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## Securities - Oil and Gas Leases: Should They Be Considered Securities - Shepperd v. Boettcher & (and) Company, Inc.

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**SECURITIES—Oil and Gas Leases: Should They be Considered Securities? *Shepperd v. Boettcher & Company, Inc.*, 613 F. Supp. 287 (D. Wyo. 1985), *appeal docketed*, No. 85-2235 (Aug. 16, 1985).**

Rex A. Shepperd and Steve Edwards (Shepperd) invested in undivided fractional working interests in oil, gas, and mineral leases offered through the Casper office of Boettcher & Company, Inc. (Boettcher).<sup>1</sup> The leaseholds were located in Louisiana and were operated by Latham Exploration Co., Inc. (Lexco). Relying upon Boettcher, Shepperd entered into two participation agreements for \$142,982.23 each and received a one and two-thirds percent working interest in the drilling operations. Shepperd bore a proportional share of the risks and costs but received no management rights or control over the drilling operations. Shepperd alleged that because of financial circumstances not disclosed to him prior to his purchase of the working interests, including the existence of liens on Lexco property and assets, Lexco was forced to file for bankruptcy. Shepperd lost nearly three hundred thousand dollars.<sup>2</sup>

In his complaint, Shepperd argued that the working interests were investment contracts and therefore "securities" within the meaning of the Wyoming Uniform Securities Act.<sup>3</sup> He asserted that, as securities, these working interests should have been registered pursuant to section 17-4-107(a)(i) of the Wyoming Statutes or exempted pursuant to section 17-4-114(a)(i-ix) prior to any offer or sale within the State of Wyoming. Since the working interests were not registered or exempted, Shepperd asserted that the sale was unlawful. Therefore, pursuant to section 17-4-122(a)(iii), he should be entitled to recover from Boettcher.<sup>4</sup>

In reply, Boettcher claimed that the working interests were not "securities" as defined by the Wyoming Statutes, that the complaint failed to state a cause of action, and therefore asked that the complaint be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.<sup>5</sup>

The district court agreed with Boettcher, finding that "neither Wyo. Stat. § 17-4-113(a)(xi) (1977) nor the security regulation on investment contracts encompass working interests in oil, gas, or mining titles or leases . . . within the definition of 'security.'" <sup>6</sup> The case was dismissed for failure to state a claim upon which relief could be granted.<sup>7</sup>

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1. *Shepperd v. Boettcher & Co., Inc.*, 613 F. Supp. 287, 288 (D. Wyo. 1985), *appeal docketed*, No. 85-2235 (Aug. 16, 1985).

2. Memorandum in Opposition to Defendant's Motion to Dismiss at 1-2, *Shepperd v. Boettcher & Co., Inc.* 613 F. Supp. 287 (D. Wyo. 1985) [hereinafter Memorandum in Opposition].

3. WYO. STAT. §§ 17-4-101 to -129 (1977 & Supp. 1985).

4. Memorandum in Opposition, *supra* note 2, at 2.

5. Memorandum Brief in Support of Defendant's Motion to Dismiss at 2, *Shepperd v. Boettcher & Co., Inc.*, 613 F. Supp. 287 (D. Wyo. 1985) [hereinafter Motion to Dismiss].

6. *Boettcher*, 613 F. Supp. at 291.

7. *Id.*

## BACKGROUND

*The Fractional Undivided Interest*

Unique forms of financing have evolved with the growth of the commercial petroleum industry. One such form involves the development of a privately-owned geographic area with oil-producing potential. Once a favorable geologist's report is issued, representatives of producers and speculators endeavor to lease as many of the individual tracts as they can.<sup>8</sup>

If the lessee company's resources are insufficient to develop the tract, the lessee may sell fractional undivided shares of the lease to raise working capital. Or, the lessee may give a part interest to a drilling contractor, who in turn may sell his share to finance the drilling. These undivided fractional shares are called "working interests." Often, as was the case with Shepperd, the purchasers of these fractional undivided working interests assume a proportionate share of the costs and risks incurred in the operation.<sup>9</sup>

*The Purpose of Securities Regulation*

The regulation of securities began in this country in the early twentieth century. The first substantive statute was enacted in Kansas in 1911. The term "blue sky law" was apparently coined in Kansas to describe legislation aimed at promoters who would "sell building lots in the blue sky in fee simple."<sup>10</sup> Kansas' lead was ultimately followed by the rest of the states so that today, every state, the District of Columbia, and Puerto Rico has some form of blue sky law.<sup>11</sup>

