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The Jones Walker Energy E\*Zine reviews and discusses developments in the energy industry, with a particular focus on matters that affect Louisiana. It addresses all legal disciplines within the energy industry, including the exploration and production of oil, gas, and other hydrocarbons; as well as the processing, marketing, and valuation of these products.

## **Pipeline Right of Way Condemnations: Louisiana Supreme Court Reaffirms Traditional Valuation Method, Rejects New “Per Rod” Method**

On October 5, 2001, denying rehearing of its May 15, 2001 decision, Louisiana’s Supreme Court reaffirmed one of the most important pipeline condemnation decisions in decades.

Jones Walker represented Exxon Pipeline Company, now ExxonMobil Pipeline Company, in the case, *Exxon Pipeline Company v. George Hill, Jr., et al.*, 2000-2559 (La. 5/15/01) 2001 WL 508244. The Supreme Court sided with ExxonMobil and reaffirmed the traditional valuation method for pipeline easements, or, as they are called in Louisiana, “servitudes.” The Supreme Court rejected a new valuation method that is growing in popularity with landowners’ appraisers and attorneys because it produces compensation awards many times higher than the traditional method.

The traditional method determines first the per acre value of the parent tract and then computes compensation for the servitude as a percentage of that per acre value applied to the acreage of the servitude. Typically, depending on the use of the parent tract and the conditions of the servitude, the compensation for a pipeline servitude will be in the neighborhood of 80% of the value of the parent tract. The theory is that the portion of the parent tract encumbered by the servitude has lost 80% of its value because the servitude limits the use of that portion of the parent tract. When a pipeline company takes an additional servitude over an existing servitude, as happened in *Hill*, courts might award 80% of the remaining 20% of the encumbered land’s per acre value.

The landowners in *Hill* made a new argument that landowners across the country have started making in recent years. Several appellate courts in various states, including Louisiana, had adopted this approach.

According to the landowners in *Hill*, the compensation for the servitude should be based upon prices paid by pipeline companies for other servitude ac-

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quisitions, not on the per acre value of the parent tract. Because pipeline companies in voluntary acquisitions typically pay by the “rod,” the landowners argued that the court should compute a “per rod” value based on other servitude acquisitions.

The Louisiana high court rejected this argument. The proper inquiry in computing just compensation is the loss the taking causes the landowner, not the value the interest taken has to the expropriator. The “per rod” method, based upon sales to pipeline companies, does not provide a reliable indication of the loss experienced by a landowner. In such transactions, pipeline companies typically pay a premium over what they believe just compensation would be if the issue were litigated. They do this in order to avoid litigation costs and delays for the project. Using the “per rod” method would likely overstate the compensation due a landowner.

\* \* \*

## Reasonableness of Lessees’ Reliance on Unit Survey Based on Partial Title Information Tested in Louisiana Courts

Lessees found unreasonable in relying on unit survey developed on partial title information to pay royalties. In *Broussard v. Union Pacific Resources Co.*, 2000-01079 (La. App. 3 Cir. 1/31/01), 778 So.2d 1199, writ denied, 2001-0589 (La. 4/27/01), 791, So.2d 118, the Court of Appeal of Louisiana, Third Circuit, affirmed the finding of the trial court that lessee/oil companies acted unreasonably (1) in relying on a unit survey in which the surveyor failed to consider the record title and lease description of one of the bounding owners in placing the boundary between two tracts, (2) in refusing to investigate the title once a discrepancy was brought to their attention, and (3) in refusing to correct the situation even after a boundary agreement had been executed by the adjoining landowners fixing the property boundary.

Plaintiff acquired a tract of land in Rapides Parish by donation from his mother. His mother had previously executed an oil and gas lease covering the donated lands in favor of the lessee/oil companies. A well was drilled, completed and unitized and went on production in May of 1998. The lessee/oil companies engaged a surveyor to prepare a unit survey for purposes of allocating payment for the unitized production.

The unit survey indicated that plaintiff owned 8.473 acres in the unit.

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As it related to plaintiff's tract, however, the unit survey was based entirely on the property description in the lease of a bounding owner. Plaintiff refused to sign the division order because the unit survey shorted him by 1.137 acres and credited this acreage to the adjacent landowner. When the plaintiff brought this issue to lessees' attention, he was told that the lessees did not agree with his position but that he could obtain his own survey to prove his position.

Thereafter, the plaintiff hired an independent surveyor. The plaintiff's surveyor found that plaintiff's tract of land contained 9.610 acres of land in the unit, not the 8.473 shown on the unit survey plat. The plaintiff's surveyor considered the property description in the donation and the mineral lease by plaintiff's mother, as well as that in the adjacent landowner's mineral lease. Plaintiff again made written demand on his lessees attaching this survey. The lessees refused to recognize the correct acreage totals. Instead, the lessees informed plaintiff that the change could not be effected because of an ambiguity in the adjacent owner's property description and that he should get a boundary agreement with the adjacent owner.

In response, plaintiff obtained a boundary agreement with the adjacent owner recognizing the boundary as surveyed by plaintiff's surveyor. This boundary agreement was presented in another written notice to the lessee. Receiving no response from that notice, plaintiff filed suit.

In defending against plaintiff's claims for royalties prior to the recordation date of the boundary agreement and for double damages under Louisiana Revised Statute 31:137 *et. seq.*, the lessees attempted to rely upon the unit survey which they alleged was based upon recognized survey protocol, to wit:

This protocol is recognized in Louisiana law. Under our jurisprudence, it is well settled that the order of importance or value of the various calls which may be included in any property description are: (1) natural monuments; (2) artificial monuments; (3) distances; (4) courses; and (5) quantity. However, the controlling consideration in any case is the intention of the party or parties.

