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Chapter 10

Oil and Gas Exploration and Development Agreements

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Synopsis

§ 10.01. Introduction.

Companies in the oil and gas industry form relationships with other industry players that they hope will be beneficial to all of the parties. Industry players seek out others who possess something that they lack. Some companies have acquired sizable leasehold acreage but lack the funds to timely develop the acreage. Others have cash to invest but lack the technical know-how to properly develop property. Some industry players have developed a geologic idea for a project but lack the resources necessary to acquire the acreage and develop the property.

Each of the great unconventional gas plays that have dominated the industry news over the last few years[1] — the Barnett Shale, the Marcellus, the Haynesville Shale, and the most recent of the group, the Eagle Ford[2] —

1 Questar Corp. chairman Keith Rattie was quoted as stating that the Haynesville: "may be one of the biggest natural gas fields in the world[.]," *Oil and Gas Investor*, May 26, 2009.

2 "In 1990, unconventional gas – from shales, coal-bed methane and so-called 'tight' formations – was about 10% of total U.S. production. Today it is around 40%, and growing fast, with shale gas by far the biggest part." Daniel Yergin and Robert Ineson, "America's

require acreage, technical know-how and substantial cash for development. Some of the major players in the unconventional gas plays, such as Chesapeake Energy, Range Resources, Cabot Oil & Gas Corporation, and Chief Oil & Gas, have amassed substantial leasehold acreage. Chesapeake Energy alone has reportedly acquired 220,000 acres in the Barnett Shale and 1.6 million net acres in the Marcellus.

Companies have always needed to allocate their capital among their various projects. To avoid spending all of their capital on one project, companies have historically formed joint ventures or entered into participation agreements with other companies who can help provide additional capital for development. In addition to the ongoing need to properly allocate funds, at a time when companies have needed substantial amounts of capital to develop their acreage, the credit crisis that started in 2008[3] continues to plague the industry. Capital markets have not fully recovered. Credit remains tight. Companies without sufficient funds to finance development on their own have been actively seeking other industry players who can fulfill their need for cash. So, we have seen a surge in the number of companies that have entered into joint development programs with other companies to develop these unconventional gas plays.

The first step for companies wanting to enter into a relationship for the joint development of a project is to determine what form their relationship will take. The potential forms are numerous, but two of the most common are a joint venture and a contractual arrangement under which the parties agree to jointly explore and develop property without forming a separate legal entity.

Natural Gas Revolution," *Wall St. J. Online*, November 2, 2009, *available at* http://online.wsj.com/article/SB10001424052748703399204574507440795971268.html.

3 The financial crisis is widely acknowledged to be the worst financial markets disruption since the Great Depression. Press Release, Cambridge Energy Research Associates, "Three Top Economists Agree 2009 Worst Financial Crisis Since Great Depression; Risks Increase if Right Steps are Not Taken" (Feb. 13, 2009), *available at* http://www.cera.com/aspx/cda/public1/news/pressReleases/pressReleaseDetails.aspx?CID=10119. On December 9, 2008, the yield on three-month Treasury bills went below zero for the first time since the 1940s. David Gaffen, "Three-Month Bill Yield Goes Negative," *Wall St. J. Marketbeat*, Dec. 9,