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Why Oil and Gas Companies Should Include Tolling Provisions in Their Leases

In an issue of first impression, the Pennsylvania Supreme Court unanimously held that the primary term of an oil and gas lease cannot be equitably extended by the courts in cases where the lessor has pursued an unsuccessful lawsuit challenging the validity of the lease. *Wayne Harrison and Mary Harrison v. Cabot Oil & Gas Corporation,* 2015 Pa. LEXIS 355 (Pa. 2015).

In *Harrison v. Cabot Oil,* the lessor, Wayne Harrison, entered into an oil and gas lease with Cabot Oil & Gas Corporation in 2007. Approximately halfway through the primary term of the lease, Mr. Harrison and his wife commenced a civil action against Cabot in a federal district court, seeking a declaration that the lease was invalid. The Harrisons sought to invalidate the lease based upon their contention that the company had fraudulently induced Mr. Harrison to enter into the lease via an agent's representation relating to the maximum amount of bonus payment per acre he would be able to receive from any gas company.

In response, Cabot Oil, the lessee, denied the Harrisons' allegations and claimed that the lease was valid. In addition, Cabot Oil sought to equitably toll the primary term of the lease until the litigation was complete. The lessor's action was unsuccessful, but the question of whether the lease's term should be tolled remained.

A toll prevents an oil and gas lease from expiring during lease litigation; it suspends the time of the lease from the time the civil action commences through its resolution. If a five-year lease's validity is challenged after two years, the remaining three years of the lease are not fulfilled until after the lawsuit.

In reaching its decision on the issue, the Court noted the existence of legal precedent from other jurisdictions holding that when a lessor unsuccessfully challenges the validity of a lease by filing an action in court, the primary term of the lease should be tolled or extended so that the lessee is still provided with the benefit of a complete primary term, free from the uncertainty of litigation. Further, the Court acknowledged that an oil and gas company's financial investment and corresponding potential for loss in Marcellus well production units is great, and that it may not be reasonable for such a lessee to continue to conduct operations in light of a legal challenge. However, the Court also pointed out that there are several other reasons why a lessee might face financial risks and that such risks can and often are mitigated through the drafting and negotiation of leases and other contracts.

Ultimately, the Court did not find Cabot Oil's reasoning sufficient, or the precedent from other jurisdictions controlling such that the primary period of the lease could be equitably tolled. In declining to extend that precedent's application to the current case, the Court held that the mere filing of a declaratory judgment action was not an unequivocal repudiation of a contract for which equitable relief was available. Perhaps most instructive to landmen, energy attorneys, and industry professionals in Pennsylvania is the Court's suggestion that oil and gas companies should draft and negotiate tolling provisions into their leases. Comprehensive leases are a vital investment in oil and gas production and integrating tolling provisions into those leases may now be necessary to minimize the costs of delay or disruption caused by litigation.

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