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I. Legislative and Regulatory Developments

This year's developments included the State of Oklahoma amending the Oil and Gas Owner's Lien Act of 2010 and the Oklahoma Corporation Commission adopting final versions of several rules, including how the Commission conducts hearings.

A. State Legislative Developments

1. Oil and Gas Owner's Lien Act

Senate Bill 632, modifying the Oil and Gas Owners' Lien Act of 2010, is effective as of November 1, 2021. The Act amends 52 O.S. 2011, Sections 549.2 and 549.3 to provide for an oil and gas lien to secure the obligation of any person to pay any proceeds for the acquisition of oil and gas rights. The Act amends the illustrations of oil and gas rights covered by the Act to include the following:

> (3) proceeds owed for oil and gas drilling and development,
>
> (4) proceeds from the acquisition of oil and gas rights including but not limited to a lease bonus or pooling bonus,
>
> (5) proceeds from an unfulfilled contract or agreement for the purchase of mineral rights,[1]

2. Unclaimed Property Recovery Fees

House Bill 2226, effective November 1, 2021, amends 60 O.S. 2011, Section 674.1, related to limitations on service fees for recovering unclaimed property, to provide that "[i]n the event that the claimant of such funds or property is deceased and did not personally agree to the fee in writing, a fee for recovery can only be collected from each identified heir, devisee or legatee that has affirmatively agreed to that fee in writing" as it relates to the unclaimed funds or property.[2]

3. Approval of Unitization Plan; Required Interest

House Bill 2029, approved and effective on May 24, 2021, amends 52 O.S. 2011, Section 287.5, relating to ratification or approval of a unitization plan by lessees and owners, to remove the exclusion of royalty interest owned by lessees, or subsidiaries of the lessee, from counting towards the

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1. 2021 Okla. Sess. Law Serv. ch. 93 (West).
2. 2021 Okla. Sess. Law Serv. ch. 326 (West).

requisite sixty three percent (63%) of royalty ownership needed to ratify or approve a unitization plan.[3]

4. Plugging Fund and Production Tax Sunset Extensions

Senate Bill 1059 was passed to amend 17 O.S. Supp. 2020, Section 180.10, related to the Corporation Commission Plugging Fund, to extend the current law through June 30, 2026. Additionally, the Act amends 68 O.S. Supp. 2020, Sections 1101, 1102 and 1103 to extend the sunset date for the current excise and gross production taxes on petroleum oil and natural gas and/or casinghead gas and the apportionment of such taxes from 2021 to June 30, 2026. The Act allows the current tax rates and the current apportionment of those taxes to remain in place until 2026.[4]

5. Oil and Gas Industry Boycotts

On May 25, 2021, the Senate adopted a concurrent resolution relating to the oil and gas industry, 2021 OK H.C.R. 1011, declaring that "the oil and gas industry is a vital part of the economy" of Oklahoma and that "those companies that do business by and through the state . . . should not boycott the oil and gas industry." The resolution declares that "the state should not enter into a contract with a company unless the company submits a written certification that [it] is not currently engaged in a boycott . . . of the oil and gas industry" and "should not adopt a procurement, investment or other policy that has the effect of inducing or requiring" a boycott of the oil and gas industry.[5]

B. State Regulatory Developments

1. Regulation Updates

On September 1, 2020, the Oklahoma Corporation Commission published various permanent final adoptions of rules, effective October 1, 2020, as set forth in 75 O.S. Sections 250.3(5) and 308(E) including: rules to update, streamline and clarify the Oil and Gas Conservation rules; rules to update, streamline and clarify existing rules and establish new rules concerning the Commission's Rules of Practice, including but not limited to general clean up, providing consistency between certain provisions, clarifying how confidential information is to be provided to the Commission, addressing procedures for telephone and videoconference

3. 2021 Okla. Sess. Law Serv. ch. 501 (West).
4. 2021 Okla. Sess. Law Serv. ch. 497 (West).
5. 2021 Okla. Sess. Law Serv. ch. 1011 (West).

participation during hearings and allowing electronic signatures of Commissioners in certain documents; rules to clarify definitions related to Aboveground Storage Tanks; rules to update references to the Federal Pipeline Safety Regulations; rules to incorporate statutory changes passed by the Legislature in 2019 concerning the definition of "Excavation" and relating to the One-Call System; and rules to clarify the Commission's role in enforcing the Underground Natural Storage Facility Act.[6]

II. Judicial Developments

This year Oklahoma state courts examined when an overriding royalty interest owner should know there is a potential cloud on its interest, and when operations off-unit can maintain a lease. Also, the federal court for the Western District of Oklahoma tackled how Oklahoma Corporation Commission orders affect a pooling provision in a lease and when emissions from operating a well may constitute a trespass.

