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Andrea Frenn

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Oil and Gas, Natural Resources, and Energy Journal

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ARKANSAS



*Andreah Frenn**

I. Introduction

In Arkansas, there were few developments in oil and gas law during the period of August 1, 2018 to July 31, 2019. The Arkansas General Assembly met during this time; however, matters concerning oil and gas primarily dealt

* Andreah is an Associate at Steptoe and Johnson PLLC, where her work includes abstracting for oil and gas title opinions, preparing easements for oil and gas clients, and drafting title opinions for drilling operations to commence. Andrea earned her J.D. from Duquesne University. Andrea is licensed in Ohio and West Virginia. Isabella Anderson, a Summer Associate and current 2L at the West Virginia University College of Law assisted in writing this article.

with funding the Arkansas Oil and Gas Commission and were not substantive in nature. In the courts, oil and gas litigation primarily dealt with procedural updates in cases rather than precedential impacts on state law.

II. Statutory Law

There were not any notable statutory developments in Arkansas during the time period of August 1, 2018 to July 31, 2019.

III. Common Law

A. Abrams v. SEECO, Inc.

In *Abrams v. SEECO, Inc.*, the United States District Court for the Eastern District of Arkansas granted SEECO's motion to dismiss "claims barred by res judicata, the unjust enrichment claim against SEECO, the claim brought under Arkansas Code Annotated section 15-72-305, and the claim for treble damages."¹ The plaintiffs in *Abrams* leased their mineral interests in the Fayetteville Shale to SEECO to operate wells on the land, and subsequently alleged that SEECO and its affiliates underpaid royalties under the parties' lease agreements.

Plaintiffs' underpayment and gathering claims were precluded in *Abrams* because they were similar to claims brought in two previously litigated cases, *Lipsey v. SEECO, Inc.* and *Smith v. SEECO, Inc.*² The Court dismissed the unjust enrichment claims against SEECO because the analysis applied to underpayment claims in *Lipsey* also applies to gathering claims.³ Further, the claim brought under Arkansas Code Annotated Section 15-72-305 was dismissed because there is no private cause of action available under this statute.⁴ Finally, the court dismissed the claim for treble damages because the plaintiffs "failed to plead that SEECO has a contract with a pipeline company for 'the sale of gas or oil.'"⁵

The motion to dismiss the unjust enrichment claims against the other defendants named in the lawsuit was denied because those defendants "were

1. No. 4:18-CV-00575 BSM, 2019 WL 2150406 (E.D. Ark. Jan. 16, 2019).

2. See *Lipsey v. SEECO, Inc.*, No. 4:16-CV-00149 JLH, 2017 WL 2662977 (E.D. Ark. June 20, 2017); *Smith v. SEECO, Inc.*, No. 4:14-CV-00435 BSM, 2017 WL 4638585 (E.D. Ark. May 24, 2017).

3. *Lipsey v. SEECO, Inc.*, 2017 WL 2662977, at *8.

4. *Id.* at *12; See ARK. CODE ANN. § 15-72-305 (West 2019).

5. *Abrams*, 2019 WL 2150406, at *4 (citing ARK. CODE ANN. § 15-74-708(b) (LexisAdvance through all legislation of the 2019 Reg. Sess., excluding final official corrections and edits)).

not parties to the oil and gas leases at issue,” and the plaintiffs alleged facts to support the unjust enrichment claim against those defendants. This case is still being actively litigated in the district court.

B. Arkansas Oil & Gas Commission v. Hurd

The Supreme Court of Arkansas recently affirmed a circuit court decision granting mineral interest owners’ motion for class certification.⁶ In *Stephens Production Co. v. Mainer*, owners of mineral interests in land entered into natural gas leases with Stephens Production Company which allowed the company to explore, drill, produce and sell hydrocarbons from the leased property.⁷ The mineral interest owners asserted claims for breach of contract, violation of the prudent operator standard, conversion, fraud, and violation of the Arkansas Deceptive Trade Practices Act.⁸ The circuit court granted a motion for class certification and the supreme court affirmed, holding that the trial court acted within its discretion in concluding that the proposed class satisfied the numerosity requirement for class certification, and that the proposed class also satisfied the superiority requirement.⁹

In *Arkansas Oil & Gas Commission v. Hurd*, the supreme court reversed the circuit court’s dismissal of an administrative appeal from final orders of the Arkansas Oil and Gas Commission (“AOGC”), holding that the circuit “erred in concluding that the doctrine of sovereign immunity barred its consideration of the petition for review of the AOGC orders.”¹⁰ The AOGC had granted an operator’s request to reduce the royalty rate agreed to by mineral interest lessors and lessees. Although the AOGC was a named defendant in plaintiffs’ petition for review, the supreme court found that sovereign immunity did not apply because the AOGC’s “role in the proceeding [was] that of a tribunal or quasi-judicial decision-maker rather than a real party in interest.”¹¹ In addition, the court noted that plaintiffs had “alleged no additional claims against the AOGC or any other state actor.”¹²

6. *Stephens Prod. Co. v. Mainer*, 2019 Ark. 118, 571 S.W.3d 905 (Ark. 2019).

7. *Id.* at 907.

8. *Id.* at 907-909.

9. *Id.*

10. *Ark. Oil & Gas Comm’n v. Hurd*, 2018 Ark. 397, 564 S.W.3d 248 (Ark. 2018).

11. *Id.* at 255.

12. *Id.*

IV. Conclusion

Since the height of Fayetteville Shale boom, Arkansas has seen a decrease in new litigation and legislation impacting the oil and gas industry. Regardless of the lack of recent changes in the law, it will be interesting to see where the industry stands at the end of the next survey period.