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## Louisiana

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# ONE J

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LOUISIANA



*Rachel Cummings\**

## *I. Introduction*

The following is an update on Louisiana's legislative activity and case law relating to oil, gas, and mineral law, from August 1, 2016 to July 31, 2017.

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## II. Case Law

### A. Subsequent Purchaser Doctrine

#### 1. *Guilbeau v. Hess Corporation*<sup>1</sup>

Kenneth Guilbeau (“Guilbeau”) purchased a tract of land in 2007 on which Hess Corporation’s (“Hess”) predecessors in title conducted oil and gas operations.<sup>2</sup> The operations ended in 1971 with any leases affecting the property terminating in 1973.<sup>3</sup> All oil and gas wells on the property were plugged and abandoned.<sup>4</sup> When Guilbeau purchased the property, there was no assignment of rights to sue for “pre-purchase damages.”<sup>5</sup> Guilbeau sued Hess for damages arising from contamination caused from the oil and gas operations that occurred on the property prior to when Guilbeau purchased the property.<sup>6</sup>

The district court granted Hess’s motion for summary judgment.<sup>7</sup> Hess argued that Louisiana law barred these claims based on the subsequent purchaser rule.<sup>8</sup> The Louisiana Supreme Court analyzed the subsequent purchaser rule in depth in *Eagle Pipe & Supply Inc. v. Amerada Hess Corp.* The court held that the subsequent purchaser rule is a rule in which a property owner has no standing to recover from a third party for damage that occurred on the property before he became the owner, unless there was an assignment of those rights from the owner of the property when the damage occurred thereto.<sup>9</sup> Further, the court determined that damage to property is not a real right, but rather, a personal right to sue and does not automatically transfer to a subsequent purchaser.<sup>10</sup> As such, Guilbeau had no right to sue Hess.

Guilbeau argued that in its analysis, the Supreme Court of Louisiana did not address whether or not the subsequent purchase doctrine applied to mineral leases, which resulted in conflicting results in the appellate system.<sup>11</sup> The Fifth Circuit Court of Appeals acknowledged that in the past,

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1. *Guilbeau v. Hess Corporation*, 854 F.3d 310 (5th Cir. 2017).

2. *Id.* at 311.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 312 (internal citation omitted).

10. *Id.* (internal citation omitted).

11. *Id.* at 312-13.

the appellate courts differed on whether or not the subsequent purchaser rule applied to mineral leases and the Mineral Code, but that subsequent cases had arisen, showing agreement among the appellate courts that the subsequent purchase rule does indeed apply to mineral leases.<sup>12</sup> The appellate court in this case did not see a reason to depart from the precedent established by the other appellate courts, and affirmed the district court's decision, barring Guilbeau's claim.<sup>13</sup>

*B. Prescription Periods and Clerical Errors*

*1. Petro-Chem Operating Co., Inc. v. Flat River Farms, L.L.C.*<sup>14</sup>

In 1994, Max Hart, Jr. and Bernadette M. Hart ("Hart") granted Flat River Farms, L.L.C. ("Flat River") a three-fourths (3/4) interest in a 707-acre tract, reserving the minerals (the "Hart Servitude").<sup>15</sup> The Harts executed an oil and gas lease with Spanoil Exploration, LLC on May 9, 2001, which expired on May 9, 2004.<sup>16</sup> The Hart Servitude was set to prescribe on March 3, 2004.<sup>17</sup> Larry Lott of Lott Company, LLC ("Lott") also owned a portion of the land that was subject to the Hart Servitude. Petro-Chem, the operator of the Swan Lake Prospect, of which the Hart Servitude was a part thereof, requested that Lott acquire CUA permits for two wells, one of which was burdened by the Hart Servitude.<sup>18</sup> The permit was issued on January 20, 2004, and the well was spudded on March 28, 2004.<sup>19</sup> In 2008 Petro-Chem became aware that there was a possibility that the Hart Servitude had prescribed before any operations had commenced on the property.<sup>20</sup> Petro-Chem filed suit in order to determine ownership of the mineral rights.<sup>21</sup> Hart asked the trial court for a summary judgment holding that the Hart Servitude remained in full force and effect when the well was spudded due to certain events that would have extended the prescription

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12. *Id.* at 313-14.

