

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

Mary Lansden Swafford, as trustee for the
Mary Lansden Swafford GST Exemption
Residuary Trust, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

Ovintiv Inc., and Ovintiv Mid-Continent
Inc.,

Defendants.

Civil Action No. 21-CV-210-SPS

CLASS ACTION COMPLAINT

Plaintiff Mary Lansden Swafford, as trustee of the Mary Lansden GST Exemption Residuary Trust, on behalf of herself and the Class of all others similarly situated, brings this Class Action Complaint against Ovintiv Inc. and Ovintiv Mid-Continent Inc. (collectively “Ovintiv”), and alleges and states the following.

SUMMARY OF ACTION

1. Plaintiff and the Class bring claims against Ovintiv concerning Ovintiv’s actual, knowing, and willful underpayment or non-payment of royalties and oil-and-gas proceeds from wells through improper accounting methods (such as not paying on the starting price for gas products but instead taking improper deductions) and by failing to account for and pay royalties, all as more fully described below.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the claims asserted in this complaint pursuant to 28 U.S.C. § 1332(d) because this is a class action for which the amount in controversy

exceeds the sum of \$5,000,000; the members of the Classes number over 100 aggregate members; and minimal diversity exists because Plaintiff is a citizen of Oklahoma and Defendants are citizens of Colorado and Delaware. Further, minimal diversity exists because members of the Classes are citizens of states other than Colorado and Delaware, meaning that members of the Classes are citizens of different states than Defendants.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because many of the Class Wells are located in this district.

PARTIES

4. Mary Lansden Swafford, an Oklahoma citizen (“Plaintiff”), is trustee of the Mary Lansden Swafford GST Exemption Residuary Trust, a traditional trust (the “Trust”). The Trust’s corpus includes royalty interests in at least one Ovintiv-operated well that produces gas: the ELY 0104 1H-18X Well located at 19–1N–4W in Stephens County, Oklahoma. The royalty interests in that well stem from an oil-and-gas lease for which Ovintiv is lessee and the Trust is lessor as successor in interest to the original lessor. That lease, attached as **Exhibit 1**, includes an express fuel clause entitling the Trust to royalty for all gas used off the leased premises.

5. Ovintiv Inc. is a corporation organized under Delaware law with its principal place of business in Denver, Colorado.

6. Ovintiv Mid-Continent Inc. is a corporation organized under Delaware law with its principal place of business in Denver, Colorado.

7. “Ovintiv,” as used throughout this Complaint, encompasses both Ovintiv Inc. and Ovintiv Mid-Continent Inc.

8. Ovintiv is in the business of producing and marketing oil-and-gas and constituent products from the wells in which the Class members hold interests.

9. Ovintiv and its affiliated predecessors, successors, and current and past employees, agents, representatives, attorneys, or others acting on their behalf and all those to whose prior leasehold interests they have succeeded and for whom they are legally liable whether by merger, assignment, or otherwise shall herein collectively be known as “Defendant” or “Ovintiv.”

10. The acts charged in this Complaint as having been done by Ovintiv were authorized, ordered, or done by officers, agents, affiliates, employees, or representatives, while actively engaged in the conduct or management of Ovintiv’s business or affairs, and within the scope of their employment or agency with Ovintiv.

CLASS ALLEGATIONS

11. Plaintiff brings this action in her own name, as trustee of the Trust, and as a class action pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (“Class”):

All non-excluded persons or entities who are royalty owners in Oklahoma oil-and-gas wells where Defendants (including their affiliated predecessors and affiliated successors) are or were the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners) during the Claim Period. The Class claims relate to or arise from royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate).

Excluded from the Settlement Class are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) Defendants, their affiliates, predecessors, and employees, officers, and directors; (4) any publicly traded company or their affiliated entity that produces, gathers, processes, or markets gas; (5) overriding royalty owners and others whose interest was carved out from the lessee’s interest; (6) royalty owners who have already filed and still have pending individual lawsuits for underpayment of royalties against Defendants at the time suit is filed herein; (7) Charles David Nutley, Danny George, Dan McClure, Kelly McClure Callant, William L. Galbreath, Verdeen L. Slatten, Jack A. Slatten, Verdeen L. Slatten Family Limited Partnership, Neva M. Dorman, Ann Ellis Boles, Fischer-Jones, LLC, B.N. Taliaferro, Jr., Jack B. Searle, Tamara

D. Searle, OGI, Inc., Shepherd Royalty LLC, and their relatives or trusts; and (8) officers of the Court.

12. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable.

13. Ovintiv operates or has operated hundreds, if not thousands, of Class Wells that produce gas. Ovintiv holds a working interest in these Wells, with at least one, and usually multiple, royalty owners for each well. As a result, the Class contains well over 100 members, if not thousands of members.

14. Ovintiv has within its possession or control records that identify all persons to whom it (including affiliated predecessors and those for whom it is legally responsible) has paid royalties from Class Wells during the Class Period.

