



Oklahoma Bar Association Mineral Law Section NEWSLETTER



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<i>Oklahoma Bar Association Mineral Law Section Newsletter</i>	
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All case citations are correct as of 10-31-2009. The citations given do not reflect changes due to Lexis, Westlaw, or addition to a reporter after that date. Cases pulled for briefing through 10-19-2009. This PDF version of the newsletter is word-searchable. If you have any suggestions for improving the Newsletter, please e-mail the editorial staff at ou.mineral.law@gmail.com.

FEDERAL DECISIONS

Third Circuit

Vess Oil Corp. v. Semcrude, L.P., No. 08-11525(BLS), 2009 WL 3182558 (Bankr. D. Del. Oct. 5, 2009); 2009 Bankr. LEXIS 3085.

Vess operated certain wells located in Texas but lacked the back-office capabilities to manage the distribution of funds to its interest owners. To accommodate, Vess entered into an oral agreement with Eaglewing, a subsidiary of SemGroup, which agreed to hold and distribute production proceeds on Vess's behalf. Eaglewing subsequently filed Chapter 11 bankruptcy and refused to return certain funds held for Vess, claiming the production proceeds belonged to the bankruptcy estate. Vess moved for a determination of its rights to the disputed funds, arguing that such proceeds were held in trust for its benefit. The court agreed and granted Vess's motion for summary judgment. Concluding the funds were not property of the bankruptcy estate, the court consulted Kansas, Oklahoma, and Texas law and found that regardless of the applicable state law, a trust had been created.

Statewide Crude, Inc. v. Semcrude, L.P., No. 08-11525 (BLS), 2009 WL 3273914 (Bankr. D. Del. Oct. 9, 2009); LEXIS citation unavailable.

In the months leading up to SemCrude's bankruptcy filing, it purchased crude oil from Statewide and various other producers that later asserted liens on delivered production. Unlike other similarly situated producers, however, Statewide never joined the court-instituted omnibus procedures established for determining the validity and priority of all related claims. Claiming that a Texas statute not considered in the omnibus proceedings afforded it a lien on production, Statewide subsequently filed this action. SemCrude argued that the statute at issue granted a lien only to mineral contractors providing "labor or services" and was not intended to cover crude oil sales. The bankruptcy court agreed and dismissed the action, concluding that the Texas statute did not create a lien in favor of Statewide.

Fifth Circuit

L&C Consultants, LLC v. ASH Petroleum, Inc., No. 3:07-CV-1904-D, 2009 WL 3110200 (N.D. Tex. Sept. 29, 2009), *aff'd*, 2009 WL 3334668 (N.D. Tex. Oct. 15, 2009); 2009 U.S. Dist. LEXIS 89652, *aff'd*, 2009 U.S. Dist. LEXIS 96056.

L&C invested in oil and gas drilling operations with ASH, specifically relying on ASH's promises that it would provide certain production guarantees regardless of the success of drilling. After L&C was never provided the guaranteed payments, it brought suit against ASH for breach of contract, fraud, and fraudulent inducement, seeking actual and exemplary damages. Finding that L&C would not have otherwise invested in ASH's operations, the court found for L&C and held two of ASH's principals individually liable for fraud and fraudulent inducement. The court subsequently denied the defendants' motion to set aside the judgment, finding *inter alia* that operating costs need not be deducted from the value of the production payments because there was no evidence that ASH ever drilled wells in accordance with its contractual obligations.

STATE DECISIONS

Arkansas

Griffis v. Anadarko E&P Co., L.P., No. 4:08CV01974, 2009 WL 2601371 (E.D. Ark. Aug. 24, 2009); 2009 U.S. Dist. LEXIS 75124.

Griffis sought to quiet title to oil and gas rights based on a deed that reserved “all minerals upon, in, or under” the property but did not specifically mention oil and gas. In attempts to bolster its claim that oil and gas was not reserved, Griffis offered affidavits from three individuals who attested that oil and gas development was uncommon in the area at the time the lease was executed. In response, Anadarko provided affidavits asserting that thousands of oil and gas leases were taken during the time period and that numerous wells were drilled in the area. Additionally, to evidence that the reservation was intended to include oil and gas, Anadarko referred the court to language in the deed that discussed drilling and pipelines. The court ultimately agreed with Anadarko’s interpretation and determined that the reservation included oil and gas.

Kansas

Northern Natural Gas Co. v. Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., No. 100,282, 2009 WL 3234155 (Kan. Oct. 9, 2009); 2009 Kan. LEXIS 857.