13. *Id.* at 315.

14. *Petro-Chem Operating Co., Inc. v. Flat River Farms, L.L.C.*, 51, 212-CA, 2017 WL 786868 (La. App. 2 Cir. 3/1/2017).

15. *Id.* at \*1.

16. *Id.*

17. *Id.*

18. *Id.* at \*2.

19. *Id.*

20. *Id.*

21. *Id.*

period.<sup>22</sup> The trial court denied this motion and held in favor of those with competing claims.<sup>23</sup>

Lott had also conveyed to Raymond J. Lasseigne (“Lasseigne”) a tract of land containing 63 acres.<sup>24</sup> Jon G. Black, LLC (“Black”) wanted to buy the tract and hired a titled company to investigate the tract.<sup>25</sup> The title company found a defect from the sale from Lott to Lasseigne. Lott and Lasseigne attempted to correct the defect by exchanging the 63-acre tract with another piece of property that Lott owned in section 11 through an act of exchange.<sup>26</sup> Lott then sold the 63-acre tract to Black. During the act of exchange, there was no reservation of the mineral rights; however, when Lott then conveyed the 63-acre tract to Black, Lott reserved the minerals.<sup>27</sup> Lott did not reserve the mineral rights in the second tract to Lasseigne.<sup>28</sup> After the acts of exchange and deeds were recorded, the notary filed two notarial affidavits of correction.<sup>29</sup> The first affidavit was regarding the act of exchange, and stated that it was Lott’s intention to reserve the mineral rights in the tract located in section 11, and the second was to correct the deed to Black, which stated that it was not the intent of Lott to reserve the mineral rights in the 63-acre tract.<sup>30</sup> Lott subsequently conveyed all mineral rights owned by Lott in the 63-acre tract and section 11 tract which left Lasseigne with only ownership of the surface rights in the subsequent tract.<sup>31</sup> Lasseigne filed a motion for summary judgment asking that the affidavit of correction related to the act of exchange be stricken from the conveyance records and be declared invalid.<sup>32</sup> The trial court granted Lasseigne summary judgment stating that an affidavit of correction may only be used to amend clerical errors.<sup>33</sup>

Hart argued that the trial court erred when granting the competing mineral complainant’s summary judgment regarding the prescription of the mineral servitude.<sup>34</sup> She asserted that there were multiple obstacles that

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22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at \*3.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at \*4.

would have suspended the prescription period because it prevented a well from being spudded prior to March 3, 2004, including the fact that the USDA easement prevented timely exercise of the servitude, as well as inclement weather, and inaccessibility of the area where the well was intended to be spudded.<sup>35</sup> The Second Circuit Court of Appeals agreed with the trial court and found that Petro-Chem was familiar with the prospect area and the challenges associated with drilling in the area.<sup>36</sup> The appellate court also found that the failure to timely exercise the use of the servitude was solely due to Petro-Chem's failure to plan properly, rather than to circumstances Petro-Chem could not control.<sup>37</sup>

Furthermore, Black argued that the trial court erred when it interpreted the notarial correction was not a clerical error.<sup>38</sup> According to the appellate court, a clerical error cannot correct a substantive error or amend substantive terms of a contract, but rather can only correct minor mistakes.<sup>39</sup> The court found that the addition of language amending a reservation of mineral rights is a substantive change, which would change the intent of the document, and therefore, is not a clerical error.<sup>40</sup>

### *C. Unit Operator Reports*

#### *1. TDX Energy LLC v. Chesapeake Operating, Inc.*<sup>41</sup>

The Louisiana Office of Conservation created the HA RA SUH unit on September 29, 2008, to be effective on September 16, 2008.<sup>42</sup> Chesapeake was named the operator of the unit, then a well was spudded on February 5, 2011 and completed on July 19, 2011.<sup>43</sup> Touchstone Energy LLC obtained multiple oil and gas leases covering approximately 63 net acres located in the unit, which were subsequently assigned to TDX.<sup>44</sup> TDX notified Chesapeake that it had acquired an interest in the well holding the unit and asked Chesapeake to provide a report in accordance with La. R.S. 30:103.1

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35. *Id.*

36. *Id.* at \*5.

