Institute for ENERGY LAW
THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

NOVEMBER 2026

THE ENERGY DISPATCH

A PUBLICATION OF THE IEL YOUNG ENERGY PROFESSIONALS COMMITTEE



CONTENTS

YEP HIGHLIGHT - ZACHARY MCPHERSON, BEMBIX LLC

INDUSTRY EXPERT INTERVIEW WITH DAVID VINSON, PEARSON ADAIR & CO.

WHO OWES THE ROYALTY? NON-OPERATING LESSEES, COTENANT OPERATORS, AND THE TIMING OF ROYALTY OBLIGATIONS IN TEXAS OIL AND GAS LEASES

JONES ACT WAIVER: EXTENSION, NARROWING OF SCOPE, AND ADDITIONAL PRE-VOYAGE REQUIREMENTS

TENTH CIRCUIT AFFIRMS DISMISSAL OF $450 MILLION WINTER STORM URI CLASS ACTIONS, HOLDING FEDERAL LAW PREEMPTS KANSAS CONSUMER CLAIMS AGAINST NATURAL GAS MARKETERS

THE POWER OF SPONSORSHIP: CREATING OPPORTUNITIES FOR CAREER GROWTH

The Energy Dispatch, the IEL's Young Energy Professional newsletter, contains substantive articles on trending legal issues in the energy industry, interviews, and professional development.



Publication Sponsor: BAKER BOTTS

Chair
Barbara Light

Vice Chair
Kirsten Vesel

Committee Members
Tyler Boyce, Drew Gann, Courtney Giles, Julian Sharp, Katherine Raunikar

Please note: The articles and information contained in this publication should not be construed as legal advice and do not reflect the views or opinions of the editing attorneys, their law firms, or the IEL.

Young Energy Professional Highlight – Zachary McPherson, Bembix LLC

Interview by: Tyler Boyce, King & Spalding LLP



Zack, along with his partner Paul Liotta, is a founder and co-owner of Bembix LLC, a services company providing equipment and services concerning chemical treatment, mineral recovery, and water reclamation, injection, and filtration.

TB: Tell us a bit about how you founded Bembix and what your goal is.

ZM: I'm a petroleum landman and my partner Paul has spent most of his career on the engineering side for oilfield services companies. We founded Bembix in 2023 aiming to shake up how the oil and gas industry handles water filtration and reclamation.

TB: How do you plan to do that?

ZM: The industry is currently using older technology for these processes that we're going to be able to improve upon. They also largely view economics and environmental goals as tradeoffs to one another, but we know that you can run a successful business that's environmentally minded. Our niche is going to be providing the "how" aspect making environmentally actionable filtration and recovery systems economically feasible.

TB: How does the industry currently deal with wastewater?

ZM: Currently, most operators are creating 100 barrels of waste sludge for every 20,000 barrels (more or less) of water processed and just hauling that sludge off to be disposed of. They're usually not even filtering it; the sludge is just being created through flocculation. Those current processes have difficulty processing the sludge and other waste. If they do any filtering, it's using older technology that doesn't do the job efficiently.

TB: How is what Bembix is offering different?

ZM: We're going to take that waste, which is their byproduct that is currently being disposed of, and recover the useful components. Our first unit will be finished before the end of the year. It's got a much smaller footprint, around 4 feet x 4 feet. With this small unit we'll have the ability to stack filters to adjust the capabilities to take on different types of inputs such as different volumes or different types of materials. This filter will have the ability to remove any suspended solids down to half a micron.

TB: You mentioned that "useful components" will be recovered – what types of useful components are in oil and gas wastewater?

ZM: There is a lot of useful resources in wastewater, including rare earth minerals such as lithium, iodine, and others. For example, in the Smackover formation that runs from Texas to Alabama there is a ton of lithium waiting to be extracted from produced water in an efficient manner. What has been historically treated as waste and disposed of may be worth a lot in many instances as long as you can process it efficiently. So not only are we able to reduce the amount of physical waste that gets disposed of, but we'll be able to create value by extracting valuable minerals.

TB: How are you going to protect your technology from would-be competitors?

ZM: We recently had a patent issued, titled "Solid-liquid filtration assembly and method of use"—U.S. Patent No. 12,478,900.

TB: What part of forming Bembix most excites you?

