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Recording Federal Oil and Gas Leases

Robert M. Seipt

cash values, which have a present value. Since then, the decedent had a present value, under Lord Campbell's original thinking regarding the treatment of premiums, this value should be deducted from that amount which would be considered in mitigating the wrongdoer's liability.

The foregoing is a purely theoretical outlook involving a special type of case under wrongful death statutes, and so far as the writer has been able to determine, has not been specifically decided by any tribunal in the United States. The basic rule, that evidence to the effect that the beneficiary in a wrongful death action was also the recipient of an insurance policy on the life of the decedent is inadmissable to mitigate damages, is universal in its general application in this country.[21] This should not, however, preclude the possibility that in peculiar situations, such as the one outlined in this paper, an exception should be formulated in order that complete justice, without over-compensation or penalty, be carried forward.

Dean Frank Trelease, in a book review, commenting on Mr. Belli's work, *Modern Trials,* had this to say:

> . . . Perhaps the rules of damages need an overhaul. Maybe there will be a shift toward attempting to determine what actual dismemberment causes a fixed percentage drop in earning the loss of a lawyers' leg or arm, rather than assuming that any disememberment causes a fixed percentage drop in earning power. . . .[22]

Dean Trelease was referring specifically to personal injury cases rather than damages as a result of wrongful death, but it should also be kept in mind that this remedy was purposely formulated in order that survivors may recoup, in a pecuniary fashion, that which they lost at the hand of a person committing a negligent or wrongful act, *and no more.* The Death Act was not designed to impose a penalty on the wrongdoer, but if the beneficiary of the action receives more than what he has lost, pecuniarily speaking, the result may very well be said to act as imposing such a penalty.

HARRY S. HARNSBERGER, JR.

RECORDING FEDERAL OIL AND GAS LEASES

The United States owns 48.4%[1] of the land in the State of Wyoming including both the surface and the minerals. In addition, the United States owns, by reason of patent reservations, the minerals in some patented lands as well as the minerals in other acquired lands. Thus, approximately one-half of the land within the State available for oil and gas leasing is federally owned and administered.

21. 18 A.L.R. 686 s. 95 A.L.R. 579.
22. Trelease, Book Review, 10 Wyo. L.J. 91 (Fall 1954 to Spring 1956).

1. Statistical Abstract of the United States 1960.

The administration of the oil and gas leases on these federal lands is by the Secretary of the Interior through the Bureau of Land Management, which Bureau was created by the consolidation of the General Land Office and the Grazing Service.[2] Under the mining and mineral leasing laws, the Bureau administers a program of development, conservation, and utilization of mineral resources through the leasing of minerals on public domain lands, privately owned land on which the mineral rights are federally owned, and certain acquired lands.[3] Incidental to the administration of these lands is the maintenance of records: the tract book and plats,[4] and the serial register.[5] All instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases must be filed for approval within ninety days from the date of final execution.[6] It should be noted at this point that an examination of the Bureau of Land Management records prior to the approval does not reflect other than apparent ownership since the approval may be withheld. This fact does not detract from the chain of title established up to the unapproved filing.

The remaining one-half of the lands within the State available for oil and gas leasing are either State or privately owned and clearly subject to the State recording statutes.[7] A purchaser of a recordable interest in an oil and gas lease on this latter one-half of the land may look to the records of the appropriate county as the sole source of his record title.

The Wyoming Supreme Court has held an overriding royalty carved out of a federal oil and gas lease to be real property and subject to the law relating thereto.[8] The same court has also held that an operating agreement for a term of twenty years and "so long thereafter as oil, gas and other hydrocarbon substances are produced in commercial quantities," which agreement purports to sublease the right to drill, in effect, conveys rights under the lease and constitutes real property.[9] These, and presumably any greater interests, are recordable interests within the purview of the Wyoming recording statutes.

While the two above types of interests are treated the same under the Wyoming recording statutes, they are subject to different treatment by the Bureau of Land Management. The 1% overriding royalty assignment is, upon filing, deemed valid whether formally approved or not.[10] The assignment or transfer of a leasehold interest is effective only after both

2. Provisions 402 and 403 of President's Reorganization Plan 3 of 1946 (5 USC 133y-16).
3. United States Government Organization Manual, 1960-61, page 481.
4. 43 CFR 240.1 (1954).
5. 43 CFR 240.13 (1954).
6. 43 CFR 192.140-192.145 (1954).
7. Wyo. Stat. §§ 34-1 to 34-40 (1957).
8. Dame v. Mileski, ... Wyo. ...., 340 P.2d 205 (1959).
9. Torgeson v. Connelly, ... Wyo. ...., 348 P.2d 63 (1959).
10. 43 CFR 192.145 (1954).
Any assignment of 1% or less if filed for record will be deemed to be valid whether formally approved or not.