(citations omitted).

The Court of Appeal affirmed the trial court's finding that the lessees were unreasonable in handling the matter. Specifically, the trial court concluded that there had never been a dispute between the plaintiff and the adjacent owner as to the location of their common boundary. In responding to the lessees' posi-

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tion that the unit survey followed the proper protocols, the trial court pointed out that the unit surveyor never considered the title of the plaintiff but relied solely on the property description in the lease from the adjacent owner. Further, the trial court found that once a discrepancy was noted, unit surveyor erred in failing to consult both the plaintiff and the adjacent owner to help understand the true location of the property boundary.

\* \* \*

## Louisiana Court Determines Who Has Title to Roadbed After Parish Abandons Servitude of Public Use.

Parish abandonment of a public road does not automatically invoke Louisiana Revised Statute 48:701 such that the contiguous landowners received title to the roadbed. In *U.S. Silica Co. v. Wooldridge*, 2001 WL 1336260 (La. App. 2 Cir. 10/31/01), the Court of Appeal of Louisiana, Second Circuit, held that where there is a servitude of public use over a road that the parish abandons, the land reverts free of any servitude to the owner who made the dedication, or to the subsequent purchaser if the grantor conveyed his fee title interest in the land after the dedication and not necessarily to the owners of the contiguous tracts.

U.S. Silica Co. (“Silica”) operated a plant and obtained title to certain lands situated on either side of a portion of a parish road in Webster Parish, Louisiana. Silica filed a petition with the Webster Parish Police Jury seeking abandonment of a portion of the road because the road had fallen into a state of extreme disrepair making travel along it difficult.

Finding that no recorded right-of-way for the road existed, the appellate court concluded that no formal dedication of the road for public use had occurred. Instead, the court concluded that the land had been tacitly dedicated to the public use. As such, the court concluded that Louisiana Revised Statute 48:701 did not apply and that the roadbed would not have vested in the contiguous owners after the abandonment by the parish. Louisiana Revised Statute 701 provides:

The parish government authorities and municipal corporations of the state, except the Parish of Orleans, may revoke and set aside the dedication of all roads, streets, and alleyways laid out and dedicated to public use within their respective limits, when the roads, streets, and alleyways have been abandoned or no

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longer needed for public purposes.

Upon such revocation, all of the soil covered by or embraced in the roads, streets, or alleyways up to the centerline therein, shall revert to the then present owner, or owners of the land contiguous thereto.

Nothing in this Section shall be construed as repealing any of the revisions of special statutes or charters incorporated into the municipalities granted the right to close or alter roads or streets.

The court held that “tacit or implied dedication does not disturb the ownership of the roadbed of the dedicated road, but grants a servitude of passage to the public.” (citing *Chevron Oil Co. v. Wesson*, 226 So.2d 774 (La. App. 2 Cir.), writ denied, 254 La. 849, 227 So.2d 593 (La. 1969)). Accordingly, the court concluded that “where there is a servitude of public use and the road is abandoned, the land reverts free of any servitude to the landowner who made the dedication, or to the subsequent purchaser if the grantor conveyed his fee title in the land subsequent to the dedication.” (citing *St. Martin Parish Police Jury v. Michel*, 229 So.2d 463 (La. App. 3 Cir. 1969)).

After so concluding, the appellate court evaluated the evidence offered by the two parties as to their title to the underlying roadbeds. The court found that Silica failed to prove title because none of the exhibits it offered as evidence of its title included the roadbed in the lands transferred to Silica. Instead, the transfers described the boundaries of the tracts of land conveyed to Silica as running “to” the road, “along said road” or “with” the road. Further, the court found that the defendants did not prove their title because the deed out of which they alleged to have acquired title was a 1933 deed that described the land conveyed to the defendants as “all that part of the west half of the northeast quarter,” and “all that part of the northwest quarter of the southeast quarter lying east of . . . the road . . .” The court concluded that this instrument did not convey any title to the road. Accordingly, the appellate court denied both parties’ claims to the roadbed but did not preclude either from proving valid title in a subsequent action.

\* \* \*

## Louisiana Court Imposes on Contract Operator An Implied Obligation to Provide A Qualified Lease Operator

Contract operator held to an implied obligation to provide a qualified lease operator under its lease operating contract which imposed upon it the obligation to provide a lease operator. In *Certain Underwriters at Lloyds London vs. Sealar Management, Inc.*, 2000-1512 (La. App. 4 Cir. 5/9/01), 787 So.2d 1069, the Court of Appeal of Louisiana, Fourth Circuit, addressed a contract lease operator's duty under a contract which called for the provision of the following services:

Sealar will provide a Lease Operator A to perform the following services: (1) make two daily well equipment inspection in order to maintain production at a maximum efficient rate. Past experience indicates that the lease operator will be on location for four (4) hours each day; (2) perform preventative maintenance on production process equipment; (3) gauge and load oil sales barge; 4) prepare and transmit production, equipment, maintenance, well test and safety inspection reports as required by Graham; (5) maintain good housekeeping.

The Court of Appeal affirmed the trial court's ruling that the obligation to provide a "Lease Operator A" included an implicit obligation to provide a qualified lease operator. The lease operator engaged by the contract operator negligently caused a spill by leaving a safety valve unconnected. Concluding that "an experienced lease operator/subcontractor should have known the difference between a gas line and a safety line," the trial court ruled that Sealar breached its obligation to provide a qualified lease operator to manage the properties and thus was responsible for the resulting spill.

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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