PREPARING and CURING
THE TITLE OPINION

By:
Brenda L. Selinger
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DRILLING TITLE OPINION (DTO)

- Determines who owns the leases covering the mineral interests in the lands encompassing the spacing unit, as well as all irregularities, defects or encumbrances affecting those interests.
DIVISION ORDER TITLE OPINION (DOTO)

- Sometimes called Drilling and Division Order Title Opinion (DDOTO)
- Goes one step farther
- Includes a Division of Interest
  - Individual ownership of the production for all royalty owners, overriding royalty owners and working interest owners
CONTENTS OF A DOTO

- Description
- Materials Examined
- Patent Information
- Ownership
  - Surface
    - Tract
  - Mineral
    - Tract
    - Unit
CONTENTS OF A DOTO, con’t.

- Leasehold of each Working Interest Partner
  - Tract
  - Unit
  - Corresponding leases
  - Overriding royalties
CONTENTS OF DOTO, con’t.

- Oil and Gas Lease Tables
  - Names and addresses
  - Royalty rate
  - Verbatim royalty clause
  - Term of lease and date it was signed
  - Interest owned and leased; including all lands leased
  - Recording information and date of recording
  - Pooling clause; covers spacing unit
  - Delay rentals
  - Shut in clause
  - Special provisions
  - Tribal or allotted leases; consents and BIA approval
CONTENTS OF DOTO, con’t.

- Assignments
  - Leases affected
- Assignments of Overriding Royalties
  - Leases affected
- Easements
- Encumbrances
  - Mortgages
  - Judgments/liens
  - Real property taxes
Unreleased Oil and Gas Leases
  ◦ HBP leases impacting current spacing unit

Division of Interest
  ◦ Current Names and addresses of all parties
  ◦ Equals one (yes, really!)
  ◦ Full equation/calculation
  ◦ BPO/APO differences
    • Penalty provisions for unleased and/or non-consenting partners
  ◦ Infill wells are creating issues that sometimes require two or more Division of Interest Tables
Fractured leasehold results in comments and requirements

Difficult to attain marketable title

Strive for **defensible title**
- Title that is free from such reasonable doubt that a prudent person engaged in the business of ownership, development and operation of producing oil and gas properties with knowledge of all of the facts and their legal bearing would be willing to accept the same.
USEFUL COMMENTS & REQUIREMENTS

- Identify current owner subject to the requirement who may need to be suspended
- Acreage involved
- Irregularity involved
- Time frame and age of defect
- Recording information for documents in question
OPTIONS

- Do everything suggested?
- Consider size and value of interest?
- Company’s business risk?
- Viable alternatives?
- Suspend payment until curative can be completed and defensible title obtained.
WHY DID I GET PAID BEFORE?

- Inquire as to what is “before”?
  - Leasing
  - Another company
Always a big issue
No probate always leaves some risk as marketable title cannot be achieved
Is a Proof of Death and Affidavit of Heirship sufficient?
  ◦ Make it clear that AOH does not transfer title
John Smith owns 320 acres in 1280 acre unit
John dies leaving widow, Jane and three
grown children, James, Julie & Joseph
LWT gives all to Jane if she survives him,
otherwise to their three children
No probate as he had no other real property
or measurable assets
Jane calls, pay me, clearly I am rightful heir
Response to Example #1

- Jane appears to be rightful heir
- Risk involves 25% of unit; not deemed a small interest
- Jane will receive sufficient funds to cover the cost of a simple probate
- Probate will be required
- Best for Smith family and company
Probate Example #2

- John Smith owns 1 acre in the 1280 acre unit
- Expired OGL from Jane, a widow
- Current leases from James, Julie & Joseph as heirs of John and Jane Smith
- No probates for either John or Jane
- AOH for John, survived by Jane & 3 children
- AOH for Jane, predeceased by John, survived by 3 children
- Requirement says probate both estates, if any additional heirs found, review & rewrite
3 Smith leases at 16%, well is producing 200 barrels per day and oil is $100/barrel

\[ \frac{1}{1280} \times 0.16 \times 200 \times 100 = $2.50 \text{ per day or } $75 \text{ per month or } $900 \text{ per year or } $300 \text{ per year per Smith heir} \]

- How many years will it take the Smith heirs to pay for two probates?
- What is company’s business risk?
What if we pay them on this well and next month we find they own another acre in another well; 10 wells?

