILLIAMS & MEYERS, OIL AND GAS LAW, MANUAL OF TERMS, *Stripper Well* (2020). For tax purposes, wells that produce 15 barrels of oil per day or 90 mcf (thousand cubic feet) of gas per day during a twelve-month period are classified as stripper wells. 26 U.S.C. § 613A(c)(6).

The overwhelming majority of natural gas wells in Kansas are stripper wells, averaging just 25.1 mcf per day. U.S.E.I.A., U.S. OIL AND NATURAL GAS WELLS BY PRODUCTION RATE B30 (2020) (attached as Appendix A). In total, Kansas has approximately 20,000 of these low-volume gas wells. *Id.* Astonishingly, stripper wells represent **97.8%** of all Kansas gas wells and collectively produce over **86%** of all Kansas gas. *Id.* These stripper wells are essential to the state of Kansas. They make it possible to efficiently recover

natural gas from mature fields, like the Hugoton Gas Field, which would otherwise be stranded unproduced and wasted. Stripper wells produce gas that would otherwise remain underground and, in the process, generate tax revenue for counties and the state, create jobs for Kansans in rural communities, and pay royalties to landowners.

The "good faith" argument advanced by the Class in this appeal threatens the existence of the stripper well industry in Kansas. The Class's goal is not to quibble about the supposed lack of good faith in one or two isolated natural gas transactions. Rather, its theory is that producers across the state are completing "paper title transfers" in bad faith *en masse* to swindle the lessors under their leases. This theory is unmoored from the economic realities of natural gas production and willfully ignores the express language of the parties' oil and gas leases.

a. The Economics of Gas Sales—In Reality

This case involves sales of raw natural gas at the wellhead of the defendant's wells to a midstream gas marketing company—a type of transaction that is ubiquitous in Kansas. The current dispute arises over how the royalty on these sales should be calculated under the defendant's leases with members of the Class. Like other commodities such as wheat, gas is produced as part of a value chain. In wheat production, grain goes through various improvements and middlemen in its journey from a farm to bread at a

grocery store. Each middleman between the farmer and the ultimate consumer adds value to the product while incurring costs.

Just so for gas. Gas producers typically sell their gas to midstream marketers. Midstream marketers buy the gas in its raw form in the field and then resell it at an interstate pipeline spot market after they have enhanced its value through processing and transportation. The interstate pipeline operator ships and delivers the gas to utility companies and industrial users.

For a number of reasons, it can be complicated for midstream marketers and producers to determine the right price for raw gas. One reason is that raw gas can be processed into multiple different commodities, including natural gas liquids (like propane) and the residue gas (gas which can be burned for other uses). Additionally, the composition of a well's production can vary over time. For example, wells which produce both oil and gas have changing oil-to-gas ratios. *Acme Propane, Inc. v. Tenexco, Inc.*, 844 F.2d 1317 (7th Cir. 1988) (discussing declining oil to gas ratios over the well production cycle). Likewise, a well's gas quality (and the processing needed to prepare it for later sale) fluctuates from year to year. To complicate matters further, the price that natural gas fetches on large commodity exchanges typically changes by the minute.

In light of these uncertainties, when midstream marketers purchase raw natural gas at the wellhead of a producer's wells, they determine the purchase

price based on a formula rather than a set amount. The typical formula starts with an index price and then deducts from the price the marketer's costs to transport and process the raw gas for resale at a distant market. This formula is usually called the netback or workback method.

The index price is a composite based on a survey of sales that occur over a given period at a given location (a "spot market"). It does not represent the price that a willing buyer paid to a willing seller in an actual transaction. Marketers' gas purchase contracts rely on different spot market indices. The individual contracts are bought and sold on a commodity exchange by traders like Eddie Murphy's character, Billy Ray Valentine, in *Trading Places*. *See* TRADING PLACES (Paramount Pictures 1983). ("Advise our clients interested in [pork] bellies to buy at 64. Mr. Valentine has set the price.").

The Class characterizes gas sales under netback pricing contracts as bad faith attempts by producers like the defendant to steal value from royalty owners. The story here is that scheming operators are aware of the marketable product rule and its implications for post-production costs. The Class argues that rather than making the gas ready for an interstate pipeline themselves, producers like OPIK are engaging midstream marketers as mere service providers. As part of their service to operators, the class posits, the midstream marketers accept faux title to the gas to allow the producers to avoid post-production expenses. The Class implies that these transfers are not genuine

sales—the real gas sales are at some vaguely imagined point downstream. In short, the Class's argument is that a sale of raw gas at the wellhead can never be a good faith transaction.

This illustrates the Class's misunderstanding of gas marketing. While marketers use several variations of the formula, netback pricing is the national industry norm and has been for decades. As the 2014 amicus brief by DCP Midstream, LP suggests, other pricing mechanisms are not workable. [Appendix B]. Through netback pricing, midstream marketers shift the vast majority of post-production costs to the producer enabling the marketer to resell the gas, which it owns, at a downstream market for a profit.

Furthermore, midstream marketers such as ONEOK are highly sophisticated parties and often have dramatically more bargaining power than producers. This is especially true of stripper well producers. Since each stripper well produces a small amount of gas, producers are saddled with the marketer's form contract. Success for such producers is in merely getting the midstream marketer to commit to buy small volumes of gas at all. For stripper well producers, these arrangements are essentially non-negotiable contracts of adhesion. If the producers want to sell any natural gas, they must use a netback system.

Moreover, once the gas transfers into the marketer's possession, the operator ceases to have any control over it. The operator does not decide what

processing the raw gas undergoes before the marketer sells it at a downstream market. Neither does the operator have any control over when, where, to whom, and for how much the ultimate downstream sale will occur. All of these decisions are made by the owner of the gas after the wellhead sale—the midstream marketer. Midstream marketers insist upon receiving title to the gas specifically to ensure they have sole control over the processing, transportation, and eventual resale of the gas after it leaves the leasehold.

In short, sales of raw natural gas at the wellhead are real sales. This arrangement exists and is ubiquitous because of the economic constraints of producing and selling gas, not because of any bad faith or self-dealing.

b. The Economic Impact of the Class's Theory

Importantly, the profit margins for producers on most sales of gas under these arrangements are slim. Far from being the bonanza for producers that the Class makes it out to be, the sale of raw natural gas at the wellhead based on a netback pricing formula is essentially the only means a producer has of selling the gas economically. Yet, under the Class's theory, a sale of raw gas at the wellhead can never be a good faith transaction. Instead, the Class urges that the marketable product doctrine requires royalty be paid on the basis of the price obtainable at some point downstream of the wellhead.

