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## **Recent Haynesville Shale Leasing Issues**

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### **I. Introduction**

I have been asked to speak today about different issues that have arisen relating to leasing in the context of the Haynesville Shale. When determining what issues to speak on, I reviewed demand letters, lawsuits, and title issues that have recently come across my desk and through our Firm. Demands seeking lease cancellation, although not a novel concept, seem to have become a common issue with regard to the Haynesville Shale. This circumstance is undoubtedly due to the fact that lease bonuses several years ago before all the excitement ranged from \$150 - \$300 per acre. Then, at the peak thus far, mineral owners were fetching lease bonuses as high as \$30,000 per acre. In addition to these large bonus payments, mineral owners went from bargaining for lease royalties in the range of twelve and one half percent (12.5%) to twenty percent (25%) in the early stages of leasing, and certainly under HBP leases, to as much as thirty percent (30%) or more at the peak of new leasing.

As the financial stakes increased, so did the claims and demands by mineral owners who desired, in most instances, to renegotiate a trade that they or their predecessors in title had already made with their lessee. Everyone wanted peak prices regardless of when they negotiated the deal. It appears that many of the claims and demands asserted by landowners concerning leases in the Haynesville Shale play can be analogized to the Parable of Workers in the Vineyard, which is summarized as follows:

In the Parable of the Workers in the Vineyard a landowner goes out to hire some men in his vineyard. He agrees to pay them one denarius for a day's work. A few hours later the landowner finds more men and only says "I will pay what is right." A few more hours the landowner finds more men and gives them work and then a few hours later he finds a few more and so on. At the end of the day when the landowner is paying everybody he gives the workers he hired at the beginning of the day a denarius like he promised. Then he paid everybody else one denarius even if they didn't work the entire day. The workers that worked the entire day were angry that some people only worked on hour and got paid the same amount. The landowner tells them "Friend, I am not being unfair to you. Didn't you agree to work for a denarius? Take your pay and go. I want to give the man who was hired last the same that I gave you.

Don't I have the right to do what I want with my own money? Or are you envious because I am generous." Matthew 20: 1 – 16

With the stakes so high in the minds of these mineral owners, they have come up with creative ways (sometimes quite clever ways) to pursue the cancellation of oil, gas and mineral leases.

## II. Issues Arising from Haynesville HBP Leases

Many mineral owners in North Louisiana were prevented from leasing their Haynesville Mineral Rights when the “boom” began because their lands were already burdened by productive or HBP leases. Because most of these leases were *circa* the early 1950s, few, if any, contained the “so-called” horizontal or vertical Pugh clause. The fact that these mineral owners were unable to join in the “boom” was likely a source of confusion for some mineral owners in the area. Consequently many mineral owners have made demand seeking the release and cancellation of their HBP leases (at least as to the deeper Haynesville rights). Based upon our experience, the basis of most of these claims and the salient issues for discussion are: (1) whether the deep rights had never been properly explored or developed; (2) whether the operator failed to maintain the production of minerals under the lease in paying quantities; and (3) whether there was a gap in production many years ago sufficient to have terminated the HBP lease. I will also cover other related issues.

### A. Implied Covenant Issues

Article 122 of the Louisiana Mineral Code imposes upon the lessee the obligation to operate his lease as a “reasonably prudent operator.” In doing so, Article 122 provides that “[a] mineral lessee is not under a fiduciary obligation to his lessor, but he is bound to perform the contract in good faith and to develop and operate the property leased as a reasonably prudent operator for the mutual benefit of himself and his lessor.”<sup>1</sup> In addition, the “[p]arties may stipulate what shall constitute reasonably prudent conduct on the part of the lessee.”<sup>2</sup>

Although Louisiana’s law recognizes several additional implied obligations, our experience with respect to the Haynesville has been limited, thus far, to the following: (a) the obligation to develop known mineral producing formations in the manner of a reasonably prudent operator (hereinafter “reasonable development”) and (b) the obligation to explore and test all portions of the lease premises after discovery of minerals in paying quantities (hereinafter “further exploration”).

Whether the lessee has sufficiently developed the leased premises is a question of fact which must be resolved by a consideration of the facts

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<sup>1</sup> La. R.S. 31:122.

