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Oil and Gas Law: Recent Oklahoma Cases Interpreting Oil and Gas Joint Operating Agreements

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OIL AND GAS LAW: RECENT OKLAHOMA CASES INTERPRETING OIL AND GAS JOINT OPERATING AGREEMENTS

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The model form operating agreements published by the American Association of Professional Landmen (AAPL) have for years been the dominant form of operating agreements used by oil and gas operators in the state of Oklahoma and other oil- and gas-producing states. The model form operating agreements, while drafted by committees of very capable oil and gas attorneys and landmen, have nevertheless been the subject of frequent disagreement, dispute, and litigation concerning the proper interpretation and application of the lengthy provisions of the agreements.[1]

The early years of the twenty-first century have witnessed the continued occurrence of lawsuits over the application and effect of the model form operating agreements. This Article reviews three reported decisions of the Oklahoma appellate courts during the early 2000s and briefly discusses one unpublished decision of the U.S. Court of Appeals for the Tenth Circuit, in which these courts resolved certain disputes over applying the provisions of model form operating agreements relating to Oklahoma oil and gas wells.[2]

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1. For some of the more recent articles written on the subject of joint operating agreements, see Robert C. Bledsoe, *The Operating Agreement: Matters Not Covered or Inadequately Covered*, 47 ROCKY MTN. MIN. L. INST. 15-1 (2001); Tim Dowdy, *A.A.P.L. Form 610 Model Form Operating Agreement: Selected Provisions Impacting Onshore Producing Property Transfers*, 47 ROCKY MTN. MIN. L. INST. 13-1 (2001); James C. T. Hardwick, *Something Old, Something New — Current Issues Under the Joint Operating Agreement*, 51 SW. LEGAL FOUND. INST. ON OIL & GAS L. & TAX'N 6 (2000); John R. Reeves & J. Matthew Thompson, *Significant Cases Governing the Onshore Operating Agreement*, 49 SW. LEGAL FOUND. INST. ON OIL & GAS L. & TAX'N 2-1 (1998); Michael Smith & Robert McCutcheon, *Joint Operating Agreement Exhibits: A Survey*, 47 ROCKY MTN. MIN. L. INST. 14-1 (2001); and Arthur J. Wright, *Joint Operating Agreements — Ten Common Amendments and Mistakes*, 50 ROCKY MTN. MIN. L. INST. 7-1 (2004).

2. This article does not discuss the recent decision in *Stephenson v. Oneok Resources Co.*, 2004 OK CIV APP 81, 99 P.3d 717, because that case was not final and was still the subject of appellate proceedings at the time this article was submitted. The *Stephenson* decision addresses issues associated with the combined fixed-rate overhead charge under the COPAS Accounting Procedure Exhibits and accompanying AAPL Model Form Operating Agreements at issue in that litigation.

I. Election of a Successor Operator Under the 1956 Model Form After the Operator Assigns Its Interest in the Unit Area

In *Duncan Oil Properties, Inc. v. Vastar Resources, Inc.*,[3] the operator of the unit area, Unocal, assigned its 39.34895% working interest to Vastar.[4] The plaintiffs owned a combined 30.35467% of the working interest in the unit,[5] and nonoperators not named in the lawsuit owned the remaining 30.29638% of the rights.[6] An AAPL Form 610-1956 Model Form Operating Agreement covered the unit.[7] Upon acquiring Unocal's interest, Vastar began operating the unit.[8]

One of the plaintiffs, Duncan Oil Properties, Inc. (Duncan), upon learning of the assignment by Unocal, sent ballots to the parties to the operating agreement, other than Vastar, for the purpose of selecting a new operator.[9] The plaintiffs contended that the provisions of the operating agreement did not permit the interest that Vastar had acquired from Unocal to vote in the election of a new operator.[10] Vastar disputed the plaintiffs' contention, and Vastar conducted its own election and included its newly acquired interest in the voting process.[11] Duncan asserted that it was the duly elected successor operator as a result of the balloting conducted by Duncan.[12] Vastar similarly claimed that it was the duly elected successor operator because of its separate election process, which included its own vote.[13]