ZM: Bringing new and improved technologies and processes is really exciting in itself. But we're also excited to bring a more environmentally directed manner while preserving the economic feasibility by focusing on bringing quality end results to our customers.

TB: Do you have any plans to extend beyond oil and gas?

ZM: Oh yes, we've got our eye on a number of other industries that could benefit from this water filtering technology, including data centers, marine vessel ballast systems, agriculture, mining, heavy industrial, and others. But oil and gas is what we know so we're starting here and seeing where it takes us.

TB: What do you like to do when you're not working?

ZM: Spending time with my wife and son, plus golfing and hunting whenever I get the chance.

Industry Expert Interview with David Vinson, Pearson Adair & Co.

Interview by: Kirsten Vesel, Copeland & Rice LLP



David Vinson is a Partner at Pearson Adair & Co. He has a Bachelor of Science in Chemical Engineering and a Master of Science in Energy Management.

David has broad experience across the energy industry with over 15 years of experience. He began his career at the Williams Companies in 2011 and joined Pearson Adair in 2016. He has completed assignments in upstream production, gas gathering and compression, processing and fractionation, gas and NGL transportation, storage, and export logistics, and chemical manufacturing. He has experience in engineering design, oil and gas operations, economic modelling, project feasibility and execution, contracting and contract disputes, due diligence, gas marketing, and oil and gas accounting.

David has provided testimony as an industry and technical expert on matters involving the operation of production facilities, oil facility construction and associated contracts, various royalty cases concerning deductions, gas marketing, and damages associated with various litigation claims.

KV: Tell us a little bit about your early professional background.

DV: I started with the Williams companies in Tulsa, Oklahoma right out of college. I was in their engineering development program, which was a three-year program with three, one-year rotations to different roles within the organization. In the engineering development program, I was able to work in an optimization role in Tulsa for a year. I then moved to Louisiana and spent two years working in operations and project management at a gas plant and fractionator. I finished my rotational program with an assignment in Williams' project development group in Tulsa. After finishing the rotational program, I moved to Oklahoma City to the Williams Access Midstream group and spent a year doing projects in Pennsylvania. I left Williams in 2016 and joined Pearson Adair.

KV: What do you enjoy the most about your job?

DV: There are a lot of things I enjoy about my job, but the thing I enjoy most is the variability of assignments I get to work on. When I worked for Williams, I took advantage of several opportunities to move around the company and work on different things, but those job changes inside the company sometimes resulted in physical moves. I know other industry professionals who have also made several moves to take advantage of opportunities to grow. In consulting, I work on projects for different operating companies across the energy value chain, and I never have to move. I really enjoy the variety of work that we do.

KV: How do you think your unique background has helped you in your current role at Pearson Adair?

DV: I'm a fan of the saying "A jack of all trades is a master of none, but oftentimes better than a master of one." I believe my time at Williams with exposure to a large variety of roles allowed me to get a better understanding of how the oil and gas industry works. Those various experiences are valuable in my consulting work, with that exposure to many things providing the foundation that allows me to contribute to the wide variety of services offered to our clients. At Pearson Adair, our consultants bring a wide range of varied experience to bear on assignments for our clients. That experience allows our team to address almost any aspect of the oil and gas value chain.

KV: What legal area or matter in your practice excites you the most? What challenges you the most?

DV: The matters that excite me the most are the challenging ones which tend to be unique one-off matters. In consulting and especially in litigation, there are topical trends and series of cases, and while those can be interesting, often the key issues are repetitive. I really enjoy assignments that are unique or different that require our team to dig in and understand granular and nuanced issues. At Pearson Adair, we add the most value for clients when technical issues cross over with business or commercial issues, especially when addressing damages.

KV: What can lawyers do to help you with your expert work in any given case?

DV: The first thing is to engage experts well ahead of the report deadlines. It is very challenging to provide an expert report with only a month of notice. After that, I think the next biggest thing is being a good communicator. It's important as an expert to understand what has been produced in the case already and what documents may be available to assist in expert assessment, what issues have been decided by the judge, and what areas other experts may be covering.

KV: What advice would you give to young professionals just starting out in the energy industry?

DV: There are two things I would focus on, first, despite what your ultimate goal is, work on a lot of different things. A variety of experiences across several different areas will serve you well whether you want to specialize in one area or be a jack of all trades. The second thing is to be a colleague that people enjoy working with. No one likes working with unpleasant people, and I have found in my consulting work that a lot of our business comes from personal referrals. If you know what you are doing and are genuinely good to work with, you will get another call on the next job, and clients will refer you to colleagues.