15. The questions of fact or law common to Plaintiff and the Class include, without limitation, one or more of the following:

- a. Whether the Trust and members of the Class are beneficiaries of the implied Marketable Condition Rule (MCR), which requires Ovintiv to sever the gas from the ground and to prepare the gas for market at Ovintiv's sole expense.
 - i. If so, whether: 1) the Midstream Costs of gathering, compression, dehydration, treatment, and processing (GCDTP) are costs associated with preparing the gas for market such that none of them should have been deducted from royalties but all of them were; or 2) whether the market for gas occurs before GCDTP are incurred such that the Class's claim is only for excessive deductions of Midstream Costs.
 - ii. If not, whether the Class members were party to a lease that expressly allows deduction of all of the GCDTP Midstream Costs ("Express Deduction Lease" or "ED Lease"), such that these Class members have a claim only for excessive deductions of Midstream Costs, and if so, whether the Midstream Costs actually deducted were excessive in amount.
- b. Whether Ovintiv paid royalty to the Trust and members of the Class for all valuable constituents coming from their wells and which inured to Ovintiv's benefit either: (1) through credit toward the Midstream Costs; or (2) by

contractual consideration in-kind to a midstream company (such as drip condensate, helium, liquefied nitrogen, some percentage of residue, some percentage of fractionated NGLs, plant fuel, or FL&U).

- c. Whether Ovintiv (including any of its affiliates) paid royalty to the Trust and members of the Class based on a starting price below what Ovintiv or its affiliates received in arm's-length sales transactions.
- d. Whether the Class leases contain express fuel clauses.
 - i. If so, whether Ovintiv failed to pay for the gas from the Class Wells used off the leased premises.
- e. Whether class-wide damages can be calculated for Plaintiff's theories of liability.

16. Plaintiff is typical of the other Class members because Ovintiv pays royalty to the Trust and other Class members using common methods. Ovintiv pays royalty based on the net revenue Ovintiv receives under its gas contracts which terms royalty owners do not know or approve. The contracts are for services necessary to place the gas and its constituent parts into marketable condition so they can be sold into recognized, active, and competitive commercial markets.

17. Further, Plaintiff is also typical of the other Class members because the Trust's oil-and-gas lease contains an express fuel clause.

18. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff understands her duties as representative for the Class. Plaintiff has retained counsel competent and experienced in class action and royalty owner litigation.

19. This action is properly maintainable as a class action. Common questions of law or fact exist as to all members of the Class, and those common questions predominate over any questions solely affecting individual members of such Class. *See supra*, ¶ 15. There is no need for individual members of the Class to testify in order to establish Ovintiv's liability to or damages sustained by the Trust and members of the Class.

20. Class action treatment is appropriate in this matter and is superior to the alternative of numerous individual lawsuits by members of the Class. Class action treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without duplication of time, expense and effort on the part of those individuals, witnesses, the courts, and/or Oviniv. Likewise, class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative forum exists for the fair and efficient adjudication of the claims of all the Class.

21. Class action treatment in this matter is further superior to the alternative of numerous individual lawsuits by all or some members of the Class. Joinder of all of the Class and the members would be either highly impracticable or impossible. And the amounts at stake for the individual Class members, while significant in the aggregate, would be insufficient to enable them to retain competent legal counsel to pursue claims individually. In the absence of a class action in this matter, Oviniv will likely retain the benefit of its wrongdoing.

GAS INDUSTRY BACKGROUND

22. The members of the Class own royalty interests in wells that produce gas and constituents that are transformed into marketable products and sold into the established commercial markets for those products.

23. Oviniv's method for calculating the royalty owed to the members of the Class is subject to uniform accounting procedures and implied marketable product law.

24. Oklahoma law requires the lessee to bear all of the costs of placing gas and its constituents into "Marketable Condition" products.

25. Gas and its constituent parts are marketable products only when they are in the physical condition to be bought and sold in a commercial marketplace.

26. Only after a given product is marketable does a royalty owner have to pay its proportionate share of the reasonable costs to get a higher enhanced value or price for that particular product.

The Lessor-Lessee Relationship

27. The lessor owns minerals, including oil and gas; the lessee has the money, labor, and know-how to extract, condition, and market those minerals. The lessor and lessee enter into a lease that allows the lessee to take the minerals from the lessor's land. The usual revenue split from a well was 1/8th to the lessor (royalty owner) and 7/8ths to the lessee. As the risk of finding oil and gas has diminished over time, due to the prevalence of wells delineating the field, better seismic technology, and increased efficiency of drilling rigs, royalty owners on more recent leases have received 3/16th or even 1/4th of the revenue.

28. But, oil-and-gas companies have used undisclosed, internal accounting practices to try to keep for themselves as much of the well revenue as possible. These accounting practices are at the heart of every oil-and-gas royalty case.

29. Rather than adopting transparency in its royalty-calculation formula, Ovintiv, like most lessees, has guarded its production and accounting processes as confidential or proprietary, thereby, depriving the royalty owners of information necessary to understand how Ovintiv calculates royalties. Consequently, the royalty owner is unaware of the lessee's actual practices, thereby enabling the lessee to breach the oil-and-gas lease without accountability.