37. *Id.* at \*6.

38. *Id.*

39. *Id.* at \*7.

40. *Id.*

41. *TDX Energy, LLC v. Chesapeake Operating, Inc.*, No. 12-1242, 2016 WL 1179206 (W.D. La. Mar. 24, 2016).

42. *Id.* at \*3.

43. *Id.*

44. *Id.*

of its operating costs for the well.<sup>45</sup> TDX followed up a month later stating that Chesapeake did not comply with La. R.S. 30:103.1.<sup>46</sup> Less than a week later, Chesapeake provided TDX with a list of its costs and explained that, pursuant to La. R.S. 30:10, TDX had thirty (30) days from the date of notice to elect to participate in the well and that failure to provide notice would automatically be deemed an election not to participate in the well.<sup>47</sup> TDX responded a month later stating that Chesapeake had forfeited any right to demand contribution from TDX for well costs because it did not comply with La. R.S. 30:103.1.<sup>48</sup>

Chesapeake argued that TDX is not entitled to anything under La. R.S. 30:103.1 and La. R.S. 30:103.2 because it is not the owner of any unleased oil and gas interest, and as such, Chesapeake has no obligation to give TDX well information.<sup>49</sup> TDX argues that “owner or owners of unleased oil and gas interests” refers to the owner of the oil and gas interests within the unit that are unleased by the operator of the unit, which would be Chesapeake.<sup>50</sup> The district court found that the statutes read by themselves appear to refer to oil and gas interests that are not leased, rather than not leased by the operator.<sup>51</sup> Further, the district court found that Chesapeake was entitled to recover, under La. R.S. 30:10, TDX’s allocated share of reasonable expenditures.<sup>52</sup> However, the court disagreed that TDX was responsible for a risk charge that was equal to 200% of TDX’s allocated share of the cost of the unit well.<sup>53</sup> The court agreed with TDX that a risk charge was not applicable to their share of the cost of the well because Chesapeake did not send notice that they were drilling or intended to drill a well prior to when the well was complete.<sup>54</sup>

The Fifth Circuit Court of Appeals took up the case on May 12, 2017 and partially reversed and affirmed the district court’s decision.<sup>55</sup> The appellate court reversed the district court’s summary judgment grant in favor of Chesapeake regarding the drilling and operating costs, finding that TDX, as a lessee, had the same rights as the owner of a tract when it comes

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45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at \*5.

50. *Id.*

51. *Id.*

52. *Id.* at \*8.

53. *Id.* at \*10.

54. *Id.*

55. *TDX Energy, LLC v. Chesapeake Operating, Inc.*, 857 F.3d 253 (5th Cir. 2017).

to the reporting requirements of La. R.S. 30:103.1.<sup>56</sup> In its reasoning, the court looked at the natural reading of La. R.S. 30:103.1 and La. R.S. 30:103.2. They found that operators gave up their right to any contribution from a lessee when they failed to timely report to those lessees with interests in the land where the operator has no lease.<sup>57</sup> Non-operators lack any access to the data of a well drilled within a unit, and these statutes allow lessees a manner in which to gain access to that information.<sup>58</sup>

The appellate court also affirmed the grant of summary judgment for TDX and denied Chesapeake its counterclaim for any risk charges. The district court found that Chesapeake was not entitled to the risk fee since the statute was clear that it affected owners drilling or intending to drill, requiring those owners to notify the other owners of the drilling or the intent to drill.<sup>59</sup> Chesapeake argued that TDX had exploited a loophole in the statute by not recording their leases until after the unit well had been completed.<sup>60</sup> The court acknowledged that the current version of La. R.S. 30:10 fixed this problem by adding language that would allow Chesapeake to send notice to owners after it had drilled a unit well.<sup>61</sup> However, at the time these events occurred, Chesapeake was only required to notify if it was currently drilling or intended to drill the unit well.<sup>62</sup>