The plaintiffs brought suit seeking a declaratory judgment concerning the rights of the parties and injunctive relief, enjoining Vastar from interfering with Duncan's efforts to operate the unit.[14] The key provision of the model form operating agreement that the plaintiffs relied upon in asserting that Duncan was the duly elected operator was paragraph nineteen,[15] which provided in part as follows:

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3. 2000 OK CIV APP 146, 16 P.3d 465.
4. *Id.* ¶¶ 1-2, 16 P.3d at 466.
5. *Id.* ¶ 1, 16 P.3d at 466.
6. *Id.*
7. *Id.* ¶ 2, 16 P.3d at 466.
8. *Id.* ¶ 3, 16 P.3d at 466.
9. *Id.* ¶ 2, 16 P.3d at 466.
10. *Id.*
11. *Id.*
12. *Id.* ¶ 3, 16 P.3d at 466.
13. *Id.*
14. *Id.* ¶ 1, 16 P.3d at 466.
15. MODEL FORM OPERATING AGREEMENT, AAPL Form 610-1956 (Am. Ass'n of Petroleum Landmen) [hereinafter MODEL FORM]. The Association later changed its name to the American Association of Professional Landmen.

> *[s]hould a sale be made by Operator* of its rights and interests, *the other parties shall have the right* within sixty (60) days after the date of such sale, by majority vote in interest, *to select a new Operator.* If a new Operator is not so selected, the transferee of the present Operator shall assume the duties of and act as Operator.[16]

Vastar argued that the phrase "other parties" in paragraph nineteen included the assignee of the operator.[17] Otherwise, approximately 39% of the working interest would be excluded from the election process.[18] The plaintiffs contended that the phrase "other parties" meant "all parties to the agreement except the operator and its assignee."[19] The plaintiffs further contended that the wording of paragraph nineteen excluded the operator and its assignee from the voting process to keep an operator with a large ownership interest — or its assignee — from having the ability to "cram-down" its choice for successor operator on the other owners, thereby leading to tyranny by the operator with a large ownership interest.[20]

Vastar responded to this argument by asserting that the preferential right to purchase provision of the model form operating agreement, which the parties had deleted in this case, gave the parties the right to prevent the operator from assigning a large voting interest to an entity that the others desired to keep out of unit ownership and operations.[21] Vastar additionally argued, with the use of hypothetical examples involving an even larger ownership interest of an operator under the same model form operating agreement, that excluding the operator's interest in selecting a successor could just as easily lead to tyranny by a minority owner in the well who would then control the outcome of the vote if the voting process excluded the large interest of the operator.[22] If the other owners considered disproportionate voting power to be tyranny, Vastar suggested that it would be far better to keep such power in the hands of the majority owner who possessed the largest economic stake and risk in the oil and gas operations.[23]

At the nonjury trial of the case, the parties stipulated that if Vastar was permitted to vote in selecting a successor operator, Vastar would be the duly

16. *Duncan Oil Props., Inc.* ¶ 4, 16 P.3d at 467 (emphasis added).
17. *Id.* ¶ 5, 16 P.3d at 467.
18. *Id.*
19. *Id.*
20. *See* Answer Brief for Appellee at 6, *Duncan Oil Props., Inc.* (No. 93,600).
21. *See* Appellant's Brief at 23-24, *Duncan Oil Props., Inc.* (No. 93,600).
22. *See id.* at 11-14, 24.
23. *Duncan Oil Props., Inc.* ¶ 5, 16 P.3d at 467.

elected successor; if Vastar was not permitted to vote, Duncan would be the duly elected successor.[24] The parties further stipulated that the language in paragraph nineteen of the operating agreement was clear and unambiguous.[25]

The trial court found neither Vastar nor Unocal to be among the "other parties" permitted to vote under paragraph nineteen of the operating agreement, with the result that Duncan had been elected as the new operator.[26] Vastar appealed the trial court's decision.[27]

The Oklahoma Court of Civil Appeals, after reviewing the arguments of the parties and the ruling of the trial court, found that "the single issue presented on appeal [was] whether the clear and unambiguous language of paragraph no. 19 of the [operating agreement] prohibited the operator's assignee [Vastar] from voting in the election for the new operator."[28] The court noted that neither the parties, nor the court, had been able to find any prior case that interpreted the meaning of "other parties" under the model form operating agreement.[29] The court recognized, however, that an operating agreement is a contract and should be construed "like any other contract."[30]

