

Oil & Gas Law

Class 24:

**Lessee Contracts (3 of 4):
Jt. Operating Agreements (1 of 2):
Operational Issues**

Tonight and Next Class ...

- Assignments of the Oil & Gas Lease
- Farmout Agreements
- Joint Operating Agreements
 - Operational
 - Initial & Additional Wells
 - Costs
 - Operator Issues (removal / liability)
 - Relationship Between the JOA and the OGL
 - Business
 - Marketing
 - Balancing
 - Pref. Rights

The Mt. Rushmore of O&G Docs



JOAs – Introduction

- 2nd in importance in the O&G industry ... so why not more time spent?
- **Definition? Why needed / Goals?**
- Goals
 - ❑ Define the initial operations
 - ❑ Provide a mechanism for subsequent operations
 - ❑ Provide the structure for day-to-day operations
 - ❑ Define the rights and obligations of all parties
 - ❑ Define rights and obligations of the JOA parties regarding third parties who are NOT JOA parties

JOAs – Introduction

- Parties
 - Operator
 - Non-Operators
- P. 998: JOA is used “whenever joint operations are contemplated ...” – **so when would a JOA be needed?**
- 4 versions of JOA
 - Prepared / published by the AAPL
 - **which one you’re using is important !!**

JOA Structure – Key Provisions



- Sec. III.B / VII – each party owns its own prod. and costs ... several liability, **NOT** joint
- Sec. XVI – allows for JOA to be customized
- Sec. V.A / VI.A & B – operations / drilling / authority of Operator / voting / non-consent
- Sec. VII.E / IV.B.2 – JOA-OGL relationship: loss of lease / failure of title

JOA Disputes are Business Issues ...

- ... and they are handled professionally and with common courtesy



Initial Well (Article VI.A)

- Must be done by specific date
- “... shall commence the drilling ...”
 - Again, different from OGL and comparable to the FO
 - Valence Op. Co. v. Anadarko (2010) – before deadline, Valence (Op.) surveyed and staked drilling locations, prepared cost estimates, obtained RRC permits, obtained title documents ... found **NOT** to have commenced work
- Drilling of, and participation in, the Initial Well is obligatory ... **Why?**

Initial Well (Article VI.A)

- Everyone agrees to pay their share ... but what if there are cost overruns? → M & T, Inc.
- M&T Inc. (p. 1009): *Issue? Ct's ruling?*
- *How would YOU address cost overruns?*
- This is one of the differences between the Initial Well and Subsequent Operations
- P. 1014, N3: Non-Op assigns its interest in producing wells; assignee goes bankrupt; Op pursues assigning Non-Op

Additional Wells / Subsequent Ops.

- Article VI.B and C. (text pp. 1015-1018)
- Notice / **election to participate** (JOA p.6)
 - ❑ And if a party doesn't, they ***“go nonconsent”***
 - ❑ Participating parties have additional election
 - ❑ Relinquishment of interest / payout penalty under Article VI.B.2(b) – (JOA pp.6-7)
 - ❑ Non-participating party still has royalty obligations and liabilities (pp 1017-18)
 - ❑ Cases where subsequent op. is different than what was first proposed, and non-participating party tries to come back in

Non-Operators' Liability for Costs

- *Does the JOA create a partnership where each party is liable for all costs?*
 - Blocker Exploration: *what is Ct's analysis?*
- Rt. to participate in management or control operations → jt. ops; makes non-Ops liable
 - Instead, the various rights given to non-Operators (e.g., right to receive info, right to go non-consent) held **NOT** to rise to the level of control required for a determination that this is a mining partnership
- JOA Sec. VII.A & Sec. III.B – each party owns its own prod. and costs ... several liability, **NOT** joint

Failure of Title / Loss of Lease

- JOA Art. IV.B (p.3) and VII.E (p. 13)
- L'ee continues to make all OGL payments
- Op. required to notify L'ee of shutting in or resumption of production
- L'ee loses OGL
 - L'ee bears loss, unless ...
 - If due to failure of Op. to notify, then loss is borne by all parties

Removal of Operator

- JOA Art. V.B (p.4)
- Removal only for “good cause”
- Vote of majority of non-Op. interests
 - ***Can subsidiary vote?*** (Pennmark, p. 1000)

Operator Liability

- Sec. V.A. (p.4) –
 - Operator has “full control” over operations;
 - Must conduct operations in a “good and workmanlike manner”
 - No liability as Operator for losses or liabilities, except where they result from Op.’s gross negligence or willful misconduct
 - a/k/a, the “Exculpatory Clause”
- Shell Rocky Mtn. (plus MDU case)

Exculpatory Clause – 1

- ***Does the E.C. apply to just JOA operations, or does it also apply to the Operator's admin. activities?***
- Shell: wells to be drilled on a “competitive pricing” basis; Shell alleged to have charged rates > prevailing prices in the area → breach of K
- MDU: Op. allegedly failed to provide info, provided inaccurate info, and overcharged Non-Ops

Exculpatory Clause – 2

- Does the E.C. apply to:
- ... breach of contract claims?
- ... tort claims?
- ... defamation claims?
- ... personal injury claims?
- ... criminal charges?
- ... moving the drill site?
- ... failure to drill to the agreed-upon depth, or cost overruns?

NEXT CLASSES ...

■ THU., APRIL 17 – CL 25

- ❑ Ownership / Marketing of Production Under the JOA; Gas Balancing / Pref. Rts.
- ❑ **Ch. 6 Sec. E 3 and 4 (pp. 1023 – 1038)**
- ❑ **+ supplemental materials** [3 cases re gas balancing & pref rts]
- ❑ **BRING JOA FORM TO CLASS AGAIN !!!**

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■ TUES., APRIL 22 – CL 26

- ❑ “New Developments”: HZ Drilling
- ❑ **supplemental materials**