30. If and when one or more of the royalty owners learn of the "breach," the royalty owner has only three options—all of which are poor: (1) confront the lessee and maybe get paid while the lessee continues to retain improperly garnered gas revenues from thousands of other

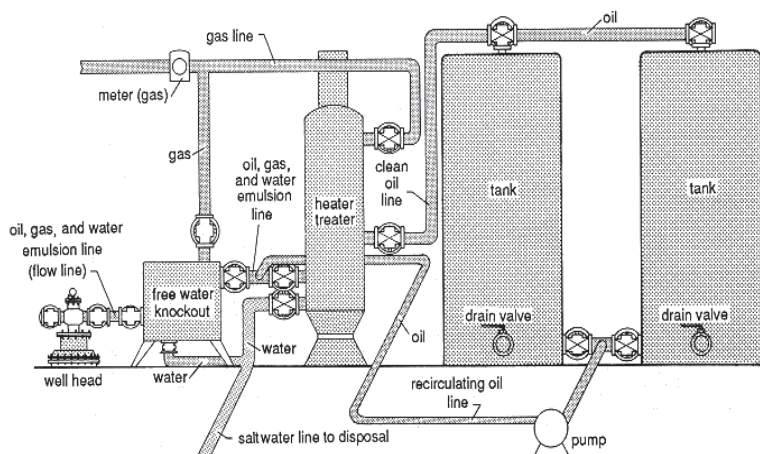
unknowing royalty owners; (2) do nothing since the “breach” only results in a modest yearly loss and the expense of individual litigation would exceed the recovery, if any; or (3) file a class action lawsuit which will persist for years and probably will not recover the full loss. In short, if the lessee breaches, it may never be held accountable; and if a royalty owner complains, the lessee will still come out ahead because an individual case is not worth much and a class action rarely requires 100% repayment to royalty owners plus prejudgment interest, plus attorneys’ fees and expenses. The class action is the best of the three options, hence the filing of this class action lawsuit.

Residue Gas, Helium, Nitrogen and Natural Gas Liquids Production

31. The gas is gathered from each well, dehydrated and compressed, through underground gathering lines crossing many miles of land to processing plants where the raw gas is transformed into two primary products: methane and fractionated natural gas liquids (“NGLs”). Once homogenized as fungible products, the residue gas and NGLs are sold in the commercial market.

Wellhead (Basic Separation and Gas Measurement)

32. The diagram below illustrates the gas conditioning process:



See <http://www.kgs.ku.edu/Publications/Oil/primer13.html> (last visited Sept. 11, 2019).

33. Wells produce oil, gas, and a host of other products, such as water, helium, nitrogen, etc., all mixed together in the gas stream.¹ After the stream comes out of the ground, it enters the free water knockout (a/k/a three-phase separator) which separates the products by gravity, water at the bottom, oil in the middle, and gas going out the top. Due to the low technology, the separator is not expensive (the “separation cost”). The gaseous mixture (with helium, nitrogen, NGLs, and other gaseous substances) passes from the separator into the gas line.² The remaining fluid goes through the heater-treater where heat, gravity segregation, chemical additives and electric current break down the mixture more clearly in oil and water. The heater-treater is installed, maintained and takes fuel to operate (the “heater-treater cost”). The water is drained off and sent for salt water disposal. The oil that is separated at the wellhead is collected in a tank, usually trucked out and sold (the payment of oil royalties is not at issue in this action).

34. Since production over time depletes the pressure of a well, on rare occasion, on-lease compressors are installed to suction gas out of the well or to move the gaseous mixture down the gathering lines. But when they are installed, their use requires fuel (the “on-lease compression” or “vacuum compression” cost).

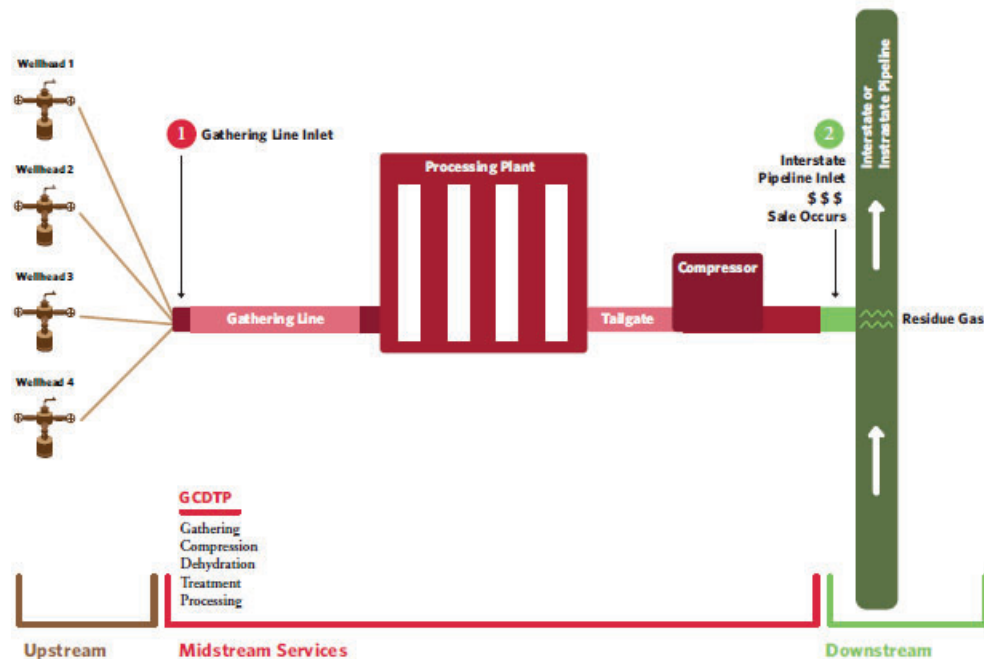
35. The gaseous mixture produced from a single well cannot be processed economically, so the mixtures from many wells are “gathered” together through gathering lines and