Should the company begin to worry because now the risk is growing in terms of dollars affected?
Response to Example #2

- This is a simple family situation
  - One spouse
  - Children are descendants of both spouses
- Would most likely put in pay and leave in pay based on the AOH’s
- Small percentage of each well
- Defensible title exists
Probate Example #3

- Same one acre owned by John Smith
- AOH for John, signed by son, James, LWT attached showing all goes to Jane and then to the 3 children
- AOH for Jane, signed by son, James, LWT of Jane attached, indicates Jane had a daughter, Anne who was not the daughter of John
- James response is “well, she has never been a part of our family, she doesn’t deserve a share of these minerals that came from Dad’s side of the family”
Response to Example #3

- Require probate or at very least, disclaimer or QCD from Anne
- Consider protective lease from Anne
- What if they probate and don’t give Anne notice, how should company proceed?
- Defensible Title?
Same one acre owned by John Smith

John dies, Jane submits AOH with copy of death certificate and LWT for John saying all goes to Jane if she survives John

No other assets, Jane does not want to probate John’s estate for this small interest
Company decides to put Jane in pay, have defensible title

Later, Jane dies and company receives PRDeed from her Estate to Joseph only

Looks legitimate, put Joseph in pay

6 months later, receive a PRDeed from John’s Estate to all three children
Response to Example #4

- Suspend all payments until company can find out what is going on
- Request a stipulation signed by all three children.
- Does company just assume documents are correct when they know other heirs exist?
- Does defensible title disappear?
Probate Example #5

- Same one acre owned by John Smith
- Jane submits AOH for John, with DC/LWT showing all goes to Jane if she survives, then to 3 children
- No probate because small interest with documentation that provides defensible title
- Jane marries Bill
Probate Example #5, cont.

- Jane dies, children submit AOH
  - Bill as surviving spouse
  - 3 children as surviving heirs
  - Requesting interest be transferred to children without probate
- No LWT
- What about Bill?
Response to Example #5

- Going to need something from Bill
  - QCD to children
  - Stipulation agreeing to nothing
  - Disclaimer
  - Pre-Nuptial Agreement
  - Protective Lease
Additional Considerations for #5

- What if time of events was pre 1975 and UPC?
- Laws of intestate succession for that time?
- Value of Jane’s estate?

- One acre can cause a lot of turmoil!
NDCC 38-18.1-01 provides that “any mineral interest is, if unused for a period of twenty years…deemed to be abandoned…”

If a surface owner has begun an action to succeed to mineral ownership, must require statute be followed, including the QTA

Need to be protected against all uncertainties of compliance with the act

Need to suspend payment of royalties until completed and all interests leased
MINERAL RESERVATION TO 3RD PARTY

- Malloy v. Boettcher, 334 NW2d 8 (ND 1983)
- “a reservation can be effective to convey a property interest to a spouse, who does not own an interest in the land prior to the deed, but joins in the execution of the deed, where is it determined to have been the grantor’s intent.”
- How do we determine the intent?
- Probates/stipulations/disclaimers
DUHIG RULE

- Developed to deal with conveying more property than actually owned

- “When full effect cannot be given to the granted interest because of a previously conveyed interest, priority will be given to the granted interest (rather than to the reserved interest) until full effect is given to the granted interest”

- Ignores constructive notice; emphasizes warranty
Duhig Example

- A conveys Blackacre to B, reserving $\frac{1}{2}$ minerals
- B conveys Blackacre to C, reserving $\frac{1}{2}$ minerals with no mention of the A’s prior reservation

- A owns $\frac{1}{2}$, B owns nothing, C owns $\frac{1}{2}$
- If B had mentioned A’s reservation, B would have reserved the $\frac{1}{2}$ as intended
Duhig Example, cont.

- XYZ leased B
- Your company leased C

- Who are you going to pay and what curative are you going to require?
- Ask XYZ to release B’s lease?
- If they refuse, suspend and require stipulation?
CONCLUSION

- Marketable title desired, but perhaps not realistic
- Need at least defensible title in order to minimize business risk
- Abide by title standards, probate laws, real property laws
- Make suggestions for curative
PATIENCE + COOPERATION
WITH A DOSE OF REASONABLE
CURATIVE =
HAPPY OWNERS
&
HAPPY COMPANY
(WIN/WIN)
Questions?

THANK YOU!
Brenda L. Selinger
Attorney/Land Professional
blselinger@marathonoil.com