KV: What do you enjoy doing in your spare time?

DV: My wife and I have a three-year-old son, so we spend a lot of time playing in the backyard with him. We have some property about an hour from our house so this summer we have spent a lot of our free time up there letting our son be a wild little boy and collect rocks and sticks. When we aren't doing those things, we like to travel, in October we headed to Scotland to see the Highlands.

Who Owes the Royalty? Non-Operating Lessees, Cotenant Operators, and the Timing of Royalty Obligations in Texas Oil and Gas Leases

Barbara Light, Norton Rose Fulbright US LLP

Introduction

What would appear to be a simple question sits at the heart of a recent Texas royalty decision: if a cotenant operator drills a well and sells the production, does the non-operating lessee owe the lessor royalty from the moment of first sale—or only after the non-operating lessee personally receives its share of the proceeds?

The Texas Eighth Court of Appeals answered that question in *Pioneer Natural Resources USA, Inc. v. Elberta M. Royalty, LLC*, No. 08-24-00133-CV (Tex. App.—El Paso Aug. 19, 2026) (mem. Op.).: the royalty obligation runs with production, not with the lessee's personal receipt of proceeds, and the statutory clock under the Texas Natural Resources Code starts ticking at the sale, not at payout. The decision carries important lessons about lease construction, the limits of the "net amount received by Lessee" royalty clause, and the risks that arise when non-operating lessees fail to anticipate the royalty consequences of co-tenancy arrangements at the drafting stage.

This article examines the facts and holdings of *Pioneer v. Elberta*, explores the interpretive reasoning the court employed, and offers practical drafting and litigation guidance for energy lawyers and professionals navigating multi-party working interest arrangements.

Background: The Permian Basin Setting and the Parties

The dispute arose in the Permian Basin, the prolific West Texas basin that sits at the center of modern American oil and gas production. The facts giving rise to the dispute are straightforward.

Elberta M. Royalty, LLC is the lessor under an oil and gas lease covering acreage in the Permian Basin. *Id*. at 2. Pioneer Natural Resources USA, Inc. held a working interest under those leases as a lessee, alongside a cotenant operator, Henry Resources, that had drilled and was operating the producing wells at issue, known as the Pearl Wells. *Id*.

Pioneer was not the operator of the Pearl Wells. Henry drilled the Pearl Wells, produced the hydrocarbons, and sold the production. Pioneer, as a non-operating cotenant, was entitled to its share of net production proceeds after Henry recouped the cost of drilling and completing the wells (i.e., after payout). During the period before payout, Pioneer received nothing from Henry; Henry began paying Pioneer its share of revenue in November 2022. *Id*.

Pioneer took the position that its obligation to pay royalty to Elberta did not accrue—and the statutory payment deadline did not begin to run—until Pioneer itself received proceeds from Henry post-payout. *Id*. at 2-3. Elberta disagreed, contending that the lease entitled it to royalty on all oil and gas produced from the leased premises, beginning with first production, regardless of whether Pioneer had yet received any money.

The Lease Language: A Royalty Clause and Its Yardstick

The royalty clause at issue provided, in pertinent part:

> Lessee reserves as royalty, and Lessee agrees to pay Lessor as royalty on oil . . . produced and saved from the leased premises (the 'oil'), 22.5% part of the net amount received by Lessee for the sale of the oil . . . . Lessee shall pay Lessor as royalty on . . . gas produced from the leased premises 22.5% of the net amount received by Lessee for the gas[.] *Id*. at 6.

Pioneer argued that "received by Lessee" should be read as the net amount received personally by the Lessee, meaning that no royalty on production from the Pearl Wells was owed unless and until Henry paid Pioneer after payout. *Id*.

The Court rejected this reading for two reasons. First, it held that the phrase "net amount received by Lessee" functions as a yardstick for measuring how much royalty is owed, rather than a condition precedent to the obligation itself. *Id*. The clause establishes a proceeds-based measure of value, not a rule that the lessee must personally realize proceeds before any royalty becomes payable. The court also observed that the clause refers to post-production costs "incurred by Lessee," that Pioneer did not claim to have personally incurred those costs, and that the clause as a whole uses "by Lessee" to refer to the acts of whoever produces and sells the oil and gas. *Id*. at 6–7.