<sup>2</sup> *Id.*

and circumstances shown in the particular case.<sup>3</sup> Prior to 1948, Louisiana courts consistently required that a lessor show the prospective profitability of the drilling demanded in order to state a cause of action for breach of the implied covenant of reasonable development.<sup>4</sup> In other words, “the lessee was not required to ‘wildcat’ or ‘explore’ with little hope of making a profit or even recouping his expenses.”<sup>5</sup> However, this position was altered over time in favor of the lessor by the Louisiana Supreme Court decision of *Carter v. Arkansas Louisiana Gas Co.*<sup>6</sup> *Carter* was the first case in Louisiana that recognized a separate obligation of further exploration of the geographical extent of the leased premises. Below is a brief recitation of *Carter’s* facts, which illustrate how the covenant of further exploration arose in Louisiana.

A geological fault line divided the 1263-acre Carter tract into 824 acres on the down-thrown side of the fault and 439 acres on the up-thrown side. After approximately five years of the ten-year primary term had elapsed, the defendant began producing in paying quantities on the smaller tract. A year later the lessee drilled another successful well on the same tract. Five years after the last drilling, and after the primary term had expired, the lessors demanded development of the 824 acres on the down-thrown side of the fault line. The lessees refused to develop the 824 acres and a lawsuit for lease cancellation followed. The lessee’s geologist testified that profitable production could not be reasonably expected from the larger tract and that therefore drilling on the 824 acres “would constitute exploration and not development.” The Court allowed cancellation of the lease as to the 824 acres. The Court, in forming its decision, relied on testimony of an experienced competent operator who stated that he would have drilled a well. The Court buttressed its decision by quoting dictum from the Oklahoma decision of *Fox Pet. Co. v. Booker*.<sup>7</sup> “The principle as we understand it is that development of every part of the lease is an implied condition. Therefore, whether the undeveloped portion be a single tract remote from the rest, or a considerable portion of a very large tract...or the east one hundred of 160, it is an implied condition that the lessee will test every part.”

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<sup>3</sup> Harrell, *A Mineral Lessee’s Obligation to Explore Unproductive Portions of the Leased Premises in Louisiana*, 52 La. L. Rev. 387, 391-392.

<sup>4</sup> Endom, *Implied Covenants of Exploration in Oil and Gas Leases*, 37 Tul. L. Rev. 90 (1962) citing; *Wadkins v. Wilson Oil Corp.*, 6 So.2d 720 (1942); *Logan v. Tholl Oil Co.*, 180 So. 473 (1938); *Ardis v. Texas Co.*, 99 So. 600 (1924).

<sup>5</sup> Conger, *The Evolution of the Further Development Requirement Under Mineral Leases*; LSU, 7<sup>th</sup> Annual Mineral Law Institute 149, 150 (1960).

<sup>6</sup> 36 So.2d 26 (1948); Endom, *Implied Covenants of Exploration in Oil and Gas Leases*, 37 Tul. L. Rev. 90 (1962).

<sup>7</sup> 123 Okla. 276, (Okla. 1926).

Louisiana jurisprudence, mainly due to the *Carter* decision, recognizes the covenant of further exploration as a distinct obligation that appears to be separate and apart from the covenant of reasonable development. Where *Carter* appeared to expand the implied obligation of reasonable development to further exploration of the geographical extent of the leased premises, commentary suggests that cases such as *Lejeune v. Superior Oil Company*<sup>8</sup> may have expanded the obligation of Lessee to develop other horizons or formations on the leased premises.

In *Lejeune* the plaintiff-lessors, under the two leases, sought cancellation of non-unitized portions of the leases for defendant lessees' alleged failure to reasonably develop (or further explore) the non-unitized acreage. Portions of the lessors' leases were producing gas and condensate from the unitized Miogyp sand. The plaintiffs' claims were based upon the defendants' alleged failure to develop Camerina 1 Sand. The plaintiffs' leases contained Pugh clauses, but it was admitted that defendants tendered Pugh clause rentals as provided for in the leases in order to maintain the non-unitized acreage. The court stated that the issue was whether the defendant failed to (a) develop known producing formations in the manner of a reasonable prudent operator; and (b) satisfy their obligation to explore and test all of the portions of the leased premises after the discovery of minerals in paying quantities in the manner of a reasonable, prudent operator. The court found that because there were no wells producing from the Camerina 1 Sand either from the lease or in the entire field in which the lease was located, it was not a "known producing mineral formation within the meaning of the obligation to reasonably develop, and not a discovery of minerals [in the Camerina 1 Sand] within the meaning of the obligation of further exploration."<sup>9</sup> The court noted that in all cases, including *Carter v. Arkansas* and its progeny, there was first a discovery well and production in paying quantities from a known mineral formation before the courts required further development or exploration, in that horizon.