A. Supreme Court Cases

White Star Petroleum, LLC v. MUFG Union Bank, N.A., 2020 OK 89, 480 P.3d 887

A federal bankruptcy court certified two questions to the Oklahoma Supreme Court. First, are "trust funds" created by Title 42 O.S. §144.2 limited to obligations due to non-operator joint working interest owners, or can they include payments due to mechanic's and materialmen's lien holders? Second, does the Oil and Gas Owners' Lien Act of 2010 grant working interest owners a lien on well proceeds superior to claims asserted by mechanic's and materialmen's lien holders?[7]

White Star Petroleum, LLC ("Plaintiff") operated oil and gas wells across Oklahoma. These operations were governed either by joint operating agreements or pooling orders issued by the Oklahoma Corporation Commission.[8] Also, Plaintiff and other operators entered into drilling and reworking contracts with third-party service providers, and those costs were divided between the working interest owners proportionally. Usually, the operator would bear these costs up front, and

6. 37 Okla. Reg. 1082, 1121, 1126, 1143 (Sept. 1, 2020).

7. *White Star Petroleum, LLC v. MUFG Union Bank, N.A.*, 2020 OK 89, ¶ 1, 480 P.3d 887.

8. *Id.* ¶ 2.

then the other owners would reimburse the operator through Joint-Interest Billing Payments ("JIBs").[9]

Plaintiff filed for bankruptcy, and the Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Court") approved the sale of almost all of Plaintiff's assets to Contango Oil & Gas Company in 2019.[10] During those proceedings, "78 unpaid vendors filed adversary proceedings seeking adjudication of statutory lien claims."[11] Plaintiff responded by initiating its own adversary proceedings, seeking adjudication of the priority and validity of 2,000 mechanic's and materialmen's liens asserted by those unpaid vendors. Also, Plaintiff asked the Bankruptcy Court to force several first purchasers of oil and gas to pay them about $2,000,000, which was being held in suspense after those purchasers received lien notices from the unpaid vendors. To resolve Plaintiff's adversary proceedings, the Bankruptcy Court certified the questions to the Oklahoma Supreme Court.[12]

The bankruptcy court presented this first question to the Court: "Are the 'trust funds' created by Title 42 O.S. §144.2, entitled 'Creation and Appropriation of Trust Funds for Payment of Lienable Claims,' limited to obligations due non-operator joint working interest owners, or do such funds include payments due holders of mechanic's and materialmen's liens arising under and perfected by Title 42 O.S. §144?"[13] The Court reworded the question as follows: "Whether the funds held in trust pursuant to Title 42 O.S. §144.2 for payment of lienable claims created by Title 42 O.S. §144 are limited to joint-interest billing payments received by operators for services rendered by the lienholders?"[14] In other words, can those claims be paid out of revenue from sources other than JIBs?

Plaintiff argued Title 42 O.S. §144.2 only covers obligations operators incur with third-parties under drilling and reworking contracts, and since §144.2(A) is limited to amounts due under those contracts, "the only funds which must be held in trust to satisfy these obligations are JIBs."[15] The Court responded that it found no such limitations in the statute. §144.2(A) applies to "all lienable claims," and not just those incurred pursuant to drilling and reworking contracts.[16] Also, the Court found §144.2(A) does

9. *Id.* ¶ 3.
10. *Id.* ¶¶ 5–6.
11. *Id.* ¶ 6.
12. *Id.*.
13. *Id.* ¶ 9.
14. *Id.* ¶ 10.
15. *Id.* ¶ 13.
16. *Id.* ¶ 18.

not reference any specific funds, and does not limit the sources of revenue subject to the trust funds to just JIBs.[17]

The bankruptcy court presented this second question to the Court: "Does the Oil and Gas Owner's Lien Act of 2010, Title 52 O.S. §549.1 et seq., grant an operator and non-operator working interest owners a lien in proceeds from purchasers of oil and gas which is prior and superior to any claim of the holder of a mechanic's and materialmen's lien asserted under Title 42 O.S. §144?"[18] Plaintiff noted §549.7 states "'an oil and gas lien is a lien that takes priority over any other lien, whether arising by contract, law, equity or otherwise, or any security interest.'"[19] Plaintiff claims this language means its own liens and those of other working interest owners are superior to mechanic's and materialmen's liens.[20]

The Court responded that the Oil and Gas Owner's Lien Act defines an interest owner as "'a person owning an interest of any kind of nature in *oil and gas rights* before the acquisition thereof by a first purchaser.'"[21] And "oil and gas rights" include a "mortgage lien or security interest," including in proceeds from the sale of oil and gas.[22] Therefore, the Court reasoned the statute provides all vendors with a lien on the leasehold on which they performed work, and the sale proceeds as well, putting holders of mechanic's and materialmen's liens on par with working interest owners.[23]

