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Maintenance of Oil and Gas Leases in these Troubled Times

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MCLE Information
(1.0 Credit Hour)

- Most participants should anticipate receiving their certificate of attendance in 4-6 weeks following the webcast
- Virginia Bar Association members should anticipate receiving their certificate of attendance in 6-8 weeks following the webcast
- All questions regarding MCLE Information should be directed to Victoria Chan at (650) 849-5378 or vchan@gibsondunn.com

Maintenance of Oil and Gas Leases in these Troubled Times - Agenda

- Part 1: Introduction
- Part 2: Lease Maintenance
- Part 3: Lease-Saving Provisions
- Part 4: Temporary Cessation of Production Doctrine
- Part 5: Implied Covenants
- Part 6: Additional Issues for Consideration
- Part 7: Some Random Thoughts
- Part 8: Conclusion

Part 1: Introduction

I. Planning for reduced production and shut-ins
II. Rationale and causes of reduced production and shut-ins
   a. CapEx and OpEx reductions
   b. Transportation and storage capacity restrictions
   c. Flaring restrictions
   d. Prorationing order(s)
   e. Self-determination

Part 2: Lease Maintenance

I. Reminder of the first and foremost consideration

II. Nature of and estate created by an oil and gas lease

   a. Why is this important?

   b. Fee simple determinable

III. Primary term and secondary term

IV. Importance of "production in paying quantities"

Part 3: Lease-Saving Provisions

I. Absence of production in paying quantities
II. Determination of fee simple = lease termination
III. What's holding the lease?
IV. No gaps
V. Common Lease-Saving Provisions
    a. Shut-In
    b. Continuous Operations
    c. Force Majeure
    d. Governmental Regulation

Part 4: Temporary Cessation of Production Doctrine

I. Purpose and rationale of doctrine

II. Is the doctrine helpful in this situation?

Part 5: Implied Covenants

I. To reasonably develop the leased premises
II. To protect the leasehold from drainage
III. To manage and administer the lease
IV. To market production
V. To act as a reasonably prudent operator

Part 6: Additional Issues for Consideration

I. Lessors and royalty interest owners
II. Counter-parties in JOAs, JVs, Joint Development Agreements and similar contractual arrangements
III. Various mid-stream arrangements
IV. Regulatory bodies having jurisdiction over oil and gas matters
V. Lenders/Hedge Counterparties
VI. Technical concerns

Part 7: Some Random Thoughts

How will CapEx and OpEx reductions, significantly-reduced production, shut-in wells, and the possibility of lost leases play out in the context of:

I. Vintage leases with no Pugh clauses or retained acreage clauses?

II. Wellbore deals, where wellbores (and production) are owned by one party and held acreage by another party?

III. Field-wide units (vertical wells), pooled units (vertical and horizontal wells), and allocation wells (horizontal wells)?

IV. Royalty Trusts?

V. Recent ABS transactions?

VI. Industry agreements containing drilling and expenditure obligations or production and delivery obligations?

Part 8: Conclusion

I. Express terms of a lease must provide the means by which to maintain the lease in the absence of production in paying quantities
II. Otherwise, lease termination is a real possibility
III. Utilize lease-saving provisions
IV. Comply with implied covenants
V. Be mindful of other issues
VI. What's holding the lease?

Presenter

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