Numerous lessors burdened by HBP leases held by Cotton Valley and Hosston production have made demands against their lessees seeking the release of their deeper Haynesville rights under claims of failure of reasonable development and further exploration. In essence, these lessors have claimed that their lessees have had fifty some odd years to develop and/or explore the Haynesville Shale formation, but have failed to do so. Under the above-cited case law and other Louisiana jurisprudence such claims appear to have little merit. Relative to the HBP leases at issue, and analogous to the Camerina 1 Sand in *Lejeune*, the Haynesville Shale formation, until recently has not been a "known producing formation"

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<sup>8</sup> 315 So.2d 415 (La. App. 3d Cir. 1975).

<sup>9</sup> *Lejeune*, 315 So.2d 417.

within the meaning of the obligation to reasonably develop. Moreover, until recently there had not been a discovery of minerals within the Haynesville to trigger a lessee's obligation of further exploration. In fact, the writer contends that the case law and specifically *Lejeune* suggests that the obligation of further exploration is only triggered where some portion of the leased property has become productive from the Haynesville Shale formation. Additionally, the lessor claimants would be barred from judicial demand unless and until they have given written notice to the mineral lessee under Louisiana Mineral Code article 136, and allow the lessee a reasonable time for performance.

Under the reasoning set forth in *Carter* and its progeny, and based upon the basic facts that we know concerning the Haynesville Shale and these HBP leases, lessees should be in a strong position to thwart claims for reasonable development and further exploration based upon lessees' alleged previous inaction.

#### **B. Habendum Clause Issues**

The Habendum Clause specifies and provides the duration or "term" of a mineral lease. The typical Habendum Clause in most form leases used in Louisiana provides two terms for the lease, the primary term and the secondary term.<sup>10</sup> The primary term is the definitive period stated in the clause. For example, the typical primary term used today is three years. During the primary term, unless otherwise stated in the lease form, the lessee can maintain the lease in lieu of production or drilling operations by the payment of delay rentals.<sup>11</sup> However, the failure of the lessee to drill or pay the rental as provided in the lease, on the appropriate date (usually the anniversary date), will cause the lease to terminate *ipso facto*.<sup>12</sup>

The secondary term, on the other hand, is an uncertain period, usually provided in the latter part of the Habendum Clause during which the lease may be maintained after the primary term, but typically only by drilling or mining operations for the purpose of achieving production or by actual production in paying quantities.

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<sup>10</sup> Louisiana Mineral Code article 115 (La. Rev. Stat. § 31:115 (2007)); see also 8 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW at 465 (2006); 2 L. SUMMERS, LAW OF OIL AND GAS § 14.1, 186 (3 ed. 2006); Patrick S. Ottinger, *Production in "Paying Quantities"- A Fresh Look*, 65 LA. L. REV. 635 (2005) ("A 'Habendum' Clause is that provision which dictates the duration of a mineral lease.").

<sup>11</sup> See *Mattison v. Trotti*, 262 F.2d 339, 340 (5th Cir. 1959).

<sup>12</sup> See *Jones v. Southern Natural Gas Co.* 213 La. 1051, 1074, 36 So.2d 34, 41 (La.1948)(stating that under an "unless" lease, the lessee is under no duty either to drill or to pay delay rentals; if he either pays or drills, the lease remains in effect, but, if he does neither, it *ipso facto* terminates at the time of default. It will be observed also that the forfeiture clause in the 'unless' lease is for the benefit of, and exercisable by, the lessee or his assigns alone.