The purpose of securities regulation is basically twofold: to protect investors and to police affirmative disclosure of corporate information.<sup>12</sup> Since the vast majority of investors have no control over the entities in which they invest, one role of government is to protect these investors. This protection is largely accomplished by state and federal securities legislation.<sup>13</sup>

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8. L. LOSS, *FUNDAMENTALS OF SECURITIES REGULATION* 183 (1983). The lessor usually receives a rental fee for the years during which no drilling takes place, a percentage of the oil or gas produced or its market value, and in some cases, the lessor will also receive an immediate cash bonus. The percentage is usually 1/8, although 1/6 has become popular in the last several years. The lessor's percentage interest is called the "landowner's royalty interest." The lessee's interest (7/8ths) is called the "working interest." *Id.* at 183-84.

9. *Id.* at 183-85.

10. *Id.* at 8 (citing Mulvey, *Blue Sky Law*, 36 *CAN. L.T.* 37 (1916)).

11. Loss, *supra* note 8, at 8.

12. *Id.* at 3. In 1980, the New York Stock Exchange estimated that thirty million individuals owned shares of publicly held corporations. This figure represents one in every four American adults. In addition, approximately one hundred and thirty-three million people have an indirect interest in the market through life insurance, pension plans, and other intermediaries. *Id.* at 5 (citing N.Y. STOCK EXCHANGE, *SHAREOWNERSHIP* 1980, at *i* (1981)).

13. Professor Loss lists several concerns in the securities arena that required legislative attention including the

failure to furnish essential information to prospective investors when they were invited to buy securities[;] . . . the common law limitations on civil recovery by injured investors; the inadequacy of current information concerning com-

Congress' major thrust at federal securities regulation, prompted by the crash of 1929 and the subsequent Great Depression, came in the form of the Securities Act of 1933.<sup>14</sup> In the words of the United States Supreme Court, the purpose of the securities statutes was "to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry."<sup>15</sup>

Amendments to the the Securities Act of 1933 removed any doubt that Congress intended fractional interests in oil and gas rights to be regulated as securities.<sup>16</sup> The Act, as amended, states: "The term 'security' means any . . . fractional undivided interest in oil, gas, or other mineral rights. . . ."<sup>17</sup>

### *The Uniform Securities Act*

To unify the various blue sky laws, the American Bar Association and the National Conference of Commissioners and Uniform State Laws promulgated the Uniform Securities Act in 1959.<sup>18</sup> Prior to its drafting, no

panies with publicly held securities; the abuse of the proxy device by self-perpetuating managements; the abuse by corporate "insiders" of their favored position in order to trade in their corporations' securities for their own profit; the "private club" atmosphere of the Nation's securities exchanges; the ease with which the securities markets could be manipulated; the lack of financial safeguards for brokers and dealers; the disproportionate amount of the Nation's available credit that at times was channeled into the securities markets at the expense, it was thought, of direct financing of commerce and industry; the practices of protective committees in corporate reorganizations; the abuses of the holding company and investment company devices; and the irresponsibility of trustees under corporate bond indentures.

*Id.* at 6-7.

14. 48 Stat. 74 (1933) (codified as amended at 15 U.S.C. §§ 77a to 77aa (1982)). Following the Securities Act of 1933, Congress enacted the Securities Exchange Act of 1934, 48 Stat. 881 (1934) (codified as amended at 15 U.S.C. §§ 78a to 78kk (1982)); the Public Utility Holding Company Act of 1935, 49 Stat. 838 (1935) (codified as amended at 15 U.S.C. §§ 79 to 79z-6 (1982)); the Trust Indenture Act of 1939, 53 Stat. 1149 (1934) (codified as amended at 15 U.S.C. §§ 77aaa to 77bbbbb (1982)); the Investment Company Act of 1940, 54 Stat. 789 (1940) (codified as amended at 15 U.S.C. §§ 80a-1 to 80a-64 (1982)); the Investment Advisers Act of 1940, 54 Stat. 847 (1940) (codified as amended at 15 U.S.C. §§ 80b-1 to 80b-21 (1982)); and finally the Securities Investor Protection Act of 1970, 84 Stat. 1636 (1970) (codified as amended at 15 U.S.C. §§ 78aaa to 78lll (1982)).

15. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963) (italics in original).

16. Loss, *supra* note 8, at 185.

17. Securities Act of 1933, 15 U.S.C. § 77b(1) (1982). The entire section reads: (1) The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest of oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

18. UNIF. SECURITIES ACT, 7B U.L.A. 509 (1985).

two states had identical blue sky laws.<sup>19</sup> Under the Uniform Act's definition section, the draftsmen substituted the wording "any certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease" for the phrase "fractional undivided interest" found in the 1933 Act.<sup>20</sup> However, the intent is still clear; oil and gas payments are securities whether or not they are regarded as interests in a title or lease.<sup>21</sup> Wyoming adopted the Uniform Securities Act with some revisions in 1965.<sup>22</sup>

#### THE PRINCIPAL CASE

In the principal case, the issue confronting the district court was whether fractional undivided working interests in oil and gas leases should be considered as investment contracts and therefore securities, given the legislative exclusion of such working interests from the definition of security. Shepperd argued that even though the Wyoming statute failed to specifically include working interests in oil and gas leases within the definition of securities, such working interests could be included under the term "investment contract." Therefore, the working interests should have been registered or exempted from registration prior to sale or solicitation.<sup>23</sup>

Boettcher's motion to dismiss was based on the concept that the Wyoming legislature never intended such working interests to be regulated. Boettcher's argument was threefold. First, when the Wyoming legislature adopted the Uniform Securities Act, the reference to working interests in oil and gas leases was excluded.<sup>24</sup> Second, prior Wyoming securities law was silent on the issue of oil and gas leases.<sup>25</sup> Finally, a 1962 Wyoming Attorney General Opinion had maintained that such interests

19. LOSS & COWETT, *BLUE SKY LAW* 18 (1958).

20. UNIF. SECURITIES ACT, *supra* note 18, § 401(l) comment at 583. The comment reads:

This section is identical with § 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1) . . . except for oil, gas and mineral interests. . . . Section 2(1) was modeled on the definitions in some of the state statutes, and the federal definition has in turn influenced many of the new state statutes enacted since 1933. Moreover, substantially that definition—particularly the phrase "investment contract"—has been broadly construed by both state and federal courts. . . .

Oil, gas and mineral interests: Section 2(1) of the Securities Act of 1933 uses the phrase "fractional undivided interest in oil, gas, or other mineral rights." The phrase in this statute is modeled on the language in § 25008(a) of the California act—"certificate of interest in an oil, gas, or mining title or lease"—which may be slightly broader than the federal phrase and in any event is by far the most commonly found phrase in the state statutes. The words which have been added to the California language are intended to make it clear that so-called "oil payments" are securities whether or not they may be regarded as interests in a title or lease. Very few states go so far as to include entire leasehold interests. However, it is clear that even entire leasehold interests may be offered under such circumstances that a security is involved in the nature of an "investment contract."

21. *Id.*

22. Wyoming Securities Act, ch. 160, 1965 Wyo. Sess. Laws 410.

23. Memorandum in Opposition, *supra* note 2, at 2.

24. Motion to Dismiss, *supra* note 5, at 3. See DIGEST OF WYOMING SENATE AND HOUSE JOURNALS, S. 10, at 56 (1965) [hereinafter DIGEST]. See also WYO. STAT. § 17-4-113(xi) (1977).

25. See WYO. STAT. § 17-102 (1959).

were not intended to be securities under Wyoming law.<sup>26</sup> The court, with little embellishment, accepted Boettcher's arguments and granted the motion to dismiss.<sup>27</sup>

#### ANALYSIS

The landmark federal case concerning the issue of which transactions in oil and gas constitute securities is *SEC v. C. M. Joiner Leasing Corp.*<sup>28</sup> In that case, the defendant argued that because the statutory definition of security mentioned "fractional undivided interest in oil, gas, or other mineral rights," it excluded sales of leasehold subdivisions by parcels.<sup>29</sup> The Court recognized that not every transaction involving the sale of a fractional undivided interest in oil, gas, or other mineral rights was *ipso facto* the sale of a security. Such leases were important as "indispensable instruments of legitimate oil exploration and production."<sup>30</sup> Yet, they were "notorious subjects of speculation and fraud" and needed to be regulated.<sup>31</sup> To avoid burdening the oil industry with controls designed for securities, Congress specifically included as securities "only that form of splitting up of mineral interests which had been most utilized for speculative purposes."<sup>32</sup> The Court went on to explain: "We do not think the draftsmen thereby immunized other forms of contracts and offerings which are proved as a matter of fact to answer to such descriptive terms as 'investment contracts' and 'securities.'"<sup>33</sup>