In 2002, Northern filed claims against Trans Pacific, alleging Trans Pacific was producing gas that had migrated from its gas storage field. After a judgment was entered in favor of Trans Pacific, Northern subsequently filed this action against its legal counsel, asserting professional negligence and malpractice for failing to preserve for appeal the question of whether K.S.A. 55-1210 applied retroactively. To address the question of professional negligence and malpractice, the district court certified to the Kansas Supreme Court the question of whether an injector retains title to gas migrating outside a condemned gas storage area before the effective date K.S.A. 55-1210. In holding that the injector loses title to such gas, the Court cited its holding in *Anderson v. Beech Aircraft Corp.*, 699 P.2d 1023 (Kan. 1985).

Montana

Hart v. Craig, 216 P.3d 197 (Mont. 2009).

The Harts sold a parcel of land to the Craigs subject to a general mineral reservation, which did not specifically mention sandstone. When the Craigs began mining and selling sandstone from the property, the Harts filed suit to quiet title and sought an accounting. The district court found for the Craigs, and the Harts appealed. The Supreme Court of Montana affirmed, holding that substances will not be considered “minerals” within the scope of a general mineral reservation unless they are exceptionally rare and valuable or possess a particular purpose giving them special value. Because the sandstone in question was being sold for rip-rap and landscaping, the Court concluded it was neither exceptionally rare nor valuable and as such, was not a mineral included in the general mineral reservation.

North Dakota

Spitzer v. Bartelson, 2009 ND 179.

Hattie and George Spitzer entered into a contract for deed with the Bartelsons whereby the Spitzers would deliver a general warranty deed to a quarter section of land subject to a 50% mineral reservation in favor of Hattie Spitzer. When George Spitzer came into full possession of the property following his wife’s death, he subsequently quitclaimed to the Bartelsons his entire interest without mention of a mineral reservation. George Spitzer subsequently died, and his only surviving heir, Harold, later filed suit to reform the quitclaim deed, arguing that the absence of the mineral reservation was the result of a mutual mistake. The district court dismissed Spitzer’s claim, and he lodged this appeal. In affirming the district court’s decision, the North Dakota Supreme Court upheld the district court’s admission of parol evidence to reach its conclusion that no mutual mistake has occurred.

Tennessee

Phillips v. Ky-Tenn Oil, Inc., No. E2008-02724-COA-R3-CV, 2009 WL 3064883 (Tenn. Ct. App. Sept. 25, 2009); 2009 Tenn. App. LEXIS 644.

Phillips owned three tracts of land burdened by an existing oil and gas lease. Believing that the lease's entirety clause provided a basis for dividing the property, he sought release of his undeveloped land. After filing his claim, however, the district court dismissed his suit, concluding that the entirety clause could not be used as an offensive weapon to terminate the lease. Phillips appealed, and the court of appeals affirmed. The court concluded that the purpose of the entirety clause was to apportion royalties, and as such, it could not be interpreted as a covenant that requires drilling on every tract to save the lease. Thus, sufficient production on some tracts subject to the lease maintained the entire lease in full force and effect.

Texas

Rosenthal v. Railroad Comm'n of Tex., No. 03-09-00015-CV, 2009 WL 2567941 (Tex. App.—Austin Aug. 20, 2009); 2009 Tex. App. LEXIS 6522.

K-3 applied to the commission for a permit to operate a commercial disposal well on a tract of land where its subsidiary owned the surface estate. The mineral owner to the same parcel protested K-3's application, contending that K-3's disposal well would interfere with development of the mineral estate. The commission entered a final order granting K-3's permit application, and the mineral owner sought review by the district court. The district court affirmed the commission's order, and the mineral owner appealed. In upholding the commission's order, the appellate court found that evidence that the surface estate might include the rights to non-productive strata was enough to support the commission's conclusion that K-3 had a good-faith claim to use the tract for salt-water disposal. Moreover, the court determined that the public interest sufficiently supported the need for a commercial salt-water disposal well in the area.

Dynegy Midstream Serv., Ltd. P'ship v. Apache Corp., 52 Tex. Sup. Ct. J. 1176 (2009).

Apache and Versado entered into various gas-purchase contracts requiring that Versado pay Apache a percentage of the net proceeds generated on the sale of residue gas. When Apache claimed Versado could not account for large quantities of gas lost during transport, it brought suit alleging breach of contract. Apache also sought a declaratory judgment regarding its entitlement to payments for condensate collected at converted compressor stations. At trial, the jury found for Apache, but the court subsequently granted Versado's motion for JNOV. The court of appeals reversed, and the Texas Supreme Court granted review. In reversing and remanding, the Court concluded that because the contracts required Versado to pay only on actual sales at the tailgate, contract damages were not available to Apache for gas lost during transport. Additionally, the Court held that Apache was entitled only to compensation for condensate collected at processing plants, not compressor stations.