Second, the Court held that under Pioneer's reading, the lessor would receive nothing before its costs of production had been recouped—a result contrary to the established meaning of a royalty as an interest in first production, free of the costs of production. *Id*. at 7. The Court declined to read the isolated phrase "net amount received by Lessee" in a manner that would "defeat the evident purpose of the royalty clause as a whole." *Id*.

The court also addressed Pioneer's argument that requiring royalty before Pioneer itself was paid, forced an impossible calculation on a non-operating lessee. Pioneer argued that requiring royalty before Pioneer itself was paid leads to an impossible and absurd result: the non-operating lessee must front royalty it does not even know how to calculate. Pioneer argued that this would disrupt the settled expectations of lessors and lessees. Pioneer, however, pointed to nothing in the record indicating that royalty on a cotenant's production is understood to await payout. *Id*. The court further concluded that the record did not support Pioneer's claimed difficulty, much less impossibility: Pioneer had asked Henry for production information and decimal interests in January 2021, later sent Elberta division orders stating its interest effective as of "first sales," and in January 2023 paid two years of accrued royalties. *Id*. at 8.

The Statutory Dimension: Section 91.402(a) of the Texas Natural Resources Code

Having resolved the lease construction question, the Court turned to the applicable statute. Texas law imposes a statutory payment deadline on royalty payors. Under Section 91.402(a) of the Texas Natural Resources Code, royalty payments must be made within 120 days after the end of the calendar month of first sale of production, and thereafter on a monthly basis within 60 days after the end of each production month. *Id*. at 5. Pioneer argued that the 120-day deadline did not apply until Pioneer received its own share of proceeds from Henry. *Id*. at 8.

The Court disagreed. The statutory clock is triggered by the sale of production, not by the payor's receipt of proceeds. *Id*. at 8-9. The court further confirmed that Pioneer, as lessee, fell squarely within the definition of "payor" for statutory purposes—a reading consistent with the Texas Supreme Court's interpretation of the statute, and the Natural Resources Code's protective purpose of ensuring that mineral interest owners receive timely payment. *Id*. at 9.

Practical Implications and Drafting Lessons

The *Pioneer v. Elberta* decision is notable not only for its holdings, but for what it left open. The Eighth Court of Appeals expressly acknowledged that parties are free to contract for a different rule. *Id*. at 8. A lease may provide that royalty on a cotenant's production does not accrue until payout, or is conditioned on the non-operating lessee's actual receipt of proceeds. The lease at issue simply did not do so.

Jones Act Waiver: Extension, Narrowing of Scope, and Additional Pre-Voyage Requirements

Utsav Mathur, Lindsey Swiger, Matthew Melbourn, Norton Rose Fulbright US LLP

The Jones Act waiver, which has been in effect since March 17, 2026, has been extended for an additional 90-day period and is now scheduled to expire on November 15, 2026.

As clarified .in an official US Customs and Border Protection bulletin released on August 13, 2026, this most recent extension:

- extends the waiver for an additional 90-day period beginning August 17, 2026, at 12:00 a.m. Eastern Time and will apply to any covered product loaded onboard the relevant vessel before the waiver expires at 11:59 p.m. Eastern Time on November 15, 2026;
- significantly narrows the list of covered products by reducing the applicable Harmonized Tariff Schedule ("HTS") codes from 671 to 237, effective August 17, 2026;
- establishes a new pre-voyage approval process requiring parties seeking to utilize the waiver to request authorization and provide voyage-specific information to the Department of War ("DOW"), the Maritime Administration ("MARAD"), and US Customs and Border Protection ("CBP"); and
- continues the existing pre-voyage and post-voyage reporting requirements effective since the implementation of the initial waiver and prior extensions.

As the situation continues to evolve, market participants should closely monitor CBP guidance and related agency announcements to ensure compliance with the waiver and its conditions. Particular attention should be paid to the national defense nexus language required in both pre-voyage requests and post-voyage MARAD reports, as well as the substantially revised HTS code list, before committing to or engaging in any voyages under the waiver.

Background

46 U.S.C. § 55102 (commonly known as the "Jones Act") generally requires that merchandise transported between points within the United States be carried on vessels that are US-built, US-owned, US-flagged, and predominantly crewed by US citizens or permanent residents. These coastwise trade requirements restrict foreign-flagged vessels from engaging in domestic maritime transportation absent a statutory exemption or waiver.

