Chris Griswold, P.C.

News From the Firm April 2013

Message From Chris….

In Oklahoma and Texas, we're all thankful for our oil and gas industry. It drives our local and national economy and is one of the main reasons we, as a region, have weathered the national recession so well. This month, we're going to talk about the **Oklahoma Surface Damage Act** (codified as 52 O.S. 318.2-318.9) and which we'll hereafter refer to as the "***Act***." For all of the people out there reading this that don't normally involve themselves with the minutia of the oil and gas industry, including the Act, I'd urge you to read more below as you'll be sorely surprised just how the Act can unexpectedly ***seep*** into your life (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

The Oklahoma Surface Damage Act

What is the Act? In Oklahoma, a surface owner ***cannot prevent*** a mineral owner (including the royalty interest owner and/or the working interest owner(s)) from accessing (i.e. drilling and producing) the minerals under the surface owner's estate (i.e., the ground) so long as the mineral owner complies with all of the terms and provisions of the Act. While it isn't the purpose of this article to cover the comprehensive requirements imposed upon the mineral owner and surface owner under such Act, suffice it to say that under the Act, "[w]ithin five (5) days of the date of delivery or service of the [mineral owner's] notice of intent to drill, it shall be the duty of the [mineral owner] and the surface owner to enter into good faith negotiations to determine the surface damages…" which will result due to such drilling. The Act (whose purpose was to simplify a previously more complicated judicial process), requires that these "good faith negotiations" determine surface damages according to the difference in the fair market value of the subject property both before and after the drilling operations.

What does any of this have to do with me? In Oklahoma, most of the oil and gas development occurs in **rural areas**. In these rural areas, if the mineral owner and surface owner can't agree upon an amount of surface damages (assuming it's just a corn field or cotton field at issue), the court will ultimately set surface damages at somewhere around the $10-15k mark (as a rough, general rule) since the surface damages will merely be a "ruffling of the soil." In **urban areas**, where property has already been improved and structures/buildings have already been erected upon real property, oil and gas development is highly curtailed since the law prevents: **i**) oil and gas drilling sites from being located any closer than X feet (usually 125 feet) from any structure, and **ii**) mineral owners from drilling on property occupied by buildings/structures (i.e., you can't tear down a building to drill). However, in **transitional areas** which surround growing metropolitan areas (i.e., where agricultural land is being transitioned to residential/commercial use), things get interesting….

How do they get interesting?

When mineral owners wish to drill in these *transitional areas*, these mineral owners will occasionally stumble upon a developer (including an entity running any land bank), a business owner or an individual who was planning on building a commercial or residential structure in such area. *By law and pursuant to the Act, the mineral owner can commence drilling in such transitional area – even if building permits (which never expire) and construction drawings have already been obtained and approved*. What would the surface damages be? It depends. However, one thing is for sure, the drilling will be permitted by the Act and relevant law.

Things to take away? ***First***, the Act only gives the **surface owner landlord** (not the surface owner ***tenant***) standing to enter into negotiations with the mineral owner to determine surface damages - something that should be addressed in any build to suit situation where a property will be leased. ***Second***, prior to getting that certified mail notice in the mail from the mineral owner of their intent to commence drilling operations, surface owners in these transitional areas should consider entering into surface use agreements with the mineral owner(s) so that these damages can be liquidated in advance. ***Third***, if you've got your hands on a piece of property you expect to develop, do your homework on any possible, forthcoming oil and gas drilling in the area lest you "wait too long" and you get a notice in the mail from the mineral owner…. Thanks go to Gregory Harjo, Esquire, the principal of Harjo & Associates, P.C. in Edmond, OK (405.341.7708) for his help in writing this article.

What My Clients Are Saying

"Chris Griswold was instrumental in negotiating a very solid, long-term lease for our new bank branch in Oklahoma City. His industry knowledge helped us avoid several potential pitfalls with a landlord that was somewhat difficult at times. It was a pleasure to work with Chris because of his professional style and easy going demeanour."

Charlie Crouse / President / Summit Bank / Oklahoma City, Oklahoma

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