Among the rules of contract interpretation recited in the opinion, the court noted that "[w]hen provisions in a contract are susceptible to two constructions, the contract will be interpreted in a manner which is fair and rational, rather than in a manner which would reach an inequity."[31] The court found that preventing a new working interest owner from voting for operator simply because the new owner had obtained its interest from the operator would be inequitable.[32]

The court found that "[t]he equitable and logical construction of paragraph no. 19 is [that] the phrase 'other parties' is used to indicate the current operator is not allowed to vote because the current operator no longer has a working interest."[33] The court deemed this phrase to be clarifying language because the parties might still consider the operator a party to the operating agreement because of its ongoing duties in the transition of operations.[34] The court reversed the decision of the trial court and held that, because Vastar became a party to the operating agreement upon the assignment from Unocal,

24. *Id.* ¶ 3, 16 P.3d at 466.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.* ¶ 4, 16 P.3d at 467.
29. *Id.* ¶ 6, 16 P.3d at 467.
30. *Id.*
31. *Id.* ¶ 8, 16 P.3d at 467-68.
32. *Id.* ¶ 8, 16 P.3d at 468.
33. *Id.*
34. *Id.*

the owners should have counted Vastar's vote in tallying the votes for the new operator.[35]

II. Whether Holder of Preferential Right to Purchase Under an Operating Agreement Covering Multiple Wells May Split Its Election

A. Samson Resources Co. v. Amerada Hess Corp.

In *Samson Resources Co. v. Amerada Hess Corp.*,[36] the Oklahoma Court of Civil Appeals considered another issue that arose under the model form operating agreements. In *Amerada Hess*, Amerada and Samson were parties to several operating agreements.[37] Each of the operating agreements at issue covered multiple wells, and each was an AAPL Form 610-1956 Model Form Operating Agreement containing a preferential right of purchase provision, which the parties opted not to delete from the agreement.[38] The operating agreements also contained a maintenance of unit ownership clause.[39]

Amerada contracted to sell its interests in hundreds of leases, including leases covered by the operating agreements with Samson, to DLB for a total purchase price allocated among the assets in the manner set forth in an attached exhibit to the purchase and sale agreement.[40] The purchase and sale agreement provisions also established a procedure for offering properties, subject to preferential rights of purchase, to the holders of those preferential purchase rights before any transfer to DLB.[41]

As to each of the units covered by preferential purchase rights on the part of Samson, Amerada sent Samson a letter providing notice of Amerada's proposed sale to DLB of Samson's leasehold interests in the multiple wells covered by each of the applicable operating agreements.[42] In each instance in dispute, Samson elected to purchase some, but not all, of the wells covered by the applicable operating agreement.[43] Amerada responded by advising

35. *Id.*

36. 2002 OK CIV APP 32, 41 P.3d 1055.

37. *Id.* ¶ 2, 41 P.3d at 1056.

38. *Id.*

39. The model form operating agreements at issue in this case were AAPL Form 610-1956 model forms, which use the title "Maintenance of Unit Ownership" for the referenced provision. *See infra* note 54 for the text of that provision. In subsequent AAPL model form operating agreements, this clause was retitled the "Maintenance of Uniform Interest" provision, and that title has probably become the more common reference name for this provision within the industry in recent years.

40. *Amerada Hess* ¶ 3, 41 P.3d at 1057.

41. *Id.*

42. *Id.* ¶¶ 4, 6-7, 41 P.3d at 1057.