On March 17, 2026, the Department of Homeland Security ("DHS") issued a limited waiver of the Jones Act pursuant to 46

U.S.C. § 501(a). The limited waiver was issued at the request of the Department of War and permitted non–Jones Act vessels to engage in US coastwise trade for the duration of the waiver.

46 U.S.C. § 501(a) permits the DHS to issue Jones Act waivers at the request of the DOW when such a waiver is "in the interest of national defense to address an immediate adverse effect on military operations." When announcing the waiver, Press Secretary Leavitt noted the "waiver is just another step to mitigate the short-term disruptions to the oil market as the U.S. military continues meeting the objectives of Operation Epic Fury."

The initial waiver took effect on March 17, 2026, and was scheduled to remain in effect through May 17, 2026, at 11:59 p.m. EDT. However, the initial waiver was subsequently extended by the DHS at the request of the DOW, with such extension set to expire on August 16, 2026.

Under the current extension, the waiver is now set to expire on November 15, 2026, meaning any covered product must be loaded onboard the relevant vessel before the deadline expires at 11:59 p.m. Eastern Time on Sunday, November 15, 2026.

Current Extension and New Requirements

In addition to extending the duration of the waiver, this latest extension introduces major substantive and procedural changes to utilization of the Jones Act waiver, in each case described in more detail immediately below.

Duration

CBP guidance confirms that the waiver has been extended for an additional 90-day period commencing on August 17, 2026, at 12:00 a.m. Eastern Time. Importantly, CBP guidance clarifies that the waiver will apply to any covered product loaded onboard the relevant vessel before the deadline expires at 11:59 p.m. Eastern Time on Sunday, November 15, 2026.

Covered Products

In connection with the publication of CBP guidance on the latest waiver, CBP also released an updated List of Potentially Covered Products, effective as of August 17, 2026. Notably, the updated List of Potentially Covered Products has reduced the number of potentially covered HTS codes from 671 to 237. Though the updated list has been substantially reduced, the List of Potentially Covered Products still includes a number of fuels and petrochemicals, as well as some agricultural commodities (e.g., certain fertilizers).

New Pre-Voyage Approval Process

Unlike prior versions of the waiver and extensions, the latest waiver creates a formal pre-voyage approval process that must be complied with prior to utilizing the waiver.

Prior to initiating a voyage, any party considering conducting a voyage utilizing the waiver must first send a written request, with the subject line "VESSEL AVAILABILITY REQUEST," to:

- DOW;
- MARAD; and
- CBP.

The written request must include the following information:

- the name (including IMO Number) and flag of the vessel;
- the name of the owner and operator of the vessel (and country);
- the name of the carrier;
- the dates of the voyage;
- any relevant ports of call and applicable dates:
    - place of lading;
    - port of lading;
    - date of lading;
    - place of unlading;
    - port of unlading;
    - date of unlading;
- a description of the cargo carried (including commodity and relevant HTS Code and Hazmat Code, if applicable, and quantity of the units to be shipped per shipment);
- frequency of the shipment;
- an explanation as to why the voyage is in the interest of national defense; and
- any other information the Maritime Administrator determines necessary, including but not limited to: special shipping or stowage requirements; date of the charterparty, lay days in the charterparty, and load date in the charterparty.

After receipt of the request, MARAD will then conduct a coastwise-qualified vessel market survey, "to determine the availability of coastwise-qualified vessels to conduct the proposed transportation." Unless otherwise specified, coastwise-qualified vessels must respond to MARAD's market survey within 24 hours advising of their availability to lift the cargo.

MARAD will then provide the results of the survey to DOW, who will determine whether the waiver applies to the individual proposed voyage. DOW will then inform the requesting party, MARAD, and CBP whether a foreign-flagged vessel is authorized to conduct the transportation. After such determination, the requesting party may contact the appropriate carrier(s) to arrange transportation.

Pre-Voyage Notice Process

Carriers operating foreign-flagged vessels that are authorized to transport merchandise in US coastwise trade utilizing the waiver must also follow specific instructions for reporting to

CBP. Parties who are approved to conduct a voyage under the Jones Act waiver must notify CBP with the following information regarding the applicable voyage:

- vessel name (including IMO number and flag);
- commodity and relevant Harmonized Tariff Schedule (HTS) Code;
- carrier;
- ports and dates of departure and arrival (include CBP port code); and
- a PDF copy of the CBP Form 1302.