## 2. *XXI Oil & Gas v. Hilcorp II*<sup>63</sup>

In 2011, the Trahan No. 1 drilling unit was created by the Louisiana Commissioner of Conservation.<sup>64</sup> Hilcorp recompleted the well, which began producing on January 11, 2011.<sup>65</sup> XXI began leasing the lands covered by the drilling unit in February of 2011.<sup>66</sup> XXI sued Hilcorp for not complying with La. R.S. 30:103.1, which provides that an operator or producer of oil and gas units shall provide reports detailing costs associated with wells to owners of “unleased oil and gas interests” when the producer

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56. *Id.* at 260-63.

57. *Id.* at 262.

58. *Id.* at 263.

59. *Id.* at 266.

60. *Id.* at 267.

61. *Id.* at 266.

62. *Id.* at 267.

63. *XXI Oil & Gas, LLC v. Hilcorp Energy Co.*, 206 So.3d 885 (La. App. 3 Cir. 9/28/2016), *reh'g denied* (La. App. 3 Cir. 11/9/16), *writ denied* 216 So.3d 814 (La. 2017).

64. *Id.* at 887.

65. *Id.*

66. *Id.*



has no valid oil, gas, or mineral lease.<sup>67</sup> If this statute is not complied with, then the operator has no right to ask the other owner to contribute to the costs for the well.<sup>68</sup> The trial court granted partial summary judgment against Hilcorp, finding that Hilcorp violated La. R.S. 30:103.1 by not providing a sworn, itemized statement of costs to XXI as an interest owner.<sup>69</sup> Hilcorp argued that La. R.S. 30:103.1 and 30:103.2 do not apply to mineral lessees, and therefore, XXI had no claim against Hilcorp.<sup>70</sup>

The Third Circuit Court of Appeal of Louisiana agreed with the trial court holding that the statement sent to XXI was not sworn and consequently, Hilcorp was liable for \$367,231.30 to XXI, which Hilcorp appealed.<sup>71</sup> Hilcorp again argued that the statutes refer only to “oil and gas interests that are not leased at all as opposed to not leased by the operator.”<sup>72</sup> However, the Third Circuit upheld its opinion that if an operator of a well has no valid lease on the land, a lessee who is not the operator or producer of the well has a right to demand a statement of costs pursuant to La. R.S. 30:103.<sup>73</sup>

#### *D. Pipeline Servitudes*

##### *1. Enterprise TE Products Pipeline v. Avila*<sup>74</sup>

Enterprise TE Products Pipeline Company, LLC (“Enterprise”) wanted to expropriate a thirty-foot-wide servitude over a tract of land in St. Martin Parish.<sup>75</sup> The trial court awarded the servitude, but made it subject to a term of ninety-nine years, and awarded the twelve landowners a total value of \$1,300.00.<sup>76</sup> The named landowners were each awarded between \$150.00 and \$300.00, even though their total interest in the property amounted only to 1.1983418%.<sup>77</sup> Enterprise appealed the judgment citing two errors, that the trial court imposed a term on the servitude, which creates a

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67. *Id.* at 890.

68. *Id.*

69. *Id.* at 887-88.

70. *Id.* at 888.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Enter. Te Prods. Pipeline Co., LLC v. Avila*, 16-207, 2016 WL 6495978 (La. App. 3 Cir. 11/2/16).

75. *Id.* at \*1.

