

Here's What's New!!

Reeder v. Wood County Energy, LLC, et al.

By Chris Halgren

Non-operators should seriously evaluate any existing or potential JOA in light of a recent Texas Supreme Court case which held the exculpatory language in the A.A.P.L 1989 Model Form JOA significantly limited the liability of operators when compared to earlier versions. The scope of the limitation on the operator's liability should be considered by any non-operator negotiating a JOA or contemplating a breach of contract lawsuit against an operator. If possible, non-operators may want to consider negotiating a modification of the exculpatory language in the 1989 Model Form JOA in favor of the language in the earlier versions. Non-operators under the 1989 Model Form JOA must now prove that the operator's breach of contract resulted from either gross negligence or willful misconduct. Prior to the *Reeder* case, Texas courts had generally held that an operator was not protected by the JOA exculpatory language if the cause of action was one for breach of contract alone, and not related to the operator's operations.

Synopsis

On August 27, 2012, the Texas Supreme Court issued an opinion reversing the 12th District Court of Appeals and rendered judgment in favor of an operator in regard to breach of contract claims brought by non-operating working interest owners under the terms of an A.A.P.L. Form 610 Model Form Joint Operating Agreement-1989

In *Reeder v. Wood County Energy, LLC, et al.*, the Supreme Court of Texas reviewed the lower court's interpretation of the exculpatory clause in the 1989 Model Form JOA. At issue was whether the JOA's exculpatory clause sets the standard to adjudicate a breach of contract claim against the operator. The court of appeals held that the exculpatory clause does not apply to the breach of contract claims and therefore, no instructions regarding gross negligence or willful misconduct should be given to the jury.

In its analysis, the Supreme Court noted that prior Texas cases generally had analyzed the 1977 or 1982 Model Form Operating Agreements which limits the liability of the Operator in regard to "such operations" conducted by the Operator, whereas the 1989 JOA limits the liability of the Operator in regard to "its activities." The court noted that prior appellate courts, analyzing the 1982 or earlier Model Form JOAs, held that the exculpatory clause extends only to claims that the operator fails to act as a reasonably prudent operator for operations under the contract, and not for other breaches of the JOA. See *e.g. IP Petroleum Co., Inc. v. Wevanco Energy, LLC*, 116 S.W.3d 888 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

The Supreme Court concluded that the change in language from "such operations" to "activities" is significant because the new language broadens the clause's protection of operators. The court explained that the "modifier 'such' references operations under the JOA, while the deletion of that word

and use of the term 'its activities' includes actions under the JOA that are not limited to operations." Therefore, "the agreed standard exempts the operator from liability for its activities unless its liability-causing conduct is due to gross negligence or willful misconduct."

Based on its interpretation of the 1989 Model Form JOA, the Supreme Court found that no evidence existed to establish Wendell Reeder, the operator, acted with gross negligence or willful misconduct "when he breached a duty to offer Well No. 116 prior to plugging the well." The court further held that there was no evidence to find gross negligence or willful misconduct when the operator failed to maintain the wells in compliance with the standards set by the Texas Railroad Commission, resulting in the Commission suspending production, because no evidence established the operator knew "about the peril but did not care about the consequences."

Based on the Supreme Court's holding in *Reeder*, a working interest owner now must show more than a "mere breach" of the JOA, but instead must show "a breach attended by gross negligence and willful misconduct."

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