Claude C. Arnold Non-Operated Royalty Interest Properties v. Cabot Oil & Gas Corporation, 2021 OK 4, 485 P.3d 817

This case centered on when an owner of an overriding royalty interest should have known of the existence of a cloud on its interest. The Oklahoma Supreme Court ruled subsequently recorded leases do not necessarily provide notice of an adverse interest.[24]

Arnold Petroleum, Inc. ("Arnold"), Plaintiff's predecessor in title, obtained six oil and gas leases in Beaver County in 1973.[25] Each lease included the following unusual clause: "Lessee shall not be obligated to release any formation, horizon, or zone, the production from which would

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17. *Id.* ¶ 19.
18. *Id.* ¶ 1.
19. *Id.* ¶ 24.
20. *Id.*
21. *Id.* ¶ 25.
22. *Id.*
23. *Id.*
24. *Claude C. Arnold Non-Operated Royalty Int. Props. v. Cabot Oil & Gas Corp.*, 2021 OK 4, 485 P.3d 817.
25. *Id.* ¶ 3.

conflict with any existing producing horizon, formation or zone."[26] In other words, if Lessee produced from one formation, and production from another formation would interfere with production from the first formation, then Lessee did not have to release the second formation.

By 1974, Arnold had assigned all six leases and reserved an overriding royalty interest. Harold Courson, Defendant's predecessor in title, completed two vertical wells in the Chester formation that have continuously produced since the mid-1970s, and Arnold has continuously received payments for its overriding royalty interest in those wells.[27]

The primary and extended terms of the leases expired in 1981, and Courson obtained new leases covering the same lands in 1984. The 1984 leases were not limited to any specific formations, and Arnold did not know of these leases until 1999, despite them being recorded in Beaver County in 1984.[28]

In 1999, Courson notified Arnold about an additional well completed in the Chester formation pursuant to the 1984 leases. Arnold reached out to find out why it was not receiving an override on this new well, and Courson explained the 1984 leases only covered deep rights, being the formations that had expired under the 1973 leases.[29]

In 2011, Courson assigned all of the leases to Defendant, which drilled horizontal wells in the Marmaton formation, which is adjacent to the Chester formation where the original vertical wells were producing. Defendant's wells began producing in 2012, and Arnold requested payment on these wells. Arnold argued the 1973 leases still covered the Marmaton formation because of the exception clause in those leases. Arnold claimed the Marmaton was capable of production, but production from the Chester formation prevented operators from also producing from the Marmaton. In Arnold's opinion, this conflict meant the 1973 leases still covered the Chester and Marmaton formations due to the lease provision concerning production from neighboring formations.[30]

Defendant rejected Arnold's claim, leading to this lawsuit. Arnold sought to quiet title to its overriding royalty interest as to the Marmaton. Defendant responded that Arnold's claims were barred by a 15-year statute of limitations which began to run in 1984 when the new leases were executed and recorded in Beaver County. The District Court ruled for

26. *Id.* ¶ 4.
27. *Id.* ¶ 5.
28. *Id.* ¶ 6.
29. *Id.*
30. *Id.* ¶ 7.

Arnold, holding the statute of limitations began to run in July 2012, when Arnold contacted Defendant to request payment.[31] Defendant appealed and the Court of Civil Appeals reversed the District Court, holding the statute of limitations began to run in 1984, and Arnold needed to sue by 1999 to preserve its rights to the Marmaton.[32]

The Oklahoma Supreme Court explained the main issue: "when did Arnold's cause of action arise?"[33] Usually, a cause of action accrues when an injury occurs, and the Court held Arnold was not injured until July 2012 when it first requested payment from Defendant's horizontal wells drilled in the Marmaton formation.[34]

Defendant argued the 1984 leases put Arnold on notice of an interest adverse to its overriding royalty interest. The Court countered that the recording of the 1984 leases "did not *reasonably* cast doubt on the viability of Arnold's interest in the as-yet-undeveloped Marmaton formation."[35]

Evidence at trial indicated production from the Marmaton would have conflicted with the existing production from the Chester formation, allowing both formations to be held by production from the Chester due to the exception clause in the 1973 leases.[36] The 1984 leases did not reference any specific formations and they did not alter any of the terms in the 1973 leases. Therefore, the Court noted the 1984 leases did not give notice that Courson considered the Marmaton to be released from the 1973 leases. In 1999, when Arnold contacted Courson, neither party even mentioned the Marmaton, let alone suggested it had been released from the 1973 leases.[37]

