

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

	)	
IN RE WESTERN STATES WHOLESALE	)	MDL Docket No. 1566
NATURAL GAS ANTITRUST	)	
LITIGATION	)	Base Case No. 2:03-cv-01431-RCJ-PAL

	)	
THIS DOCUMENT RELATES TO:	)	
	)	
<i>Learjet, Inc., et al. v. ONEOK Inc., et al.</i>	)	Case No. 2:06-cv-00233-RCJ-PAL
	)	
<i>Heartland Regional Medical Center, et al. v. ONEOK Inc., et al.</i>	)	Case No. 2:07-cv-00987-RCJ-PAL
	)	
<i>Arandell Corp., et al. v. Xcel Energy, Inc., et al.</i>	)	Case No. 2:07-cv-01019-RCJ-PAL
	)	
<i>NewPage Wisconsin System Inc. v. CMS Energy Resource Management Co., et al.</i>	)	Case No. 2:09-cv-00915-RCJ-PAL
	)	

**FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE**  
**AS TO ONEOK, INC. AND ONEOK ENERGY SERVICES COMPANY, L.P.**

This matter has come before the Court to determine whether there is any cause why this Court should not approve the settlement between Plaintiffs in the above-captioned Actions on behalf of the Midwest Classes, and ONEOK, Inc., and ONEOK Energy Services Company, L.P. (f/k/a/ ONEOK Energy Marketing and Trading Company, L.P.) (collectively, "ONEOK"), as set forth in the Settlement Agreement dated September 1, 2016 (the "Agreement"). The Court, after carefully considering all papers filed and proceedings held herein and otherwise being fully informed in the premises, has determined (1) that the settlement should be approved, and (2) that there is no just reason for delay of the entry of this Final Judgment approving the Agreement. Accordingly, the Court directs entry of Judgment which shall constitute a final adjudication of the above-captioned Actions on the merits in accordance with the terms of the Agreement. Good cause appearing therefor, it is:

**ORDERED, ADJUDGED AND DECREED THAT:**

1           1.       The Court has jurisdiction over the subject matter of the Actions and over all parties  
2 to the Agreement, including all members of the Midwest Classes based upon the Court’s findings  
3 and conclusions herein that such settlement class members have been afforded the due process  
4 protections of notice, an opportunity to be heard, a right to exclude themselves from the Midwest  
5 Classes and adequate representation. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

6           2.       All terms which are defined in the Agreement and used but not otherwise defined  
7 herein shall have the meanings ascribed to them in the Agreement, all of which are incorporated  
8 herein as though fully set forth in this Final Judgment.

9           3.       By its Preliminary Approval Order, the Court certified, for purposes of settlement  
10 only, these Actions as class actions against ONEOK under Federal Rule of Civil Procedure 23(b)(3).  
11 The Classes are defined as follows:

12           A.       “Kansas Class” means:

13                   All industrial and commercial direct purchasers of natural gas for their  
14                   own use or consumption during the period from January 1, 2000  
15                   through October 31, 2002, and which gas was used or consumed by  
16                   them in Kansas. Excluded from the Class are (a) entities that  
17                   purchased natural gas for resale (to the extent of such purchase(s) for  
18                   resale); (b) entities that purchased natural gas for generation of  
19                   electricity for the purpose of sale (to the extent of such purchase(s) for  
20                   generation); (c) defendants and their predecessors, affiliates, and  
21                   subsidiaries; (d) the federal government and its agencies; and (e)  
22                   Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

23                   For purposes of the Kansas Class definition, a “direct purchaser”  
24                   means an industrial or commercial entity that bought natural gas for its  
25                   own use or consumption directly from any of the defendants in the  
26                   Actions or from a seller other than a local distribution company.

