



Assignor Liability for Assigned Oil and Gas Contracts Upheld in Wyoming

On December 2, 2015, the Wyoming Supreme Court issued an opinion upholding the law of assignor liability by holding Pennaco Energy, Inc. liable for its assignee's failure to pay under several surface use and damage agreements. The Court affirmed that a party who assigns a contractual duty remains responsible for performance of that duty, unless the contract contains an exculpatory clause excusing liability after assignment. Assigning parties may also be relieved of assignor liability by obtaining consent to the assignment from the other party to the contract, transferring contractual duties to the new assignee (called a novation).

The Court issued its decision in an opinion covering appeals consolidated in two different, but factually similar cases: *Pennaco Energy, Inc. v. KD Company LLC* (S-15-0019) and *Pennaco Energy, Inc. v. First Northern Bank of Wyoming, as Trustee* (S-15-0020).

In each of these cases, Pennaco Energy, Inc. ("Pennaco") held several oil and gas leases in northeastern Wyoming. Pennaco entered into contracts with the surface landowners, which granted Pennaco access to and use of the landowners' land for exploration and production under the leases. In the agreements, Pennaco committed to pay for damages and for use of the land and, when operations ceased, to restore the land as nearly as possible to its prior condition. Pennaco developed its coalbed methane operation and made the required payments for several years. It then assigned its interest in the surface use and damage agreements to CEP-M Purchase, LLC, which re-assigned those interests to High Plains Gas, Inc. Since Pennaco's assignment, neither Pennaco nor the assignees had made any of the payments to the landowners required under the agreements, nor had they reclaimed any of the land.

The surface use and damage agreements at issue did not contain exculpatory clauses relieving Pennaco of liability upon assignment, and the parties did not agree to a novation upon assignment. Pennaco nonetheless argued that the agreements were covenants running with the land, and should only be enforced against the party in privity of estate with the landowners. Pennaco asserted that its privity of estate ceased when it assigned the agreements, and that only Pennaco's assignees should remain liable after the assignment.

The Wyoming Supreme Court disagreed with Pennaco, holding that the plain language of the surface and damage agreements entered into between the landowners and Pennaco required Pennaco to

perform certain obligations until the coalbed methane operations ceased and the lands were reclaimed. Those agreements did not contain language indicating any intent that Pennaco would be discharged from its obligations upon assignment to a third party. To the contrary, the surface use and damage agreements contained numerous indications that Pennaco's contractual obligations continued even after assignment. According to the Court, under established principles of contract law, and because there was no express clause that terminated Pennaco's obligations upon assigning the agreements to a third party, Pennaco remained liable to the landowners to perform the covenants in the event its assignee defaulted.

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