Post-Voyage Notice Process

Consistent with prior waiver utilization, no later than 10 days after the date of conclusion of a voyage conducted under the waiver, the owner or operator of the vessel and the individual requesting such waiver (if not the owner or operator of the vessel) must submit the following information to MARAD:

- the name and flag of the vessel;
- the name of the owner and operator of the vessel;
- the dates of the voyage;
- any relevant ports of call;
- a description of the cargo carried;
- an explanation as to why the waiver was in the interest of national defense; and
- any other information the Maritime Administrator determines necessary.

Practical Advice for Waiver Utilization

In the months since its initial issuance, the Jones Act waiver has received some pushback. For example, on May 15, 2026, following the first extension of the waiver, ranking members of the House Transportation & Infrastructure Committee issued a letter to President Trump arguing that "there seems to be little scrutiny . . . to ensure that the voyages under the waiver meet the standard of an immediate adverse effect on military operations" as required by 46 U.S.C. § 501(a). Accordingly, the letter called for greater oversight over the use of the waiver.

Given the evolving regulatory landscape, market participants are encouraged to closely monitor CBP guidance and related agency announcements to maintain compliance with the waiver and its applicable requirements. In particular, parties should carefully consider the national defense nexus language utilized in both pre-voyage requests and post-voyage MARAD reports, and should confirm any applicable cargo falls within the substantially revised HTS code list, before committing to or engaging in any voyages under the waiver.

Additionally, the Internal Revenue Service (the "IRS") has indicated that income from vessels operated pursuant to the waiver would not be exempt from U.S. federal income tax. This may cause owners to reconsider making vessels available for cabotage voyages or to seek to pass on tax liability to charterers.

Tenth Circuit Affirms Dismissal of $450 Million Winter Storm Uri Class Actions, Holding Federal Law Preempts Kansas Consumer Claims Against Natural Gas Marketers

Louie Layrisson, Ryan Norfolk, and Michael Yuffee, Baker Botts L.L.P.

On July 6, 2026, the United States Court of Appeals for the Tenth Circuit issued a unanimous published opinion affirming the dismissal with prejudice of consolidated class actions brought by Kansas residential natural gas consumers against natural gas marketing and transportation companies seeking more than $450 million in damages arising from Winter Storm Uri in February 2021. *In re Winter Storm Uri Nat. Gas Litig.*, No. 25-3046, 2026 WL 1944831 (10th Cir. July 6, 2026). The opinion was written by Circuit Judge Hartz and joined by Chief Judge Holmes and District Judge Garcia (sitting by designation).

These consolidated class actions target the segment of the energy chain responsible for moving significant quantities of natural gas from producers to end users—natural gas marketing and transportation companies. After extensive briefing and oral argument, the Tenth Circuit affirmed the district court's judgment based on field preemption and its "holding that FERC's exclusive jurisdiction over the interstate wholesale natural-gas market under the [Natural Gas Act ("NGA")] preempts Plaintiffs' state-law claims." *Id.* at *3. This decision confirms that the NGA's field preemption doctrine remains a powerful shield for participants in the interstate wholesale natural gas market, even in the face of extraordinary market events and significant downstream consumer impact.

Background

In February 2021, Winter Storm Uri hit Kansas, bringing subzero temperatures that simultaneously spiked demand for natural gas and froze wellheads, causing natural gas prices to soar from roughly $2.55/MMBtu to as high as $622.785/MMBtu—approximately 20 times the 15-year peak. *Id.* at *2. The Kansas Governor declared a State of Disaster Emergency, and the Kansas Corporation Commission ordered distributors to ensure continued service and authorized deferral of extraordinary costs. *Id.*

Plaintiffs were individual Kansas residents who purchased natural gas from five different regional distributors that serve municipal entities or retail customers in Kansas. *Id.* at *1. Plaintiffs did not sue these regional distributors. Instead, Plaintiffs sued the natural gas producers, suppliers, and

marketers from whom the non-party regional distributers purchased wholesale natural gas during Winter Storm Uri. *Id.* Defendants included many of the largest natural gas marketers and transporters in the world.