Consider the financial impact of the Class's theory on a hypothetical stripper gas producer that sells gas in raw form at the wellhead to a midstream purchaser under a contract containing a netback pricing formula.

Under *Fawcett I*, if the producer's lease provides for payment as royalty "1/8 of the proceeds from the sale of gas as such at the mouth of the well where gas only is found" or "one eighth (1/8) of the proceeds if sold at the well," it would calculate the royalty on the basis of the price it actually receives from the sale to the midstream gas purchaser, which, in turn, would be determined on the basis of a price formula that begins with an index price and deducts the purchaser's processing and transportation costs. If we assume the Henry Hub[1] futures price index reflects a recent average price of $3.00 per mcf and the netback pricing formula renders proceeds to the producer of $1.00 per mcf, $0.125 (being 1/8 or 12.5%) would be paid to the lessor as royalty and $0.875 (being 7/8 or 87.5%) would be retained by the producer. If we further assume that the average monthly expenses to operate the well amount to $400, the producer would need to produce and sell 15 mcf of gas per day to make one penny of profit for the month.

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[1] "Henry Hub: A pipeline hub on the Louisiana Gulf coast. It is the delivery point for the natural gas futures contract on the New York Mercantile Exchange (NYMEX)." *Glossary*, U.S.E.I.A., https://www.eia.gov/tools/glossary/index.php (last visited June 12, 2021).

Under the Class's proposed "good faith" theory, however, the producer in our hypothetical would not be permitted to calculate the lessor's royalty on the basis of the proceeds it received from the sale of gas to the midstream purchaser. Instead, the producer would have to calculate the lessor's 1/8 royalty on the basis of the index price, $3.00 per mcf, even though it actually receives only $1.00 per mcf. Thus, for each mcf of gas sold, the producer would pay to the lessor as royalty $0.375 and would retain for itself only $0.625. As a consequence, to make a penny of profit for the month, the producer would have to produce and sell 21.3 mcf of gas—40% more than it had to produce and sell under the rule from *Fawcett I*.

This difference is significant. Based on statistics maintained by the U.S. Energy Information Administration, approximately 57% of the state's wells produce 17 mcf of gas per day or less, whereas only 27.7% of wells produce at more than 29 mcf of gas per day. *See* Appendix A. Thus, around 15% of the state's wells, more than 4,300 wells, could have their economic lives ended prematurely if the Class's theory were to prevail. These are only the wells that would no longer at least break even; thousands more would become less profitable and see their economic lives curtailed, as well. In a low-margin business like natural gas production, even small changes to the economics can have significant consequences.

c. The Legal Impact of the Class's Theory: Waste.

The Kansas Legislature has declared, "The production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited." K.S.A. § 55-701. Yet, adoption of the Class's "good faith" theory would cause the premature termination of marginal oil and gas leases and the abandonment of stripper wells and waste the state's natural gas resources. *See* Broomes, *supra*, at 182–86 (discussing how the marketable product rule causes waste of natural gas).

Kansas law holds that oil and gas leases remain valid only so long as they can be operated at a profit. *Tucker v. Hugoton Energy Corp.*, 253 Kan. 373, 381, 855 P.2d 929 (1993). When production of gas in paying, i.e., economic, quantities ceases, the underlying lease terminates under the terms of the typical habendum clause. Additionally, producers must plug and abandon their wells when they reach the end of their economically productive lives. *See* K.S.A. § 55-179. Thus, by undermining the economic viability of stripper wells, the Class's theory would cause a chain reaction of lease terminations and well abandonment.

Prematurely abandoning even low-volume wells causes physical and economic waste in violation of Kansas law. K.S.A. § 55-701; *Kansas-Nebraska Nat. Gas Co. v. State Corp. Comm'n*, 169 Kan. 722, 732, 222 P.2d 704, 712 (1950). "Waste" is defined by statute to include, "in addition to its ordinary

meaning, . . . economic waste, underground waste and surface waste." K.S.A. § 55-702. Of particular importance here are economic waste and underground waste. "Underground waste" refers to the physical loss of otherwise recoverable natural gas reserves. 8 PATRICK H. MARTIN & BRUCE M. KRAMER, WILLIAMS & MEYERS, OIL & GAS LAW, *Waste* (2019).

Stripper wells are usually the last producers in mature oil and gas fields. If stripper wells are prematurely plugged, it is unlikely anyone will drill into the formation again. As a result, gas which could have been produced will remain trapped in the reservoir—the very definition of underground waste.

The Class's theory would also cause economic waste by threatening to cut short the economic life of a substantial number of the state's stripper wells. If wells are prematurely plugged, the State of Kansas and Kansas counties will lose tax revenues from gas that will not be produced, producers will lose the opportunity to make a reasonable return on their stripper well investments, and rural communities will lose employment opportunities directly and indirectly related to stripper well production.

Additionally, the Class's theory would harm royalty owners. Lessors with highly productive wells would temporarily show a benefit from the Class's calculation. For those royalty owners whose leases are average or worse, the Class's theory threatens to terminate the lease prematurely and cut off any further royalty payments. All leases will one day decline and cease to be

economically productive. The Class's theory ensures that this day will come sooner, depriving even its own members of the marginal additional production that stripper wells provide. Having a right to a larger slice of nothing will be cold comfort when all the wells are plugged.

Finally, forcing operators to bear these post-production costs will lead to more abandoned wells. In Kansas, well operators are responsible for plugging oil and gas wells when they reach the end of their production life. *See* K.S.A. § 55-179. When operators go bankrupt, they sometimes struggle to plug all of their wells. Instead, the state must assume responsibility. Due to the cost and difficulty of plugging wells, many go unplugged for years. *See* KAN. CORP. COMM'N, ABANDONED OIL AND GAS WELL STATUS REPORT 4–5 (2021) (5,000 wells requiring action). The state currently has approximately 20,000 unplugged abandoned wells, 5,000 of which currently need action. *Id.*; Joseph Schremmer & Charles C. Steincamp, *Imputing Regulatory Failures in Oil and Gas Licensing: A Discussion and Proposal*, 57 WASH. L. J. 265, 270 (2018) (noting the state has approximately 20,000 unplugged wells as of 2018).

d. Avoiding Waste Is Merely a Matter of Enforcing the Parties' Chosen Lease Language.