¹ Hydrocarbons can vary in chemical makeup (from simple methane to complex octane) and in form (from pure gaseous state to liquid condensate). The non-hydrocarbon makeup of the well-stream that includes natural gas can also include gases such as helium, sulfur, carbon dioxide, and nitrogen. This mixture of many gaseous elements and substances is often referred to as the “gas stream” or just “gas.”

² A minute portion of this raw gas may be used on a few leased lands to heat the farm house pursuant to a free gas clause in the lease. Although title to the gas sometimes is purportedly transferred, this is not a true sale. Some producers sell less than 3% of the raw gas to a local irrigator during the summer months for agricultural purposes, but this is not the economic market for which the wells are drilled.

delivered to a processing plant for transformation into marketable products and sale into commercial markets. This results in a gathering cost (G). The below diagram provides an overview of the midstream services deduction process. Ovintiv does not improperly deduct from royalty any of the costs before the gathering line inlet.

Midstream Services (GCDTP) Deductions



36. As the gaseous mixture from each well enters the gathering line, it flows into a meter run where the mixture is measured for both volume (in Mcf) and quality (Btu content) (combined, “gas measurement,” in MMBtu). The meter run must be constantly maintained to record accurate measurements.

37. Gathering pipelines are usually made of metal that could be corroded by water vapor (and other corrosive gases) in the gaseous mixture, so a glycol dehydrator is used to remove the water vapor. This results in a dehydration cost (D).

38. Gas will not move downstream from the well unless it is pressurized sufficiently to overcome the in-line back pressure and friction in the gathering line. So large gas compressors are

installed to move the gas from the gathering line inlet to the processing plant. These compressors are expensive and require fuel to operate. This results in a compression cost (C).

39. The gathering pipelines themselves cost money to lay and maintain, though most have been in place for decades. Gas condensate (gas condensed into liquid as it cools and is pressurized) (“Drip Condensate”) is collected at points along the gathering lines as a result of cleaning or “pigging the line” and is captured for fractionation and sale later. Generally lessees pay no royalty on the revenue generated from the sale of the drip condensate.

40. Finally, gathering lines leak, especially as they age, resulting in lost and unaccounted for gas (“L&U”). Lessees pay no royalty on the volume of L&U.

Natural Gas Processing

41. Once a sufficient amount of the gas mixture from multiple wells (and often from multiple gathering systems) is gathered, the mixture enters the inlet of the processing plant where the mixture will be transformed into methane and mixed NGLs.

42. Lessees, such as Ovintiv, use gas processing plants that either they or a third party own. Usually an unrelated third party owns the processing plant but the plant may also be owned in whole or in part by a lessee.

43. The plant removes impurities that remain in the mixture, such as carbon dioxide, nitrogen, or sulfur, before the mixture can be processed. This incurs a “treatment cost” (T).

44. The final cost, processing (P), involves services to transform the gas mixture into methane gas (also called “residue gas”), NGLs raw make, and in the Panhandle of Oklahoma, crude helium.

- a. Methane must meet the quality standards for long-haul pipeline transmission set by the Federal Energy Regulatory Commission (“FERC”) which is called “pipeline quality gas”.

- b. The raw make NGLs are used as a feedstock in the petrochemical and oil refining industries; they are a more valuable commodity than methane. To separate the NGLs from the gaseous mixture, they are cooled to temperatures lower than minus 150°F (the “Cryogenic or cooling process”). The NGLs move into a liquids pipeline and processed by a fractionator into their marketable products: ethane; propane; butanes; and pentanes plus. In the gas contracts, this process incurs a “T&F” or “fractionation” fee, even though lessees sometimes give away the NGLs in keep-whole agreements as consideration for other services the midstream company provides.
- c. Helium is processed into Grade A helium at new processing plants or into crude helium (contaminated with nitrogen) at older plants which is then processed into Grade A helium at a nearby helium processor (often a few hundred feet away).

45. This total processing system involves expensive equipment and requires fuel to operate (collectively, the “processing charge” and/or “plant fuel”). Lessees do not pay royalty on plant fuel, even though it comes from Class Wells.