These class actions brought statutory claims under the Kansas Consumer Protection Act ("KCPA") challenging the wholesale prices that distributors agreed to pay natural gas marketers for natural gas delivered during Winter Storm Uri. *Id.* Plaintiffs alleged that Defendants profiteered during an emergency by cutting distributors' baseload gas supplies tied to the lower first-of-the-month prices, forcing them into the exponentially higher-priced spot market. *Id.* at *1-2. FERC's Office of Enforcement investigated the wholesale transactions during the storm to determine whether there had been market manipulation or other misconduct, and the investigation did not result in any enforcement action. *Id.* at *3.

After extensive briefing of motions to dismiss, the district court (D. Kan.) granted Defendants' joint motion and dismissed all claims with prejudice on February 28, 2025, holding that FERC's exclusive jurisdiction over the interstate wholesale natural-gas market under the Natural Gas Act ("NGA") preempts Plaintiffs' state-law claims.

Opinion Analysis — Key Holdings

On appeal, the Tenth Circuit affirmed based on field preemption, holding that FERC's exclusive jurisdiction over the interstate wholesale natural-gas market under the NGA preempts Plaintiffs' state-law claims. *Id.* The Court accepted all of Defendants' key arguments as presented. As the Court stated, it is "well settled" that "Congress occupied the field of matters relating to wholesale sales and transportation of natural gas in interstate commerce." *Id.* at *1 (quoting *Schneidewind v. ANR Pipeline Co.,* 485 U.S. 293, 305 (1988)).

Plaintiffs' Claims Target Wholesale Transactions

The Court had "little doubt that what Plaintiffs are targeting in this case are wholesale (jurisdictional) transactions." *In re Winter Storm Uri Natural Gas Litig.* at *6. The Court applied the *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015) "direct target" test, concluding that whether the plaintiffs are targeting wholesale or retail transactions is the key inquiry. *Id.* at *7-8. The Court distinguished this Winter Storm Uri class action from *Oneok*—in *Oneok,* the challenged practices (alleged index manipulation) independently affected both wholesale and retail prices through "background marketplace conditions," but here retail prices were affected only because non-party distributors paid increased wholesale prices. *Id.* at *6. As the Court put it: "Although Plaintiffs complain of the increase in retail prices, that increase was a direct result of the increase in wholesale prices." *Id.*

Downstream Retail Effects Do Not Alter the Analysis

The Court was "not persuaded" by Plaintiffs' argument that "the impact of these wholesale transactions on the retail market was so extensive during Winter Storm Uri that jurisdiction should fall to the States." *Id.* at *5. The Court rejected this argument as it "rests on the ripple effects of wholesale transactions on downstream retail transactions." *Id.* at *8.

General Applicability of State Statute Does Not Save Claims

The Court also rejected Plaintiffs' argument that the general applicability of the KCPA should save their claims from preemption, holding that preemption analysis requires a claim-specific inquiry into the conduct targeted, not merely an examination of the breadth of the state statute. *Id.* "The problem for Plaintiffs is that the specific theory of their lawsuit improperly extends the KCPA into FERC's jurisdiction." *Id.* at *9. However, the Court noted that field preemption of Plaintiffs' suit does not suggest that the NGA preempts the KCPA—or any other generally applicable state statute—in its entirety. *Id.*

Parallel Federal Power Act Precedent

The Court accepted Defendants' interpretation of parallel Federal Power Act cases, including *FERC v. Electric Power Supply Association (EPSA)*, 577 U.S. 260 (2016), and *Hughes v. Talen Energy Marketing*, 578 U.S. 150 (2016), reinforcing the breadth of federal preemption in the wholesale energy markets. *Id.* at *8.

The Court determined that it "need not address conflict preemption, because Defendants prevail on field preemption." *Id.* at *4 n. 2.

Why This Matters

This decision is a significant victory for natural gas marketers and transporters facing claims arising from Winter Storm Uri, or future weather events. This litigation—which follows attorney general investigations in Texas, Oklahoma, and Kansas—exemplifies the more aggressive energy enforcement playbook in play at the state level in the U.S. today. But it also supports the contention that wholesale power and gas market prices during winter events are subject to federal law rather than scrutiny under state laws.

The Tenth Circuit's opinion reinforces that the NGA's comprehensive federal regulatory scheme over interstate wholesale natural gas sales provides a robust preemption defense when plaintiffs' claims directly target wholesale transactions, even when those transactions had downstream effects on retail consumers. The decision also clarifies the application of the *Oneok* direct-target test: where the challenged conduct consists solely of interstate wholesale transactions, the mere fact that those transactions had ripple effects on retail prices is insufficient to escape NGA field preemption.