Gas producers understand both the economic and the legal implications of selling gas discussed above, and they have these realities in mind when they negotiate and draft the royalty clauses of their oil and gas leases. Producers

typically choose to calculate royalty "at the well" to ensure that even low-volume or low-quality gas production may be economically viable.

The "at the well" language is a hedge against the uncertainty inherent in gas production. When they obtain an oil and gas lease, lessees never know what, if any, oil or gas the lease may produce. They do not know what volumes of gas they might produce, if any, or what the quality of the gas may be. They cannot know what the prevailing price for natural gas will be in any given market, whether at a downstream market or at the wellhead.

The "at the well" language helps ensure that, in light of the uncertainty inherent in natural gas production, producers of even low-volume or low-quality gas can maintain at least a narrow profit margin. In other words, this language has meaning and there is a reason that it is used in the vast majority of oil and gas leases in Kansas, including the Class leases.

The Class's "good faith" theory boils down to this: the parties' reasons for selecting the "at the well" language do not matter. The Class instead urges that despite the economic realities undergirding the parties' consensual agreement, the defendant must guarantee that the Class receive the value of interstate-pipeline quality gas regardless of the actual quantity or quality of gas that is produced from their lands. As now-Judge John Broomes has explained about the marketable product rule,

> [T]he Marketable Product Rule essentially forces the lessee to be the guarantor of the physical properties of any natural gas discovered on the leased premises by requiring the lessee to bear the risk that gas of lesser quality may be located thereunder, as compared to better gas that more closely matches the specifications for pipeline quality. This idea may be best illustrated through a comparison with hard-rock mining. If a miner discovers silver on one tract of land and gold on another, no one expects the miner to pay the silver royalty owner as if his land produced gold.

Broomes, *supra*, at 175.

Thus, the Class's "good faith" theory not only ignores the parties' intent, it deliberately destroys it. It invalidates the arrangement the parties actually assented to and replaces it with one that no rational stripper well producer would ever agree to. Fortunately, however, Kansas law wisely protects the right of parties to contract on their own chosen terms. *See Levin v. Maw Oil & Gas, LLC*, 290 Kan. 928, Syl. ¶ 2, 234 P.3d 805 (2010) ("The primary rule for interpreting written contracts is to ascertain the parties' intent."). There is no reason to believe that the when the parties' wrote "at the well" they meant "at a distant commodity exchange to be selected by lawyers."

While the Class clearly rejects the possibility that a sale at the wellhead could be a "good faith" sale, despite the language of the parties' lease, it is not at all clear at what point they believe a good faith sale *is* possible. In *Fawcett I*, the Court suggested that the Class pressed for valuation at the "interstate pipeline"—which probably means the FERC price indices referenced in various

gas purchase contracts. *Fawcett v. Oil Producers, Inc. of Kansas*, 302 Kan. 350, 352, 352 P.3d 1032, 1035 (2015). At other points during this protracted litigation, the Class appears to have advocated for valuation at yet a different point, the Henry Hub spot market, where the commodity price would generally be even higher than the FERC indices.

By not clearly establishing a point of valuation as an alternative to the wellhead, the Class appears to be leaving itself room to move the valuation point farther and farther downstream in future litigation. The "good faith" theory they are advancing in this round of *Fawcett* fits this strategy. Once a court establishes that the first sale of gas to a midstream marketer lacks good faith as a matter of law, royalty owners can start challenging the second sale. Since natural gas becomes more valuable farther down the line, each disregarded sale means a larger slice of the proceeds pie for royalty owners. Finally, by muddying the waters on the correct valuation point, the Class can claim that there is a factual question in dispute over where the real gas sale occurs. *See* Plaintiffs' Reply Brief at 6.

Fortunately, it is possible to avoid the morass of identifying the proper point for determining the lessor's royalty under the Class leases. The Class leases expressly set the valuation point at an easily ascertainable and economically realistic location: at the well. Not only does Kansas law require

the parties' express language be given effect, in this case the economic realities of gas production and the public policy against waste demand it as well.

II. Conclusion

In its briefings, the Class, in spite of the evidence, evokes the myth of a great conspiracy between operators and marketers, and it advances a theory that threatens impermissible economic and underground waste of natural gas resources. The language of the parties' oil and gas leases, on the other hand, sets up bargained-for arrangement that enables the parties to share in the benefits of stripper gas production and promotes conservation of the state's natural gas reserves.

/s/ Charles C. Steincamp
Charles C. Steincamp, #16086
Depew Gillen Rathbun & McInteer, LC
8301 E. 21st St. N., Suite 450
Wichita, KS 67206
(316) 262-4000, telephone
chris@depewgillen.com
Co-Counsel for NSWA

Joseph A. Schremmer, #25968
University of New Mexico
School of Law
1117 Stanford Dr. NE
MSC11 6070
Albuquerque, NM 87106
(316) 305-4224, telephone
schremmer@law.unm.edu
Co-Counsel for NSWA

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2021, a copy of the above and foregoing was presented to the Clerk of the Court by electronic transmission for filing which will send notice of electronic filing, via email, to the following:

Mr. Doug Shima
Clerk of the Supreme Court
Kansas Judicial Center
301 SW 10th Street
Topeka, Kansas 66612-1507