#### *Investment Contracts as Securities*

The United States Supreme Court has provided a test for defining an investment contract. In reversing a decision by an appellate court, Justice Murphy wrote: "The test [for an investment contract] is whether the scheme involves: [1] an investment of money [2] in a common enterprise [3] with profits to come solely from the efforts of others."<sup>34</sup>

The third element of this test has been modified at the appellate level so that "solely" should now be read as "substantially."<sup>35</sup> In *SEC v. Glenn W. Turner Enterprises, Inc.*,<sup>36</sup> the ninth circuit, after analyzing the purpose of securities regulation, the statutory policy of giving broad protec-

26. Motion to Dismiss, *supra* note 5, at 4-5.

27. *Shepperd*, 613 F. Supp. at 290-91.

28. *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344 (1943).

29. *Id.* at 352.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* (emphasis added).

34. *SEC v. W. J. Howey Co.*, 328 U.S. 293, 301 (1946). *Howey* was another landmark in the area of securities law. The case involved the sale of strips of land in various citrus groves in Florida, along with a service contract for the care and harvest of the fruit. The court held the offer to be an investment contract and thus subject to the provisions of the Securities Act of 1933.

35. *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476 (9th Cir. 1973). See also Mihaly & Kaufmann, *Securities*, in N.Y. GEN. BUS. LAW art. 23-A, at 6, 14 (McKinney 1984).

36. *SEC v. Glenn W. Turner Enterprises Inc.*, 474 F.2d 476 (9th Cir. 1973).

tion to the public, and the Supreme Court's directive that the term "security" should be flexibly defined, held that "the word 'solely' should not be read as a strict or literal limitation on the definition of an investment contract, but rather must be construed realistically, so as to include within the definition those schemes which involve in substance, if not form, securities."<sup>37</sup> The court went on to rule that a transaction involves an investment contract, and hence a security, when the investor must rely on the promoter's efforts and has no practical control over his investment.<sup>38</sup> The Wyoming Supreme Court explicitly adopted the *Howey* definition in 1982.<sup>39</sup>

In the instant case, Shepperd sought to have his working interests defined as "investment contracts."<sup>40</sup> There is persuasive support for such an interpretation. In *Woodward v. Wright*,<sup>41</sup> the court held that:

[A] fractional undivided interest in oil and gas becomes a "security" when it is created out of the ownership of an interest in oil and gas or other mineral rights for the purpose of sale or offering for sale. Correlatively, *the sale or offering for sale of an oil and gas lease, or an undivided interest therein, may be the sale of an "investment contract," hence a security*, when the transaction carries with it something more than the assignment of a "naked leasehold right," as where the purchasers look entirely to the efforts of other persons to make their investment a profitable venture.<sup>42</sup>

The district court failed to reach the question of whether the working interests purchased by Shepperd were investment contracts under the *Howey* test. The case was dismissed on Boettcher's motion that Shepperd failed to state a claim upon which relief could be granted. Boettcher based its motion for dismissal on the claim that the Wyoming legislature intended to exclude working interests in oil and gas from the definition of security under the Wyoming Securities Act.<sup>43</sup>

### *Legislative Intent*

The legislature modified the Uniform Securities Act by deleting the phrase "certificate of interest or participation in an oil, gas or mining title or leases or payments out of production under such a title or lease" from the definitions section.<sup>44</sup> Judge Kerr was persuaded that the deletion indicated the legislature's intent to exclude from regulation under the Wyoming Act the types of interests Shepperd had purchased.<sup>45</sup> The district court also considered it significant that prior Wyoming securities

37. *Id.* at 482.

38. *Id.* at 483.

39. *Gaudina v. Haberman*, 644 P.2d 159, 166 (Wyo. 1982).

40. *Shepperd*, 613 F. Supp. at 288.

41. *Woodward v. Wright*, 266 F.2d 108 (10th Cir. 1959).

42. *Id.* at 112 (emphasis added).