The Court explained that from 1984 to 2012, nothing alerted Arnold to an adverse claim to its interest in the Marmaton formation.[38] Since the language in the 1973 leases allowed production from the Chester to perpetuate the leases as to the Marmaton as well, Arnold's interest in the Marmaton was not "injured" until 2012, when Defendant began producing from the Marmaton. Therefore, Arnold's cause of action accrued in 2012, not in 1984. Arnold filed a timely lawsuit, and the Court affirmed the District Court's judgment.[39]

31. *Id.* ¶ 8.
32. *Id.* ¶ 9.
33. *Id.* ¶ 12.
34. *Id.*
35. *Id.* ¶ 13 (emphasis in original).
36. *Id.* ¶ 14.
37. *Id.* ¶ 16.
38. *Id.*
39. *Id.* ¶ 19.

Highpointe Energy v. Viersen, 2021 OK 32, 489 P.3d 28

This case examined two competing chains of title emanating from a sheriff's deed and bankruptcy proceedings. The Supreme Court of Oklahoma held the purchasers from the sheriff's deed had superior title because the purchasers from the bankruptcy proceeding bought their interest subject to the mortgage foreclosure that led to the sheriff's sale.[40]

Highpointe Energy ("Plaintiff") filed a quiet title action against Viersen ("Defendant") concerning mineral interests in McClain County. The District Court ruled Plaintiff owned the superior interest, and Defendant appealed.[41]

In 1923, Carry Hughes owned the 90 net mineral acres in question. She mortgaged her interest that same year to Pittsburg Mortgage Investment Company, which assigned the mortgage to The Women's Home Missionary Society of the Methodist Episcopal Church (the "Missionary"). That assignment was recorded in 1925.[42]

In 1927, Hughes sold portions of her mineral interest to various parties, including Cal-Cul Oil Company ("Cal-Cul").[43] In 1933, the United States District Court for the Eastern District of Oklahoma adjudged Cal-Cul bankrupt and appointed a bankruptcy trustee (the "Trustee"). In 1936, while the bankruptcy was still pending, Missionary initiated foreclosure proceedings in McClain County on the mineral interest subject to the 1923 mortgage. Missionary included as defendants/interest owners Hughes, Cal-Cul, and other individuals who had bought portions of the mineral interest from Hughes. The Trustee accepted service of the foreclosure action on behalf of Cal-Cul, but the Trustee never filed notice of the bankruptcy in McClain County.[44]

In 1937, the Trustee sold Cal-Cul's assets, including the mineral interest purchased from Hughes in 1927, and this interest eventually passed to Defendant (the "Viersen Chain").[45] In 1938, after the Trustee's deed had been recorded in McClain County, Missionary obtained title to the disputed mineral interest pursuant to a judgment in the foreclosure, and this interest eventually passed to Plaintiff (the "Missionary Chain").[46]

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40. *Highpointe Energy v. Viersen*, 2021 OK 32, 489 P.3d 28.
41. *Id.* ¶ 9.
42. *Id.* ¶ 2.
43. *Id.* ¶ 3.
44. *Id.* ¶ 4.
45. *Id.* ¶ 6.
46. *Id.* ¶ 7.

In 2019, Plaintiff and Defendant both filed competing quiet title actions, claiming their chain of title was superior.[47] The District Court ruled the Missionary Chain was superior because the foreclosure action gave notice to the Trustee, so the 1937 Trustee's deed was essentially made subject to the foreclosure proceedings.[48]

Referencing its 1963 decision in *Viersen v. Boettcher*,[49] a case also involving a bankruptcy proceeding and a foreclosure action, the Court set forth a few rules regarding a bankruptcy trustee's sale. First, the bankrupt's interest passes to the Trustee subject to any outstanding liens, "unless the bankruptcy sale is specifically free from liens."[50] Second, "[i]f the sale is not expressly ordered to be free and clear of liens," then the sale is subject to liens, and the Trustee is not considered an innocent purchaser for value.[51] And third, "a purchaser from a trustee takes no better title than the bankrupt or trustee had."[52]

Regarding a sheriff's sale, the Court stated a foreclosure action only affects interest owners who are made a party to the action. Since Viersen was not made a party to the foreclosure action in Viersen v. *Boettcher*, his interest was not foreclosed, and Boettcher did not acquire same. Since the foreclosure action did not include the bankruptcy trustee as a party, the foreclosure proceeding was void as to the trustee's interest. Therefore, in Viersen v. *Boettcher*, the Court held Viersen obtained superior title pursuant to the bankruptcy trustee's sale.[53]