Rex Sharp
rsharp@midwest-law.com

Robert W. Coykendall
rcoykendall@morrislaing.com

Jeff Kennedy
jkennedy@martinpringle.com

Keith A. Brock
kbrock@andersonbyrd.com

/s/ Charles C. Steincamp
Charles C. Steincamp

APPENDIX A

Table B30. Kansas oil and gas well summary statistics, 2019

	Oil wells							Gas wells							Total wells			
Prod. rate bracket (BOE/day)	# of oil wells	% of oil wells	Annual oil prod. (MMbbl)	% of oil prod.	Oil rate per Well (bbl/day)	Annual gas prod. (Bcf)	Gas rate per well (Mcf/day)	# of gas wells	% of gas wells	Annual gas prod. (Bcf)	% of gas Prod.	Gas rate per well (Mcf/Day)	Annual oil prod. (MMbbl)	Oil rate per well (bbl/Day)	# of total wells	Annual oil prod. (MMbbl)	Annual gas prod. (Bcf)	Horizontal well count
0–1	28,652	57.2	2.9	9.2	0.3	0.0	0.0	3,734	18.2	3.3	1.8	2.7	0.0	0.0	32,386	3.0	3.3	1
1–2	9,048	18.1	4.5	13.8	1.5	0.1	0.0	3,144	15.3	9.6	5.3	8.7	0.0	0.0	12,192	4.5	9.7	0
2–4	7,781	15.5	7.5	23.3	2.8	0.3	0.1	4,913	23.9	30.8	17.1	17.6	0.1	0.1	12,694	7.6	31.1	0
4–6	2,072	4.1	3.4	10.7	4.8	0.3	0.4	4,327	21.0	45.3	25.1	29.2	0.1	0.1	6,399	3.6	45.6	0
6–8	836	1.7	2.0	6.2	6.8	0.2	0.8	2,491	12.1	36.1	20.1	40.6	0.1	0.1	3,327	2.1	36.4	0
8–10	398	0.8	1.2	3.8	8.8	0.1	1.0	938	4.6	17.0	9.5	51.7	0.1	0.2	1,336	1.3	17.2	0
Subtotal <=10	**48,787**	**97.4**	**21.6**	**67.0**	**1.3**	**1.2**	**0.1**	**19,547**	**95.1**	**142.0**	**78.9**	**20.8**	**0.4**	**0.1**	**68,334**	**22.0**	**143.2**	**1**
10–12	297	0.6	1.1	3.5	10.6	0.1	1.1	352	1.7	7.7	4.3	62.9	0.0	0.3	649	1.2	7.8	0
12–15	281	0.6	1.3	4.0	13.1	0.2	1.9	214	1.0	5.5	3.0	75.8	0.0	0.6	495	1.3	5.6	0
Subtotal <=15	**49,365**	**98.5**	**24.0**	**74.5**	**1.5**	**1.5**	**0.1**	**20,113**	**97.8**	**155.2**	**86.2**	**22.1**	**0.5**	**0.1**	**69,478**	**24.5**	**156.7**	**1**
15–20	263	0.5	1.5	4.7	16.6	0.4	4.1	145	0.7	4.3	2.4	91.7	0.1	1.7	408	1.6	4.7	0
20–25	119	0.2	0.9	2.8	21.6	0.1	3.2	81	0.4	2.8	1.5	115.5	0.1	2.6	200	1.0	2.9	1
25–30	126	0.3	1.1	3.6	26.6	0.2	4.9	46	0.2	2.0	1.1	147.9	0.0	2.9	172	1.2	2.2	1
30–40	80	0.2	0.9	2.8	33.8	0.1	3.8	74	0.4	3.9	2.2	182.0	0.1	4.1	154	1.0	4.0	0
40–50	49	0.1	0.7	2.1	43.6	0.2	10.4	34	0.2	2.6	1.4	243.1	0.0	4.0	83	0.7	2.8	0
50–100	66	0.1	1.4	4.3	65.5	0.4	18.3	51	0.3	5.3	2.9	364.0	0.1	6.3	117	1.5	5.6	0
Subtotal <=100	**50,068**	**100.0**	**30.5**	**94.8**	**1.8**	**2.9**	**0.2**	**20,544**	**99.9**	**176.0**	**97.7**	**24.6**	**0.9**	**0.1**	**70,612**	**31.4**	**178.9**	**3**
100–200	9	0.0	0.4	1.1	150.2	0.1	23.2	16	0.1	4.0	2.2	703.4	0.1	19.5	25	0.5	4.0	0
200–400	16	0.0	1.3	4.0	247.7	0.1	14.1	1	0.0	0.1	0.1	1,971.5	0.0	0.0	17	1.3	0.2	0
400–800	1	0.0	0.0	0.1	413.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	1	0.0	0.0	0
800–1,600	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0
1,600–3,200	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0
3,200–6,400	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0
6,400–12,800	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0
> 12,800	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0
Total	**50,094**	**100.0**	**32.2**	**100.0**	**1.9**	**3.0**	**0.2**	**20,561**	**100.0**	**180.1**	**100.0**	**25.1**	**1.0**	**0.1**	**70,655**	**33.2**	**183.1**	**3**

Notes:

1) Source: State administrative oil & gas data thru Enverus Drillinginfo.

2) The total volumes shown in the distribution tables may not exactly agree with other related data, including other EIA sources. Major reasons for differences include: the timing of updates from state and commercial sources, the summed production of available well-level production data versus state-level aggregations of production, and how a well is defined and which entities are counted and summed.

3) Wells counted for this report include sidetracks, completions, re-completions and leases, this includes all oil and/or gas producing 'entities' available in Enverus Drillinginfo database.

4) For late reporting states; the last year of available data is repeated for missing years (AZ 2017 used for 2018-19, KY 2018 for 2019, MD 2015 for 2016-19, TN 2016 for 2017-19). All years are missing for IL and IN.

5) To be consistent between states a GOR of 6,000 (cf/bbl) for each years production was used to define oil versus gas wells. If the GOR was less (greater) than 6,000 (cf/bbl) the well was classed an oil (gas) well.

6) To determine production rate brackets for the first and last year of a wells life the annual production was divided by the number of days in the productive months. For other years the annual production was divided by 365 or 366 days.

7) Gas volumes have been converted from the various state pressure bases to the Federal base (14.73 psia).

Data available as of November 2020.

APPENDIX B

NO. 108,666

IN THE SUPREME COURT
OF THE STATE OF KANSAS

L. RUTH FAWCETT,
Plaintiff-Appellee,

v.

OIL PRODUCERS, INC. OF KANSAS
Defendant-Appellant.

BRIEF OF AMICUS CURIAE DCP MIDSTREAM, LP

Appeal from the District Court of
Seward County
Honorable Kim. R. Schroeder
Case No. 11-CV-90

Curtis M. Irby, #7274
GLAVES, IRBY AND RHOADS
1555 North Market, Suite 200
Wichita, Kansas 67202
Attorneys for Amicus Curiae
DCP Midstream, LP

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INTRODUCTION AND SUMMARY OF ARGUMENT

DCP Midstream, LP ("DCP") submits this amicus brief in support of Oil Producers Inc. of Kansas ("OPIK") and urges reversal of the Lower Courts' grant of partial summary judgment to Plaintiffs. *Fawcett v. Oil Producers, Inc. of Kansas*, 49 Kan. App. 2d 194, 306 P.3d 318 (2013). As a midstream gas purchaser/gatherer from OPIK and many other producers in Kansas, DCP is filing this brief because of the importance to the natural gas industry of a predictable legal landscape and the need for consistent interpretations of the royalty value provisions of Kansas oil and gas leases.

