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TABLE OF CONTENTS

I. NONOPERATOR VERSUS OPERATOR AND OTHER OIL AND GAS OPERATIONS-RELATED CASES

A. *Court addresses dispute concerning timely commencement of operations, fiduciary duty claims, and contractual duty of good faith under the 1989 Model Form Operating Agreements.*

In *Bays Exploration, Inc. v. PenSa, Inc.*, Bays and PenSa had executed operating agreements naming Bays operator of the wells at issue in the lawsuit, and they had also entered into an Area of Mutual

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Interest letter agreement ("AMI Agreement").[2] Bays sued PenSa asserting ten claims for relief. Bays sought partial summary judgment for certain of the claims and counterclaims that related to Bays's operation of the jointly owned wells and properties. The parties agreed that Oklahoma law governed their disputes.

The first issue presented was PenSa's contention that its affirmative election to not participate in the Brinlee Ann Marie well did not result in the relinquishment of PenSa's interest because Bays allegedly failed to commence operations on the well by the August 19, 2006 deadline under the operating agreement. While PenSa conceded that Bays built the drilling location on June 13, 2006, PenSa noted that Bays did not set casing until September 15, 2006. PenSa argued that there was little activity during the intervening three-month period, which provided proof that Bays did not commence operations in good faith. The court found that PenSa's argument was contrary to applicable law:

> "[I]t is generally held that acts which are preparatory to drilling are sufficient to constitute the commencement of a well and that it is not essential that the lessee be in the process of making hole." *21st Century Inv. Co. v. Pine*, 734 P.2d 834, 840 (Okla.Civ.App.1986) (quoting 3 E. Kuntz, *A Treatise on the Law of Oil and Gas* § 32.3 at 70 (1967) ("Kuntz")). "A lessee has commenced a well if he has conducted operations on the land in good faith preparation for the drilling of a well for oil or gas and has continued the operation in good faith and with diligence." *Id.* (quoting Kuntz § 32.3 at 69). Thus, preparatory operations such as building the drilling pad or even transporting the drilling rig to the location are considered sufficient to constitute commencement of operations. *21st Century*, 734 P.2d at 840.[3]

The court also found that PenSa offered no evidence that Bays did not commence operations in good faith, and the court concluded that the drilling location work performed in June 2006 satisfied the requirement of the operating agreement that the well be commenced on or before August 19, 2006.

Bays additionally argued that it could not be considered to be in a non-consent status because Bays had proposed the wells in question too late, which violated a requirement in the AMI Agreement stating that it was "the intent of Bays and PenSa that no well will be proposed more than 30 days prior to the anticipated spud date."[4] The court observed that to say in a contract that one will *attempt* to do a given act does not acknowledge that the party is *required* to do that act. The

2. Bays Exploration, Inc. v. PenSa, Inc., 771 F. Supp. 2d 1289, 1291 (W.D. Okla. 2011).
3. *Id.* at 1295 (quoting 21st Century Inv. Co. v. Pine, 734 P.2d 834, 840 (Okla. Civ. App. 1986)).
4. *Id.* at 1296.

court also cited the general rule that "precatory statements of intent do not alter the express and unambiguous language of a contract."[5] Finding that the operative provisions of the underlying contracts concerning well proposals and deadlines were clean and unambiguous, the court rejected PenSa's attempt to transform an intent recital into an express contractual requirement.

The next key issue addressed by the court was Bays's request that the court grant it summary judgment on PenSa's counterclaim for alleged breach of fiduciary duty. Bays relied on both the provisions of the operating agreements and principles of Oklahoma law to support its motion. The operating agreements expressly provided that the parties to the agreements "shall not be considered fiduciaries."[6] The court further found that: "[T]he Oklahoma courts have repeatedly held that an operator does not owe its non-operating working interest owners a fiduciary obligation; instead, the duties imposed by a joint operating agreement are contractual obligations."[7]

PenSa further argued that operating agreements imposed on Bays, as operator, a duty of good faith and fair dealing, which Bays violated. The court first recognized that, under Oklahoma law, the common law "duty of good faith and fair dealing" does not extend to the contractual relationship created by an operating agreement. However, the operating agreements at issue in this case expressly provided that the parties were obligated to act in good faith in their dealings with each other with respect to the activities under those agreements. Since the duty of good faith between the parties in this suit arose from the provisions of the contracts, the court concluded that PenSa's cause of action was for breach of contract and not a tort claim. The court granted summary judgment against PenSa to the extent that it sought recovery in tort.

B. *Nonoperator sues operator for drilling a "horizontal" well rather than a "vertical" well.*

The case of *Summa Engineering, Inc. v. Crawley Petroleum Corp.*, presented the court with a complicated factual history that began with a new well proposal for a prospect in Jackson County, Oklahoma that was presented by Summa's representatives to Mack Energy. The proposal called for the drilling of a vertical well and included a number of other terms and conditions.[8] Mack Energy and Crawley responded to the proposal by indicating that they were interested in pursuing

5. *Id.* at 1297.

6. *Id.* at 1299 (citing Model Form Operating Agreement, Article VII(A), Bays Reply Ex. 1 at p. 11).

7. *Id.* at 1299.

8. *See* Summa Eng'g, Inc. v. Crawley Petroleum Corp., No. 107,483 (Okla. Civ. App. July 7, 2011), *available at* http://oklegal.onenet.net/oklegal-cgi/ifetch?okca+2313 4217313910+F.

Summa's prospect, but Crawley and Mack proposed certain additional and different terms than those set forth in Summa's proposal. A series of additional exchanges occurred between the parties, including proposals and counter-proposals of various additional terms and amendments to the agreement. The parties finally reached a final agreement.

In May 2004, Crawley proposed the drilling of a horizontal well to Mack under the terms of a separate operating agreement ("JOA") between those two parties and mailed the representative of Summa a copy of that letter. Two representatives of Summa responded by separate letters to Crawley and Mack explaining that they thought the well should be drilled vertically rather than horizontally, for stated reasons. Several months later, Crawley advised Summa that the horizontal well had been drilled. Since Summa had a carried working interest to casing point, it asked Summa to confirm its election to participate in the after-casingpoint operations and completion of the well. Summa made no election. In a second letter with an Authorization for Expenditure attached, Crawley proposed reentering and deepening the well and a second lateral to a specific depth. One of Summa's representatives responded and again recommended a vertical well.