In contrast, in this case, Missionary gave the Trustee notice of the foreclosure action and the Trustee did not file notice of the bankruptcy proceeding in the foreclosure.[54] The Court noted the Trustee's deed was filed before the Sheriff's deed, but the bankruptcy sale was not free of liens.[55] Pursuant to *Boettcher*, "the Trustee did not obtain any more rights to the disputed property than Cal-Cul had when it entered bankruptcy," and the Trustee's sale was subject to Missionary's mortgage.[56]

47. *Id.* ¶¶ 8–9at 31.
48. *Id.* ¶ 10.
49. 1963 OK 262, 387 P.2d 133.
50. Highpointe Energy, ¶ 15.
51. *Id.*
52. *Id.*
53. *Id.* ¶ 16.
54. *Id.* ¶ 20.
55. *Id.* ¶ 19.
56. *Id.*

Therefore, the Court held this case did not turn on notice.[57] Cal-Cul's interest was subject to the foreclosure, so the Trustee's interest was also subject to the foreclosure. Since the Trustee's sale was not made free of liens, any party who purchased the interest from the Trustee did so subject to the foreclosure. So when Missionary's mortgage was foreclosed upon, it wiped away any interest purchased from the Trustee. The Court affirmed the District Court and ruled in favor of Plaintiff.[58]

B. Appellate Activity

Lawson, Tr. of Harold Lawson Living Tr. v. Citizen Energy II, 2021 OK CIV APP 1, 481 P.3d 287

In a case of first impression, the Court of Civil Appeals held a lease could be maintained beyond its primary term by operations conducted off-unit.[59]

The June 2014 Lawson Lease covered 320 acres in Section 11, Township North, Range 6 West, Canadian County.[60] The Oklahoma Corporation Commission (the "OCC") established Section 11 as a 640 acre drilling and spacing unit and pooled Section 11.[61] On the same date, the OCC also pooled Section 14, the section immediately south of Section 11.[62] Then Citizen Energy II, LLC ("Operator") applied for a multi-unit horizontal well across Sections 11 and 14.[63] The OCC granted this application in May 2017.[64]

Operator commenced the McWhirter 1H-14-11 well from a surface location in the southeast quarter of Section 14, with the intention of drilling from south to north and eventually penetrating Section 11.[65] Operator began work on the McWhirter well on Section 14 before the primary term of the Lawson Lease expired, but the well did not penetrate Section 11 until after the Lawson Lease expired.[66]

57. *Id.* ¶ 24.
58. *Id.* ¶ 25.
59. *Lawson, Tr. of Harold Lawson Living Tr. v. Citizen Energy II*, 2021 OK CIV APP 1, ¶ 1, 481 P.3d 287.
60. *Id.* at ¶ 2.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.* at ¶ 3.
66. *Id.*

The Canadian County District Court granted summary judgment in favor of the Operator.[67] Lawson appealed and argued the operations on Section 14 did not extend the Lawson Lease into its secondary term because no operations existed on Section 11 itself, being the leased premises.[68]

The Lawson Lease states the lessee must "commence to drill a well…within the term of the lease…or on acreage pooled therewith."[69] Lawson argued the lease required Operator to physically enter the leased premises during the primary term.[70] Operator responded physical entry was not required, and that drilling in Section 14 extended the lease pursuant to the commencement clause.[71]

The court noted the Oklahoma Legislature's 2011 Shale Reservoir Development Act, which permitted multiunit horizontal wells, or a well completed in two or more units.[72] Specifically, the statute provides "[a] multi-unit horizontal well shall be treated as a well in each of the affected units and shall be subject to all of the rules otherwise applicable to any other well in any of the affected units."[73]

In its multiunit horizontal well application, Operator stated the Woodford and Mississippian common sources of supply underlie Sections 11 and 14.[74] Operator proposed to drill the well under both sections and requested the OCC to commingle production and allocate costs between each section.[75] The court explained that since Sections 11 and 14 are both "affected units," a well drilled in either unit is considered a well drilled in both units.[76] Therefore, the court held commencement activities in Section 14 are treated as commencement activities in Section 11, and the McWhirter well perpetuated the term of the Lawson lease.[77]

67. *Id.* at ¶ 4.
68. *Id.* at ¶ 7.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* ¶ 11.
73. *Id.* ¶ 13.
74. *Id.* at ¶ 14.
75. *Id.*
76. *Id.*
77. *Id.* at ¶ 15.