filing with and approval by the Bureau of Land Management.[11]

The *Damé v. Mileski*[12] case involved two assignees of the same 1% overriding royality in a federal oil and gas lease. *A* took his assignment on February 11, 1952, filed with the Bureau of Land Management February 21, 1952, and recorded in the county November 22, 1954. *B* took the same interest on November 6, 1952, filed with the Bureau of Land Management November 21, 1952, and recorded in the county on November 6, 1952. *B* sought to quiet his title against *A*, who defended on the grounds that the Bureau of Land Management records furnished constructive notice. This contention was rejected by the Wyoming Supreme Court, asserting that the Wyoming statute on judicial notice[13] precluded the recognition of the Bureau of Land Management records. The Court, after discussing a broadening of the notice by statutory change, said: "Be that as it may, the wisdom of the procedure is not one for the courts but for the people through legislation." It should be noted that the disputed interest is deemed valid without Bureau of Land Mangement approval.

The leasehold interest type of problem is approached in *Torgenson v. Connelly*.[14] The effectiveness of an assignment, as between the parties, without Bureau of Land Management approval was discussed in this case. Authorities holding the assignment effective and those holding the assignment ineffective were cited. The Wyoming Supreme Court did not answer the question. However, the Court again pointed out that the Bureau of Land Management records do not afford constructive notice and any change to give them recognition must be legislative.

The Wyoming Supreme Court in its discussion of both the *Mileski* and *Torgeson* cases discussed the constructive notice in terms of judicial notice. Their basis for the discussion were the California decisions in which the litigants were held to constructive notice of proceedings in federal bureaus of which the court could take judicial notice. This would suggest that the Wyoming judicial notice state could be legislatively revised to include the Bureau of Land Management records. Two other areas of legislative enactment might prove more satisfactory to resolve future problems created by these dual recording systems.

The revision of the recording statutes to allow recording of unacknowledged instruments such as federal oil and gas leases is one possible solution. This would continue the present practice wherein the constructive notice is entirely dependent upon the county recording. While this would accomplish the first step in a mineral chain of title, it still would not present the full record. The current status of lease payments, lease cancellations or forfeitures would not be in this record. The county

11. 42 CFR 192.140 (1954).
Subject to final approval by the Bureau of Land Management, assignments or sublease shall take effect as of the first day of the lease month following the filing. . . .
12. Supra note 8.
13. § 1-180 W.S. 1957.
14. Supra note 9.

recording would not resolve the problem of effectiveness of the assignment, as between the parties, if prior to Bureau of Land Management approval. If the Bureau of Land Management approval were determined by the Wyoming Supreme Court to be a condition precedent to effectiveness of the assignment, the county record would not reflect an effective transaction until the approval was recorded. Even if the required approval were taken as a condition subsequent, it would be necessary for a purchaser of the recorded assignment to search the Bureau of Land Management records to determine that the recorded assignment was actually approved.

The physical burden placed upon county recording offices and equipment during a large and active oil play might well lead to recording delays. The sheer bulk and volume of some of the conveyances and agreements make the recording task formidable. The cost of title searches would be increased, particularly on lands on which the minerals are reserved and subject to federal oil and gas leases.

A legislative enactment directing that the Bureau of Land Management records serve as notice within the meaning of the recording statutes would probably be a more satisfactory answer to the current problem of dual records. It would appear that the act of filing would create the notice and Bureau of Land Management approval, if required, would become a condition subsequent. The physical location of the Bureau of Land Management office in relation to the remainder of the state is an inconvenience but certainly not a serious problem when weighed against the advantage of a single complete source of information affecting title to federal oil and gas interests.

As suggested by the Wyoming Supreme Court, a situation exists that merits legislative attention. It has been the historic function of states to provide legislation seeking to assure a means of ascertaining the status of ownership of interests in land. While more than one approach is available, legislation that eliminates duplication of recordings and provides the most complete record title is the most desirable. Such a result could best be achieved by stautes recognizing the Bureau of Land Management records as constituting constructive notice. To achieve the best record notice results, it may be necessary to seek improvement in office practices within the Bureau of Land Management.*

ROBERT M. SEIPT

*Editor's Note: Subsequent to the preparation of this article, Section 34-21, Wyoming Statutes, 1947, was amended by the Legislature; the amendment provided recordation and constructive notice be extended to include conveyances, certificates of purchase or payments for public lands, issued by the United States, State of Wyoming, or any agency, department or bureau of either thereof.