DCP believes that the Court of Appeals opinion effectively rewrites oil and gas leases that require paying royalty on "proceeds" of sales "at the well." OPIK properly paid royalties on the total proceeds received in its wellhead sales. By requiring OPIK to pay royalties on the purchasers' downstream resale price without any deductions, the Court of Appeals erroneously assumed as a matter of law that the gas was not in marketable condition at the well. But DCP's gas purchase contracts with OPIK on their face prove the gas was marketable at the well. In fact, DCP and its midstream competitors routinely purchase raw gas at the wellhead under two part payment percentage of proceeds ("POP") and percentage of index ("POI") contracts throughout Kansas, demonstrating that the gas is marketable at the well. The Court of Appeals decision changes Kansas royalty law and will adversely affect midstream purchasers, producers, and royalty owners.

ARGUMENT AND AUTHORITIES

I. The Lower Courts erred in holding that royalties based on the proceeds of OPIK's sales at the wellhead did not comply with "at the well" lease language and that the gas was not in marketable condition at the wellhead.

A. DCP's role as a midstream gas purchaser

DCP is a gas gatherer and processor in Kansas and in many of the producing states in the United States. DCP is not a gas producer, nor is it affiliated with any gas producer. DCP purchases raw natural gas at or near the wellhead from many Kansas gas producers, including OPIK. Similarly, DCP is not a party to any lease between OPIK and Plaintiffs. The terms of the arms' length Gas Purchase Contracts between Kansas gas producers and DCP determine the producers' gas sale proceeds.

DCP negotiates with producers to purchase gas, typically at or near the wellhead. DCP then gathers that production, often using compression, and typically delivers gas to a gas processing plant for processing. Processing entails extraction of entrained liquid hydrocarbons in the raw gas, generally using cryogenic or refrigeration technologies. This separation yields raw make natural gas liquids ("NGLs") and remaining residue gas. NGLs include ethane, propane, butanes, and pentanes and natural gasoline (pentanes+). DCP and other gas gatherers and processors (such as ONEOK) add value to purchased wellhead gas in several ways as they move it toward end consumers. Gatherers' and processors' contributions toward the higher end values that exist at downstream consumption points include:

- receiving the raw gas at many field locations, often at low pressure;
- dehydrating the gas if not already dehydrated by the producer;
- compressing gas in the field and at plant inlets to increase pressure to that needed for processing and for delivery to downstream interstate pipelines and using fuel to do so;

- moving the gas from wellheads to a central processing plant and processing it to recover NGLs;
- delivering raw make NGLs to the NGL pipeline connected to the plant;
- delivering residue gas to residue gas transmission pipelines; and
- marketing and managing deliveries of the residue gas and NGLs that are then available in high quantities at a single point and at the higher pressures needed for the deliveries to the downstream takers.

All of this work and activity moves the gas part of the way to the end-use market and leads to revenues that exceed the wellhead gas values; otherwise, gas gathering and processing companies could not continue in business. The Court of Appeals' opinion rests on a misimpression that wellhead gas is not marketable, and thus the producer has to pay to make it so. This has no basis in fact. In fact, wellhead gas is very desirable for both its NGLs and gas content, and there is active competition among multiple gatherers for wellhead gas purchases from gas producers like OPIK.

DCP is actively involved in the midstream segment of the energy industry as the second largest natural gas gatherer and processor, the largest NGLs producer, and one of the largest marketers of natural gas and NGLs in the United States. DCP operates 64 gas processing plants and about 61,250 miles of gas gathering lines in the United States. These activities occur across 11 different states. DCP handles about 6 trillion Btus (or 6 Bcf) of gas every day, or about 12% of the nation's production, and produces well over 400,000 NGLs barrels per day, or about 17% of all NGLs produced in the United States.

In Kansas, DCP and its affiliates engage in gas gathering, gas processing and treating, gas and NGLs transmission, and gas, helium, and NGLs marketing. Kansas is of key importance to DCP operations for a number of reasons. DCP operates gas gathering and transmission pipelines and supplies gas to the 700 MMcf/day capacity National Helium Plant near Liberal in Seward County, Kansas, owned by DCP's subsidiary

National Helium, LLC and operated by DCP. DCP operates about 1,921 miles of gas gathering lines and operates for others 226 miles of gas transmission lines in Kansas.

DCP participates in an active market for the purchase of unprocessed wellhead gas all across western Kansas. DCP has about 327 active gas purchase contracts in Kansas, with many different suppliers covering 1,336 wells or delivery points near the wellhead.

B. DCP's wellhead purchase contracts with OPIK and other unaffiliated producers

For decades, gatherers have negotiated wellhead sales contracts that value the gas in a two-part payment based on percentages of the values the processor might receive at the plant for the residue gas and NGLs portions only after the gatherer-processor has performed the steps described above. These may be based on published gas index values ("percentage of index" or "POI"), on the gatherer-processor's actual resale proceeds for both gas and NGLs ("percentage of proceeds" or "POP") or on both published gas and NGLs index values ("POPI"). These forms of contracting are flexible and market-based, allowing gas values to change as the downstream residue gas and NGLs values change. They satisfy a real need for longer term contracts that help to justify the large investments in gathering, compression, and processing infrastructure need to handle producers' gas. They represent the best way to value wellhead gas based on the values that the purchaser can later derive from it.

Producers and midstream participants have been using POP, POI, and POPI contracts for many decades. They represent the industry's best thinking on the fairest way to value wellhead gas by recognizing the purchaser's downstream markets. They are by no means a recent fraudulent construct to avoid royalties, as the lower courts' opinions

imply. For gas deliveries at the well, DCP pays producers the full wellhead value in a two part payment calculation that pays the producer the wellhead value for the NGLs contained in the gas and for the residue gas remaining and available for sale allocated to that producer's deliveries. These values are 100% of the wellhead sale site values. Typical DCP Kansas Gas Purchase Contracts include these material terms:

(1) Title usually passes from the producer to DCP at agreed wellhead or wellhead area Delivery Points, the inlets to DCP gathering systems near each well.

(2) As the agreed full compensation to the seller for purchase of the raw gas and all of its constituents, DCP pays a full wellhead value that is usually the sum of two agreed sets of values. The first is an agreed percentage of the value of the residue gas as of the plant location that remains and that DCP allocates to that seller's gas quantities. The second is often the same agreed percentage of the value of the NGLs as of the plant location that DCP allocates to the seller based on the tested NGLs quantities in the seller's raw gas. The residue gas values are today most often based on published index quotations that apply to sales of gas at high pressure and quantity at gas transmission pipeline inlets (*e.g.*, interstate pipelines) at the processing plant tailgate. An older residue gas valuation method, also still frequently used in the industry, is to base the seller's compensation on the processor's actual residue gas proceeds as of the plant location.

