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Chapter 9

Conflicting Rights and Interests Among Oil and Gas Lessees, Surface Owners and Other Interest Holders

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Synopsis

§ 9.01. Scope.

This chapter will explore the state of the law of selected eastern states (Alabama, Mississippi, New York, Ohio and West Virginia) concerning the relative rights and responsibilities of surface owners, oil and gas lessees and the owners of other (non-oil and gas) interests in real property. The law of each of the selected states is fully analyzed in a separate appendix to this chapter. Each of the state analyses follows a common issue matrix.

A relatively new and litigiously volatile area of developing law concerns the various conflicting interests in the ownership of, rights to produce, and limitations upon rights to produce coal bed methane gas. Complete analysis of such issues is beyond the scope of this chapter. Interested readers are referred to the Energy and Mineral Law Foundation website (www.emlf.org) for access to papers specifically targeted upon coal bed methane issues.

Readers will note that many states have no developed law covering many important issues related to conflicting rights and obligations of various parties holding different interest in the same parcel of land. Therefore, in addition to an analysis of existing law, this chapter will explore the current American process underlying common law, statutory and regulatory law development.

§ 9.02. Introduction.

At a time long ago and in a place seemingly very, very far away, oil and gas lessees enjoyed a simple life. Oil was oil. Wells were shallow. Gas was largely wasted. Landowners were grateful for the bounty of their totally unanticipated and unexpected royalties. Exploration consisted of drilling wells with hope, not science. Well bores were, and could only be, straight up and down in a vertical, or nearly vertical, plane. Pipeline disputes did not exist because oil was transported in convenient containers called "barrels" and gas was not worth transporting anywhere. Governments exercised a "hands-off" policy that placed development and operational decisions exclusively in the hands of the business community. Oil field disputes related mainly to surface boundary issues and to landowner concerns to assure maximum production and development of their properties. Drilling and production were messy operations but the very "messiness" of operations was valued as a sign of economic progress.

Oh, how times have changed! But only the times have changed. The place remains the same, the oil and gas lands of eastern states.

There is at least one continuing situation — landowners continue to want maximum production and exceptional income from operations on their property. Today, however, many landowners also want no disturbance to or limitation of their use and enjoyment of the surface of their lands. The problem is compounded by the return of oil and gas activities to long

dormant lands after decades of severed ownership of the surface, oil, gas and other mineral estates.

In many areas of the East, it is now oil that is viewed as a nuisance by-product while gas is the sought-for commodity of value. There is, however, a delightful parity of thought between the current Eastern focus on the relative values of oil and of gas and the judicial view of the value of oil evidenced in one of the earliest oil and gas cases in our nation,[1] in which ownership of incidental oil production was awarded to the holder of a salt brine lease as compensation for the nuisance it created in salt recovery operations!

Today, pipeline issues are also core to an operator's ability to profitably develop a modern gas program. Advances in drilling and completion technology have enabled economic production from deeper and deeper formations. Advances in landowner sophistication have resulted in multiple operator, horizon limited leasing situations. Seismic studies can evaluate reserves under land with no surface presence whatsoever. Well bores now snake in varying directions over long distances. Federal, state and local laws, rules and regulations cover all aspects of the use and occupancy of real estate from surface land use controls through environmental quality assurance to mandatory mineral extraction spacing and interest integration. "Messiness" is no longer next to godliness; it has become a felony!

In short, modern oil and gas operators face a far different world from their forbearers in the late 19th and early to mid 20th century. The value of many Eastern oil lands for uses other than mineral activities have increased markedly. Landowners still seek economic reward from the development of their oil, gas and mineral estates. Today, however, many landowners expect their reward to result in minimal impact upon their land and upon other uses of their land.

As can be seen from a review of the appendix to this chapter, the law in many Eastern states is surprisingly undeveloped in many areas of essential interest to oil and gas exploration and development. Existing law is often very old law developed at a time when the matrix of correlative

1 Kier v. Peterson, 41 Pa. 357 (1861).

rights and responsibilities was far different than today. The continued viability of those cases is, therefore, uncertain.

The issues addressed in the appendix to this chapter are core issues to the oil and gas industry, to landowners and to the owners of other mineral estates in Eastern lands. Because of the state of Eastern law, the issues addressed in this chapter will certainly experience redefinition and full development in the future. It is in the interests of all oil, gas, land and mineral interest stakeholders to understand the current state of Eastern law and to develop rational plans for addressing obsolete legal antiquities and for developing a rational law for the future.

§ 9.03. How Eastern Oil and Gas Law (and Lack of Eastern Law) Came to Be as It Is – and as It Is Not.

One should not be surprised at the state of Eastern law on any oil and gas issue. Eastern oil and gas law (and the lack of essential Eastern oil and gas law) is the product of timing. The East experienced the first commercial production. The East also experienced the first conflicts between and among varying property interests with respect to oil and gas exploration and development. The East produced the first American oil and gas cases as a result of those conflicts.

Then, the East experienced a rapid decline in available "easy" production and, more importantly, the more productive and richer oil and gas fields of the West were discovered. The focus of industry activity rapidly shifted to the West and only maintenance and somewhat limited exploration and development activities continued in the East.

By the turn of the 20th century, litigation and legislation concerning oil and gas matters came to a near halt in the East. Meanwhile, oil and gas law, oil and gas exploration, development and marketing technology and oil and gas technology-driven law developed very fully in the Western states.

It is important to note that there is a vast difference in legal approach and background in Eastern and Western states. Many of the Eastern oil and gas states were original colonies. By the time most Western states were admitted to the Union, Eastern oil and gas states had a hundred years or more of developed law. In addition, the Eastern states have a far