46. At the tailgate of the processing plant, at least two products emerge: (1) residue gas (or methane gas); and, (2) NGLs (usually a mixture of NGLs, known as “raw make” or “Y” grade). In helium rich production areas, Grade A or crude helium, along with liquefied nitrogen also emerges. But none of these products are commercially marketable at that point.

Marketable Condition for the Products

47. *Methane Gas.* Methane gas (or residue gas) is commercial quality (a/k/a “pipeline quality”) at the tailgate of the processing plant only after it is further pressurized to enter the transmission line by a booster compressor (the “booster compression” cost).

48. *NGLs.* The raw mixture of NGLs at the tailgate of the processing plant is not commercially marketable. It must be fractionated into commercially marketable products – ethane, propane, butane, isobutene, natural gasoline, etc. In computing royalty for NGLs, Ovintiv improperly deducts processing fees and/or other costs (such as transportation and fractionation, T&F) needed to reach commercially marketable fractionated NGLs.

49. *Drip Condensate.* Drip Condensate is recovered on the gathering lines and at the inlet to the processing plant, and is essentially in marketable condition when collected.

50. *Other Products.* In some areas of the country (e.g., in the Hugoton Field, which stretches across Southwest Kansas, the Oklahoma Panhandle, the Texas Panhandle, and into parts of Wyoming), helium is produced in commercial quantities and recovered, along with liquefied nitrogen. Other areas of the country produce sulfur and carbon dioxide in commercial quantities. When such products are available in commercial quantities, processing and treatment plants recover these valuable constituents but for them, historically, lessees pay little or nothing to the royalty owners. Royalty owners should be paid for the gas and all constituents taken.

Sale of Products

51. To turn the marketable products into money, the producer sells them (or contracts to have them sold) in the commercial market place in an arm's length transaction. No money exchanges hands until the residue gas is sold at the Index pool, the fractionated NGLs at OPIS, and any other marketable products at the prices established by their respective commercial markets. Lessees attempt to obscure this fact with self-serving language in gas marketing contracts about title transfer or even by creating a wholly owned affiliate to manufacture a fictitious "sale" before the gas reaches commercial quality for sale.

52. The "starting price" for gas products is always achieved, as it must be, at a commercial market price. All of the gas contracts express the commercial market price in one of two ways: (a) a market price, called an "Index" price for residue gas and "OPIS" price for fractionated NGLs, or (b) a "weighted average sales price" or "WASP" achieved at the same residue Index market or OPIS market. The difference stems from Ovintiv's market power to, over time, obtain above "Index" or "OPIS" price in its arm's length sale. Whichever starting price is used in an arm's length

transaction, that price is the highest and best reasonable price for the valuable gas products. If Other Products are also produced, they are and must be also priced in a commercial market.

53. Affiliate gas contracts are not arm's-length sales in a commercial market. Instead, the later arm's-length sale by the affiliate in the commercial market is the true sale that should be used as the "starting price" for marketable condition gas products.

- a. Some lessees contract with affiliated gathering companies or other affiliated gas service providers before the products (residue gas and/or NGLs) are in Marketable Condition in an effort to: (1) artificially, and improperly, create a commercial market where none truly exists so they may justify deducting costs from royalty, or not paying for all of the gas or constituent products produced; (2) charge "marketing fees" to royalty owners even though the lessee is already obligated under the lease to prepare the gas for market and market the gas and constituent products; and/or (3) pay on the lower lessee/affiliate sale price and not the higher affiliate/third party price.
- b. WASP involves a pool of sales transactions to third parties (and/or affiliates) and combines the prices paid by those third parties (and/or affiliates) to arrive at a "weighted average sales price." Lessees can manipulate this process by using lower lessee/affiliate sales prices for part of the pool price, rather than all third party arm's length sale prices.

54. Fictitious "sales" (also known as sham sales or conditional sales) are created by lessees in an effort to pass off a non-commercial market sale as if it should be the starting point for royalty payments. But none of these efforts comport with economic reality or are in good faith with respect to royalty owners. For instance:

- a. Anything of value can be sold at any place and in any condition.
- b. Gas and other minerals can and are routinely sold in the ground, but they are not in marketable condition.
- c. Gas could be sold at the bottom of the hole when it is severed from the surrounding rock and enters the downhole pipe. Although a contract driller might be willing to accept some percentage of the future sale of oil or gas in the real marketplace as compensation for his drilling services, that agreement does not make the transaction a real market sale.
- d. Gas could be sold "at the wellhead" when the gas is severed from the surface. Although a contract operator might be willing to accept some percentage of

the future sale of oil or gas in the real marketplace as compensation for his well operating services, that transaction does not make it a real market sale.