(3) DCP usually bases NGLs values on the *Oil Price Information Service* ("*OPIS*") published NGLs values for NGLs market centers like Conway, Kansas, and Mont Belvieu, Texas, less a location differential to adjust that market center value to a plant location value (*OPIS* less NGLs transportation, fractionation and storage, or

"TF&S"). Of course, those values are very close to DCP's actual NGLs sales values, and DCP sometimes uses actual NGLs values as of the plant location instead.

(4) DCP sometimes purchases wellhead gas using "percentage of index" or "POI" pricing where the entire wellhead purchase payment based on a gas index value.

The specific gas purchase contracts that OPIK entered into in Kansas were sales to ONEOK, UNIMARK, and Duke Energy Field Services, LP ("Duke") (the previous name of DCP Midstream, LP before January 1, 2007). *Fawcett*, 306 P.3d at 320. While the Court of Appeals refers to DCP and "Duke" as separate entities having separate contracts with OPIK, the record demonstrates they are one and the same. *See* ROA Vol. 5 Exhs. Q-S. The DCP/Duke contracts dated 8-1-02 and 6-1-03 are both POI contracts. ROA Vol. 5 Exhs. B-F at 29, 44. These contracts provide for sale by OPIK at a "site at or near [OPIK's] sources of production." *Id.* at 30, 45. The price for these sales at or near the wellhead is based on 100% of the index price published in an industry publication for Panhandle Eastern mainline pipeline spot gas trades, less a fixed cents per MMBtu gathering charge to compensate DCP for gathering, compression, and processing costs and other expenses. The DCP "billing statement" referred to in the Court of Appeals opinion, 306 P.3d at 320, relates to a well covered by the 8-1-02 gas purchase contract of DCP/Duke, ROA Vol. 5 Exhs. Q-S at 5, and shows the calculation of the contract price of the percentage of a gas price index less the gathering fee.

The ONEOK gas purchase contract with OPIK was a POP wellhead purchase contract using a percentage of the proceeds of the resale after processing of both NGLs and residue gas, less a gathering and compression fee. ROA Vol. 5 Exhs. B-F at 2, 23. The UNIMARK gas purchase agreement with OPIK was a POP field purchase contract

using a percentage of UNIMARK's resale price, less costs incurred by UNIMARK for gathering, treating, transportation, and compressing the gas. *Id.* at 58.

POP[1] and POI[2] contracts have long been a feature of the natural gas industry. The Supreme Court of the United States, the U.S. Court of Appeals for the Tenth Circuit, and courts in other jurisdictions with robust oil and gas law have uncritically described wellhead POP and POI contracts (formerly called "casinghead gas contracts") without voicing any doubt as to the legitimacy or validity of these agreements. *See Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954); *Duke Energy Natural Gas Corp. v. Comm'r of Internal Revenue*, 172 F.3d 1255 (10th Cir. 1999); *Deep S. Oil Co. of Tex. v. Fed. Power Comm'n*, 247 F.2d 882 (5th Cir. 1957); *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 708 (Tex. 2008) (citing Williams & Meyers at 751); *Tana Oil & Gas Corp. v. Cernosek*, 188 S.W.3d 354 (Tex. App.–Austin 2006, pet. denied). *See also Foster v. Apache Corp.*, 285 F.R.D. 632, 638 n. 10 (W.D. Okla. 2012) (finding no material distinctions between POP and POI contracts and thus referring to both as POP contracts). The Supreme Court of Texas has recognized such contracts as "common throughout the natural gas industry." *Dynegy Midstream Servs., Ltd. P'ship v. Apache Corp.*, 294 S.W.3d 164, 165 (Tex. 2009). Thus, POP and POI contracts are widely used and accepted in the natural gas industry.

C. Contrary to the unsupported assumption by the Lower Courts, OPIK's gas was marketable at the wellhead where it was purchased.

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[1] A POP contract is "a gas purchase contract providing payment to the purchaser as a percentage of the proceeds realized by the purchaser upon the resale of gas." *Bowden v. Phillips Petroleum Co.*, 247 S.W.3d 690, 708 (Tex. 2008) (8 Williams & Meyers, Oil & Gas Law: Manual of Oil & Gas Terms ("Williams & Meyers"), at 751 (2007)).

[2] A POI contract is a contract in which payment is based on "a percentage of the month's prices under an index-based gas value formula for the aggregate MMBtus at the wellhead." *Naylor Farms, Inc. v. Anadarko OGC Co.*, No. CIV-08-668-R, 2011 WL 7053789, at *2 (W.D. Okla. July 14, 2011).

The court in *Fawcett* held that OPIK violated the implied covenant to market. *Fawcett*, 49 Kan. App. 2d at 207-08, 306 P.3d at 326. In *Fawcett* the court has turned the marketable product into a rule of law that the location for calculating royalty must be at the transmission pipeline. *Fawcett*, 49 Kan. App. 2d 194, 203-04, 306 P.3d 318, 324. The court appears to base this conclusion on the fact that the midstream purchasers from OPIK at the wells resold the gas at downstream mainline pipelines. But nowhere in the *Fawcett* decision does the court address whether the gas was marketable at the well.

At most, Kansas' implied duty to market in oil and gas leases requires only that the gas be "marketable"—not that it exhibit all attributes of mainline transmission quality gas. There is ample evidence of the existence of wellhead markets for raw gas in wellhead quality and condition. Gatherers like DCP eagerly vie against each other to buy wellhead gas, in its raw, unprocessed form. DCP and other midstream companies routinely enter into wellhead purchaser contracts. Those arms'-length wellhead bargains agreed between producers and wholly unaffiliated gatherers result in good faith deals at a full 100% of wellhead value. POP and POI contracts cause producers and royalty owners to bear their share of expenses necessary to obtain higher prices in the separate residue gas and NGLs markets that gatherers and processors can access after they contribute significant value through their gathering and processing activities.