C. Federal Cases

Cline v. Sunoco, Inc. (R&M), 479 F.Supp.3d 1148 (E.D. Okla. 2020)

The Production Revenue Standards Act (the "PRSA") sets out when a well operator or first purchaser of oil and/or gas must pay royalty owners for proceeds from a well.[78] And if those payments are not made on time, the PRSA dictates how much interest must be paid on any late payments.[79] In this case, Plaintiff challenged Defendant's practice of not paying statutory interest on late payments.[80]

Perry Cline is the lead plaintiff in a class of owners with interests in oil wells in Oklahoma. Defendant buys oil from those wells and sells the oil.[81] Then Defendant pays the proceeds to the parties who own an interest in the wells pursuant to PRSA.[82] Plaintiff sued Defendant for failing to pay interest on late payments, also claiming Defendant committed fraud by not admitting to owing interest on such late payments.[83]

The United States District Court for the Eastern District of Oklahoma explained the questions at hand: Under the PRSA, does Defendant automatically owe statutory interest on late payments? Does interest continue to accrue if Defendant does not pay interest with the late payment? Is it fraud if Defendant does not disclose it owes interest? And how much does this Defendant owe in interest on late payments? In 2019, the Court found Defendant must automatically pay statutory interest with a late payment.[84]

The PRSA requires a first purchaser to pay proceeds to owners within six months from the date of first sale and within two months after the month of subsequent sales, subject to various exceptions.[85] Generally, the PRSA requires 12% interest to be added to all late payments.[86] However, if the interest owner does not have marketable title, the interest rate drops to 6%.[87]

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78. Cline v. Sunoco, Inc. (R&M), 479 F.Supp.3d 1148, 1157 (E.D. Okla. 2020).
79. *Id.*
80. *Id.* at 1148.
81. *Id.* at 1155.
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 1157.
86. *Id.* at 1157-1158.
87. *Id.*

Defendant processes payments for millions of owners, and it does not automatically pay interest on late payments.[88] Per its own policy, Defendant only pays interest when requested by the owner.[89] And when Defendant does pay interest, it only pays interest due "through the date [Defendant] paid the proceeds to the owner," as opposed to the date when the interest is actually paid.[90] Defendant argued the PRSA does not include a due date for interest on late payments.[91]

The Court largely relied on Plaintiff's expert to determine the amount of interest Defendant owed. Based on sale date, payment date, and a host of other data, the expert determined Defendant made more than 1.5 million late payments to about 53,000 class members.[92] Based on the 12% interest rate, Defendant owed almost $75,000,000 in interest.[93] Defendant argued some of those late payments were based on lack of marketable title, and therefore, the 6% interest rate should apply.[94]

The Court explained Defendant had the burden of proving it withheld payment due to issues with an owner's marketability.[95] The PRSA establishes the 6% interest rate as an exception to the 12% rate. The Court noted the class members are entitled to the proceeds and interest regardless, so they do not have the burden of proving marketability.[96] The Court framed "unmarketability" as an affirmative defense; therefore, the burden is on the Defendant.[97] To determine marketability, Defendant relied on its suspense codes, but it did not identify any owners who did not have marketable titles.[98] And even when paying proceeds to the owners, Defendant never raised the issue of marketability.[99] Ultimately, Defendant failed to meet its burden of proving any interest owners had unmarketable title, and the Court applied the 12% interest rate to every late payment.[100]

88. *Id.* at 1160.
89. *Id.*
90. *.Id.*
91. *Id.*
92. *Id.* at 1161.
93. *Id.*
94. *Id.* at 1162-1163.
95. *.Id.* at 1169.
96. *Id.* at 1171.
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.* at 1175.

Also, the Court held the PRSA allows for compound interest, paying interest on interest.[101]

Turning to late payments made to unclaimed property funds, Defendant argued late payments to the State of Oklahoma for unclaimed property should not be included in the total because it should not have to pay interest to unclaimed property funds.[102] Defendant claimed these owners were never injured because they did not know they were owed anything, let alone interest.[103] The Court ruled Defendant knew the identities of many of these owners, and the injury occurred the moment they were owed proceeds and did not receive them.[104] Paying the State is essentially "paying the owner or an agent or trustee on behalf of the owner."[105] The PRSA does not exempt unclaimed property funds from its timing requirements, and interest accrues until the date paid.[106] Therefore, the Court held Defendant owed interest on late payments to unclaimed property funds, and it owed interest through the date it pays those funds to the State.[107]

And regarding Plaintiff's fraud claim, the Court held Plaintiff did not prove fraud.[108] Plaintiff argued Defendant should have disclosed the interest owed to the owners.[109] Defendant noted it included check stubs with every royalty check, and those stubs contain all the information required by the PRSA.[110] The Court ruled Defendant did not have an additional duty to "inform interest owners that it withheld interest from a late payment."[111]

Finally, the Court discussed the damages awarded to Plaintiff. The Court found $75,000,000 in actual damages, the total put forth by Plaintiff's expert, to be reasonable based on the language of the PRSA and the expert's methodology.[112] Regarding punitive damages, Plaintiff sought twice the amount of the actual damages, or an amount equal to the actual damages.[113] The Court examined Oklahoma's punitive damages statute and