## 1. Production in Paying Quantities Issues

Article 124 of the Louisiana Mineral Code provides that “[w]hen a mineral lease is being maintained by production of oil and gas, the production must be in paying quantities.” Thus, whether a lease is being maintained by production either during the primary term or subsequent thereto, such production must be in paying quantities. Under the statute, production is considered to be in paying quantities when production allocable to the total original right of the lessee to share in production under the lease is sufficient to induce a reasonable prudent operator to continue production in an effort to secure a return on his investment or to minimize any loss.<sup>13</sup> This language conforms to Louisiana’s long-standing policy that the lessee should not be permitted to maintain the lease indefinitely merely for speculative or other selfish purposes.<sup>14</sup>

In the recent decision of *Rathborne Land Co., L.L.C. v. Ascent Energy, Inc.*,<sup>15</sup> the Eastern District of Louisiana examined whether a lease on land terminated based on the mineral lessee’s failure to produce the lease in paying quantities. In *Rathborne*, the lessors granted an oil, gas and mineral lease in 1952 covering 5,729.77 acres. The lease covered approximately 449.50 acres at the time of the filing of the litigation. Following execution of the lease, three (3) wells were successfully drilled and completed on the leased acreage.

The facts indicate that between 1998 and 2001, Ascent, or its predecessors in interest, performed six workover operations on two of the three earlier drilled wells. Most of the workover operations occurred in 1998. As of 2000, only one of the three originally drilled wells, the Rathborne No. 2 Well, was producing. It was re-worked that same year to re-establish gas production from the same zones in which re-completion occurred nearly a year earlier. Ascent also made an attempt to rework

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<sup>13</sup> Louisiana Mineral Code article 124.

<sup>14</sup> Ottinger, *supra* note 10 at 637-38 (citing *Caldwell v. Alton Oil Co.*, 161 La. 139, 142, 108 So. 314, 315 (La.1926)).

The court in *Caldwell* explained:

A development that falls short of a reasonable production which would bring a net profit to the lessee and furnish an adequate consideration to the lessor of the continuance of the lease might well be said to be no development at all within the contemplation of the parties . . . . To hold that any production, however small, and in less than paying quantities, gives to the lessee the right to continue the lease indefinitely and with no obligation to further development, would be contrary to the established rule of jurisprudence, and would be writing for the parties a contract the never intended to make . . . . It was never contemplated that the lease under consideration should be continued for all time to come upon the mere production of oil in quantities not sufficient to compensate the lessee and totally inadequate as a consideration to the lessor for continuing the lease.

<sup>15</sup> 2008 WL 5427751 (E.D. La. 2008).

Rathborne No. 2 Well in August of 2005 after the lessors filed the lawsuit in May 2005.

On December 1, 2005 the Rathborne No. 2 Well was re-worked and re-completed as a gas well on the Rathborne leased acreage. This 2005 re-completion followed approximately thirty-five consecutive months of operational losses at a total loss of over \$280,000 to Ascent. Based upon these facts the salient issue before the court was whether production was being had in “paying quantities.”

To make this determination, the court examined the overall operations on the Rathborne No. 2 Well from 2002 and 2007. Based upon its review of the facts and evidence, the court determined the Rathborne No. 2 well was operating at no or little meaningful production. The Court found that the Rathborne lease was being held by the lessees solely for speculative reasons until almost the eve of trial preparations. Ultimately, the court concluded that the Rathborne lease had terminated due to the lessee’s failure to produce minerals in paying quantities or conduct good faith operations to achieve such production outside of the primary term. The court also found that Ascent ceased to be a good faith possessor of Rathborne land no later than the date of judicial demand putting them on notice of the claim, February 14, 2006. As damages, the court awarded Rathborne payment of the value of all production from Rathborne No. 2 Well, less royalty payments made through July 2006.<sup>16</sup>

The issues relating to production in paying quantities has been the topic of much discussion both by Louisiana’s courts as well as by many commentators and scholars. An in-depth discussion concerning production in paying quantities is beyond of the scope of this paper other than to note that such issues have arisen regarding HBP leases in North Louisiana. As will be discussed in the conclusion of this section, each of these cases will ultimately turn on their individual facts and circumstances.