In 2006, several years after the well became productive, Summa sued Crawley and Mack for breach of contract and negligence. The case proceeded to a bench trial in July 2009. At the close of Summa's case, the defendants demurred to the evidence, arguing that there was no requirement in the final agreement to drill a *vertical* well. The defendants also argued that, as a result of the agreement, the defendants owned 100% of the leasehold interest and assumed 100% of the risk and cost of drilling the well and were entitled to drill the well in the way they chose.

In response, Summa asserted that the negotiations back and forth between the parties were for changes to the original proposal, and that the parties were substantially renewing the original proposal, which was incorporated into the revised versions of the agreement. The defendants responded that, under basic contract law and OKLA. STAT. tit 15, § 71, a qualified proposal is a new proposal.

Summa also argued that the defendants had acted imprudently and were not in good faith in drilling the well because they had been warned that they were going to have a problem drilling a horizontal well.

The trial court sustained the defendants' demurrer. Summa appealed.

In affirming the decision of the trial court, the court of appeals found as follows:

> The defendants argued that Summa's initial proposal (which required the drilling of a vertical well) was rejected by the defendants' counter-offer and the subsequent offers and counter-offers, and that

> the final agreement did not expressly or impliedly include the requirement that the well be drilled vertically. The court agreed, finding that the defendants offered new terms that completely changed the proposal and constituted a rejection or counter-proposal.

Summa additionally argued that the defendants breached the agreement by improperly imposing a casingpoint election when no casing point had been reached, then unilaterally absorbing Summa's carried working interest in the well when Summa did not make an election. The court disagreed. The court found that the agreement imposed no conditions or requirements regarding the defendants' determination of when casing point had been reached. The court further observed that Summa did not object to the defendants' casing point definition when Summa received the notice letter, and did not object to the request that Summa make an election.

Summa finally argued that the defendants were negligent in drilling the horizontal well because Summa warned them that they would not hit the target zone. The court found that there was no evidence that the defendants' decision to drill a horizontal well was made in bad faith or was performed negligently, unreasonably, or without due diligence. To the contrary, Summa's own evidence established that the well was productive.

II. Oil and Gas Lease Cancellation, Termination, and Breach of Obligation Cases (Other Than Royalty)

A. *Court reviews claims that oil and gas leases terminated due to seventeen-year absence of gas sales and for other causes.*

In *Concorde Resources Corp. v. Kepco Energy, Inc.*, the PCC defendants, as owners of oil and gas leasehold rights, drilled a well in 1981.[9] The well was shut-in in 1982. In 1990, Concorde acquired new oil and gas leases from the PCC defendants. Concorde deepened the well in that same year. However, from 1990 to 2008, Concorde did not perform any other activities in connection with the well, and made no expenditures for the operation and maintenance of the well or for exploratory activities. From 1990 to July of 2008, Concorde sold no gas from the well. Concorde's explanation for the inactivity was that there was no pipeline connection available for the well until July 2008. Concorde further alleged in its defense that shut-in royalties were paid or tendered from 1993 to 2007 and that it sold gas from the well in at least July, August, and September of 2008, which generated revenues in the approximate amount of $24,000.

In 2006 and 2007, Kepco, Williams, and Mahalo acquired oil and gas leases covering the same interests as Concorde's leases. The competing leases led to Concorde filing the present quiet title lawsuit in

9. Concorde Res. Corp. v. Kepco Energy, Inc., 254 P.3d 734, 736 (Okla. Civ. App. 2011).

which Kepco, Williams, and Mahalo, as defendants, counterclaimed for a judicial determination that Concorde's leases had expired. The trial court entered summary judgment in favor of Kepco, Williams, and Mahalo. Concorde appealed.

In reviewing the trial court's decision, the appellate court focused on three arguments that had been raised by the defendants.

First, Concorde relied upon the well drilled in 1981 under the old lease as being sufficient under the terms of the new oil and gas leases to continue and maintain those leases in effect. The court noted that Williams, alone, argued that an "existing" well drilled under a prior lease could not be relied upon to hold "new" oil and gas leases. The court of appeals found that Williams cited no authority for that proposition, and rejected it.

Second, the court considered the contention that Concorde's oil and gas leases had expired under the habendum clauses of those leases because of the absence of any well capable of producing in paying quantities. Kepco, Williams, and Mahalo pointed to the undisputed total absence of production for seventeen years, and also argued that the well was incapable based upon the condition of the equipment and lack of well pressure. Concorde disputed the latter allegations. In addition to providing reserve estimates, Concorde argued that the gas sales in the amount of approximately $24,000 over three months in 2008 showed that the well was capable of production in paying quantities. The court of appeals concluded that the foregoing gave rise to issues of fact concerning the ability of the well to produce in paying quantities that precluded the granting of summary judgment on this issue.

Finally, the court assessed the argument of Kepco, Williams, and Mahalo that Concorde's leases should be cancelled due to Concorde's alleged breach of the implied covenant to market. Concorde's explanation for the total absence of marketing for a period of seventeen years was that there was no pipeline to which the well could be connected and no owner made any demand during that period of delay in the marketing of production. Concorde presented an affidavit stating that it actively sought a market and a pipeline, but the affidavit provided no details. The defendants argued that the conclusory nature of the affidavit did not suffice to demonstrate that an issue of fact existed. The court agreed and found that Concorde had failed to demonstrate that it acted with any degree of reasonable diligence to market the gas. As a result, unless issues of fact were presented as to other defenses of Concorde, the defendants would be entitled to summary judgment.

The court turned to Concorde's other defenses. Concorde presented evidentiary materials showing payment or tender of shut-in royalties to the lessors over the years in question. The defendants argued that the shut-in royalty payments were not relevant since the well was not capable of producing in paying quantities. The court found: "¶35 The lessors acceptance of the shut-in royalty benefits from Concorde before a cancellation action is brought works an estoppel to deny Concorde's title when such benefits are accepted before the cancellation suit is commenced."[10] Concluding that there were issues of fact concerning Concorde's shut-in royalty payment defense as to all of the lessors except for the lessor Smith, the court found that this defense could not be adjudicated on a summary judgment basis.

With regard to Concorde's additional defense that a prior demand was necessary to a lease cancellation action and that no demand had been made by the lessors, the court considered a letter that the lessor Smith had sent Concorde in 1991 and related circumstances. The court held that issues of fact existed with respect to this defense that precluded granting summary judgment on the claim for breach of implied covenant.