Tex. Indep. Exploration, Ltd. v. Peoples Energy Prod.-Tex. L.P., No. 04-07-00778-CV, 2009 WL 2767037 (Tex. App.—San Antonio Aug. 31, 2009); 2009 Tex. App. LEXIS 6941.

Texas Independent held a working interest to certain depths in 80 acres of land. When it later acquired an overriding royalty interest ("ORRI") in the entire lease, a portion was assigned to Peoples Energy per the terms of an earlier farmout agreement. Texas Independent subsequently discovered it was paying Peoples Energy on production from outside the restricted depths and sought to amend the assignment, believing Peoples Energy was being overpaid. The district court construed the original assignment in favor of Peoples Energy, and Texas Independent appealed. Affirming the district court, the court of appeals found that the "subject to" clause could have a variety of meanings that would not restrict the assignment to the depths set forth in the farmout agreement. Moreover, the court determined that the term "working interest" was used to mean percentage of ownership and was unrelated to depth. Accordingly, the court found that Peoples Energy owned an ORRI in all depths.

Houchins v. Devon Energy Prod. Co., L.P., No. 01-08-00273-CV, 2009 WL 3321406 (Tex. App.—Houston (1st Dist.) Oct. 15, 2009); 2009 Tex. App. LEXIS 8064.

Trew conveyed to the Houchinses a parcel of land subject to certain restrictions and excepting mineral rights. When Trew subsequently executed an oil and gas lease, the Houchinses prevented access to Devon, the successor-in-interest to the original lessee. Devon thereafter obtained a temporary injunction to enter the property, and in response, the Houchinses filed actions against both Trew and Devon. The district court entered judgment in favor of Trew and Devon, and the Houchinses appealed, contending that the warranty deed language served as an exception to Trew's warranty of title, not an exception of the minerals from the grant. The court of appeals disagreed with the Houchinses' construction of the deed language, and in affirming the district court, concluded that the deed was unambiguous in its reservation of mineral rights.

Hunt Oil Co. v. Live Oak Energy, Inc., No. 05-07-01553-CV, 2009 WL 3337646 (Tex. App.—Dallas Oct. 19, 2009); 2009 Tex. App. LEXIS 8089.

Beginning in 1998 and continuing through 2004, Hunt drilled about fifty wells in the East Haynesville oil field. Live Oak, which in 2002 acquired a leasehold interest in the same field, subsequently filed this action claiming Hunt's failure to cement off certain formations in its previous wells negligently caused damage to certain formations Live Oak hoped to develop. Finding in favor Live Oak, the trial court relied upon the jury's determination that Live Oak should not have been expected to discover Hunt's failures until 2004. In reversing the findings of the trial court, the appellate court concluded that Live Oak should have known of its claim against Hunt in 2002, and as such, the statute of limitations had run on its action. The court reasoned that Live Oak had failed to conduct a diligent inquiry into the manner in which Hunt had developed the field when it acquired its leasehold in 2002.

Wyoming

Stone v. Devon Energy Prod. Co., L.P., 216 P.3d 489 (Wyo. 2009).

Stone filed suit alleging that Devon had failed to abide by a reassignment provision in its lease agreement. The provision required Devon to offer certain lease-operating rights to Stone six months prior to the expiration of the primary term. On the issue of breach of contract, the district court granted summary judgment, and the Supreme Court affirmed. The Court then remanded Stone's claims for ejectment, specific performance, trespass, and conversion for further consideration. Upon remand, the district court granted Devon's motion for summary judgment on all remaining issues. Stone appealed, and the Supreme Court affirmed, holding that under its previous ruling Devon retained the right to drill and produce on the lands covered by the lease. As such, Stone could not show he was entitled to possession of the lands or that Devon unlawfully kept him out.

ARTICLES OF INTEREST

L. Michele McCain & Bernard H. Booth, IV, *Lignite Coal: A “Mineral” Under Mississippi Law?*, 28 Miss. C. L. Rev. 255 (2009).

Earnest E. Smith, *The Growing Demand for Oil and Gas and the Potential Impact Upon Rural Land*, 4 Tex. J. Oil Gas & Energy L. 1 (2009).

George A. Bibikos & Jeffrey C. King, *A Primer on Oil and Gas Law in the Marcellus Shale States*, 4 Tex. J. Oil Gas & Energy L. 155 (2009).

Scott Lansdown, *The Implied Covenant to Market: A Few Years Later*, 4 Tex. J. Oil Gas & Energy L. 299 (2009).

Dr. Christopher S. Kulander, *Surface Damages, Site-Remediation and Well Bonding in Wyoming—Results and Analysis of Recent Regulations*, 9 Wyo. L. Rev. 413 (2009).