The Power of Sponsorship: Creating Opportunities for Career Growth

Courtney Giles, Baker & McKenzie LLP

It is often said that one of the keys to a successful legal career is finding a good mentor. And for good reason. A trusted mentor can help you learn the ropes as a junior associate, navigate a challenging professional situation, and make decisions about the direction of your career. But good mentors are only part of the equation. A good sponsor can be just as important, and in some cases, even more consequential. Good sponsors advocate for you when you are not in the room and put your name forward for opportunities that can help advance your career. In this respect, sponsors can change the trajectory of your career and are a powerful force to have on your side. The question, however, is not simply how to find a sponsor, but how to become someone others want to sponsor. Here are a few ways to do just that.

Sponsorships Develop Over Time

Unlike mentoring, it may not be so simple to ask someone to be your sponsor. A sponsorship relationship develops over time, as potential sponsors come to know your work, trust your judgment, and become willing to put their own credibility behind you. For example, a sponsor may recommend that you take the deposition, lead the client call, assume greater responsibility for a transaction, or take on a leadership role. Making these recommendations requires a level of trust that may not be necessary for a mentor relationship, where your mentor is simply providing advice or acting as a sounding board. This is because when a sponsor recommends an associate for an important assignment, introduces that associate to a client, or advocates for giving that associate a larger role, the sponsor is putting some measure of his or her own professional reputation behind the recommendation. In effect, the sponsor is saying, "I trust this person, and you should too."

So, while you can ask someone to mentor you, sponsorship usually develops over time because a sponsor does more than offer advice: they put their own credibility behind you by advocating for your next opportunity. For that reason, the best way to find a sponsor may be to stop looking for a sponsor and start giving people reasons to sponsor you.

Give People Reasons to Advocate for You

What does this look like in practice? Here are three things junior associates can do to make sponsorship more likely.

1. **Do excellent work, consistently.** There is no substitute for doing consistently excellent work. Meet deadlines, pay attention to details, be responsive, communicate issues early rather than waiting for someone to ask, and try to anticipate what comes next. Over time, these habits build trust. A senior associate or partner is much more likely to recommend a junior associate for an important opportunity when that lawyer is confident the associate will follow through and is reliable and consistent. In essence, show that you are ready for the opportunity you want.

2. **Let people know what you want.** Doing excellent work is important, but senior associates and partners cannot create opportunities for you if they do not know what opportunities you want (and they cannot read your mind). If you want more deposition experience, say so. If you want to argue a motion, work on a certain type of transaction, or develop experience in a particular industry, let the lawyers you work with know. The key is to be specific. "I would like to get more experience" does not give someone much to work with. "I would like to get more deposition experience this year, and if an appropriate opportunity comes up, I would appreciate being considered" does. That is not asking someone to sponsor you. It is giving that person the information necessary to do so.

3. **Make the sponsor look smart for betting on you.** When someone creates an opportunity for you, remember what that person has done. The partner who recommends you for the client presentation or tells the team you are ready to cross-examine a witness has invested some of his or her professional capital in you. Treat the opportunity accordingly. Prepare thoroughly. Ask thoughtful questions. Take ownership. And do everything reasonably within your control to justify the confidence placed in you. And then when you perform well, that person becomes more comfortable creating another opportunity for you. As important, other people begin to see you as someone who can take on greater responsibility. That is how sponsorship often develops. It is not created through a formal designation, but through a series of small bets that gradually become bigger ones.

Eventually, Become the Sponsor

As your career progresses, and you do the excellent work to build the trust to create impactful sponsorships, remember how your sponsors helped you. At some point, you will be the person deciding who gets the opportunity, who joins the client meeting, or who gets nominated for partner. When that happens, look for the talented associates who have earned the opportunity but may not yet have the visibility to receive it.

Institute for ENERGY LAW
THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

The Energy Dispatch
Institute for Energy Law
The Center for American and International Law
5201 Democracy Drive
Plano, TX USA 75024

NOVEMBER 2026

THE ENERGY DISPATCH

A PUBLICATION OF THE IEL YOUNG ENERGY PROFESSIONALS COMMITTEE