The court reversed the entry of summary judgment in favor of Kepco, Williams, and Mahalo and remanded the case to the trial court for further proceedings on the issues described above.

B. *Court affirms lower court's finding that oil and gas leases expired due to a cessation in the capability of commercial production for an unreasonably long period of time, under the temporary cessation of production doctrine.*

The case of *Strat Land Exploration Co. v. Aexco Petroleum, Inc.*, involved a lawsuit by Strat seeking a judicial determination that certain oil and gas leases of Aexco and Mewbourne that were executed in 1963, 1965, and 1966 had expired under the terms of their habendum clauses.[11] The trial court's findings and conclusions were described by the appellate court, in part, as follows:

> Following a lengthy hearing, the trial court entered an Order finding the leases were more than thirty-five years past their primary terms and they contain no cessation of production clauses; the well ceased production in July, 2003 and the gas meter was removed; the well produced no gas or oil for thirty months; no efforts to restore commercial production were made for over twenty-seven months; and "the lease road and location grew up with weeds." The trial court found the well was noncommercial during the thirty month cessation period, the well was incapable of producing commercial quantities during this cessation period, the defendants "were not diligent in working to restore the leases to commercial production," and the

10. *Id.* at 740 (citing Danne Exploration & Prod., Inc., 883 P.2d 210, 218 (Okla. Civ. App. 1994)).

11. Strat Land Exploration Co. v. Aexco Petroleum, Inc., No. 105,150, at ¶ 14 (Okla. Civ. App. Apr. 8, 2011), *available at* http://oklegal.onenet.net/oklegal-cgi/ifetch?okca+22945214465333+F.

> cessation period was an unreasonable time for the well to be off production. The trial court found the leases were a cloud and slander on title and the leases should be cancelled effective September 1, 2005. Title was quieted and judgment was entered in favor of Strat Land and against Aexco, Mewbourne, and the other named defendants pursuant to 12 O.S. 1141 (2001), the Non-Marketable Title Procedures Act (12 O.S. 1141.1 (2001), *et seq.*), and for slander of title pursuant to 16 O.S. 79 (2001).[12]

Aexco and Mewbourne appealed. The appellants argued on appeal, as they did at trial, that the well holding the leases during their secondary term had been shut-in, it had not been abandoned, that equitable considerations existed for failing to actually produce from the well, it was a temporary cessation of production, and the well was capable of commercial production during the "shut in period." They also argued that Strat Land's cause of action really was about the marketing or the lack of marketing of well production. Mewbourne argued that a demand upon it to produce and market was a condition precedent to suit and that no such demand was ever made.

The court of appeals found that the appellants' arguments misconstrued the theory of Strat Land's lawsuit because an oil and gas lease does not end under the habendum clause because a court enters an order, but rather it ends because of a failure to produce or be capable of producing in paying quantities. Strat Land sought to quiet title because the well was alleged to be incapable of production in paying quantities. Strat Land did not seek lease cancellation as a remedy for breach of the implied covenant to market. One of Strat Land's experts opined that the well was not capable of commercial production from July 2003 through October 2005, and another witness testified that providing sufficient pressure to deliver gas to the connected pipeline was Aexco's responsibility as gas seller.

The court concluded that the district court's findings that the well was not capable of producing in commercial quantities for an unreasonable period of time, and that diligent efforts were not made to restore the lease to commercial production, were not clearly against the weight of the evidence and were affirmed.

The court of appeals did, however, reverse the district court's finding that Strat Land had properly made demand in conformity with the Non-Judicial Marketable Title Procedures Act.[13]

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12. *Id.* at ¶ 15.
13. *Id.* at ¶ 30 (citing OKLA. STAT. ANN. tit. 12, § 1141.1 (West Supp. 2012)).

III. Oil and Gas Contracts, Transactions, and Title Matters

A. *Mineral deed is cancelled based on the omission of the buyer-grantee to disclose certain facts to the seller-grantor in the negotiation process.*

In *Harbour Mineral Properties v. Pence*, the Buyer of an 8.75-acre mineral interest in Coal County, Oklahoma, sued the Seller for a declaratory judgment decreeing that the contract was valid and in full force and effect.[14]

The Seller counterclaimed for cancellation of the deed. The Seller asserted that the Buyer had made an unsolicited offer to purchase the minerals, and did purchase the minerals, for $26,250.00. At the time of the offer, Buyer knew—but Seller did not know—about (a) two pooling orders covering the subject minerals and providing for a bonus payment of $24,467.39 and royalties; (b) a Mineral Owners Escrow Account ("MOEA") containing monies held for the benefit of the subject mineral interest; and (c) a producing well with production attributable to the minerals. The Seller contended that the Buyer had a duty to disclose those matters but failed to do so, which resulted in the Buyer acquiring the minerals by constructive fraud.

The Seller also argued that the Buyer failed to comply with the Uniform Unclaimed Property Act[15] and OKLA. ADMIN. CODE § 735:80-7-2(14) promulgated thereunder, requiring Buyer to notify Seller of money held in the MOEA for the Seller's benefit.

The district court granted summary judgment in favor of the Seller. The Buyer appealed. In affirming the ruling of the district court, the court of appeals observed that a party who volunteers information which may influence the conduct of another party has the duty of speaking the whole truth and not suppressing facts within its knowledge. "In particular a purchaser of minerals has the duty of disclosing production, and failure to do so is a false representation. *Deardorf v. Rosenbusch*, 1949 OK 117, 206 P.2d 996, 998. That the Seller had constructive knowledge of production is not a defense to fraudulent misrepresentation."[16]

The court noted that the Uniform Unclaimed Property Act placed additional notice requirements on the Buyer.

The court concluded that the Seller had submitted evidence that the Buyer obtained the Seller's assent to the purchase contract by failing to disclose that the minerals were in production and that the MOEA

14. Harbour Mineral Props. v. Pence, No. 108,822, at ¶ 2 (Okla. Civ. App. Feb. 18, 2011), *available at* http://oklegal.onenet.net/oklegal-cgi/ifetch?okca+22892213533787+F.

15. *Id.* at ¶ 3(citing OKLA. STAT. ANN. tit. 60, § 674 (West Supp. 2012).

16. *Id.* at ¶ 10.

held funds attributable to the mineral interest, and that Buyer did not submit evidence establishing issues of material fact on those matters.