## **2. Cessation of Production Issues**

Paragraph 5 of the Bath Form Louisiana Spec.: 14-BR1 2A (a common lease form used in North Louisiana) provides in part:

If prior to discovery of oil, gas sulphur or other mineral on said land, lessee should drill a dry hole or holes thereon, or if after the discovery of oil and gas, sulphur or other mineral, the production thereof should cease from any cause, this lease shall not terminate if lessee commences for additional drilling or reworking within sixty days thereafter or (if it be within the primary term) commences additional drilling operations or commences or resumes payment or tender of rentals on or before rental payment date next ensuing after

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<sup>16</sup> *Rathborne Land Co., L.L.C. v. Ascent Energy, Inc.*, 2008 WL 5427751, 6 (E.D. La. 2008).



the expiration of the three months from the date of completion of the dry hole or production . . . .

Most modern lease forms including those currently being used in North Louisiana provide a ninety day cessation of production clause. The high stakes presented in the Haynesville Shale appear to have created a practice by some lessors of scouring Conservation records in an attempt to find periods of cessation of production or failure of production in paying quantities to bolster a claim of HBP lease cancellation. Many times, these HBP leases have been in production and the lessor receiving royalties for fifty years or more. Whether such production has been in paying quantities and whether any hiatus in operations was sufficient for lease cancellation is a matter of fact and circumstance to be determined by the court in the particular case. Generally, the lessor has the burden of proving the propriety of cancellation of a mineral lease.<sup>17</sup> A complicating factor is that older well files typically only show production. Possible ongoing operations to rework wells or put them back on-line is, in many cases, not apparent from the Conservation records. Further, many of the 1950s vintage HBP leases have been assigned in whole or in part many times over. The successor lessees/sublessees often will not have possession of sufficient records to show continuous operations on wells occurring thirty, forty or fifty years ago. Thus, proof in such cases may rest on personal testimony of actual field personnel, if available. This writer also suggests that where the parties have been performing and accepting performance of the obligations under the lease, some form of equitable estoppel or other equitable remedy, in addition to liberative prescription, should be applicable to these claims.

### **C. Issues Resulting from the North Louisiana Pooling Clause**

Most mineral leases commonly used in Louisiana today contain some form of Pugh clause, which is included in an exhibit to the lease form. The Pugh clause typically found in today's oil, gas and mineral leases provides as follows:

In the event a portion or portions of the land herein leased is pooled or unitized with other land so as to form a pooled unit or units, operations on or production from such unit or units will maintain this lease in force only as to the land included in such unit or units.

Historically, the Bath Form Louisiana Spec.: 14-BR1 2A has been used in North Louisiana. As will be discussed below, the resulting effect of this North Louisiana Pooling Clause can have differing consequences depending on the nature of unitization. The newer versions of leases that we have seen do not contain this clause.

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<sup>17</sup> *Frazier v. Justiss Mears Oil Co.*, 391 So.2d 485 (La.App.2d Cir.1980), writ denied, 395 So.2d 340 (La.1980).

Paragraph 6 of the older Louisiana Spec.: 14-BR1 2A lease provides as follows:

If at any time while this lease is in force and effect lessee in its opinion deems it advisable and expedient, in order to form a drilling unit or units to conform to regular or special spacing rules issued by the Commissioner of Conservation of the State of Louisiana, or by any other State or Federal authority having control of such matters, or in order to conform to conditions imposed upon the issuance of drilling permits, lessee shall have the right, at its option, to pool or combine the lands covered by this lease, or any portion or part thereof, with other land, lease or leases in the immediate vicinity thereof, whether such land, lease or leases are held by lessee or by others, such pooling to be into a unit or units not exceeding the number of acres, or the land subdivision, whichever may be the larger, allocated to one well by the above mentioned authority or authorities, and to be applicable only to such sands, horizons or strata as are covered by such regulations. *Lessee shall execute in writing and record in the conveyance records of the parish in which the land herein leased is situated, an instrument identifying and describing the pooled acreage, and shall mail to the named lessor herein at his last known post office address, by registered mail, a certified copy of such instrument.* As between the parties hereto and except as herein otherwise specifically provided, the entire acreage so pooled into a tract or unit be treated for all purposes as if it were included in this lease. In lieu of the royalties elsewhere herein specified, lessor shall receive, on the production from the unit so pooled, only such proportion of the royalties stipulated herein as the amount of his acreage (mineral rights) placed in the unit bears to the total acreage so pooled in the particular unit involved. Drilling operations on or production of oil, gas, sulphur or other minerals from any portion of the land covered hereby shall continue this lease in force and effect during or after the primary term as to all of the lands covered hereby, irrespective of whether any portion thereof has been pooled. *If operations be conducted on or production be secured from land in such pooled unit other than land covered by this lease, it shall have the same effect as to maintaining lessee's rights in force hereunder as if such operations were on or such production from land covered hereby, except that its effect shall be limited to the land covered hereby which is included in such pooled unit.* This lease, during any period in which it is being so maintained as to part of the land covered hereby, may be maintained as to the remainder in any manner elsewhere provided for herein; provided, that if it be maintained by rental payment, the rentals may be reduced in proportion to the number of acres in such unit or units as to which this lease is being maintained by drilling operations or production. (Emphasis added)