27           B.       “Missouri Class” means:

28                   All industrial and commercial direct purchasers of natural gas for their  
own use or consumption during the period from January 1, 2000  
through October 31, 2002, and which gas was used or consumed by  
them in Missouri. Excluded from the Class are (a) entities that  
purchased natural gas for resale (to the extent of such purchase(s) for  
resale); (b) entities that purchased natural gas for generation of  
electricity for the purpose of sale (to the extent of such purchase(s) for  
generation); (c) defendants and their predecessors, affiliates, and  
subsidiaries; (d) the federal government and its agencies; and (e)  
Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

1 For purposes of the Missouri Class definition, a “direct purchaser”  
2 means an industrial or commercial entity that bought natural gas for  
3 its own use or consumption directly from any of the defendants in the  
4 Actions or from a seller other than a local distribution company.

4 C. “Wisconsin Class” means:

5 All industrial and commercial purchasers of natural gas for their own  
6 use and consumption during the period from January 1, 2000 through  
7 October 31, 2002, which gas was used or consumed by them in  
8 Wisconsin. Excluded from the class are (a) entities that purchased  
9 natural gas for resale (to the extent of such purchase(s) for resale); (b)  
10 entities that purchased natural gas for generation of electricity for the  
11 purpose of sale (to the extent of such purchase(s) for generation); (c)  
12 entities that purchased natural gas from entities that sold natural gas  
at rates approved by a State regulatory entity or public service  
commission (to the extent of such purchases at such approved rates);  
(d) defendants and their predecessors, affiliates and subsidiaries; (e)  
the federal government and its agencies; and (f) Reorganized FLI, Inc.  
(f/k/a Farmland Industries, Inc.).

13 D. “Midwest Classes” means, collectively, the Kansas Class, the Missouri Class, and the  
14 Wisconsin Class.

15 E. “Class Member” means each member of any one or more of the Midwest Classes.

16 F. “Class Period” means, with respect to each of the Midwest Classes, the period from  
17 January 1, 2000 through October 31, 2002.

18 4. The Actions are, for settlement purposes, certified as class actions against ONEOK  
19 pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for each and all of the  
20 Midwest Classes defined in paragraph 3 above and with respect to the Class Period defined in  
21 paragraph 3 above. Certification of the Midwest Classes is appropriate because:

22 a. The Court finds that the requirements of Rule 23(a) of the Federal Rules of Civil  
23 Procedure have been met:

24 (i) The Midwest Classes, are so numerous that joinder of all members is  
25 impracticable;

26 (ii) The Plaintiffs’ claims against ONEOK and the defenses thereto present  
27 questions of law or fact common to the Midwest Classes;

- 1 (iii) The claims against ONEOK brought by the Plaintiffs in the Actions, as  
2 industrial and commercial purchasers of natural gas for their own use and  
3 consumption during the Class Period, are typical of the claims of, or defenses  
4 to the claims of, members of the Midwest Classes against ONEOK;  
5 (iv) Class Counsel for the Midwest Classes have fairly, adequately and vigorously  
6 represented the interests of the Midwest Classes as respects claims against  
7 ONEOK; and  
8 (v) Based on their active participation in discovery and the settlement, the  
9 Plaintiffs in the Actions have fairly, adequately and vigorously represented the  
10 interests of the Midwest Classes as respects ONEOK.

11 b. The Court finds that the requirements of Rule 23(b)(3) of the Federal Rules of Civil  
12 Procedure have been met:

- 13 (i) Questions of law or fact relating to whether ONEOK engaged in false or  
14 inaccurate reporting of natural gas transactions to the publishers of natural gas  
15 price indexes, or engaged in other unlawful conduct including natural gas  
16 wash trading or churning transactions, in furtherance of a conspiracy to  
17 manipulate prices for natural gas during the Class Period predominate over  
18 any questions affecting only individual members of any of the Midwest  
19 Classes;  
20 (ii) There are no competing actions or any suggestions that a more efficient  
21 alternative to the Actions against ONEOK exists, and the Actions are the  
22 superior method for the fair and efficient adjudication of this controversy; and  
23 (iii) Manageability for trial purposes is not an issue and need not be considered in  
24 determining whether to certify the Midwest Classes herein for purposes of  
25 settlement. *See Amchem v. Windsor*, 512 U.S. 591, 619 (1997).