B. *Court addresses dispute over whether the assignment of oil and gas lease was a well bore only assignment or whether it covered the full oil and gas lease.*

In *Plano Petroleum, LLC v. GHK Exploration, L.P.*,[17] the dispute focused on the meaning and intent of a 2002 assignment of a 320-acre oil and gas lease which stated in primary part as follows:

> [Assignors] do hereby sell, assign, transfer and set over unto Clydesdale Energy, LLC, . . . all right, title and interest in and to that certain wellbore, all leasehold, limited in depth from the surface of the earth to the base of the Tonkawa Formation, and all surface and subsurface equipment and materials thereon and therein, more particularly described as the Claude E. Newell #1 well. Said leases and well located in the northwest quarter of Section 23-17N-25W, Roger Mills County, Oklahoma, which wellbore, leases and associated equipment and materials so specified are hereinafter referred to as "SAID WELL."[18]

Some six years after receiving the above assignment, Clydesdale assigned its interest to Plano using the same language. However, Clydesdale also added an exhibit to its assignment providing a legal description of the entire lease—a description that did not appear in the assignment to Clydesdale.

Two months later, the two assignees under the assignment to Clydesdale conveyed their interests to GHK under instruments that included a legal description of the entire lease and excepted the 2002 assignment, which was described as a well bore only assignment.

Plano filed the present lawsuit seeking to quiet title to the entire lease. GHK counterclaimed contending that it owned the 320-acre lease subject only to what it characterized as a wellbore assignment. The parties, agreeing that there was no factual dispute and that the assignment could be interpreted as a matter of law, presented the case for decision on summary judgment motions. The trial court granted summary judgment in favor of Plano and held that the later assignment to GHK conveyed nothing. In a divided unpublished decision, the court of appeals affirmed the trial court, with the dissenting judge writing a vigorous dissent.

The Oklahoma Supreme Court granted certiorari and reviewed the lower court decisions. In reversing the prior decisions, the Court found that patent ambiguity arose from the uncertainty as to the parties' intent in their use of the phrase "all leasehold" with there being no accompanying legal description of the leased premises. The Court

17. Plano Petroleum, LLC v. GHK Exploration, 250 P.3d 328, 329 (Okla. 2011).
18. *Id.* at 300.

delineated at least five possible outcomes from the language that was used and found that the meaning of the 2002 assignment could not be determined without extrinsic evidence. Finding that "the lower courts, in essence, reformed the conveyance by inferring that 'all leasehold' somehow refers to the entire 320 acre Newell Lease, although the instrument describes the Newell #1 well only,"[19] the Court remanded the case to the trial court for a consideration of extrinsic evidence concerning the true intent of the parties.

C. *Court finds that the key language in two deeds was ambiguous and that extrinsic evidence should have been considered in determining the intent of the parties.*

The case of *MacDonald Oil & Gas, LLC v. Sledd* presented the court with an issue of deed construction on two deeds that reserved or excepted a one-half interest in the minerals, with each grantor owning less than one-half of the surface estate and less than one-half the mineral estate.[20] MacDonald argued that since the deeds reserved to the grantor an undivided one-half interest in the minerals in the entire 240 acre tract described in the deeds, the grantors effectively reserved *all* the minerals owned by them and conveyed only surface rights. However, the successors to the grantees under those two deeds argued that, since the grantors owned a total of 168 net mineral acres at the time of the conveyances, the grantors intended to convey one-half, or 84 net mineral acres, to the grantees.

The trial court ruled in favor of MacDonald and found that no minerals were conveyed by the deeds. Sledd appealed.

The appellate court concluded that the deeds were inherently ambiguous regarding the extent to which they conveyed or reserved mineral interests because they were subject to at least two reasonable interpretations. The court reversed the trial court's ruling that no minerals had been conveyed and remanded to the trial court, stating that extrinsic evidence would be examined to determine what the grantors intended to convey.

IV. Gas Balancing Cases

A. *Court addresses statute of limitations issues and cash balancing rights under gas balancing law principles.*

In *Sanderson v. Yale Oil Association*, Sanderson and other underproduced owners sought a cash balancing and alleged that the operator's proposed plugging and abandonment of the subject well, and the fact that certain owners were in fact abandoning the well, triggered

19. *Id.* at 332.
20. MacDonald Oil & Gas, LLC v. Sledd, 256 P.3d 1018, 1020 (Okla. Civ. App. 2011).

the provision of the applicable operating agreement which provided that "in the event production of gas permanently ceases prior to the time that the accounts of the parties have been balanced, a complete balancing shall be accomplished by a money settlement."[21] The overproduced parties declined to balance and instead asserted that Sanderson's claim was time-barred by statutes of limitation. Sanderson filed the present lawsuit seeking an accounting and damages. The overproduced defendants specifically alleged in their defense that Sanderson's claim was barred by the five-year statute of limitations set forth in OKLA. STAT. tit. 12, § 95 (2001) and OKLA. STAT. tit. 52 § 570.10 (2001) since more than five years had elapsed between (a) the date Marathon assigned to Sanderson the already underproduced interest in the subject well; and (b) the date Sanderson filed the present lawsuit.

At trial, the court, citing *Harrell v. Samson Resources Co.*, concluded that the statute of limitations on a claim for gas balancing "begins to run when there is an ouster or a termination of the cotenancy relationship between the underproduced party and the overproduced party."[22] The trial court found that the cotenancy relationship between Marathon and the overproduced defendants was terminated when Marathon sold its interest in the well, and assigned its underproduction claim, to Sanderson, thereby commencing the running of the limitations period. After observing that enough time had elapsed since the assignment to Sanderson for both a three-year and five-year limitations period to have run, the court entered judgment against Sanderson and for the defendants, finding the Sanderson's claim was barred.

On appeal, the appellate court found that the *Harrell* case did not support the trial court's ruling that the claim of Sanderson was time-barred:

> Although the *Harrell* Court held that limitations began to run on a claim against the *overproduced* interest owner when that owner . . . sold or attempted to sell its interest in an out-of-balance well, the same situation is not present in the case at bar. Significantly, Marathon was *underproduced* when it sold its interest to [Sanderson]. Under *Harrell*, had Marathon been overproduced at the time of sale, the limitations clock would have started ticking on the rights of all underproduced interest owners to seek cash-balancing from Marathon. However, no party contends that Marathon has liability for any part of the overproduction held by the Defendants.[23]

In reversing the trial court's ruling that statutes of limitation barred Sanderson's claim, the appellate court found that the rules of gas balancing described in the *Harrell* decision allowed Sanderson, as the as-

21. Sanderson v. Yale Oil Ass'n, 246 P.3d 1109, 1110 (Okla. Civ. App. 2010).
22. *Id.* at 1111 (citing Harrell v. Sansom Res. Co, 980 P.2d 99, 105 (Okla. 1998)).
23. *Id.* at 1111.

signee of an underproduced owner, could wait until the relationship with the overproduced working interest owners ended before demanding a balancing. As a result, the running of the statute of limitations did not commence upon Marathon's sale of its underproduced interest to Sanderson over five years earlier.