- e. Gas also could be sold at the gathering line inlet when the gas enters the gathering line and changes custody. Although a contract gatherer might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for his gathering services, that transaction does not make it a real market sale.
- f. Gas also could be sold at the processing plant inlet when custody of the gas changes to the processing plant. Although a contract processor might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for his processing services, that transaction does not make it a real market sale.
- g. The lessee could simply pay for all of these services with monetary fees or in-kind contributions of all or part of the valuable constituents. But the structure of the transaction does not change the fact that the services are necessary to prepare the gas and valuable constituents for the first real sale into the commercial market – Index or OPIS.
- h. Nor does a contract saying title transfers at a custody transfer point create a sale of marketable products in a real commercial market. Some gas contracts with Midstream companies that provide GCDTP services purport to do that, but other parts of the gas contract demonstrate that it is a poorly attempted legal sleight of hand as (i) the risk of loss that usually passes with a true title transfer and market sale does not happen; (ii) the cost of future downstream services that usually passes with a true title transfer and market sale does not happen; (iii) the starting price that would occur with a true title transfer and market sale does not happen. Indeed, the paper title transfer is unnecessary to receiving the Midstream services as the gas could (and sometimes does) receive the exact same Midstream services without the paper title transfer.
- i. All of the gas contracts implicitly recognize this paper title transfer fiction, as the starting price for gas products always is at the Index and OPIS market pool as previously described.
- j. Midstream services providers are not buyers and resellers of raw gas. They are service providers that convert raw gas into pipeline quality gas so it can enter the Index or OPIS market pools. Indeed, they are called Midstream servicers, not Midstream purchasers.

Different Ways Ovintiv Underpays Royalty Owners

55. The extraordinarily large dollars at stake and the one-sided nature of the gas lessor-lessee relationship are constant temptations to lessees to wrongfully retain gas revenues. All

payment formulas, all affiliate and non-affiliate contractual relationships, and all calculations are firmly kept in the exclusive control of lessees, *and* they involve undisclosed accounting and operational practices. As a result, there are many ways that royalty owners are underpaid on their royalty interests, and they never know it. The common thread through all of these schemes is that they are typically buried in the internal lessee accounting systems or royalty-payment formulas.

56. Ovintiv represents the royalty calculation on the form of a monthly check stub it sends each royalty owner. The check stub shows each royalty owner's interest and taxes (which are not in dispute here), and volume, price, deductions, and value, all of which are disputed.

57. Ovintiv underpays royalty to the Trust and other Class Members in one or more of the following ways:

- a. *Residue Gas*. The starting price paid for residue gas should be an arm's length, third party market sales price for residue gas at pipeline quality. All of Ovintiv's gas contracts will show this to be true. But, instead of paying on that gross competitive price, Ovintiv pays on a net price after directly taking or allowing midstream companies to indirectly take Midstream Services deductions (both monetary fees and in-kind volumetric deductions).
- b. *NGLs*. The starting price paid for fractionated NGLs should be an arm's length, third party market sales price for ethane, propane, normal butane, iso-butane, and pentane plus (a/k/a natural gasoline). All of Ovintiv's gas contracts will show this to be true. But instead of paying on that gross competitive price, Ovintiv pays royalty (i) for only some of the NGLs produced (some is lost and unaccounted for in the gathering process, lost in plant fuel or compression fuel); (ii) after deducting processing fees and expenses (often keeping in-kind a Percentage of the Proceeds ("POP") of the fractionated NGLs as payment for the processing services); and, (iii) after reducing payment by T&F.
- c. *Drip Condensate*. The Trust's and Class Members' wells produce heavy hydrocarbons that condense in the pipeline. Ovintiv (or a third-party on behalf of Ovintiv (gatherers and/or processors)) recovers those hydrocarbons for sale. Ovintiv fails to pay any royalty for that Drip Condensate.
- d. *Other Products*. Helium is contained in the well-stream produced from the Trust's and many Class Members' wells, but Ovintiv: (i) fails to pay royalty for all of the helium produced (some is lost and unaccounted for in the gathering and processing process); (ii) deducts processing fees and costs even though the helium is not yet in commercial grade; and (iii) pays at a lower

than commercial Grade A price. Often times, Ovintiv does not pay any royalty at all for Helium, for liquid nitrogen, or other products taken from the Trust's and the Class Members' wells.

58. Ovintiv underpays all other Class Members from whom Ovintiv is legally and expressly authorized in the terms of the oil and gas lease to deduct post-production midstream services costs, by taking excessive deductions under midstream Services contracts that allow excessive monopoly charges for GCDTP services.

59. Ovintiv also underpays Class Members by failing to pay royalties on fuel used off the lease premises despite express contractual obligations to do so.

60. The underpayment and non-payment of royalties are done with Ovintiv's actual and willful knowledge and intent.

61. Ovintiv is well familiar with the fact that many other producers in Oklahoma have resolved the same claims for hundreds of millions, if not billions, of dollars or have changed their royalty payment practices to cease improperly deducting.

62. Nevertheless, Ovintiv continues its improper payment practices with actual and willful knowledge and intent.

**CAUSE OF ACTION
BREACH OF LEASE**

63. The allegations set forth above are incorporated herein by reference.

64. The Trust and the other Class Members are parties to written, fully executed, oil-and-gas leases with Ovintiv, and those leases include implied covenants requiring Ovintiv to prepare the gas and its constituent parts for market at Ovintiv's sole cost. And any express fuel clauses required Ovintiv to pay royalty on fuel used off the leased premises. The leases also place upon Ovintiv the obligation to properly account for and pay royalty interests to royalty owners under the mutual benefit rule and good faith and fair dealing.