43. Motion to Dismiss, *supra* note 5, at 2.

44. DIGEST, *supra* note 24, at 56.

45. *Shepperd*, 613 F. Supp. at 290.

law was silent regarding oil and gas leasing.<sup>46</sup> To explain this silence, Boettcher and the court relied on a 1962 Wyoming Attorney General's opinion interpreting this provision.<sup>47</sup> The Attorney General determined that such interests were not intended to be securities because the Wyoming statutory definition of security made no mention whatever of interests in oil and gas leases.<sup>48</sup>

Another Attorney General opinion, however, issued in 1953 reached an opposite conclusion. In that opinion, the Attorney General concluded:

From the foregoing discussion and the definition contained in our own Blue Sky Law it would appear that any instrument sold or offered for sale to the public by any person, firm or corporation evidencing or representing any right to participate or share in the profits or earnings or distribution of assets of any business carried on for profit would be a security.<sup>49</sup>

The 1962 Attorney General criticized this earlier opinion, saying it ran afoul of legislative intent.<sup>50</sup> Because the Wyoming securities statute made no mention of mineral interests in oil and gas leases, he invoked the academic doctrine of *ejusdem generis* to construe the law.<sup>51</sup> Applying this doctrine of construction, "it would be necessary to relate 'certificates of

46. *Id.* See WYO. STAT. § 17-102 (1959). The text of the prior statute reads: "The term 'securities' as used in this Act [§§ 17-102 to 17-117] shall be taken to mean stock certificates, shares, bonds, debentures, certificate of participation, contracts, or other instruments in the nature thereof by whatsoever name known or called. . . ."

47. Op. Wyo. Att'y. Gen., No. 4, at 93, 95 (1962) [hereinafter 1962 A.G. Op.].

48. *Shepperd*, 613 F. Supp. at 290.

49. Op. Wyo. Att'y. Gen. 35-38 (1953). The opinion went on:

In your letter you ask a number of specific questions concerning certain oil and gas transactions. We do not feel that this office can satisfactorily answer these inquiries with the limited facts at our disposition. It appears that these matters are largely dependent on the factual situations involved, and it is our opinion that the local authorities are in a much better position to decide as to what action, if any, is to be brought on the basis of the facts that are peculiarly within their knowledge. Perhaps a quotation from 79 C.J.S. 943, 944 will better explain our position:

"\*\*\*in determining whether a particular instrument is or is not a security the courts will look to the substance and not to the form of the transaction, and will examine the instrument in the light of the purpose to be accomplished by its issuance, and all surrounding circumstances.\*\*\*"

*Id.* at 37-38. From this, it appears that the attorney general in 1953 accepted the broad interpretation of security as expressed by the United States Supreme Court in *Joiner* and *Howey*.

50. 1962 A.G. Op., *supra* note 47, at 94.

51. *Id.* at 95. "The doctrine of *ejusdem generis* is a well known rule of construction to aid in ascertaining the meaning of statutes and other written instruments, the doctrine being that where an enumeration of specific things is followed by some more general word or phrase, such general phrase is to be held to refer to things of the same kind as those enumerated." *Aleksich v. Industrial Accident Fund*, 116 Mont. 127, 151 P.2d 1016, 1021 (1944). "Ejusdem generis. Of the same kind, class, or nature. . . . [T]he 'ejusdem generis rule' is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. . . . The rule, however, does not necessarily require that the general provision be limited in its scope to the identical things specifically named. . . ." *Blacks Law Dictionary* 464 (5th Ed. 1979) (emphasis added).



participation' back to the type of instruments specifically described. Obviously, a fractional undivided working interest . . . would not constitute such a certificate."<sup>52</sup>

The United States Supreme Court, however, specifically rejected the *ejusdem generis* rule in *SEC v. Joiner*. There, the Court noted:

We cannot read out of the statute these general descriptive designations merely because more specific ones have been used to reach some kinds of documents. Instruments may be included within any of these definitions, as matter of law, if on their face they answer to the name or description. However, the reach of the Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as "investment contracts," or as "any interest or instrument commonly known as a 'security.'"<sup>53</sup>

Regarding rules of construction, the Court also noted:

However well these rules may serve at times to aid in deciphering legislative intent, they long have been subordinated to the doctrine that *courts will construe the details of an act in conformity with its dominating general purpose*, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.<sup>54</sup>

The Supreme Court has further instructed that remedial legislation such as securities law should be broadly interpreted to protect the public from speculative or fraudulent schemes.<sup>55</sup> Wyoming courts have followed this admonition. In *Gaudina v. Haberman*, the Wyoming Supreme Court approvingly quoted language from *SEC v. Glenn W. Turner*, that the term "security" should be defined broadly and the definition liberally construed.<sup>56</sup> The Wyoming court also noted with approval an Oregon case pointing out that the court's aim "is to construe the securities laws liberally so as to afford the greatest possible protection to the public."<sup>57</sup> The proper interpretation of the legislation is clear. However, the intent of the legislature is not as clear as the district court would make it appear.