At first glance it may appear to oil and gas lawyers and landmen that have practiced mainly in South Louisiana, where this lease form is not used, that this provision could be applied as a type of Pugh clause. The clause provides that in the event the leased premises are included in a unit formed pursuant to the paragraph, operations on or production secured from the lands covered by the lease would have the effect of maintaining the lessee's rights as to the entire leased premises. However, if operations on or production are secured from lands not covered by the leased premises and included in such unit, the effect shall be maintenance of the leased premises only insofar as to lands included in the unit. Interestingly, the provision appears to use the "on-tract"/"off-tract" mineral servitude rules to unit operations applicable to the clause.

Although it may be argued that the scope of the provision is not clearly discernable from its plain text, Louisiana jurisprudence limits the application of the clause to voluntary pooling under the specific terms thereof. For example, the Louisiana Second Circuit Court of Appeal in *Mathews v. Goodrich Oil Company* opined on Paragraph 6 of the Bath Louisiana Spec.: 14-BR1 2A.<sup>18</sup> The facts in *Mathews* indicate that a portion of the lessors' property was included in several compulsory units for the Hosston Zone. The lessor Plaintiffs filed suit seeking lease cancellation resulting from the lessee's failure to furnish lessor with a certified copy of the recorded instrument identifying the pooled acreage pursuant to Paragraph 6. The Plaintiffs also argued that the production maintained the leased acreage only as to the portion located in the unit or units regardless of whether the unit or units were formed voluntarily or by the compulsory process. None of the wells for the Hosston units were physically located on the Plaintiffs' property. Ultimately, the Court in *Mathews*, relying on similar reasoning articulated in *Lowman v. Chevron U.S.A., Inc.*,<sup>19</sup> held that Paragraph 6 was only applicable to forms of **voluntary** pooling made pursuant to the specific terms of the provision.<sup>20</sup> The result was that the lease was maintained in its entirety.

The overarching theory behind this line of decisions is that drilling units established by the Commissioner of Conservation are not "voluntary" actions of the lessee and therefore do not trigger the operation of this pooling clause. This line of decisions, however, does not change the general rule applied to typical Pugh clauses, namely, that the Pugh clause is triggered regardless of whether the unit is voluntary or compulsory. The esteemed Professor Patrick Martin has commented on this issue by stating:

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<sup>18</sup> 471 So.2d 938 (La. App. 2<sup>nd</sup> Cir. 1985).

<sup>19</sup> 748 F.2d 320 (5<sup>th</sup> 1984).

<sup>20</sup> *Id.*

While the result in *Lowman*<sup>21</sup> is correct based on those particular facts, the practitioner is cautioned to note that the case turns on the language of the Pugh clause itself, as did *Matthews*, and not on a general principle of law or conservation policy that units established by the Commissioner of Conservation do not trigger a Pugh clause. That is to say, a Pugh clause so drafted will be triggered into operation by a unit, whether established by the lessee pursuant to the pooling clause of a lease or by the Commissioner of Conservation.<sup>22</sup>

This line of cases turns on the particular facts and the precise language of the clauses in question. Thus, lawyers and landmen should take special care when reading all North Louisiana lease forms to ensure that the language of such paragraphs have not been altered and fit squarely with the language of the clauses opined upon in the referenced jurisprudence.