The overproduced parties additionally argued that the express gas balancing provisions of the underlying agreement provided that a final cash balancing cannot occur until "production of gas permanently ceases," and the subject well was taken over by another owner and continued to produce since the date the underproduced owners abandoned it. However, the court ruled that if the trial court determines that the overproduced owners' abandonment of the well repudiated their "trust relationship" with the underproduced owners, "different remedies are available and the appropriateness thereof is dependent upon the facts and equities of the case,"[24] which were issues for the trial court upon remand.

B. *Underproduced party asserts conversion claim against Operator who is alleged to have under-stated the extent of the plaintiff's underproduction account.*

The case of *Chaparral Energy, L.L.C. v. Pioneer Exploration, Ltd.*, involved a gas balancing dispute between Chaparral, a nonoperator, and Pioneer, the operator.[25] Chaparral and the operator disagreed as to whether the conveyance under which Chaparral acquired its interest transferred to Chaparral the "underproduction" account of the assignee that accrued prior to July 1, 2000. The operator computed the gas imbalance attributable to Chaparral without crediting it with that portion of the underproduction. Chaparral sued the operator for an accounting, in-kind or cash balancing, breach of contract, conversion, and violation of the Natural Gas Market Sharing Act.[26] Chaparral asserted that the operator had tortiously converted the historic underproduction imbalance of Chaparral when it zeroed out the imbalance instead of transferring it from the assignee to Chaparral.

The issue on appeal was whether the trial court erred in granting summary judgment in favor of the operator as to Chaparral's conversion claim. The court first found that a debt cannot be the subject of a claim for conversion and, while personal property can be converted, oil and gas do not become personal property until produced and severed from the leasehold. Moreover, the court observed that the sale and marketing of gas by one cotenant without the consent of the other cotenants is lawful and does not constitute conversion on the part of

24. *Id.* at 1112 (citing *Harrell*, 980 P.2d at 105–07; Unit Petroleum Co. v. Mobil Exploration & Prod. N. Am., Inc., 78 P.3d 1238, 1241 (Okla. Civ. App. 2003)).
25. Chaparral Energy, L.L.C. v. Pioneer Exploration, LTD., 241 P.3d 1161, 1161–62 (Okla. Civ. App. 2010).
26. *Id.* (citing OKLA. STAT. ANN. tit. 52, §§ 581.1-581.10 (West 2011)).

either the working interest cotenant or the purchaser.[27] The court concluded that "[t]he gas represented by the Historic Imbalance was not converted because it was produced and sold by a cotenant with the right to so do."[28] The court held that the underproduction account that had been zeroed out by the operator was not tangible personal property but was instead an accounting entry. Thus, the proper claim was not one for conversion but was, instead, simply a claim for accounting and gas balancing—i.e., that the operator had improperly accounted to its cotenant for the underproduction.

V. Surface Use, Surface Damages, Surface Damages Act, and Environmental Cases

A. *Court finds that Oklahoma Corporation Commission order designating the plaintiff as unit operator was sufficient to confer standing to file appraisal proceedings under the Oklahoma Surface Damages Act.*

In *Charter Oak Production Co. v. Morgan*,[29] Charter Oak, as operator of a proposed new well, filed suit seeking the appointment of appraisers to determine surface damages under the Oklahoma Surface Damages Act.[30] The surface owners moved to dismiss the action on the ground that Charter Oak did not have standing to bring the appraisal proceedings because it had not shown that it had ownership of record of a mineral or leasehold interest. The surface owners relied upon section 318.2(1) of the Act, which defines an operator as "a mineral owner or lessee who is engaged in drilling or preparing to drill for oil or gas."[31] In opposition to the motion to dismiss, Charter Oak filed with the court an order of the Oklahoma Corporation Commission naming it as the designated unit operator. After conducting a hearing and considering the evidence, the trial court granted the motion to dismiss. Charter Oak appealed.

The appellate court found that the surface owners' challenge to Charter Oak's standing as an operator under the Surface Damages Act constituted an impermissible attack on the order of the Commission that appointed Charter Oak as unit operator. While it was acknowledged that the Commission does not have the jurisdiction to determine title to interests in real estate, the court found that the Commission does have the power to, among other things, "receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit."[32] The Commission is also "vested

27. *Id.* (citing Okla. Stat. Ann. tit. 52, §§ 581.1-581.10 (West 2011)).
28. *Chaparral Energy*, 241 P.3d at 1164.
29. Charter Oak Prod. Co. v. Morgan, 263 P.3d 325, 325–26 (Okla. Civ. App. 2011).
30. *Id.* (citing Okla. Stat. Ann. tit. 52, § 318.2–.9 (West 2011)).
31. *Id.*
32. *Charter Oak Prod. Co.*, 263 P.3d at 327.

with exclusive jurisdiction to designate the operator of a drilling and spacing unit."[33] In reversing the decision below, the court concluded that the surface owners, and the trial court's ruling sustaining their motion to dismiss, sought to defeat a final, facially invulnerable Commission order and were, therefore, attempting an impermissible collateral attack on the order.

B. *Court finds that exploration and production company did not show that it was a "pipeline company" entitled to use condemnation rights under Oklahoma law for purposes of constructing a pipeline.*

In *D-Mil Production, Inc. v. DKMT, Co.*,[34] D-Mil, a Texas corporation, had filed a condemnation action to obtain easements for the construction, operation and maintenance of a natural gas pipeline. The landowners argued that D-Mil was not a "pipeline company" entitled to exercise the right of eminent domain under the Oklahoma Statutes. The district court rejected the landowners' contention. The landowners appealed.

D-Mil contended that, because it had complied with Oklahoma's general corporation laws and accepted the Oklahoma Corporation Commission's rules and regulations and applicable statutes, it was entitled to exercise eminent domain to market gas from a well it operated, and that no statute required D-Mil to be specifically designated as or become a "pipeline company." The appellate court disagreed.