101. *Id.*
102. *Id.* at 1162.
103. *Id.* at 1172.
104. *Id.*
105. *Id.*.
106. *Id.* at 1174.
107. *Id.*
108. *Id.* at 1176.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.* at 1181.
113. *Id.* at 1179.

found Defendant's actions did not warrant double damages because Defendant did not act with malice, rather with a reckless disregard for Plaintiff's rights.[114] Therefore, the Court awarded Plaintiff $75,000,000 in punitive damages.[115]

Curtis Cory et al. v. Cimarex Energy Co., 2021 WL 1108596 (W.D. Okla. Mar. 23, 2021)

What happens if a pooling provision in a lease conflicts with an order from the Oklahoma Corporation Commission? *Cory v. Cimarex* details how a court resolves such a conflict.[116]

Cory ("Plaintiff") owned a mineral interest in an 80 acre tract out of Section 25, Township 15 North, Range 9 West, Kingfisher County, Oklahoma, subject to a 1977 lease now owned by Cimarex ("Defendant").[117] The lease included a pooling provision limiting units to 160 acres for oil wells and 640 acres for gas wells.[118]

In 2015, the Oklahoma Corporation Commission (the "OCC") entered Order No. 643680, establishing Section 25 as a 640 acre unit (the "Unit").[119] This Order found the Unit was "necessary to protect correlative rights, prevent…waste[,] and obtain the greatest ultimate recovery of oil and gas."[120] Then Defendant drilled a horizontal oil well called the Loretta 1-25H well (the "Loretta well").[121]

In 2020, Plaintiff sued Defendant for breach of contract, conversion, and declaratory judgment. In response, Defendant filed a motion to dismiss the case.[122]

Plaintiff claimed Defendant violated the lease's pooling provision by drilling the Loretta well.[123] Defendant argued the OCC order superseded the pooling provision, and the court agreed.[124] Defendant claimed the parties intended the pooling provision would "yield to any conflicting

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114. *Id.* at 1179-1180.
115. *Id.* at 1182.
116. *Curtis Cory et al. v. Cimarex Energy Co.*, 2021 WL 1108596 (W.D. Okla. Mar. 23, 2021).
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. *.Id.*
122. *.Id.*
123. *Id.* at 2.
124. *Id.*

unitization order issued by the OCC."[125] In support of this position, Defendant relied on two cases: *Hladik v. Lee* and *Oklahoma Natural Gas Company v. Long*.[126]

In *Hladik*, a lessee pooled ten separate tracts to create a 480 acre "declared" unit.[127] Afterwards, the OCC issued a spacing order creating a 160 acre "compulsory" unit within the larger 480 acre unit.[128] The parties disagreed on how to distribute royalties from gas production within the compulsory unit.[129] The Oklahoma Supreme Court ruled the compulsory unit superseded the declared unit.[130] The court explained "oil and gas leases are negotiated against the backdrop of the OCC's regulatory authority;" therefore, the parties must have understood that when the OCC exercised its regulatory authority, same would control over any conflicting lease provisions.[131]

In *Long*, the lease provided the lessee must commence the drilling of a well on the leased property within one year or pay delay rentals to the lessor.[132] After the parties executed the lease, the OCC issued a spacing order establishing a 640 acre unit including the leased property, and a well was drilled on that unit.[133] Lessor sued to cancel the lease, arguing the lease expired because the lessee stopped paying delayed rentals and the lessee never drilled a well on the leased property, only on the unit.[134] The Oklahoma Supreme Court held the parties contracted subject to the OCC's authority to "enact well-spacing regulations in furtherance of conserving oil and gas[.]"[135] Therefore, the OCC spacing order superseded the conflicting lease provision, and production from the well on the unit maintained the lease.[136]

Based on these two Oklahoma Supreme Court decisions, the District Court held the OCC's regulatory authority is incorporated into oil and gas

125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *.Id.*
131. *.Id.*
132. *Id.*
133. *Id.*
134. *.Id.*
135. *.Id.*
136. *.Id.*

leases by operation of law. This is particularly the case when a lease's pooling provision notes mineral conservation as its primary objective.[137]

Barton v. Ovintiv Mid-Continent, Inc., 2021 WL 1566451 (W.D. Okla. Apr. 21, 2021)

When might emissions from oil and gas operations constitute a trespass? What duty does an operator owe to a landowner? The United States District Court for the Western District of Oklahoma answered these questions in relation to operations in Kingfisher County.[138]

In 2004, Kenny and Julie Barton ("Plaintiff") bought a home and seven acres in Kingfisher, Oklahoma.[139] As a result of a 2019 divorce, Kenny Barton owns the property and pays the mortgage on the same.[140]