43. *Id.*

Samson that its split-elections were not valid, and it gave Samson the opportunity to correct its prior elections by electing, as to each operating agreement, to purchase either all of the wells or none of the wells covered by the applicable operating agreement.[44] When Samson did not revise its split-elections, Amerada and DLB closed their transaction and DLB claimed ownership of the interests previously owned by Amerada in the wells in question.[45]

Samson sued Amerada and DLB seeking specific performance of its preferential purchase rights under the operating agreements.[46] Samson also asserted causes of action for breach of contract, tortious interference with contract, conversion, and injunctive relief.[47]

The trial court entered summary judgment in favor of Samson on its claim for specific performance, allowing Samson to split its elections between multiple wells covered by the same operating agreement.[48] The trial court also entered summary judgment in favor of Amerada and DLB concerning Samson's claims for tortious interference and conversion.[49]

Amerada and DLB appealed the trial court's ruling.[50] The primary issue on appeal was whether it was permissible for Samson to attempt to exercise its preferential right of purchase by making a split-election under which it elected to purchase some, but not all, of the properties covered by each operating agreement at issue in the lawsuit.[51]

The Oklahoma Court of Civil Appeals held that Samson could not split its election to exercise its preferential purchase right; rather, Samson needed to match the terms of the proposed sale between Amerada and DLB, as to each applicable operating agreement, by purchasing all of the wells covered by each agreement, because DLB agreed to do the same.[52] In reaching its decision, the court referred to principles of "basic contract law."[53] Instead of emphasizing the wording contained in the preferential right of purchase provisions in the operating agreements, the court emphasized the maintenance of a unit ownership clause in each agreement.[54] The court found that the

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44. *Id.* ¶ 8, 41 P.3d at 1057.
45. *Id.*
46. *Id.* ¶ 9, 41 P.3d at 1057.
47. *Id.*
48. *Id.* ¶ 10, 41 P.3d at 1058.
49. *Id.*
50. *Id.* ¶ 13, 41 P.3d at 1058.
51. *Id.*
52. *Id.* ¶ 19, 41 P.3d at 1059.
53. *Id.* ¶ 17, 41 P.3d at 1059.
54. The Maintenance of Unit Ownership provision in the AAPL Form 610-1956 Model Form Operating Agreement appears in paragraph nineteen and states as follows:

maintenance of unit ownership provisions limited the terms upon which Amerada could offer to sell its interests to DLB.[55] Those provisions "required Amerada to sell its entire interest in all the leases or an equal undivided interest in all the leases covered by each [operating agreement]."[56] The court held that "Samson was required to accept that condition and purchase Amerada's entire interest under each applicable [operating agreement]."[57] Samson had elected to purchase Amerada's entire interest under the operating agreement covering one unit, so the court of appeals affirmed the trial court's decision regarding that unit.[58] The court reversed, however, the trial court's ruling concerning the other units because of Samson's failure to elect to purchase all of Amerada's interests in those units.[59]

B. Brown v. Samson Resources Co.

An earlier, albeit unpublished, decision of the U.S. Court of Appeals for the Tenth Circuit provides an interesting comparison to the Oklahoma Court of Civil Appeals decision in *Amerada Hess*. In *Brown v. Samson Resources Co.*,[60] the federal appellate court decided the same split-election issue in a case involving an AAPL Form 610-1956 Model Form Operating Agreement covering a unit area in Oklahoma with two wells.[61] Samson was the holder of

> For the purposes of maintaining uniformity of ownership in the oil and gas leasehold interests covered by this contract, and notwithstanding any other provision to the contrary, no party shall sell, encumber, transfer or make other disposition of its interest in the leases embraced within the Unit Area and in wells, equipment and production unless such disposition covers either: (1) the entire interest of the party in all leases and equipment and production; or (2) an equal undivided interest in all leases and equipment and production in the Unit Area. Every such sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement, and shall be made without prejudice to the rights of the other parties.

Id. ¶ 2, 41 P.3d at 1056-57.

55. *Id.* ¶ 19, 41 P.3d at 1059.

56. *Id.*

57. *Id.*

58. Based upon a review of the briefs of the parties, the appellate disposition apparently referenced the one unit on which Samson elected to purchase all of the interest of Amerada through inadvertence and possible ambiguity in the summary judgment record that was retrieved from the district court for purposes of appellate review. Before the conclusion of the trial court proceedings, DLB, as successor in interest to Amerada after the closing of the large purchase and sale transaction, assigned the rights Amerada owned in that one unit to Samson, thereby rendering the lawsuit moot as to that unit. The above appeal involved only the other units in which split-elections had in fact been attempted by Samson.