Gas has typically been marketable at the wellhead since the 1920s. *See, e.g.*, www.eia.gov/dnav/ng/hist/n9190us3a.htm. While "interstate pipeline quality" gas is unquestionably "marketable" at inlets to interstate pipelines, as it is in a form suitable for use by residential end users, that does not mean the gas is not marketable in raw unprocessed form at the wellhead. Reaching "interstate pipeline quality" at the wellhead

is not an attribute of being "marketable." Multiple buyers and alternative commercial uses do not require "interstate pipeline quality" gas. In fact, unlike transmission pipelines, gatherers and processors like DCP very much prefer the NGLs contained in the gas, and they would far rather have raw gas with NGLs content for processing than "interstate pipeline quality gas," from which NGLs content has been removed.

The Court of Appeals opinion appears to rest on the assumption that the OPIK gas sold to DCP, ONEOK, and UNIMARK was not marketable at the wellhead, even though it was actually sold and marketed at the wellhead to a buyer not affiliated with OPIK. This finding not only ignores undisputed controlling facts and defies common sense, but also completely ignores the marketing realities in the natural gas industry. DCP's, ONEOK's, and UNIMARK's wellhead purchase contracts with OPIK are more the rule than the exception. Most natural gas produced in Kansas is sold at the wellhead to gatherer processors such as DCP under wellhead purchase contracts. There is a vigorous and active wellhead raw gas market. Of course, there are downstream markets for natural gas as well. One such market exists at the tailgate of gas processing plants where treated and processed natural gas is sold in large quantities by gatherers such as DCP to purchasers transporting on interstate or intrastate mainline pipelines. The POP and POI contracts of DCP, ONEOK, and UNIMARK with OPIK allow the producers and their associated royalty owners to share in the benefit of a downstream pipeline price for the raw gas purchased at the wellhead from the producer. There are other market locations even further downstream, sometimes thousands of miles away from the point of production, at city gate locations where local utilities purchase at the tailgate of interstate pipelines. And of course, there is a retail consumer market for natural gas where

residential and commercial customers purchase natural gas at their places of residence and business. Each step in the chain of commerce adds value that the end consumer must pay, or the product would not be available for long. However, the fact that there are multiple downstream markets for natural gas does not establish that there is no market for natural gas at the wellhead.

The concurring opinion of Justice McAnany in the Court of Appeals decision illustrates how far from the realities of the marketplace the *Fawcett* opinion strayed. The concurring opinion stated: "I do not ascribe to the notion that because there is some point on every such curve where *somebody* would be willing to pay for the item, each and every item passes the test of marketability." *Fawcett*, 306 P.3d 318, 327. By that statement the court apparently assumes that wellhead sales under POP and POI contracts are outliers. To the contrary, they are the norm.

In order to affirm summary judgment, the Court of Appeals necessarily held *as a matter of law* that the OPIK gas sold at the wellhead was not marketable at the wellhead even though the undisputed evidence was that the gas *was* sold to an unaffiliated purchaser at the wellhead. The court cites no factual evidence in the record that proves that the OPIK gas was not marketable at the wellhead, nor any evidence that the producer's "gross proceeds" are the "at the plant" values that include the gatherer-processor's entire margin on its resale. The court simply divined that the "gross proceeds" are the "at the plant" values implicit in the purchase contracts, not the actual wellhead values paid to OPIK. Then the court stated there could be no "deductions." But OPIK made no "deductions" at all. Sure, the gas purchaser made adjustments to calculate the full wellhead values, but these were not "deductions" from the producer's real "gross

proceeds." OPIK already paid royalty on its actual gross proceeds. The court's opinion is based solely on its conclusion that the proper "gross proceeds" include the producer's value plus the entire gross margin of the gatherer-processor implicit in the terms of OPIK's wellhead sale contracts with DCP, ONEOK, and UNIMARK. But if anything, those contracts demonstrate just the opposite of the court's conclusion. They prove that the gas was in fact marketable at the wellhead and was indeed marketed.

That raw gas at the wellhead is in marketable condition is shown by how widespread such wellhead purchases are. DCP has approximately 327 active gas purchase contracts in Kansas with 1,336 delivery points at or near the wellhead.

Once a producer makes a sale at the wellhead at arms' length to an unaffiliated purchaser, it has fully satisfied any implied obligation to market gas under the oil and gas lease. The resulting wellhead values are appropriate full royalty values.

The Court Appeals here made the same error as the class of royalty owners in a Texas case which rejected claims that resale prices in POP contracts should be the basis for royalties in "at the well" leases: "The Class erred by equating the sale of raw gas at the well to the separate and distinct third-party sales of the residue gas and extracted liquids on the open market . . . . Accordingly, by paying the Class royalties based on 100% of the money it actually received, Tana did in fact pay royalties on 100% of the total volume of raw gas that it sold at the well." *Tana Oil & Gas Corp.*, 188 S.W.3d at 360.

D. The Lower Courts' holding is contrary to Kansas law, would re-write "at the well" leases, and is based on erroneous factual assumptions.

The OPIK oil and gas leases state that royalty will be calculated "at the mouth of the well" or "at the well." *Fawcett*, 49 Kan. App. 2d at 195, 306 P.3d at 320. Had the

leases specified that the valuation of the production would be "at the mainline" instead of "at the well," the result urged by Plaintiffs and adopted by the Court of Appeals might have made sense. Instead, the Lower Courts effectively rewrote the lease terms to reach their result. But that approach is contrary to Kansas law. In *Sternberger v. Marathon Oil Company*, 257 Kan. 315, 894 P.2d 788 (1995), this Court looked to the express terms of the oil and gas lease to decide the case. Although the court found that Marathon had an implied covenant to market the gas, it held the oil and gas lease provided that royalty would be determined "at the well." *Id.* at 322, 894 P.2d at 794. The Court held:

> *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.

Id. at 324, 894 P.2d at 796.

In *Sternberger* the issue was whether Marathon could deduct what it incurred to provide gathering services to move the gas from the wellhead to a mainline pipeline. In contrast to *Sternberger*, there is actually no issue for OPIK regarding what the producer may "deduct" from its sales price. In *Sternberger*, the producer (Marathon) owned the well and the gathering system, and gathered and transported the gas to downstream sales locations where the gas was actually marketed, raising the issue of whether transportation and other costs incurred by Marathon itself prior to sale were deductible. In the instant case, however, OPIK transferred title to DCP, ONEOK and UNIMARK at or near the wellhead, where the gas is both marketable and actually marketed, and the producer (OPIK) deducted nothing from the proceeds it received from those midstream purchasers in arms'-length sales transactions. Nothing in *Sternberger* requires OPIK to do anything else in marketing gas and paying its royalties.

