

CHAPTER 12

The "Mother Hubbard" or "Cover All" Clauses in Mineral Deeds and Leases

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§ 12.01. Introduction.

Many standard oil and gas lease forms, as well as other instruments used to convey mineral interests, contain a clause which seeks to insure that the transferee receives all of the mineral estate owned by the transferor even if some interest is not specifically described. This clause is often referred to as a "Mother Hubbard" or "cover-all" clause.⁽¹⁾ This Chapter will explore the legal ramifications of the use of Mother Hubbard clauses.⁽²⁾

The use of Mother Hubbard clauses is not of recent origin.⁽³⁾ The basic underlying problem that gave rise to their use was a combination of arbitrary rules that affected judicial interpretations of land descriptions and the lack of a uniform system by which land could be defined adequately and accurately.⁽⁴⁾ The problems were particularly acute in Texas where large areas of land were poorly surveyed during the early days of settlement. That led, in part, to a special type of Mother Hubbard clause, known as a "excess and vacancy" clause, which is much more restrictive than the typical Mother Hubbard clause.⁽⁵⁾ Also, the use of a metes and bounds description, along with the random placement of fences or other boundary lines, created many "limitation titles" that would only be confirmed many years after a deed or lease had been executed. For the transferee to receive the benefit of minerals owned by the transferor by adverse possession, Mother Hubbard clauses often included references to adversely possessed interests as included within the deed or lease.

With oil and gas leases, the lessees would insist on a Mother Hubbard clause because under a rule of capture ownership scheme, unfettered by conservation regulation, or a liberal well spacing exception doctrine, the lessor who actually owned a small strip of land not described by the lease would be able to drill a well on the premises and produce a "living allowable," all to the great detriment of the lessee.⁽⁶⁾ Today Mother Hubbard clauses are more common in oil and gas leases than in other instruments, although they still appear in deeds.

§ 12.02. Sample Mother Hubbard Clauses.

[1]--Deed Clauses.

There are two general types of Mother Hubbard clauses used in mineral deeds. The first usually expresses an intent to convey and then uses conveying language to cover the non-specifically described mineral interests. For example, in *Luthi v. Evans*,⁽⁷⁾ the court interpreted the following Mother Hubbard clause:

Assignors intend to convey, and by this instrument convey, to the Assignee all interest of whatsoever nature in all working interests and overriding royalty interest in all Oil and Gas Leases in Coffey County, Kansas, owned by them whether or not the same are specifically enumerated above . . .⁽⁸⁾

The second type of deed form merely refers to the intention or agreement of the parties to include the non-specified acreage. For example, in *Katz v. Bakke*,⁽⁹⁾ the deed stated:

It being intended hereby to convey to the Grantee herein all the right, title, interest and estate in and to any and all minerals owned by the undersigned in or under said land hereinafter specifically excepted from this conveyance.⁽¹⁰⁾

While one commentator has suggested that the second clause, since it lacks words of conveyance, may not be sufficient to transfer title,⁽¹¹⁾ no court has treated the lack of granting language as critical to the application of the Mother Hubbard clause.

Another typical feature of Mother Hubbard clauses is that the lands must either be "contiguous," "adjacent to," or "adjoining." In *Gardner v. Amerada Petroleum Corp.*,⁽¹²⁾ the Mother Hubbard clause referred to