59. *Amerada Hess* ¶ 20, 41 P.3d at 1059-60.

60. 229 F.3d 1162, Nos. 99-6344, 99-6345, 2000 WL 1234851 (10th Cir. Aug. 31, 2000).

61. When the Tenth Circuit issued the unpublished *Brown* decision before *Amerada Hess*

the preferential right of purchase, and J.M. Huber Corporation (Huber) was the selling party. Samson notified Huber that it wished to exercise its preferential right as to the Cummings well, but did not wish to purchase the Lance well covered by the same operating agreement.[62] Huber took the position that Samson's split-election violated the terms of the preferential right to purchase, and then proceeded to sell the disputed interests to the proposed buyer.[63]

The district court granted summary judgment in favor of Samson.[64] Huber appealed that ruling to the Tenth Circuit Court of Appeals.[65]

The Tenth Circuit reversed the district court and held Samson's purported split-election invalid.[66] The federal appellate court, however, reached a ruling in line with the primary argument made by Amerada and DLB in *Amerada Hess*. In its lengthy decision, the court stated in part as follows:

> Samson emphasizes the first sentence of the preferential right to purchase provision, which activates the preferential right when 'any party desire[s] to sell *all or any part of its interests under this contract*.' Samson muses the 'or any part' language guarantees the holder of a preferential right the ability to exercise its right as to any part of the interest being sold, so long as it is done on the same terms and conditions as proposed in the sale. We find fault with this interpretation and reverse the district court's determination.
>
> Samson's interpretation ignores the most basic rules of grammar and sentence structure. The 'or any part' language Samson emphasizes clearly applies to the interest Huber is selling, not

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had advanced to the appellate stage, Amerada filed a "second" motion for summary judgment relying upon the appellate court decision in *Brown*. Amerada argued that the *Brown* decision collaterally estopped Samson from relitigating the same split-election issue in *Amerada Hess*. This contention appeared to be particularly appealing under the facts. Samson had previously cited the federal district court ruling in favor of Samson in the *Brown* case (prior to the Tenth Circuit's reversal of that decision in the *Brown* appeal) as persuasive authority to be considered by the state district court in *Amerada Hess*. In urging the state court to follow the lower federal court decision in *Brown*, Samson asserted that both cases presented essentially the same issue under the same pertinent facts. Notwithstanding Samson's prior citation of *Brown* as being a parallel case to *Amerada Hess*, the trial court denied Amerada's argument. The Oklahoma Court of Civil Appeals likewise rejected Amerada's proposed use of the appellate decision in *Brown* as a basis for collaterally estopping Samson from asserting the opposite position in *Amerada Hess*. *Amerada Hess* ¶¶ 14-15, 41 P.3d at 1059.

62. *Brown*, 2000 WL 1234851, at *2.

63. *Id.*

64. *Id.*

65. *Id.* at *2 n.3.

66. *Id.* at *6.

> Samson's preferential right. . . . The provision gives Huber unfettered discretion to sell 'any part of its interest,' then in the next sentence strictly limits Samson's preferential purchase right to the very interest '[Huber] proposes to sell.' Samson's argument that this language allows it any flexibility in exercising its preferential right, beyond a simple acceptance or rejection of Huber's sale offer, is indefensible.
>
> Having determined the clear language of the preferential right to purchase provision restricts Samson's right to the interest Huber proposed to sale, the only remaining question is the one answered by the district court: what was the interest Huber proposed to sell? The district court and Samson point to the Coda agreement's inclusion of allocated values for individual wells, and the corresponding reduction in Coda's purchase price if a party exercised its preference right in a well, as support for the finding Huber proposed to sell each well separately. This reasoning ignores the reality of the Coda agreement. Huber sold its interest in hundreds of wells to Coda in a single transaction. The agreement described the property to be sold as '[a]ll right, title and interest of Seller in and to the oil, gas and/or mineral leases and other properties described in Exhibit "A". . . .' Exhibit A consists of ninety-three pages listing all the properties included in the sale. The purchase price is listed as a single 'Base Purchase Price', which as noted can be adjusted when third parties exercise their preferential right to purchase. This was a large package deal, not a plethora of separate sales of distinct interests . . . .[67]

The court concluded that Huber proposed to sell both of the properties that were covered by the same operating agreement together for a stated price. The proper exercise by Samson of its preferential right to purchase required that Samson match the terms offered by the proposed buyer for the two properties.