The Court observed "D-Mil's motion provides no explanation of any of its business activities in Texas beyond mineral leasing. Whether D-Mil transports or transmits natural gas by means of a pipeline, at best, is purely conjecture. D-Mil, therefore, is not entitled to summary judgment as a matter of law."[35]

The Court concluded: "[W]e find that D-Mil is properly domesticated in Oklahoma as a 'mineral leasing company.' As a matter of law, however, D-Mil has not met the statutory definition of a "pipeline company" under Oklahoma law. Specifically, D-Mil failed to demonstrate that it transports or transmits natural gas by means of pipeline as part of its lawful business activities in the State of Texas. There was no factual evidence to support the trial court's legal conclusion that D-Mil is a pipeline company."[36]

The district court's judgment was reversed and the court was directed, on remand, to enter summary judgment in favor of landowner.

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33. *Id.*
34. D-Mil Prod., Inc. v. DKMT, Co., 260 P.3d 1262, 1264 (Okla. 2011) (per curiam).
35. *Id.* at 1270.
36. *Id.*

C. *Court finds that use of state condemnation statutes to condemn rights-of-way for electrical transmission lines serving customers in a multi-state area satisfied the requirement for a "public use."*

In *Oklahoma Gas & Electric Co. v. Beecher,* the court was presented with a suit to condemn easements for the construction of electrical transmission lines to wind farms in northwestern Oklahoma.[37] The transmission line project of which this suit was a small part sought 200-foot wide rights-of-way running 121 miles across six Oklahoma counties, from Woodward to Oklahoma City, for the construction of above-ground high capacity transmission lines for large amounts of wind-generated electricity. Oklahoma Gas & Electric ("OG&E"), the plaintiff, is a public utility that generates, transmits, and furnishes electric power to approximately 750,000 customers in Oklahoma and Arkansas.

The Oklahoma Corporation Commission approved the project as being in the public interest and authorized OG&E to pass the costs of the project on to its customers. The Southwest Power Pool ("SPP") also approved the project. The SPP is a regional transmission organization regulated by the Federal Energy Regulatory Commission. It was created to coordinate and ensure the reliability of transmission across a multistate area. OG&E is a member of the SPP.

OG&E began acquiring rights-of-way for the project. When negotiations with the landowners in this case failed, OG&E filed a condemnation action seeking a permanent easement over the landowners' property. Among other proceedings, the landowners filed an exception to the Commissioners' Report asserting that the proposed taking by OG&E was for an unauthorized private use and not a public use. At the hearing on the landowners' exception, OG&E presented detailed evidence to support its contention that the proposed taking involved a public purpose, and the trial court agreed. While the trial court concluded that the taking also included a private purpose, it denied the landowners' exception. The landowners appealed.

In affirming the trial court's ruling, the court of appeals found in part as follows: the court first recognized the project would serve both OG&E's Oklahoma customers and consumers in other states who buy their electricity from power companies having access to the transmission lines. The court noted that the SPP, and not OG&E, would have control over the lines.

The landowners first argued that most of the project's electric transmission capacity would be used to benefit customers outside of Oklahoma who are not Oklahoma citizens. The landowners pointed to evidence that only 22% of the project's capacity was needed to

37. Oklahoma Gas & Electric Co. v. Beecher, 256 P.3d 1008, 1009 (Okla. Civ. App. 2010).

meet OG&E customer demands through 2020. On this basis, the landowners argued that OG&E failed to satisfy the "primary beneficiary" test set forth in *Board of County Commissioners v. Lowery*.[38] The court rejected this argument for two reasons. First, even if OG&E's customers used only 22% of the capacity of the line through 2020, the landowners had not presented any evidence that the remaining 78% capacity would actually be used by out-of-state consumers, or that OG&E would not use most of the line capacity over the effective life of the project, which was estimated to be fifty to sixty years. Second, the court found that the "primary intended beneficiaries" of the line were in fact the customers of OG&E.[39] The court specifically found that the *Lowery* decision did not require that 51% or more of the electricity transmitted through the project lines had to be used by the Oklahoma public in order to satisfy the primary beneficiary test. Rather, the court considers all the factors in the case to determine the primary intended beneficiaries.

Second, the landowners argued that the project was not a public purpose because, while OG&E was constructing the transmission line project and is the owner of it, the SPP will control it and could actually deny OG&E the right to use the power lines. The court first noted that, in prior cases involving electrical power and so long as the ultimate use was a public use, the authority to condemn has been approved even where the condemnation suit was brought by an intermediate agency that would not have control over the facilities. In the present suit, the court found that nothing in the record suggested that OG&E would not have access or that OG&E's condemnation suit was a pretext for using its utility status to benefit out-of-state entities. The mere fact that out-of-state entities may also benefit does not preclude OG&E's condemnation action.

VI. Corporation Commission Related Cases

A. *Court determines that the Corporation Commission had jurisdiction and authority to determine if applicant in force-pooling action was a party to an operating agreement with the respondent that would preclude the compulsory pooling action.*

The case of *NBI Services, Inc. v. Corporation Commission* involved a force pooling order of the Commission that was issued on July 22, 2009, with Davis Operating Co. being the applicant.[40] NBI thereafter filed a Motion to Re-Open, Motion to Stay and to Vacate the pooling order. In its motion, NBI stated that it had new evidence that affected the standing of Davis to file its pooling application and affected the

38. *See* Bd. of Cnty. Comm'rs v. Lowery, 136 P.3d 639, 645–46 (Okla. 2006).
39. *Beecher*, 256 P.3d at 1012.
40. NBI Servs., Inc. v. Corp. Comm'n, 241 P.3d 685, 688 (Okla. Civ. App. 2010).

jurisdiction of the Commission to hear the case. The new evidence was a 1981 Operating Agreement.

After a hearing on the motion, the ALJ recommended that the motion be granted on the grounds that the 1981 Operating Agreement, if valid, would invalidate the Corporation Commission's authority to have entered the pooling order. However, the appellate referee determined that the ALJ's recommendation should be overturned and that the motion should be denied.

The Corporation Commission adopted the recommendation of the appellate referee that NBI's motion be denied on the basis that the Commission did not have jurisdiction to make factual findings regarding the 1981 Operating Agreement in order to determine whether it invalidated the Commission's authority to have entered the pooling order. NBI appealed.