76. *Id.*

77. *Id.*

conventional or contractual servitude, rather than a legal servitude, and that the compensation amount was contrary to the trial court's findings.<sup>78</sup>

The Third Circuit Court of Appeals found that a pipeline servitude is a legal servitude, rather than a natural or conventional servitude.<sup>79</sup> A legal servitude is a “[limitation] on ownership established by law for the benefit of the general public or for the benefit of particular persons.”<sup>80</sup> Further, the court found that a pipeline servitude was a permanent servitude and that there was no case history which awarded a permanent servitude a limited term.<sup>81</sup> The appellate court found that the trial court erred when fixing any term on the servitude.<sup>82</sup>

The appellate court also found that the trial court erred in the amount of the compensation award to the landowners.<sup>83</sup> According to Louisiana Revised Statutes 19:9, the value of property that is expropriated is the value that the property had before any type of improvement was proposed, “without deducting the general or specific benefits from the proposed improvements or work.”<sup>84</sup> An expert for Enterprise found that total value of the servitude was \$1,300.00.<sup>85</sup> The Third Circuit Court of Appeals found that when the trial court awarded the compensation, they took into account the effect that this expropriation would have “upon the ancestors of an African-American landowner who acquired the property at a time when ownership by a person of color was rare.”<sup>86</sup> The appellate court awarded the named landowners an amount between \$0.33 and \$5.23.<sup>87</sup>

#### *E. Royalties Prior to Unitization*

##### *1. Gladney v. Anglo-Dutch Energy*<sup>88</sup>

Frank Hayes Gladney and Margaret Stella Gladney Guidroz granted Anglo-Dutch Energy, L.L.C. and Anglo-Dutch (Everest), L.L.C. a lease

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78. *Id.*

79. *Id.*

80. *Id.* (quoting LA. CIV. CODE art. 645).

81. *Id.* at \*2.

82. *Id.*

83. *Id.* at \*3.

84. *Id.* at \*2 (quoting LA. R.S. 19:9).

85. *Id.*

86. *Id.* at \*3.

87. *Id.*

88. *Gladney v. Anglo-Dutch Energy, L.L.C.*, 210 So. 3d 903 (La. App. 3 Cir. 12/21/16), *reh'g denied* (La. App. 3 Cir. 1/25/17), *writ denied* 218 So.3d 120 (La. 2017).

over its land in August of 2009.<sup>89</sup> The lease provided for a 1/5 royalty, and a well was drilled and completed on the lessors' property on April 27, 2012.<sup>90</sup> The land on which the well was drilled was owned by multiple landowners, and on May 11, 2012, Anglo-Dutch filed a pre-application notice with the Louisiana Office of Conservation, asking for a compulsory drilling and production unit for said well.<sup>91</sup> Once an application has been filed for a unit, the operator is allowed a conditional allowable, which allows the operator to "extract a specific volume of production from a reservoir prior to the establishment of a unit."<sup>92</sup> The conditional allowable was granted on May 17, 2012, which stated the following:

All monies generated from the date of first production, the disbursement of which is contingent upon the outcome of the current proceedings before the Office of Conservation for the Frio Zone will be disbursed based upon results of those proceedings.<sup>93</sup>

Anglo-Dutch submitted its formal application for the unit on July 3, 2012.<sup>94</sup> On October 30, 2012 a public hearing was held and Anglo-Dutch completed the legal publication of notice for the unit.<sup>95</sup> An order for the unit was issued on January 23, 2013, stating that the unit will be effective on and after October 30, 2012.<sup>96</sup>

The lessors made demands for non-payment of royalties and argued that Anglo-Dutch was obligated to pay the full 20% royalty for production prior to October 30, 2012, the date of the effective unit.<sup>97</sup> Anglo-Dutch argued that they were only liable for payment of royalties based on the lessor's unit basis interests due to the issuance of the conditional allowable.<sup>98</sup>

The trial court ruled in favor of Anglo-Dutch stating that the allowable covered the royalty payments and that the lessors did not show where in the lease it would require Anglo-Dutch to pay the full royalty when a conditional allowable had been granted.<sup>99</sup>

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89. *Id.* at 904.

90. *Id.*

91. *Id.* at 904-05.

92. *Id.* at 905.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 906.