Boettcher and the district court felt the omission of working interests in oil and gas leases implied that the Wyoming legislature intended to

52. 1962 A.G. Op., *supra* note 47, at 94.

53. *Joiner*, 320 U.S. at 351. Footnote eight to the *Joiner* opinion further reveals the Court's opinion of the *ejusdem generis* device. "This Court has refused to follow the *ejusdem generis* rule . . . where its application seemed to conflict with the general purpose of an act." (emphasis added).

54. *Id.* at 350, 351 (emphasis added).

55. *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

56. *Gaudina v. Haberman*, 644 P.2d 159, 165 (1982) (citing *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 480 (9th Cir. 1973)).

57. *Haberman*, 644 P.2d at 166 (referring to *Marshall v. Harris*, 276 Or. 447, 555 P.2d 756 (1976)).

exclude such offerings from regulation. Determining the intent of the Wyoming legislature is no easy task, however. Aside from the Wyoming Senate and House Journals, no other official record is available. Committee recommendations consist of little more than "Do pass," "Do pass as amended," and "Do not pass." Noticeably absent are detailed committee reports. Further, there is no record of floor debate, no record of committee hearings, and no official minutes of committee meetings are kept. This scarcity of historical information makes compiling a legislative history in Wyoming difficult.

Boettcher argued that the failure of the legislature to include such working interests indicated legislative acquiescence in the Attorney General's opinion that working interests in oil and gas leases were immune from statutory regulation.<sup>58</sup> Indeed, such an assumption might be logically attributed to the Wyoming legislature's action. But it is not the only or most reasonable conclusion that can be reached. The legislature's impetus in adopting the Uniform Securities Act was to provide protection to the investing public. It seems illogical, therefore, to construe the statute so as to shield from regulation those very instruments that the United States Supreme Court has called "notorious subjects of speculation and fraud."<sup>59</sup> Moreover, it seems more plausible to interpret the broader language of the statute as encompassing such interests. Furthermore, if the legislature intended to exclude working interests in oil and gas, it could have expressly done so. It did just that with insurance and endowment policies and annuity contracts.<sup>60</sup> Absent a clearer indication of legislative intent, legislative approval of a scheme having such serious implications should not have been so lightly inferred by the district court.

#### CONCLUSION

Wyoming adopted the Uniform Securities Act to protect her citizens against securities fraud. In applying a statute such as this to a specific transaction, one must determine the general purpose of the legislation. The reading given the Wyoming statute by the district court disregards the general purpose of the regulation and ignores the counsel of the United States Supreme Court that "courts [should] construe the details of an act in conformity with its *dominating general purpose*."<sup>61</sup> In determining that interests in oil, gas, and mining leases are not securities, the district court leaves Wyoming standing conspicuously alone. All other states and the federal government regard these interests to be securities.<sup>62</sup>

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58. Motion to Dismiss, *supra* note 5, at 5.

59. *Joiner*, 320 U.S. at 352.

60. WYO. STAT. 17-4-113(a)(xi) (1977). The statute states that the term security "does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period."

61. *Joiner*, 320 U.S. at 350-51 (emphasis added).

62. ALA. CODE § 8-6-2(10) (1984); ALASKA STAT. § 45.55.130(12) (1980); ARIZ. REV. STAT. ANN. § 44-1801(16) (1967 & Supp. 1984); ARK. STAT. ANN. § 67-1247(l)(1) (Supp. 1985); CAL. CORP. CODE § 25019 (West 1977 & Supp. 1985); COLO. REV. STAT. § 11-51-102(14) (Supp. 1984);

The district court's decision in this case seem incongruous with the statutory policy of affording broad protection to investors,<sup>63</sup> and the Supreme Court's admonition that a flexible rather than static principle be applied when interpreting securities legislation. Securities legislation is remedial in nature and consequently, a liberal interpretation should have been given the term security. With this decision, the need to afford broad protection to the investing public apparently receives no welcome in Wyoming.

