

An Overview of Oil and Gas Lease Expiration Issues

Presented By:

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INTRODUCTION

- The Basics
- The Oil and Gas Lease
- The Habendum Clause
 - Primary Term
 - Secondary Term
- Cessation of Production
- Other Lease Termination Issues
- Lease Surrender Act

THE BASICS

- Read the Lease
 - Contract Interpretation Principles
 - Trend: Courts reluctant to venture beyond the plain language of the lease

THE OIL AND GAS LEASE

- Lease usually provides for a term (e.g., 3 or 5 years) within which the operator must comply with certain terms (pay delay rentals or commence operations) plus a period for “so long thereafter” as oil or gas is produced on the premises
- The “so long thereafter” or “so long as” clause in a lease creates determinable fee in lessee.

THE HABENDUM CLAUSE

- Defines the two terms of the lease and the special limitation on maintaining the estate
 - Primary Term
 - Secondary Term
 - Special limitation not satisfied: reversion

THE PRIMARY TERM

- Delay Rentals
- Extension Payments
- Commencing Operations
- Equitable Extension

THE PRIMARY TERM

- Recent Developments: Delay Rentals
 - Time is of the Essence
 - *Linder v. SWEPI, LP*, 2013 WL 521898 (M.D. Pa. Feb. 11, 2013)
 - *Dewing v. Abarta Oil & Gas Co.*, No. 268 MDA 2015 (Pa. Super. 2015) (unpublished).

THE PRIMARY TERM

- Recent Developments: Extension Payments
 - Change of Ownership Clauses
 - *Danko Holdings LP v. EXCO Resources (PA) LLC et al.*, Docket No. 4:14-cv-00274 (M.D. Pa. 2014)

THE PRIMARY TERM

- Recent Developments: Commencing Operations
 - Does not take much...
 - *Roe v. Chief Exploration & Development, LLC*, No. 11-00816, 2013 WL 4083326 (M.D. Pa. Aug. 13, 2013)
 - *Good Will Hunting Club, Inc. v. Range Res.*, 2013 WL 2297170 (M.D. Pa. May 24, 2013)

THE PRIMARY TERM

- Recent Developments: Equitable Extension
 - Not recognized in PA...
 - *Harrison v. Cabot Oil & Gas Corp.*, 110 A.3d 178 (Pa. 2015).

THE SECONDARY TERM

- Production
 - Actual vs. Capable
 - “Paying Quantities”
 - Recent Development: *T.W. Phillips Gas & Oil Co. v. Jedlicka*, 42 A.3d 261 (Pa. 2012)

THE SECONDARY TERM

- Substitutes for Production
 - Express Lease Clauses
 - Shut-In Royalty Clauses
 - Pooling Clauses
 - Storage Clauses

THE SECONDARY TERM

- Recent Developments: Shut-In Royalties
 - Shut-in Payment for a well, whether capable of producing or not, sufficient to hold the lease in secondary term
 - *Messner v. SWEPI, LP*, 574 Fed. Appx. 96 (2014).

THE SECONDARY TERM

- Recent Developments: Pooling
 - Pooling must be exercised in accordance with the lease in order to use pooling to extend other leases in the unit
 - *Neuhard v. Range Resources Appalachia, LLC*, Docket No. 11-1989 (M.D. Pa., April 30, 2014) (commencing operations on improperly pooled property ineffective to keep the lease alive)

THE SECONDARY TERM

- Recent Developments: Storage
 - Storage may be a substitute for production depending on the lease language
 - *Warren v. Equitable Gas Company, LLC*, No. 697 WDA 2014 (Pa. Super Ct. Feb. 4, 2015).

CESSATION OF PRODUCTION

- Permanent
 - Tenancy at Will *or*
 - Abandonment
 - Recent Development: Permanent cessation results in tenancy at will. *Heasley v. KSM Energy, Inc.*, 52 A.3d 341 (2012).

CESSATION OF PRODUCTION

- Temporary
 - Express Lease Clauses
 - Implied “Temporary Cessation of Production Doctrine”
 - No developments (yet)

OTHER ISSUES

- Failure to Pay Cases
- Breach of Implied Covenants
- Difference between a covenant and condition

OTHER ISSUES

- Failure to Pay Cases
 - Delay Rentals (see above)
 - Royalties
 - Recent Development: A lease held by production can't be subject to a forfeiture provision for failure to timely pay royalties. *McCausland v. Wagner*, 78 A.3d 1093 (Pa. Super. 2013)

OTHER ISSUES

- Breach of Implied Covenants
 - Express terms control
 - Implied covenants sometimes read into leases

OTHER ISSUES

- Recent Developments: Implied Covenants
 - The express terms trump any duty or covenant to drill more or drill deeper
 - *Seneca Resources Corporation v. S&T Bank*, No. 2057 WDA 2014 (Pa. Super. Aug. 31, 2015).
 - *Caldwell v. Kreibel Resources, Co., LLC*, 72 A.3d 611 (Pa. Super. Ct. 2013).

LEASE SURRENDER ACT

- “Recording of Surrender Documents from Oil and Natural Gas Lease Act,” 58 P.S. §§ 901-905
 - Applies to “termination, expiration or cancellation” of an oil and gas lease
 - Requires a Surrender Document
 - No Surrender Document – Notice to Lessee
 - No Response from Lessee - Affidavit of Termination
 - No Case Law

QUESTIONS?

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