On appeal, NBI argued that Davis was improperly attempting to force pool a unit, where all the interest owners were subject to an Operating Agreement, in an effort to obtain better terms for itself than Davis would be entitled to under the JOA. In reaching its decision reversing the Commission's denial of NBI's Motion to Re-Open, Motion to Stay and to Vacate, the court of appeals:

> observed that the Corporation Commission lacks jurisdiction over private rights. It found that the applicant in a force pooling proceeding must establish that there is no agreement among the owners of the oil and gas rights for the development of the property.

The court stated that "[t]he [Corporation Commission], when exercising its adjudicative authority, is the functional analogue of a court of record with dispute resolution authority conferred by Constitutional grant."[41] As a result, although the Commission does not have the authority to adjudicate private rights disputes, it does have the authority of a court of record to receive evidence and make fact findings to determine whether the dispute is one involving private rights or public rights. The court noted that "the OCC has the power to receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit."[42]

Because the Commission did not determine whether, or to what extent, the 1981 Operating Agreement affected its jurisdiction to issue the pooling order, the court of appeals reversed the order denying NBI's motion and remanded the case to the Commission to reconsider NBI's motion and the force pooling order in light of the 1981 Operating Agreement, and to determine whether, and to what extent, the 1981 Operating Agreement affected the pooling order.

41. *Id.* at 690.
42. *Id.* at 691.

B. *Court reverses trial court's finding that the lawsuit should be dismissed on grounds that the plaintiffs' sole recourse on its claims would have been through an appeal of the Commission's force pooling order.*

In *GrayHorse Energy LLC v. Crawley Petroleum Co.*, the subject well had been productive from the Sycamore and Hunton formations as of May 28, 2008.[43] On that date, Crawley (the operator of the well) proposed to GrayHorse and the other working interest owners that the well be recompleted in the Third Deese (Gibson Sand) formation. GrayHorse declined to participate. Crawley then applied to the Corporation Commission for an order pooling the interests of the owners in the Third Deese (Gibson Sand) common source of supply. The Commission issued its pooling order, and Crawley proceeded to recomplete the well after GrayHorse declined to participate in those efforts as a working interest owner.

GrayHorse thereafter filed a lawsuit against Crawley alleging that Crawley had converted the casing, pipe, and wellbore to its own use in recompleting the well, and that Crawley had caused damage to GrayHorse. The trial court ruled that because the Corporation Commission "has sole authority to adjust the rights and equities and protect correlative rights of all interested parties in proceedings for the issuance of a pooling order."[44] GrayHorse's sole recourse was a timely appeal of the force pooling order. The trial court granted Crawley's motion to dismiss the suit for lack of subject matter jurisdiction. GrayHorse appealed.

In reversing the decision of the trial court, the court of appeals reached the following findings and rulings, among others:

After reviewing a series of prior Oklahoma decisions that have discussed the jurisdictional dividing line between the district courts and the Commission, the court noted that the Oklahoma Supreme Court has previously held that questions in an action concerning the relationship of private parties, their duties, rights and obligations, and the existence of liability for the breach of such duties are matters particularly within the province of the district court.[45]

Crawley did not dispute that it was using the casing, pipe, and wellbore. However, Crawley asserted that GrayHorse should have asserted its claims for compensation in the pooling proceeding so that the Commission could have considered that claim in adjusting the equities, as well as considering GrayHorse's claim that it had suffered

43. GrayHorse Energy LLC v. Crawley Petroleum Corp., 245 P.3d 1249, 1252 (Okla. Civ. App. 2010).

44. *Id.* at 1253 (citing Woods Petroleum Corp. v. Sledge, 632 P.2d 393, 396 (Okla. 1981)).

45. *Id.* at 1255.

economic injury because the well had ceased producing, albeit temporarily, from the Sycamore and Hunton formations.[46]

The court stated that Crawley appeared to be basing its arguments in part on the primary jurisdiction doctrine, which would allow certain private rights disputes to be resolved by the Commission if the claim involved issues that fall within the scope of the regulatory scheme of the Commission and, thus, involve its expertise. However, the court of appeals found that Oklahoma has not adopted the primary jurisdiction doctrine, and has instead maintained the public rights/private rights distinction.[47]

The court found that, because GrayHorse sought a remedy only for the alleged infringement of its private, common law rights, the Commission had no jurisdiction over the dispute. In fact, the court found that GrayHorse's claims were within the jurisdiction of the district courts to resolve and, if appropriate, award money damages.[48]

Finding that the trial court had subject matter jurisdiction over the suit for the alleged infringement of GrayHorse's common law rights, the court reversed and remanded for further proceedings.

C. *Court adjudicates claim of entitlement of working interest owner who was overlooked and omitted from original force-pooling proceedings, and then pooled in a later proceeding, to elect to share in the force-pooled acreage derived from the prior proceeding to which it was not a party.*

The case of *Woolley v. Corporation Commission* involved an appeal by Woolley of the *third* order of the Oklahoma Corporation Commission force pooling the McAlester and Hunton common sources of supply underlying a forty-acre tract of land.[49] The key elements of the factual backdrop were as follows: In May 2008, Pontotoc completed the drilling of the Woolley #1-23 well to a depth of 4,100 feet to test the Hunton. Upon finding that the Hunton was dry, Pontotoc completed the well at 1,631 feet in the McAlester.

The Commission entered its first force pooling order on July 21, 2008, pooling both the McAlester and Hunton. Pontotoc did not name Woolley as a respondent because its title information did not indicate that Woolley owned any interest in the unit.

The Commission entered a second pooling order in March 2009 for the purpose of adding World Export Services as a respondent after Pontotoc's updated title information showed that it owned working interest rights in the unit.

46. *Id.* at 1256.
47. *Id.*
48. *Id.* at 1257.
49. Woolley v. Corp. Comm'n, 261 P.3d 1181, 1182 (Okla. Civ. App. 2011).

After receiving a further revised title opinion, showing that Woolley owned an interest in the same unit, Pontotoc filed an application for a third force pooling order naming Woolley as a respondent. The court observed:

> Woolley protested the application and moved to dismiss the application as to the Hunton. The parties tried the issues before an administrative law judge (ALJ) on October 7, 2009. The ALJ's report recommended (1) granting the application, (2) denying the motion to dismiss the Hunton formation, (3) adopting the cost allocation method proposed by Pontotoc, and (4) granting Woolley's request to share in force-pooled acreage.[50]

The appellate referee affirmed the ALJ's report, but added a right on the part of Woolley to make a casing point election. The Corporation Commission adopted the recommendations of the appellate referee except as follows:

> [Woolley's] request to share in force pooled acreage covered by prior Orders of this Commission is denied because Protestants were not a party to the original pooling. However, Protestants are allowed to share in any force pooled acreage available from subsequent wells. [Woolley's] Motion to Dismiss the Hunton common source of supply is denied.[51]

Woolley appealed.