### III. Litigation and Demands for Lease Cancellation by Lessor as a Suspension

Louisiana case law contains a line of cases which have granted lessees deprived of exercising their leasehold rights by a lessor's suit for annulment or forfeiture of the lease, an extension of the lease equal to the period of the litigation.<sup>23</sup> Specifically, Courts have granted lessees the remedy to suspend and extend the term of a mineral lease when a lessor challenges the continued legitimacy of a lease.<sup>24</sup> The remedy of lease suspension evolved jurisprudentially to deal with the peculiarity of mineral exploration and the common requirements set out in the provisions included within mineral leases. Courts equate the remedy of granting an extension to the remedy of specific performance, and typically do not view it as an equitable remedy.<sup>25</sup> Courts reason that because mineral lessees are deterred from exploring for minerals if the validity of his lease was questionable (due to the cost-risk factors involved in mineral explo-

<sup>21</sup> *Lowman v. Chevron U.S.A., Inc.* 748 F.2d 320 (5<sup>th</sup> Cir. 1984) (was relied upon by the *Matthews* Court in its finding that a particular clause allowing the lessee to establish voluntary units and make rental payments to maintain outside acreage was not triggered by order of Louisiana Conservation creating compulsory units).

<sup>22</sup> Patrick H. Martin, *Mineral Rights*, 46 La. L. Rev. 569 (1986).

<sup>23</sup> See *Leonard v. Busch-Everett Co.*, 139 La. 1099, 72 So. 749; *Standard Oil Co. of Louisiana v. Webb*, 149 La. 245, 88 So. 808; *Lieber v. Ouachita Natural Gas & Oil Co.*, 153 La. 160, 95 So. 538; *Fomby v. Columbia County Development Co.*, 155 La. 705, 99 So. 537; *Williams v. James*, 188 La. 884, 178 So. 384; *Knight v. Blackwell Oil & Gas Co.*, 197 La. 237, 1 So.2d 89 and *Baker v. Potter*, 223 La. 274, 65 So.2d 598.

<sup>24</sup> See *Baker v. Potter*, 223 La. 274, 65 So. 2d 598 (La. 1953); *Knight v. Blackwell Oil & Gas Co.*, 197 La. 237, 1 So. 2d 89 (La. 1941); *Fomby v. Columbia County Dev. Co.*, 155 La. 705, 99 So. 537 (La. 1924); *Standard Oil Co. v. Webb*, 149 La. 245, 88 So. 808 (La. 1921); *Gulf Refining Co. v. Hayne*, 148 La. 340, 86 So. 891 (La. 1920); see also 51 La. L. Rev. 1123, 1141 (1991).

<sup>25</sup> See *Amos v. Waggoner*, 229 La. 134, 140, 85 So.2d 58, 60 (La.1956).

ration), such lessees who prevail under the lessor's challenge for cancellation should be provided an extension of time added to the lease term to initiate further development.<sup>26</sup>

The remedy of extension or suspension of the Lessee's obligation under the lease is pervasive in the jurisprudence of Louisiana in the context of judicial demands. This remedy, however, is not articulated specifically in the Louisiana Mineral Code. Nevertheless, one could reasonably conclude that where the mineral lessor declares lease cancellation, particularly in some form of writing, the doctrine of suspension of lessee's obligations would be triggered. It may behoove mineral lessees who desire the remedies under this doctrine to file a petition for declaratory judgment requesting among other matters, suspension of its lease obligations during the pendency of the litigation.

It appears that the exorbitant bonus payments received by some mineral lessors in the Haynesville Shale play has obscured the traditional relationship between lessor and lessee. Historically, the goal had been one of seeking the mutual benefit for the lessor and lessee thereby resulting in royalty income for lessor from the drilling of productive wells. Where mineral lessors take the hard line by threatening lease cancellation in exchange for a one-time gain from lease bonuses, the result may have the unexpected effect of chilling exploration and production on those leases. To use another trite phrase "be careful what you ask for."

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<sup>26</sup> See *Leonard v. Busch-Everett Co.*, 139 La. 1099, 72 So. 749; *Standard Oil Co. of Louisiana v. Webb*, 149 La. 245, 88 So. 808; *Lieber v. Ouachita Natural Gas & Oil Co.*, 153 La. 160, 95 So. 538; *Fomby v. Columbia County Development Co.*, 155 La. 705, 99 So. 537; *Williams v. James*, 188 La. 884, 178 So. 384; *Knight v. Blackwell Oil & Gas .*, 197 La. 237, 1 So.2d 89 and *Baker v. Potter*, 223 La. 274, 65 So.2d 598.