Award Winning

The Override

Every Landman Wants One!

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Los Angeles Association of Professional Landmen

Presidents Message

Thomas G. Dahlgren,

Warren E&P, Inc.

In shear numbers of attendees and excellent speakers, LAAPL and BAPL put together another VERY successful West Coast Land Institute ("WCLI") on October 5th-7th in Santa Barbara. Although the institute was well attended, the limited amount of revenue collected from sponsors reflected the true state of our industry. We ended up very deep in the red, which required use of reserve funds to cover all of our costs. Of course, the reserve funds are there to help in these situations. We do want to thank all our sponsors for the monies they could donate. Without sponsors there would be no WCLI. Planning for next year is already in the works, and changes will be made to ensure a successful program, both financially and in program events. To all those land managers and business owners involved in planning their 2010 contribution budget, please include funds for next year's WCLI. We also would like

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Meeting Luncheon Speaker

LIVING THROUGH 50 YEARS OF CHANGES IN THE CALIFORNIA OIL PATCH

Edward S. Renwick, Esq., with the firm of Hanna and Morton LLP, specializes in trying cases and arguing appeals, in representing clients before administrative and legislative bodies, in helping clients settle and avoid disputes, including acting as a mediator, and in counseling clients in transactional matters, particularly in the energy and oil and gas industries.

He is experienced in natural resources and environmental matters such as contaminated property, ground-water problems, air quality matters, CERCLA, RCRA, toxic torts, natural gas pricing, geothermal resources, oil and gas, zoning, title matters, alternative energy, renewable energy and land use. He also has handled cases involving contract disputes, constitutional issues, antitrust law, partnership accounting, trusts and estates, income taxation and property taxation.

In addition to maintaining his law practice, Mr. Renwick served as vice president and general counsel of a California independent oil and gas company from 1973 through 1991.

Since 1974, Mr. Renwick has been a Fellow of the American College of Trial Lawyers, to which admission is by invitation only and is "limited to those trial lawyers who are outstanding and considered the best in a state."

Editor's Corner

Joe Munsey
Newsletter Chair
Southern California Gas Company

In our previous column we were in a recalcitrant stance as the unofficial Newsletter Chair and operating in the manner of an insolent editor. While joining the luncheon table with our current chapter president, Tom Dalhgren of Warren E & P, at the West Coast Landman Institute, I was officially installed as the Newsletter Chair of this fine award winning publication. I did so by fighting off other contenders who were lurking in the shadows, ready to thrust me aside, and take command of this post. With the support of the publisher of this newsletter, Randall Taylor, I made the case to Mr. Dalhgren that we would dutifully carry out the responsibilities of the Newsletter Chair. With a wave of his hand, the President granted me another year to carry on. Whew…..it was tough but I pulled through and made the score to be your editor for the 2010 edition.

This time last year we assured everyone we would circle back to compare November 2008 to November 2009. The year 2008 saw oil hit $140 bbl and everyone was fat and sassy; then in November the per barrel price was flirting with $65 - $72. Whoaa, it did not flirt too long within that price band, it went straight to the bottom of the $30 range in January 2009.

Son-of-a-gun, the boom was over and once again, prayers were being offered up with more emphasis, "Lord, one more boom, **just one more**, we promise not to piss it away **again**." The bolded words are additions to the original prayer. Pretty sure God did not take the first version seriously in the 80's nor the new warmed over and improved version. But go ahead and recite it if it makes you feel better, at least you are talking to Him and not to the porcelain god.

To end the year on a positive note, this column foregoes asking the question how that "hope and change" is working out for you and the country. We will avoid bringing up the cap and trade fiasco being vetted out by the scalawags who are responsible for bleeding the social security trust fund with accounting tricks.

I am not going anywhere near the highly touted Obamacare health plan working its way through the foggy bottomites' black box; the same folks who thought they could cut the United States Post Office lose and convince the public to believe it really is a private company by changing its name – United State Postal Service.

We will steer clear of mentioning David Axelrod, the "Karl Rove" of the Obama Whitehouse, who was gravely concerned about political corruption over recent elections in Afghanistan. Huh? That should make you laugh out loud. Team Chicago worried about a politically corrupt machine stealing votes? If you are still chuckling, then we left you on a happy note.

Now sit back, relax and take a moment to read the case Thierry R. Montoya, Esq., of Ardno, Yoss, Alvarado & Smith presents in our Case of the Month Section; you will find out what bankruptcy does to Apex Oil's claim that they are not responsible for millions of gallons of discharged oil that created a "hydrocarbon plume" that had contaminated groundwater.

Repeating myself from last year, however, it goes without saying, please support our troops and keep them in your prayers. Enjoy your Thanksgiving and be thankful for this year's blessings. Bask in the joy of Christmas, or Hanukkah, and spread peace on earth towards all. God Bless America!