Wyoming securities law should include undivided fractional working interests in oil, gas and mineral leases, and could be so read without doing violence to the statute. The Wyoming legislature, however, should amend the statute to include oil, gas, and mineral leases under the definition of securities.

JEFFERY N. LUTHI

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CONN. GEN. STAT. ANN. § 36-471(m) (West 1981); DEL. CODE ANN. tit. 6, § 7302(13) (1974); D.C. CODE ANN. § 2-2601(12) (1981); FLA. STAT. ANN. § 517.021(20) (West Supp. 1985); GA. CODE ANN. § 10-5-2(16) (1981); HAWAII REV. STAT. § 485-1(12) (1976 & Supp. 1984); IDAHO CODE § 30-1402(12) (1980 & Supp. 1985); ILL. ANN. STAT. ch. 121-1/2, § 137.2-1 (Smith-Hurd 1985); IND. CODE § 23-1-1(k) (Burns 1984 & Supp. 1985); IOWA CODE ANN. § 502.102(12) (West Supp. 1985); KAN. STAT. ANN. § 17-1252(j) (1981); KY. REV. STAT. ANN. § 292.310(13) (Bobb-Merrill 1981 & Supp. 1984); Louisiana: *See Caldwell v. Trans-Gulf Petroleum Corp.*, 322 So.2d 171 (La. 1975); ME. REV. STAT. ANN. tit. 32, § 10501.18. (Supp. 1985); MD. CORPS. & ASS'NS CODE ANN. § 11-101(o)(1)(xiv) (1985 & Supp. 1985); MASS. ANN. LAWS ch. 110A, § 401(k) (Michie/Law. Co-op. 1985); MICH. COMP. LAWS ANN. § 451.801(l) (West Supp. 1985); MINN. STAT. ANN. § 80A.14 (Subd. 18) (West Supp. 1985); MISS. CODE ANN. § 75-71-105(k) (Supp. 1984); MO. ANN. STAT. § 409.401(l) (Vernon 1979); MONT. CODE ANN. § 30-10-103(11) (1983); NEB. REV. STAT. § 8-1101(12) (1983); NEV. REV. STAT. § 90.090 (1983); N.H. REV. STAT. ANN. § 421-B:2, XX (1983); N.J. STAT. ANN. § 49:3-49(m) (West 1970 & Supp. 1985); N.M. STAT. ANN. § 58-13-2(H) (1984 & Supp. 1985); N.Y. GEN. BUS. LAW § 352(1) (McKinney 1984); N.C. GEN. STAT. § 78A-2(11) (1981); N.D. CENT. CODE § 10-04-0212 (1976 & Supp. 1983); OHIO REV. CODE ANN. § 1707.01(B) (Baldwin 1979 & Supp. 1984); OKLA. STAT. ANN. tit. 71, § 2(20)(R) (West Supp. 1984); OR. REV. STAT. § 59.015(13)(a) (1983); PA. STAT. ANN. § 61-1-13(17) (Supp. 1983); R.I. GEN. LAWS § 7-11-1(c) (1969); S.C. CODE ANN. § 35-1-20(12) (Law. Co-op. 1976 & Supp. 1984); S.D. CODIFIED LAWS ANN. § 47-31-1(4) (1983); TENN. CODE ANN. § 48-2-102(12) (1984 & Supp. 1985); TEX. REV. CIV. STAT. ANN. art. 581-4A (Vernon 1964); Vermont: *See* VT. STAT. ANN. tit. 9, § 4202(9) (1984). The section reads: "'Security' shall include land situated outside the state, any note, stock, share, bond, debenture, evidence of indebtedness, beneficial interest in title to property, profits or earnings, and any other instrument, whether of the same or of a different kind, commonly known as a security, and any certificate, contract, or instrument representing an interest in any of the foregoing"; VA. CODE § 13.1-501(j) (1978); WASH. REV. CODE ANN. § 21.20.005(12) (1978 & West Supp. 1986); W. VA. CODE § 32-4-401(l) (1982); WIS. STAT. ANN. § 551.02(13)(a) (West Supp. 1985).

63. *Howey*, 328 U.S. at 301.