The Third Circuit Court of Appeal reversed and remanded the trial court's ruling, and ultimately found that Gladney was entitled to their full 1/5 lease basis royalty from the date of first production to the effective date of unitization.<sup>100</sup> The court found that the lease was clear that the plaintiffs were to receive lease-basis royalties on production prior to the unitization order.<sup>101</sup> Since the unitization order specifically stated that it was effective October 30, 2012, full royalties were due to the lessors for production prior to that date.<sup>102</sup> The court agreed with the lessors that the Office of Conservation cannot impede private contract rights, and further, according to an affidavit from an Office of Conservation representative, a conditional allowable was not meant to "affect in any manner the private contractual obligations of an operator or lessee."<sup>103</sup> The court found that Anglo-Dutch could modify the obligation under the lease via a royalty escrow agreement, which the lessors were amenable to; however, Anglo-Dutch did elect to enter into such agreement, and was therefore liable for the full royalty payment to the plaintiffs.<sup>104</sup>

#### *F. Solidarily Liability*

##### *1. Gloria's Ranch, LLC v. Tauren Exploration, Inc.*<sup>105</sup>

Gloria's Ranch, L.L.C. ("Gloria's Ranch") and Tauren Exploration, Inc. ("Tauren") entered into an oil and gas lease dated September 17, 2004, covering approximately 1,390 acres for a primary term of three years.<sup>106</sup> The lease covered all formations and included a vertical and horizontal Pugh clause.<sup>107</sup> In 2006, Tauren assigned 49% of its interest in the lease to Cubic Energy, Inc. ("Cubic")<sup>108</sup> In March of 2007, Tauren and Cubic entered into a credit agreement with Wells Fargo Energy Capital, Inc. ("Wells Fargo") and used its interest in the subject lease as collateral.<sup>109</sup> Multiple wells were drilled on the property to the Cotton Valley

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100. *Id.* at 907-10.

101. *Id.* at 907.

102. *Id.* at 909.

103. *Id.* at 908.

104. *Id.* at 910.

105. *Gloria's Ranch, LLC v. Tauren Expl., Inc.*, 51,077, 2017 WL 2391927 (La. App. 2 Cir. 6/2/17).

106. *Id.* at \*1.

107. *Id.*

108. *Id.* at \*2.

109. *Id.*

formation.<sup>110</sup> While the lease was still in its primary term, Chesapeake Operating, Inc. had completed wells in the Cotton Valley formation in sections of land that were unitized with the subject land, which was later unitized in the Soaring Ridge 15-15-15H unit that was drilled into the Haynesville Shale formation.<sup>111</sup> In 2009, Gloria's Ranch and Chesapeake entered into a top lease to cover Chesapeake's operations in Section 21.<sup>112</sup> Subsequently, Tauren assigned unto EXCO USA Asset, Inc. ("EXCO") 51% of its interest in Gloria's Ranch's lease in depths below the base of the Cotton Valley formation.<sup>113</sup> Wells Fargo released Tauren's interest from the mortgage and in return, received a net profits interest in the shallow rights and an overriding in the deep rights.<sup>114</sup>

Gloria's Ranch sent a letter to Tauren, Cubic, EXCO, and Wells Fargo asking for information on the revenue and expenses of the wells on the lease because they believed that the lease had expired for not producing in paying quantities.<sup>115</sup> Tauren responded to their letter, determining that the lease was producing profitably.<sup>116</sup> Gloria's Ranch responded by asking for a recorded release of the lease, which did not occur.<sup>117</sup> The trial court found that the lease had indeed expired in depths below the Cotton Valley Sand, and expired in as to all depths in Sections 9, 10, 16, and 21 since there was no producing in paying quantities on those wells.<sup>118</sup>

Tauren argued that the trial court was incorrect as to the expiration of the lease as to Sections 9, 10, 16, and 21 for failure of the wells drilled thereon to produce in paying quantities.<sup>119</sup> Gloria's Ranch had requested accounting information from the defendants.<sup>120</sup> Their suspicions were raised when the production volumes that were reported to the Louisiana Department of Conservation appeared to be too little to constitute paying quantities.<sup>121</sup> Tauren provided operating statements of three wells, but Gloria's Ranch had discovered that these statements were amended to make

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110. *Id.* at \*2-3.

111. *Id.* at \*3.

112. *Id.*

113. *Id.*

114. *Id.* at \*4.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at \*5.

