

Tulsa Business & LEGAL NEWS

Re-establishing production after mechanical failures to save a lease

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A recent trend in oil and gas litigation is top lessees seeking termination of base leases. While these lawsuits typically target marginally producing leases, operators may be equally “termination conscious” when a profitable well experiences mechanical failures, resulting in loss of production.

With seemingly litigation-happy top lessees and mineral owners, it is understandable why operators become antsy when a well goes down. They don’t want to lose their lease.

Thankfully for operators, most leases contain savings clauses that step in to provide “constructive production.” In the absence of such a clause, Oklahoma law has developed several savings doctrines, including the temporary cessation of production doctrine.

Under a literal or strict interpretation of the habendum clause, uninterrupted production following expiration of the primary term could arguably be required to maintain a lease, which would mean any cessation of production, no matter how slight, would terminate the lease.

Oklahoma has rejected this literal view. Rather, under Oklahoma’s common law cessation of production doctrine, a temporary cessation of production will not result in the automatic termination of an oil and gas lease.

The result in each case generally depends upon the circumstances that surround cessation and the operator’s efforts to restore production. Often the controlling factor is whether the temporary stoppage in production was for an unreasonable length of time under the circumstances.

Oklahoma’s cessation of production doctrine developed out of Oklahoma’s strong policy against forfeiture of estates, and the acknowledgement that leases extended into their secondary terms

are valuable property rights. Thus, if no provision in the leases states otherwise, the lease continues in existence as long as interruption of production in paying quantities does not extend for a period longer than reasonable or justifiable in light of all the circumstances involved.

However, where the parties to a lease stipulate as to the time period for cessation of production, that express provision will likely control over Oklahoma's common law doctrine allowing temporary cessation for a "reasonable time." In either event, the most important thing for the operator to remember is: Act prudently.

The "reasonably prudent operator" standard is generally a gauge against which the operator will be judged. The question is, what would a reasonably prudent operator do under the same or similar circumstances?

Although Oklahoma courts have not drawn a bright line, they generally will not terminate a lease when the well experiences an involuntary failure and the operator makes diligent efforts to restore production, regardless what those efforts are.

http://www.tulsaworld.com/business/tulsabusiness/business_news/energy/re-establishing-production-after-mechanical-failures-to-save-a-lease/article_106b31cb-5420-50e1-be02-177ab8e23d39.html