This Court reaffirmed that the express lease terms govern in *Coulter v. Anadarko Petroleum Corp.*, 296 Kan. 336, 292 P.3d 289 (2013). There, this Court held that "[p]arties to an oil and gas lease are free to modify or change the terms of their agreement, and their express contractual provisions shall control over general statutory provisions, public policy concerns, or implied covenants." 292 P.3d at 292, Syl. ¶10.

Courts in other jurisdictions have agreed on the meaning of the "at the well" lease language. *See Piney Woods Country Life Sch. v. Shell Oil Co.*, 726 F.2d 225, 240 (5th Cir. 1984) ("'[A]t the well' refers not only to the place of sale but also to the condition of the gas when sold. 'At the well' means that the gas has not been increased in value by processing or transportation."); *Heritage Res., Inc. v. Nationsbank*, 939 S.W.2d 118, 129-30 (Tex. 1997) ("The words 'at the well' should be given their straightforward meaning. Market value 'at the well' means the value of gas at the well, before it is transported, treated, compressed or otherwise prepared for market."). By authorizing the sale of gas "at the well," therefore, the leases permit the sale of raw gas at the well and the payment of royalty from the proceeds of such sales of unprocessed raw gas. In *Coulter v. Anadarko Petroleum Corp.*, 296 Kan. 336, 292 P.3d 289 (2013), the Court revisited *Sternberger* and clarified the rule when the gas is marketable at the wellhead:

> The lessee (oil and gas company) must bear the entire expense of producing the gas at the wellhead pursuant to the terms of the oil and gas lease. Additionally, the lessee must also bear the entire cost of petting the gas in condition to be sold pursuant to the court-made "marketable condition rule." But once the gas is in marketable condition, regardless of whether a market actually exists at that point, the lessor (royalty owner) can be charged with his/her/its proportionate share (e.g., 1/8) of the cost to transport the gas to a market and a proportionate share of the cost to enhance the value of the gas stream, e.g., the processing costs to extract a saleable component such as helium.

292 P.3d at 306.

Because there is no basis for the Court to assume that gas sold by OPIK was not in marketable condition at the well, and because the gas purchase contracts and all the industry evidence demonstrates the gas was marketable at the well, Kansas law requires that OPIK pay royalties exactly as it did.

II. The Holdings of the Lower Courts Would Undermine the Sanctity of Contracts and Have Adverse Consequences for Royalty Owners, Producers, and Midstream Purchasers.

A. The Lower Courts' decisions could undermine lease contracts and gas purchase contracts.

To permit the Court of Appeals opinion to stand is to bless judicial rewriting of both gas purchase contracts and leases. If *Fawcett* is not reversed, producers will, in the short run, be forced to impute downstream prices they can never receive to the royalty share of production. In the long run, industry standard POP and POI contracts like those between DCP and its Kansas gas suppliers would be threatened. Producers may be reluctant to enter POP and POI contracts with gas purchasers if they must pay royalties on the gross amount of the resale of gas and NGLs by the midstream purchaser. But the alternative to POP and POI contracts would be fixed price wellhead purchase contracts that would deprive producers (and royalty owners) the benefits of at least a percentage of the downstream market prices. A fixed price contract would avoid the alleged "deductions." But the term could not be much beyond one month due to fluctuating energy values, and monthly new contract negotiations or amendments would be necessary, burdening the industry greatly. Obviously, for any longer term midstream purchasers would be required to offer fixed prices lower than the POP and POI net prices to account for the additional market price risk to the midstream companies of buying gas

at a fixed wellhead price and reselling at changing spot prices at mainline pipelines. In the end, producers and royalty owners would suffer.

B. The Lower Courts' decisions would ultimately reduce natural gas production in Kansas, reduce payments to producers, and reduce royalty payments.

The Court of Appeals' opinion threatens to undermine the reliability of contracts that form the basis for economic development. If *Fawcett* increases producers' royalty obligations materially beyond those initially agreed, producers will respond by finding fewer well prospects to be economic or shut in wells sooner, reducing gas supplies, and by shifting investment dollars out of state. These avoidable market distortions will injure the long-term interests of both the natural gas industry and ultimately royalty owners. As nothing in prior Kansas law warrants or requires these results, DCP urges the Court not to impose such adverse consequences on the natural gas industry.

CONCLUSION

The decisions of the Lower Courts granting partial summary judgment to Plaintiffs should be reversed. This Court should correct the errors of law in the Lower Courts' opinions and clarify the correct legal standard for royalty payments in Kansas when gas is sold by processors at the wellhead to gas producers like DCP.

Curtis M. Irby, #7274
GLAVES, IRBY AND RHOADS
155 North Market, Suite 1050
Wichita, Kansas 66202

Counsel for Amicus Curiae
DCP Midstream, LP

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2014, two true and correct copies of the above and foregoing **Brief of Amicus Curiae** was deposited in the U.S. Mail, postage prepaid and properly addressed to:

Robert Coykendall
Will Wohlford
Morris Laing Evans Brock & Kennedy
300 N. Mead, Suite 200
Wichita, KS 67202

Julia Gilmore Gaughan
Morris Laing Evans Brock & Kennedy
800 SW Jackson, Suite 1310
Topeka, KS 66612

Attorneys for Appellant/Defendant
Oil Producers, Inc. of Kansas

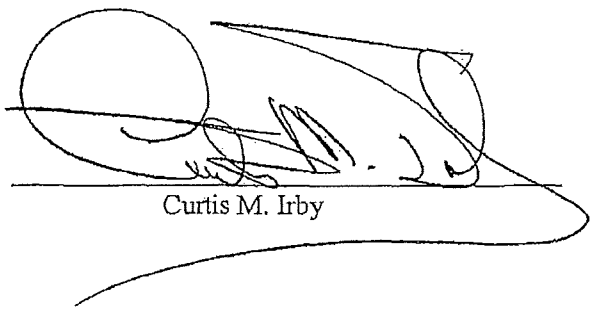
Rex A. Sharp
Barbara C. Frankland
Gunderson Sharp, LLP
5301 W. 75th Street
Prairie Village, KS 66208

David E. Sharp
Gunderson Sharp, LLP
713 Main, Suite 1400
Houston, TX 770023201

Attorneys for Appellee/Class Counsel

With the original and 16 copies via Federal Express to:

Clerk of the Kansas Supreme Court
301 SW 10th Avenue
Topeka, Kansas 66612



Curtis M. Irby