119. *Id.* at \*8.

120. *Id.* at \*9.

121. *Id.*

the wells appear more profitable than they actually were.<sup>122</sup> The statements provided by Tauren excluded administrative charges, ad valorem taxes, contract labor costs, and routine chemical charges.<sup>123</sup> Experts testified that these were typical charges that are deducted from the profitability of a well.<sup>124</sup> Tauren argued that despite the wells not being profitable, they maintained the lease due to an “ongoing business plan to develop the Haynesville Shale formation.”<sup>125</sup> The appellate court determined that this was not enough to perpetuate the terms of the lease and affirmed the trial court’s decision that the lease had expired as to Sections 9, 10, 16, and 21.<sup>126</sup>

Wells Fargo and Tauren challenged the trial court’s holding that found them solidarily liable along with the other defendants for damages.<sup>127</sup> The court found that under La. R.S. 31:207, if an owner of a mineral right does not furnish a lessor with a recordable act showing that a lease has expired within 30 days of receiving a written demand from the lessor, then that owner is liable for all damages and reasonable attorney fees.<sup>128</sup> Tauren argues that since it was only an owner in the shallow rights, it should be held responsible for damages relating solely to those rights.<sup>129</sup> The court refuted that argument by citing La. R.S. 31:168, which states that ownership of a mineral right is indivisible and so an obligation to produce a recordable release was also indivisible.<sup>130</sup> As such, Tauren was solidarily liable.<sup>131</sup>

The trial court found that Wells Fargo was solidarily liable because the mortgage on Cubic’s interest contained an assignment of the lease, the mortgage stated that the lease could not be released without prior consent from Wells Fargo, Wells Fargo had an override and a net profits interest in the lease, and it received cost information from the other defendants.<sup>132</sup> Wells Fargo argued that it did not receive an assignment of the lease, but rather a security interest.<sup>133</sup> The appellate court agreed with Wells Fargo

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122. *Id.*

123. *Id.* at \*10.

124. *Id.*

125. *Id.* at \*12.

126. *Id.*

127. *Id.* at \*22.

128. *Id.* at \*24.

129. *Id.*

130. *Id.* at \*25.

131. *Id.*

132. *Id.*

133. *Id.*

arguing that because the mortgage did not include an assignment of Cubic's working interest, it was not an assignment of the lease.<sup>134</sup> The sole purpose of the "assignment" language was to secure the loan by granting a security interest in the leases.<sup>135</sup> However, the court found that Wells Fargo did in fact have some control over Cubic's working interest as the mortgage granted Wells Fargo the right to approve location and depth of wells and the right to access the property at all times.<sup>136</sup> Further, Wells Fargo had to give written consent for any new operating agreements and amendments and written consent to release the lease.<sup>137</sup> The court found that Wells Fargo had actually specifically denied the release of the lease.<sup>138</sup> As a result, the appellate court affirmed the trial court's finding that Wells Fargo was solitarily liable for damages.<sup>139</sup>

### *III. Statutes*

#### *A. Risk Fee Statute*

Act No. 524 amends La. R.S. 30:10.<sup>140</sup> In its original state, La. R.S. 30:10, also known as the Risk Fee Statute, required notices to be sent to other owners in the unit from an owner who was drilling or intended to drill a unit well, a substitute unit well, an alternate unit well, or a cross-unit well on a drilling unit.<sup>141</sup> The 2016 amendment closed a loophole in the statute that *TDX Energy, LLC v. Chesapeake Operating, Inc.* pointed out. The court in *TDX* recognized that a free-rider problem could potentially occur if a non-operator decided to wait until the well was drilled before obtaining an interest in the unit through recording its leases. Act No. 524 adds language that allows an operator to give notice to other owners after a well has been completed.<sup>142</sup>

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134. *Id.* at \*30.

135. *Id.* at \*30-31.

136. *Id.* at \*31-32.

137. *Id.* at \*32.

138. *Id.*

139. *Id.* at \*33.

140. 2016 La. Acts 254.

141. *Id.*

142. *Id.*