65. At all material times, the Trust and the Class members have performed their terms and obligations under the leases.

66. Ovintiv breached the terms of the leases, including the implied covenants, by its actions and/or inactions in underpaying royalty or not paying royalty on all products sold from the gas stream.

67. As a result of Ovintiv's breaches, the Trust and the Class members have been damaged through underpayment of the actual amounts due.

68. Further, the Trust and the Class members have been damaged by Ovintiv's failure to pay for gas used off the leased premises, which is a breach of the express fuel clauses.

69. The Trust and the Class are entitled to the actual damages caused by Ovintiv's breaches and are further entitled to statutory interest and other allowable damages imposed by Oklahoma law, including punitive damages. *See* OKLA. STAT. tit. 52, § 570.1 *et seq.*

PRAYER FOR RELIEF

Wherefore, premises considered, Plaintiff seeks:

- a. An order certifying and allowing this case to proceed as a class action with Plaintiff as class representative for the Class and its undersigned counsel as class counsel for the Class;
- b. An order requiring Defendants to pay the Trust and all Class members actual damages to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Defendants' breaches and/or unlawful conduct including, without limitation, the compound interest required by Oklahoma law;
- c. An order requiring Defendants to pay the Trust and the Class's attorney's fees and litigation costs as provide by statute; and
- d. Such costs and other relief as this Court deems appropriate.

Respectfully Submitted,

/s/ Reagan E. Bradford

Reagan E. Bradford, OBA #22072

Ryan K. Wilson, OBA #33306

BRADFORD & WILSON PLLC

431 Main Street, Suite D

Oklahoma City, OK 73102

Telephone: (405) 698-2770

Facsimile: (405) 234-5506

reagan@bradwil.com

ryan@bradwil.com

COUNSEL FOR PLAINTIFF

Form 88--(POOLING)(OKLAHOMA)--Purkhart Printing & Stationery Co., Tulsa, Okla.

234

OIL AND GAS LEASE

52893 16

AGREEMENT, Made and entered into this 12th day of December, 1947

by and between J.G. Beard and Emily Beard his wife, S.I. Kolb and Bess Kolb his wife, Bobbie Lee Lowery and Bruce Lowery her husband, Russell Randall and Lena Randall his wife, Fred R. Whitten and Daisy Whitten his wife,

Party of the first part, hereinafter called lessor (whether one or more) and Phillips Petroleum Company, part y of the second part, hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of ... and lessee to have gas free of cost from any such well for all stores and all inside lights in the principal dwelling house on said land during the same time by making his own connections with the well at his own risk and expense.

The North half of the South half of the Northeast Quarter (N/2 S/2 NE/4)

of Section 29, Township One (1) North Four (4) West, 40 acres, more or less.

It is agreed that this lease shall remain in force for a term of Five years from date, and as long thereafter as oil and gas, or either of them, is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees:

- 1st. To deliver to the credit of lessor, free of cost, in the pipe line to which he may connect his wells, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises.
2nd. To pay lessor for gas from each well where gas only is found, the equal one-eighth (1/8) of the gross proceeds at the prevailing market rate, for all gas used off the premises, said payment to be made Monthly and lessor to have gas free of cost from any such well for all stores and all inside lights in the principal dwelling house on said land during the same time by making his own connections with the well at his own risk and expense.

3rd. To pay lessor for gas produced from any oil well and used off the premises, or for the manufacture of casing-head gasoline or dry commercial gas, one-eighth (1/8) of the proceeds, at the mouth of the well, at the prevailing market rate for the gas during which time such gas shall be used, said payments to be made Monthly.

If no well be commenced on said land on or before the 12th day of December, 1948 this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor or to the lessor's credit in the Security National Bank at Duncan, Oklahoma or its successors, which shall continue as the depository recorders of changes in the ownership of said land, the sum of Forty and NO/100 (\$40.00) DOLLARS.

which shall operate as rental and cover the privilege of deferring the commencement of a well for 12 months from said date. The payment herein referred to may be made in currency, draft, or lessee's check at the option of the lessee, and tender thereof may be made either to lessor in person or by mailing the same to lessor at his last known address, or to said depository bank on or before the date on which said rental is due hereunder.

Should the first well drilled on the above described land be a dry hole, then and in that event, if a second well is not commenced on said land within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payment of rentals in the same amount and in the same manner as hereinabove provided.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid to the lessor only in proportion which his interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of lessor.

When requested by the lessor, lessee shall bury his pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall pay for all damages caused by its operations to growing crops on said lands.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the lessee shall commence to drill a well within the term of this lease or any extension thereof, the lessee shall have the right to drill such well to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the term of years herein first mentioned.

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment of a true copy thereof, and it is hereby agreed in the event this lease shall be assigned as to a part or parts of the above described lands and the privilege or assignments of such part or parts shall fail or make default in the payment of the proportionate part of the rentals due from him or them, such default shall not operate to defend or affect this lease in so far as it covers a part or parts of the lands on which the said lessee or any assignee thereof shall make due payment of said rentals.