In contrast to the stated basis for the Oklahoma Court of Civil Appeals decision in *Amerada Hess*, the Tenth Circuit in *Brown* primarily relied on the basic language of the preferential right of purchase clause in ruling that the preferential right of purchase holder may not make split-elections under operating agreements covering multiple wells.[68]

67. *Id.* at **4-5.
68. *Id.* at *5.

III. Whether the Parties Are Permitted to Elect Different Operators for Multiple Wells Covered by the Same Operating Agreement

When multiple wells are drilled within the same unit over a long period of time, the operator of the first well is not always designated as the operator of the subsequent wells. In *Pitco Production Co. v. Chaparral Energy, Inc.*,[69] the Oklahoma Supreme Court was presented with the first impression issue of whether the provisions of the operating agreement prohibited the owners from selecting different operators for the different wells covered by the same operating agreement. In connection with the drilling of the first of the two wells that were ultimately drilled in the unit, the working interest owners entered into an operating agreement "designating Cheyenne as operator of the unit area."[70] While the published opinion in *Pitco* does not indicate the particular model form used, the quoted provisions in the opinion appear to indicate that the operating agreement was an AAPL Form 610-1956 Model Form Operating Agreement.

Upon completion of the second well, Cheyenne assumed the role of operator of that well in accordance with the provisions of the operating agreement.[71] Cheyenne subsequently "resigned as operator and sold its interests to Chaparral," thereby invoking the operating agreement's "new operator" provisions.[72] Some sixteen years before the time of Cheyenne's assignment to Chaparral, one owner in the unit had conveyed its interest in the first well to a third party, thus creating inconsistent working interest ownership between the two wells.[73] That assignment — limited to only one well — violated the express terms of the Maintenance of Unit Ownership clause of the operating agreement.[74] There is no indication in the court's opinion, however, that any party objected to the assignment.[75]

Chaparral sought to be elected as the new unit operator of both wells. In the election that followed, Chaparral received the majority vote of only the owners in the first well.[76] Pitco then proposed that it be elected operator of the

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69. 2003 OK 5, 63 P.3d 541.

70. *Id.* ¶ 3, 63 P.3d at 543.

71. *Id.*

72. *Id.*

73. *Id.* ¶ 4, 63 P.3d at 543-44.

74. *Id.* See *supra* note 54 for the text of the Maintenance of Unit Ownership provision of the 1956 model form agreement.

75. In this regard, however, the Oklahoma Supreme Court's opinion states that "there is no proof in this record of any waiver by any party of any contractual obligations." *Pitco Prod. Co.* ¶ 6 n.8, 63 P.3d at 544 n.8 (emphasis omitted).

76. *Id.* ¶ 3, 63 P.3d at 543.

second well, and Pitco received the majority vote of the owners in that well.[77] Pitco requested that Chaparral relinquish operations on the second well to Pitco.[78] After Chaparral refused,[79] Pitco brought suit seeking a declaratory judgment naming it as operator of the second well.[80]

The trial court ruled that because the operating agreement did not preclude the parties from electing multiple operators when multiple wells exist in the unit area, Pitco was the duly elected operator of the second well.[81]

On appeal, the Oklahoma Court of Civil Appeals, in addressing the issue, found that the operating agreement anticipated the very problem presented in the case by requiring maintenance of consistent ownership under the Maintenance of Unit Ownership clause.[82] The court thus held that the intent of the operating agreement was not to allow the election of multiple operators.[83] However, by reason of the conduct of the parties in allowing the divided ownership that led to the election of multiple operators, the court of appeals found that the trial court had reached the correct result and affirmed the lower court's decision.[84]

On further appeal, the Oklahoma Supreme Court vacated the opinions of the trial and appellate courts and remanded the case.[85] The Oklahoma Supreme Court found that all references to the "operator" under the wording of the operating agreement and its exhibits referred to that entity in singular form, often accompanied by singular-form grammatical articles.[86] The court acknowledged, however, that the operating agreement contained no specific language that either permitted multiple operators or limited the number of operators in the unit area.[87]