26 c. Certification of class actions, such as the Actions, for the purpose of settlement, is  
27 desirable to facilitate resolution of complex litigation such as this litigation.  
28

1           5.       The Court hereby finally approves and confirms the settlement set forth in the  
2 Agreement and finds that said settlement is, in all respects, fair, reasonable, and adequate to the  
3 Midwest Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure. In reaching this  
4 determination, the Court has, based upon the evidence presented and its independent inquiry,  
5 analysis and due diligence, considered: the serious questions of fact and law raised by Plaintiffs’  
6 claims and ONEOK’s potential defenses in the Actions; the risk, expense, complexity, and likely  
7 duration of further litigation; the risk of obtaining, and maintaining throughout trial and potential  
8 appeal, class action status; the benefits of the settlement; the extent of discovery completed and the  
9 stage of the proceedings; the experience and views of counsel that the settlement is fair and  
10 reasonable; and the reaction(s) of the Midwest Class members to the settlement (both as to the  
11 number of requests for exclusion from the Midwest Classes and as to the number and nature of the  
12 objections to the settlement).

13           6.       The Court hereby finds and concludes that the notice given to the Midwest Classes  
14 complied with this Court’s Preliminary Approval Order, and that said notice was the best notice  
15 practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal  
16 Rules of Civil Procedure and the requirements of due process, including, but not limited to, the form  
17 of notice and methods of identifying and giving notice to the Midwest Classes of, *inter alia*, the  
18 settlement terms, their rights to object to or exclude themselves from the settlement (and the  
19 procedures to do so), and the Fairness Hearing.

20           7.       Pursuant to Fed. R. Civ. P. 23(g), Polsinelli PC, McCallister Law Group, LLC, and  
21 Barry Law Offices, LLC are appointed as co-counsel for the Kansas Class; Polsinelli PC and Barry  
22 Law Offices, LLC are appointed as co-counsel for the Missouri Class, and Polsinelli PC, Kohner,  
23 Mann & Kailas S.C., and Barry Law Offices, LLC are appointed as co-counsel for the Wisconsin  
24 Class. These firms have and will fairly, adequately, vigorously and competently represent the  
25 interests of the Midwest Classes. In particular, the Court finds that the Agreement is the result of  
26 extensive, good-faith arm’s-length negotiations between the parties, and not the result of any  
27 collusion or reverse auction.

1           8.       As of the April 11, 2017 deadline designated in this Court’s Preliminary Approval  
2 Order, no persons/entities requested exclusion from the Midwest Classes. Because no member of  
3 any of the Midwest Classes submitted a timely and valid request, or indeed any request, for  
4 exclusion from the Midwest Classes, all members of any of the Midwest Classes are hereby (i)  
5 barred from asserting otherwise and (ii) bound by the terms of the Agreement, including the releases  
6 of claims, and by this Final Judgment.

7           9.       There were no objections filed to this settlement. Any member of the Midwest  
8 Classes who failed to object or seek to intervene is conclusively deemed to have waived the right to  
9 object or intervene and is barred from raising any objection to the settlement or this Final Judgment  
10 in this or any other proceeding, including in an appeal.

11          10.       This Court hereby dismisses on the merits and with prejudice, with each party to bear  
12 its own costs and attorneys’ fees, these Actions as against ONEOK and as to all members of any of  
13 the Midwest Classes.

14          11.       Pursuant to paragraph 20 of the Agreement, the Releasees are hereby and forever  
15 released and discharged from and with respect to any and all claims, demands, actions, suits, causes  
16 of action for injuries, losses, damages or other consequences of every nature (whether known or  
17 unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, liquidated or  
18 unliquidated, legal or equitable) that Releasors or any of them ever had, now has, or hereafter can,  
19 shall, or may have in any capacity (whether class, individual, direct, derivative, representative or any  
20 other capacity) on account of, or in any way arising out of, or relating in any way to any act or  
21 omission of the Releasees or the other named defendants/alleged co-conspirators or any third party  
22 alleged co-conspirators (or any of them) that is alleged in the Actions up to the date of the execution  
23 of this Agreement or that could have been alleged in the Actions or in any other proceeding alleging  
24 such acts or omissions (the “Released Claims”). All persons and entities who are Releasors are  
25 hereby barred and permanently enjoined from commencing, prosecuting or continuing, either  
26 directly or indirectly, against any of the Releasees, in this or any other jurisdiction, any and all  
27 Released Claims and any other claims arising from any conduct alleged in any of the Actions. The  
28 Released Claims shall not preclude Plaintiffs from pursuing any and all claims against any

1 defendants in the Actions other than ONEOK. Likewise, the Released Claims shall not impede  
2 Plaintiffs' rights to pursue claims against the non-settling defendants to recover for the full amount  
3 of Plaintiffs' and Class Members' alleged damages as provided by applicable law.

