DYKEMA COX SMITH

Fun New Ways for Density and Proration Rules to Bust Your Lease: Three New Retained Acreage Cases

Brandon Durrett, San Antonio
43rd Annual Ernest E. Smith
Oil, Gas & Mineral Law Institute

California | Illinois | Michigan | Minnesota | Texas | Washington, D.C.
www.dykema.com

About the Presentation

- Three new cases interpreting "governmental authority" language in retained acreage clauses
- First significant movement since 1965
- New benchmarks for drafting and negotiating oil & gas leases

Cases for Discussion

- *Endeavor Energy Resources, L.P. v. Discovery Operating, Inc.*, 448 S.W.3d 169, (Tex. App.—Eastland 2014, pet. denied).
- *XOG Operating, LLC v. Chesapeake Exploration L.P.* 480 S.W.3d 22, (Tex. App.—Amarillo 2015, pet. denied).
- *ConocoPhillips Company v. Vaquillas Unproven Minerals*, 2015 Tex. App. LEXIS 8194 (Tex. App.—San Antonio Aug. 5, 2015, pet. granted, judgm't vacated w.r.m.).

Retained Acreage

- Lease clause allowing lessee to keep only productive acreage at end of primary term (or continuous development, if applicable)
- Terminates as to all but acreage around producing wells
- Usually defined by regulatory well units using "governmental authority" language

Retained Acreage

- Incentive for lessee to drill more and allows lessor to lease undrilled acreage to new operator
- Wide variety of forms, often custom
- Governmental authority language also often appears in pooling clauses and Pugh clauses

Jones v. Killingsworth

- 403 S.W.2d 325 (Tex. 1965)
- Seminal Texas case for interpretation of "governmental authority" language
- "Permitted" vs. "Prescribed" drafting paradigm

Title search: Fun New Ways for Density and Proration Rules to Bust Your Lease: Three New Retained Acreage Cases

Also available as part of the eCourse
2017 Ernest E. Smith Oil, Gas, and Mineral Law eConference

First appeared as part of the conference materials for the
43rd Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Fun New Ways for Density and Proration Rules to Bust Your Lease "