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Tenth Circuit Adopts Ascertainability Test and Clarifies Class Action Requirements

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In *Cline v. Sunoco, Inc. R&M*, 2025 U.S. App. LEXIS 29929, __ F.4th. __ (10th Cir. Nov. 17, 2025), the U.S. Court of Appeals for the Tenth Circuit largely affirmed the federal district court's rulings certifying a class and awarding damages, and in the process, adopted the majority test for determining whether the class members are ascertainable. The circuit court upheld the lower court's rulings on class certification, standing, and prejudgment interest but vacated its punitive damages award.

Factual and Procedural Background

The named plaintiff, Oklahoma farmer and landowner Perry Cline, owns royalty interests in three Oklahoma oil wells. Defendant Sunoco buys oil extracted from Oklahoma wells, including Cline's wells.

The Oklahoma Production Revenue Standards Act (PRSA), Okla. Stat. 52 Sections 570.1-570.15, governs the relationship between royalty owners and "first purchasers" like Sunoco. Of note, the PRSA comprehensively regulates the timing of royalty owner payments and the consequences for late payments. To curtail the industry practice of delaying payments to royalty owners following the sale of oil and gas, the PRSA mandates that any late payments include 12% interest. Under Oklahoma law, contractual arrangements between first purchasers and royalty owners automatically incorporate the 12% interest rate.

In 2017, Cline filed this lawsuit against Sunoco alleging that Sunoco had a uniform practice of not paying mandatory interest on late royalty payments unless the owner specifically requested. In 2019, the U.S. District Court for the Eastern District of Oklahoma certified a class of 53,000 royalty owners. The class asserted two claims: violation of the PRSA and common law fraud. On summary judgment, the district court ruled against Sunoco on the PRSA liability. Following a four-day bench trial, the court ruled for the class on the PRSA claim and for Sunoco on the fraud claim. It also awarded damages that included over \$103 million in actual damages, including additional prejudgment interest that accrued post-trial, and \$75 million in punitive damages.

The Tenth Circuit Holds Class Treatment Was Appropriate

On appeal, Sunoco challenged class certification on predominance and ascertainability grounds. The Tenth Circuit began its analysis by noting that it reviewed whether the district court applied the correct legal standard *de novo*, but that because the court “rigorously applied each of the Rule 23(a) and (b)(3) factors,” its review of the decision to grant class certification was highly deferential.

Laying out the legal framework, the Tenth Circuit confirmed that for a damages class, the class must satisfy all the Rule 23(a) factors—numerosity, commonality, typicality and adequacy—as well as the Rule 23(b)(3) factors of predominance and superiority.

Common Questions Predominated

Sunoco maintained that individualized issues, including damages, frustrated predominance. In considering this challenge, the Tenth Circuit first explained that the predominance inquiry tests whether a class is sufficiently cohesive to merit class adjudication. It then instructed district courts to begin their analysis by characterizing the case issues as either “common” or “individual” and then weigh whether the “common” issues predominate.

As to both the PRSA and fraud claims, the Tenth Circuit affirmed the district court's findings that common questions predominated. In so holding, the circuit court repeatedly affirmed that Rule 23 requires only the predominance of common questions, even if individualized issues remain. Relevant here, the court relied heavily on three factors.

First, it noted that Sunoco's liability hinged on a common scheme, i.e., the practice of not paying interest unless specifically requested, and a uniform scheme, policy, or practice has been the cornerstone of several recent Tenth Circuit predominance decisions. Moreover, it found that the classwide scheme here was unlike that in *Wal-Mart Stores v. Dukes*, 564 U.S. 338 (2011). In *Wal-Mart*, the circuit court observed, the relevant policy involved subjective employment decisions left to the discretion of low-level decision-makers. Thus, the class-wide policy was still highly individualized. Here, the common scheme stemmed from an objective, uniform policy of not paying interest unless requested. The Tenth Circuit also pointed out that the Supreme Court instructed that damages class should be treated differently than *Wal-Mart's* proposed nationwide injunction.

Second, and relatedly, the Tenth Circuit emphasized the importance of common evidence. Typically, when there is a uniform scheme, policy, or practice, the common conduct lends itself to classwide adjudication because all class members will rely on the same evidence. In this case, the relevant evidence lay with Sunoco and would not vary from class member to class member.

Third, the Tenth Circuit found it compelling that this case had already been successfully tried as a class action. Most challenges to class certification arise prior to trial and involve hypothetical commonality considerations at a future trial. But here, the circuit court held that individual issues would not

dominate at trial because, in fact, they did not.

Finally, the Tenth Circuit rejected Sunoco's argument that individual damage determinations—such as timing of the interest payments and whether any given owner has marketable title—should have defeated class certification. While Sunoco relied heavily on *Wallace B. Roderick Revocable Living Trust v. XTO Energy*, 725 F.3d 1213 (10th Cir. 2013), the Tenth Circuit found the present case more analogous to *Harrel's v. Chaparral Energy (Naylor Farms)*, 923 F.3d 779 (10th Cir. 2019). In *Roderick*, an earlier royalty underpayment case, the Tenth Circuit vacated the district court's class certification order due to lease language variations, and particularly, the failure by the class to categorize the relevant leases and the court to review those categorizations. By contrast, in *Naylor Farms*, the Tenth Circuit upheld the certification of a class of royalty owners who alleged the defendant systemically underpaid royalty owners by charging excessive deductions. Critical to its determination, the circuit court explained, was that in *Naylor*, the class plaintiffs prepared a generally accurate lease chart so that the district court could determine that individualized issues would not predominate. Moreover, in both this case and *Naylor*, the plaintiffs' expert provided evidence that he or she could calculate damages on a classwide basis. As to marketable title, the Tenth Circuit also found it significant that in this matter, marketable title acted as an affirmative defense, and Sunoco's expert had not provided evidence casting significant doubt on any class members' marketable title.

The Class Was Ascertainable Under the Majority Test

The Tenth Circuit also definitively ruled that to satisfy Rule 23, a party must show ascertainability. However, it clarified that ascertainability does not require a showing that identifying the class members is administratively feasible.

Sunoco argued that the class members were not identified by name, and thus, the class was not ascertainable or administratively feasible. In considering this challenge, the Tenth Circuit held to be ascertainable, the class must merely “be defined clearly and cannot be defined too vaguely, and be defined objectively and cannot be based on subjective criteria, such as a person's state of mind.” It added that the class need only be identified by reasonable, not perfect, accuracy.

The circuit court then firmly rejected any administrative feasibility requirement. Sunoco had argued for its adoption, and two multi-district litigations in the District of Kansas had predicted that the Tenth Circuit would adopt this standard. But the circuit court explained its view that administrative feasibility risks rewarding defendants for their own obstruction. For example, the court remarked that defendants may affect feasibility by insufficiently maintaining their own business records or maintaining their records in burdensome ways. Here, the Tenth Circuit observed, Sunoco failed to gather and produce owner information until years into this litigation. Moreover, as a first purchaser, the PRSA obligated Sunoco to maintain proper payment records. As such, Sunoco should not reap the benefits of its poor document stewardship.

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