4 12. Neither the Agreement, the preliminary approval of the settlement and conditional  
5 certification for settlement purposes of the Midwest Classes, nor this Final Judgment (nor any  
6 negotiations or documents associated with them) are to be deemed an admission of liability or fault  
7 by ONEOK or by any of the Releasees, or a finding of the validity of any facts, allegations or claims  
8 asserted in the Actions, or of any wrongdoing or of any violation of law by ONEOK or any of the  
9 Releasees, or that any person has suffered any damage attributable to ONEOK or any of the  
10 Releasees, or an admission by ONEOK or any of the Releasees as to the certifiability of a litigation  
11 class in the Actions or in any other case. Neither the Agreement, nor any of its terms and  
12 provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken  
13 to carry out the Agreement by any of the settling parties shall be referred to, offered as evidence or  
14 received in evidence in any pending or future civil, criminal, or administrative action or proceedings,  
15 except in a proceeding to enforce the Agreement, or to defend against the assertion of Released  
16 Claims, or as otherwise required by law.

17 13. If for any reason this Final Judgment does not become "final" as provided in  
18 paragraph 17 of the Agreement, and if either ONEOK or Plaintiffs thereafter exercise their unilateral  
19 option(s) to rescind the settlement, terminate the Agreement and withdraw that Party's consent to the  
20 entry of this Final Judgment, then: (i) any preliminary or final certification of the Midwest Classes  
21 shall be automatically vacated, *nunc pro tunc*; (ii) all other provisions set forth in paragraph 16 of  
22 the Agreement shall apply; and (iii) any and all amounts paid by ONEOK into the Settlement Fund  
23 and/or deposited in the Escrow Account (including interest earned thereon) shall be returned to  
24 ONEOK within thirty (30) calendar days, less only disbursements made in accordance with  
25 paragraphs 23 and 24 of the Agreement.

26 14. Without affecting the finality of this Judgment in any way, this Court hereby retains  
27 continuing jurisdiction over: (a) implementation of this settlement and any distribution to Class  
28 Members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; (c) hearing

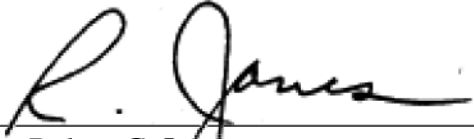
1 and determining applications by Plaintiffs' counsel for attorneys' fees, costs, expenses, and interest;  
2 (d) the Actions until the Final Judgment contemplated hereby has become effective and each and  
3 every act agreed to be performed by the parties has been performed pursuant to the Agreement;  
4 (e) hearing and ruling on any matters relating to the plan of allocation of settlement proceeds; and  
5 (f) all parties to the Actions and Releasers, for the purpose of enforcing and administering the  
6 Agreement and the releases and other documents contemplated by, or executed in connection with,  
7 the Agreement.

8 15. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil  
9 Procedure, that this Final Judgment should be entered and further finds that there is no just reason  
10 for delay in the entry of this Judgment, as a Final Judgment, as to the parties to the Agreement.  
11 Accordingly, the Clerk is hereby directed to enter Judgment forthwith.

12 16. Nothing in this Order shall be construed to expand the obligations of ONEOK under  
13 the Agreement or to impose on ONEOK any obligations other than those contained in the  
14 Agreement.

15  
16 **IT IS SO ORDERED.**

17  
18 Dated: June 5, 2017.

19   
20 \_\_\_\_\_  
21 Hon. Robert C. Jones  
22 United States District Judge  
23  
24  
25  
26  
27  
28