In case lessee assigns this lease, in whole or in part, lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

If the leased premises are now or shall hereafter be, owned in severally or in separate tracts, the premises nevertheless shall be developed and operated as one lease, and all royalties accruing hereunder shall be treated as an entirety and shall be divided among, and paid to, such separate owners in proportion to the acreage owned by each such separate owner bears to the entire leased acreage.

Provided, however, if the leased premises consist of two or more non-adjacent tracts, this paragraph shall apply separately to each such non-adjacent tract, and further provided that if a portion of the leased premises is hereafter consolidated with other lands for the purpose of operating the consolidated tract as one lease, this paragraph shall be inoperative as to such portion so consolidated.

Lessee is hereby given the right and power to pool or combine the acreage covered by this lease or any portion thereof with other land, lease or leases in the immediate vicinity thereof, when in lessee's judgment it is necessary or advisable to do so in order properly to develop and operate said premises in compliance with the spacing rules of any lawful authority, or when to do so would, in the judgment of lessee, promote the conservation of the oil and gas in and under and that may be produced from said premises, such pooling to be in a unit or units not exceeding 40 acres each, except that in cases where it may be necessary or convenient to combine a unit to survey subdivisions such units may contain not to exceed 43 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage. The entire acreage so pooled into a tract or unit shall be treated, for all purposes except the payment of royalties on production from the pooled unit, as if it were included in this lease. If production is found on the pooled acreage, it shall be treated as if production in had from this lease, whether the well or wells be located on the premises covered by this lease or not. In lieu of the royalties otherwise herein specified, lessor shall receive on production from a well so pooled only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest therein bears to the total acreage so pooled in the particular unit involved. Provided, lessee shall be under no obligation whatsoever, express or implied, to drill more than one well to each unitized tract, regardless of when, where or by whom offset wells may be drilled.

The undersigned lessors, for themselves and their heirs, successors and assigns, hereby surrender and release all rights of dower and homestead in the premises herein described, insofar as said right of dower and homestead may in any way affect the purpose for which this lease is made as recited herein.

All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.

This lease shall be effective as to each lessor on execution hereof as to his or her interest and shall be binding on those signers, notwithstanding some of the lessors above named may not join in the execution hereof.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor by payment any mortgages, taxes, or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

IN WITNESS WHEREOF, we sign this the 12th day of December, 1947. Signatures of J.G. Beard, Emily B. Beard, S.I. Kolb, Bess Kolb, Russell Randall, Lena Randall, Bobbie Lee Lowery, Bruce Lowery, Fred R. Whitten, Daisy Whitten.

STATE OF OKLAHOMA, } ss.
County of Stephens

(ACKNOWLEDGMENT FOR INDIVIDUAL)

2-5 813

Before me, the undersigned, a Notary Public, in and for said County and State, on this 15 day of December, 1947, personally appeared J. B. Beard & Emily Beard husband and wife and they personally known to me to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.
My commission expires Aug 12th 1949 R. D. Martin Notary Public

STATE OF OKLAHOMA, } ss.
County of STEPHENS

(ACKNOWLEDGMENT FOR INDIVIDUAL)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 15th day of December, 1947, personally appeared RUSSEL E. RANDLE & LENA RANDLE, husband & wife; S. I. KOLB & BESS KOLB, husband & wife; BOBBIE LEE LOWERY & BRUCE LOWERY, wife & husband; FRED R. WHITTEN & DAISY WHITTEN, husband & wife and they personally known to me to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal the day and year first above written.
My commission expires MARCH 24, 1951 Ruby M. Cuna Notary Public

STATE OF OKLAHOMA, } ss.
County of _____

(ACKNOWLEDGMENT FOR CORPORATION)

On this _____ day of _____, A. D., 19____, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared _____ to me known to be the identical person _____ who subscribed the name of the maker thereof to the foregoing instrument as its _____ and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.
My commission expires _____ Notary Public

No. _____

OIL AND GAS LEASE

FROM _____

TO _____

Date _____ 19____

Section _____ Township _____ Range _____

No. of Acres _____ County, Oklahoma _____

Term _____

STATE OF OKLAHOMA, } ss.
County of Stephens

This instrument was filed for record on the 18 day of Feb _____, 1948 at _____ o'clock P. M., and duly recorded in book _____ page 334 of the records of this office.

Edith Benson County Clerk

By _____ Deputy

Record and Mail to:
RETURN TO PHILLIPS PETROLEUM CO.
BARTLESVILLE, OKLAHOMA

Burkart Printing & Stationery Co., Tulsa, Okla.

44007

STATE OF OKLAHOMA, } ss.
County of _____

(ACKNOWLEDGMENT WHERE THE LESSOR SIGNS BY MARK)

On this _____ day of _____, A. D., 19____, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared _____ and _____ to me known to be the identical person _____ who executed the within and foregoing instrument by _____ mark _____ in my presence and in the presence of _____ as witnesses, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.
My commission expires _____ Notary Public

NOTE—The signature by mark of a lessor who cannot write his name must be witnessed by two witnesses, one of whom must write lessor's name near such mark.