The Oklahoma Corporation Commission (the "OCC") established a 640 acre spacing unit for a section of land which included Plaintiff's property.[141] This order granted Ovintiv ("Defendant") the right to drill a horizontal well anywhere in the section, and drilling began in June of 2020 within several hundred feet of Plaintiff's property.[142] Before commencing the well, Defendant knew it would need additional casing due to the "known potential risk of encountering an over-pressurized zone in the morrow series in the area."[143]

Defendant's operations brought continuous noise in the daytime and light at night.[144] Emissions from the rig caused the Plaintiff lightheadedness and nausea.[145] In July of 2020, Plaintiff evacuated to a hotel and Defendant paid for Plaintiff's stay.[146]

Plaintiff complained and the Oklahoma Department of Environmental Quality (the "ODEQ") inspected the property, detecting gassy emissions from Defendant's operations.[147] Plaintiff installed a carbon monoxide detector in their home and the level was high enough to result in

137. *Id.* at 3.

138. Barton v. Ovintiv Mid-Continent, Inc., 2021 WL 1566451 (W.D. Okla. Apr. 21, 2021)

139. *Id.*

140. *Id.*

141. *Id.* at 2.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

"hallucinations, dementia, and serious headaches within one to two hours and risk of death after three hours."[148]

In August of 2020, Defendant completed the initial drilling of the well and Plaintiff moved back onto the property.[149] Then Defendant fracked the well near Plaintiff's home, resulting in additional concerns for the Plaintiff, such that they moved out of their home and intended to sell the property.[150]

First, Plaintiff sued for trespass, claiming Defendant's operations resulted in "dangerous levels of emissions" entering their property.[151] Defendant responded there was never any physical invasion of the property, and Oklahoma law treats intangible intrusions (e.g., smoke, noise, odor, light) as a nuisance instead of a trespass.[152]

Plaintiff argued poisonous fumes are different from smoke or odor because they rendered the home uninhabitable.[153] Defendants countered that contamination does not qualify as a tangible trespass unless it is palpable, or can be felt by touch.[154] Also, Defendant argued Plaintiff has not alleged any physical damage to their property, only interference with the use of their property.[155]

The Court dismissed the trespass claim, ruling Plaintiff had not alleged a "plausible claim of trespass;" holding the emission was only an intangible intrusion.[156] Under Oklahoma law, an intangible intrusion only qualifies as a trespass if there has been substantial damage to the property, and Plaintiff has not alleged any facts claiming such damage.[157]

Second, Plaintiff alleged Defendant interfered with a prospective economic advantage.[158] Plaintiff claimed the mortgage created a business relationship between Kenny Barton and the mortgagee; "Kenny entered into that relationship with the intent of receiving a benefit of asset appreciation on the property."[159] Once Plaintiff was forced to sell the property, it lost

148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.* at 3.
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.*
159. *Id.*

out on any asset appreciation, and Defendant should have known that drilling a well would cause such a result.[160]

Defendant responded that the mortgage was a debt and not a business relationship, and Plaintiff has not alleged Defendant acted with malice.[161] Plaintiff claimed drilling the well so close to the house caused the home's value to decline, so the drilling was a malicious act.[162]

The Court ruled Plaintiff failed to bring forth a plausible claim for intentional interference with a prospective economic advantage.[163] There is no business relationship or expectation of profit and Plaintiff did not allege the Defendant acted in bad faith.[164] Without that element, the Court dismissed this claim.[165]

Next, Plaintiff alleged drilling so close to their property made Defendant strictly liable for any damages caused because operating an oil and gas well is an ultrahazardous activity.[166] Defendant replied any risks can be mitigated through reasonable care, specifically by setting back the well from the property.[167] The Court held this claim could go forward because the record was too undeveloped for the Court to decide if Plaintiff had pleaded sufficient facts.[168]

Finally, Plaintiff claimed Defendant's decision to locate and drill the well so close to their property was negligent.[169] Defendants argued it did not breach any duty to Plaintiff and it only had to act as a reasonably prudent operator.[170] Plaintiff countered that the risk of encountering an over-pressurized zone meant Defendant should have drilled the well farther away from the property.[171]

After discussing a Kingfisher City Ordinance and Oklahoma state law, the Court held Plaintiff pleaded sufficient facts to move forward with its negligence claim.[172] The court explained Plaintiff may have a claim that

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160. *Id.*
161. *Id.*
162. *Id.* at 4.
163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.* at 5.
169. *Id.*
170. *Id.*
171. *Id.* at 6.
172. *Id.*

Defendant breached a duty of due care to Plaintiff and that breach caused injuries to Plaintiff.[173]

173. *Id.* at 7.