In support of Woolley's contention that the Commission erred in refusing to dismiss the pooling application as to the Hunton common source of supply, she urged that the pooling statute[52] does not contemplate the pooling of a known dry hole. Woolley further asserted that Pontotoc was trying to put Woolley in the position of either (a) being saddled with her share of the cost of drilling the prior dry hole to the Hunton or, alternatively, (b) electing to have relinquished her Hunton participation rights as to future wells. She argued that Pontotoc abandoned the Hunton as a dry hole, with the result that it lost its right under the prior pooling orders as to that common source of supply. The court of appeals found that a force pooling order pools the working interests in the entire unit as to the named formations, and not just a single well, and remains in effect until the order ceases by its own terms or until the last well is plugged and abandoned. The court affirmed the refusal to dismiss the application as to the Hunton common source of supply.

Woolley next asserted that the allocation of well costs for the previously drilled well between the McAlester and Hunton common sources of supply was inequitable and lacked evidentiary support. In particular, the Commission had approved Pontotoc's use of the "ex-

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50. *Id.*

51. *Id.* at 1183.

52. *Id.* (citing OKLA. STAT. ANN. tit. 52, § 87.1(e) (West Supp. 2012)).

ploratory tail" method, which allocated to the deeper Hunton only those costs associated with drilling from the bottom of the McAlester to the Hunton. Woolley argued that this approach inequitably gave those participating in the Hunton a "free ride" through the McAlester. Pontotoc's accounting witness claimed that the publication of the Council of Petroleum Accountants Societies ("COPAS") titled "Well Costs - Allocations and Adjustments, Accounting Guideline AG-1 (April 2003), recommended the exploratory tail method for multiple completion wells. The court rejected Woolley's complaints and held that the Commission was within its authority to determine the allocation of the well costs.

Finally, Woolley argued that the Commission erred in refusing to allow Woolley to participate in the force-pooled acreage obtained under the two prior force pooling orders in which Woolley was not named as a respondent. Woolley argued that the effect of the Commission's ruling was to punish her for Pontotoc's errors in its early conclusions as to ownership within the unit and to allow Pontotoc to profit from its own mistake. The court appeared to agree. It held that Pontotoc could not equitably claim the right to Woolley's share of the force-pooled acreage under the original pooling order by virtue of Pontotoc's own mistake, and that the Commission erred as a matter of law in refusing to allow Woolley to share in that force-pooled acreage upon her election to participate under the third pooling order. The court reversed the Commission's order to that extent but otherwise affirmed the order.

D. *Court addresses complaint by shallow depth owner that it should not be required to elect under pooling order covering deeper depths in which it owned no interest or, alternatively, forfeit rights in the shallower depths.*

In *Sundown Energy, L.P. v. Harding & Shelton, Inc.*, the Court was presented with a dispute that arose under certain force pooling orders.[53] In November of 1985, the Commission issued a force pooling order that pooled nine common sources of supply that were the shallower formations underlying the subject 640-acre section of land ("Unit 1"). Harding & Shelton later acquired leasehold interests in 480 acres in unpooled formations that were deeper than those pooled by the Unit 1 order. In 2004, Harding & Shelton filed an application seeking to clarify the rights and interests of the mineral owners in the nine common sources of supply covered by the prior Unit 1 force-pooling order. Harding & Shelton also sought to pool certain deeper formations not covered by the Unit 1 pooling order.

53. Sundown Energy, L.P. v. Harding & Shelton, Inc., 245 P.3d 1226, 1228–29 (Okla. 2010).

The Commission entered a pooling order to force pooling the deeper formations ("Unit 2"), exclusive of the existing Rounds No. 1-20 well. However, the Commission denied Harding & Shelton's request to pool the shallower Unit 1 formations along with the deeper Unit 2 formations since the Commission found that such action would amount to an impermissible collateral attack on the original pooling order for Unit 1. As a result, Harding & Shelton filed an application asking the Commission to determine that the 1985 pooling order covering the shallower formations was still in effect, and clarifying the order in certain respects.

Sundown appealed the resulting order of the Commission and alleged that the Administrative Law Judge erred in finding "that any party who participated in the initial unit well (the Rounds No. 1-20 well) . . . must now participate in all subsequently proposed wells or surrender its unit working interest except as to the borehole of the initial unit well and the borehole of any subsequently drilled well in which it participates."[54] Sundown owned a working interest in the shallower formations of Unit 1 but did not own any working interest in the deeper pooled formations of Unit 2. Harding & Shelton owned interests in both Unit 1 and Unit 2.

The court of appeals was concerned about the prospect that the Commission's order would require Sundown to put up well costs for a deeper test well where Sundown owned only rights in the shallower formations and that, if the deep formations were developed first, Sundown might not be able to recoup its investment until years later when the well might be recompleted in uphole formations. The court of appeals concluded that the Commission erred in requiring the shallow depth owners to either participate in drilling operations in the deeper Unit 2 formations or, in the alternative, forfeit their unit rights under the 1985 pooling order.

The Oklahoma Supreme Court granted certiorari and vacated the court of appeals' decision. In reaching that ruling, the court observed in part:

> [the shallow rights owners] were allowed to participate in any subsequent wells based upon the COPAS cost allocation method of fixing their proportionate cost of participation. Although production might be made from the deeper pooled common sources of supply, it is just as possible that production might be taken from the upper pooled source of supply in which Sundown holds an interest. Sundown, under the cost allocation method, would only be responsible for their proportionate cost of production and if they elected to participate, would reap the benefits of the exploration should there be

54. Sundown Energy, L.P. v. Harding & Shelton, Inc., No. 102,248, at ¶ 10 (Okla. Civ. App. Aug. 29, 2006), *available at* http://oklegal.onenet.net/oklegal-cgi/ifetch?okca+22935214264819+F.

> production from pooled sources of supply in which they hold an interest . . . .[55]

The Court concluded that the Commission's order was supported by competent and substantial evidence, and it affirmed the order.

55. *Sundown Energy*, 245 P.3d at 1232.