Applying a "four corners" examination of the operating agreement, the Oklahoma Supreme Court found the terms and provisions neither ambiguous nor susceptible to more than one interpretation.[88] Because the court found that the particular terms and provisions of the operating agreement, which were

77. *Id.*
78. *Id.* ¶ 5, 63 P.3d at 544.
79. *Id.*
80. *Id.*
81. *Id.*
82. Pitco Prod. Co. v. Chaparral Energy, Inc., No. 94,784 (Okla. Civ. App. Jan. 15, 2002) (unpub. op.), vacated by 2003 OK 5, 63 P.3d 541.
83. *Id.*
84. *Pitco Prod. Co.* ¶ 5, 63 P.3d at 544.
85. *Id.* ¶ 22, 63 P.3d at 548.
86. *Id.* ¶ 11, 63 P.3d at 545.
87. *Id.*
88. *Id.* ¶ 15, 63 P.3d at 546.

key to this dispute,[89] were plain and unambiguous and did not involve technical information or meanings, the court refused to consider the evidence presented by Pitco that it was common industry practice to allow more than one operator for multiple wells in the unit area.[90] The court likewise rejected Pitco's argument that multiple operators should be permitted because nothing in the operating agreement prohibited the election of different operators for the multiple wells.[91] The court applied general principles of contract construction, holding that the operating agreement at issue clearly manifested the parties' intention to allow only one operator.[92]

Some oil and gas producers may regard the final *Pitco* decision as being contrary to common practice in the oil and gas industry. Those producers may be even more troubled by the fact that the decision in *Pitco* provides no indication as to the manner in which the owners in the unit area should resolve conflicting votes for a new operator that result from inconsistent ownership between two or more wells. The absence of such guidance presents the prospect of an endless voting process in which the same conflicting votes might be made for the new operator each time an election is held. Those who study this opinion are left to present to the courts in future cases proposed approaches for applying the outcome of this case in a practical way.

IV. Conclusion

The early Oklahoma decisions of the twenty-first century that address ongoing issues arising under the preprinted model form operating agreements show at least three interesting trends or developments.

First, Oklahoma courts continue to rely heavily upon the traditional rules of contract interpretation in resolving first-impression issues under the model form operating agreements. In doing so, the *extent* to which oil and gas industry customs, practices, and usage should influence the interpretation and application of the model form operating agreements remains a topic of ongoing consideration by the courts.

Second, the Oklahoma Court of Civil Appeals decisions in *Amerada Hess* and *Pitco* each cite the Maintenance of Unit Ownership provision of the model form operating agreements as a primary basis for its rulings in those cases.[93]

89. The court specifically addressed the words "operator" and "unit area." *Id.* ¶ 17, 63 P.3d at 546-47.

90. *Id.*

91. *Id.* ¶ 20, 63 P.3d at 548.

92. *Id.* ¶ 21, 63 P.3d at 548.

93. The Oklahoma Supreme Court in *Pitco* found that it was unnecessary for the court to address the maintenance of unit ownership argument because the court had resolved the case on other grounds. *Id.* ¶ 6 n.8, 63 P.3d at 544 n.8.

Because litigants have argued in prior years whether that provision of the model form operating agreements may be of questionable enforceability and may constitute an impermissible restraint on the alienation of property,[94] parties are likely to cite the court of appeals application of that provision in future lawsuits as representing at least persuasive authority supporting the enforceability of that provision.

Finally, attorneys who experience moments of doubt in their efforts to advise oil and gas clients with confidence and certainty concerning the outcome of a given first-impression issue under the model form operating agreements can take comfort from the fact that each of the four decisions discussed above involved differing conclusions at each level of judicial consideration. If there was ever a question as to the complexity of certain operating agreement issues, the fact that the courts themselves disagreed over the resolution of the above issues should put such doubts to rest.

94. *See, e.g.*, Chalk Hill Gas, Inc. v. Texaco Producing, Inc., No. 78,545 (Okla. Civ. App. Feb. 16, 1993).