Look forward to seeing everyone at the Long Beach Petroleum Club November 19th, 2009.

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some feed-back on how to make the Institute better. Is Santa Barbara the ideal location for the Institute?

It is interesting to note that I recently attended a golf tournament sponsored by the environmental industry. Environmental companies from across the country were tripping over themselves as sponsors. The tournament raised almost $40,000 for local charities. Whereas, oil companies are slaves to the price of oil, mandated environmental programs continue nonstop regardless of the economy. There is no rocket science in noting that fluctuating oil prices, higher taxes, long permitting processes coupled with litigation, and no federal Energy Department strategies and policies have devastating impacts on how we do business. Yes, I realize I am speaking to the choir.

The upcoming LAAPL meeting is scheduled for November 19th. Excellent timing, before we all dive into the Thanksgiving and Christmas holiday season. CIPA just had it's LA Division Environmental Committee meeting on November 5th at BreitBurn Energy's office in LA. It was attended by 25+ people and the topics covered were several SCAQMD issues, a report from Sacramento, greenhouse gas regulation, Joint Assessment Team and NRDA issues, and DOGGR AB1960 regulations. Hopefully, some of the findings at this meeting will be discussed at our November and/or January '10 luncheon meetings.

I hope to see everyone at our next luncheon and please enjoy a wonderful holiday season!

OUR HONORABLE GUESTS

Our September luncheon, well, not what we could refer to as a substantial group of LAAPL regulars, but our guests of honor who did attend:

- Gerry Tintle, ConocoPhillis
- Mike Shields, Independent
- Jason Downs, Independent
- Sarah Sanchez-Downs, Independent

CHAPTER BOARD MEETINGS

The Board of Directors did not hold a board meeting in September.

The Board of Directors regularly hold its meetings on the third Thursday of the month at 11:00 AM at the Long Beach Petroleum Club. Board meeting dates coincide with the LAAPL's luncheons.

We encourage members to attend and see your Board of Directors in action.

SCHEDULED LAAPL LUNCHEON TOPICS AND DATES

November 19th, 2009
Edward S. Renwick, Esq.,
Hanna and Morton LLP
50 Years in the CA Oil Patch

January 28th, 2010
Joint Meeting With
Los Angeles Basin Geological Society

March 18th, 2010
Speaker - TBD
Officer Nominations

May 20th, 2009
Speaker – TBD
Officer Elections

Lawyers' Joke of the Month

Jack Quirk, Esq.
Bright and Brown

Recently I was asked to play in a golf tournament.

At first I said, "Naaahhh! I already play 3 times a week."

Then they said to me "Come on, it's for handicapped and blind kids."

Then I thought to myself… Damn, I could win this thing!!!

Treasurer's Report

As of 8/27/2009, the LAAPL account showed a balance of	$14,922.81
Deposits checks from Luncheon 9/17/2009	+$216.00
Paid to L.A.P.C. for Luncheon 9/17/2009	-$229.86
Sponsorship to WC LI	-$1,000.00
Check to Direct Promotions (glasses w/logo)	-$490.39
Contribution check to Pyles Boys Camp	-$3,521.15
Balance as of 11/4/2009	**$9,897.41**
Merrill Lynch Money Account shows a total of	$11,096.90

New Members and Transfers

Our Chapter Board of Directors welcomes the following new members to the Los Angeles Chapter:

Jason Downs
Independent
936 10th Street, Unit C
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Sarah Sanchez-Downs
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Transfers

None to Report

Corrections

None to Report

Guest Article

OIL QUEEN OF CALIFORNIA

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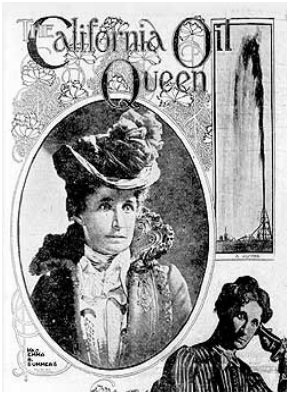

She would become a lady to be reckoned with in the rough and tumble world of the Los Angeles oil patch. Emma A. (McCutchen) Summers, a refined southern lady who graduated from Boston's New England Conservatory of Music, moved to Los Angeles in 1893 to teach piano. Summers was soon caught up in the excitement of California's new petroleum exploration industry.

With her home not far from where Edward Doheny had discovered the Los Angeles City Field just a year before, Summers invested $700 for half interest in a well just a few blocks from Doheny's producer.

Her well was between Court and Temple Streets, about a mile west of today's Dodger Stadium. It didn't go well. The casing collapsed and tools were lost, but she persevered. She borrowed another $1,800 to continue drilling the well and "Night after night, by the light of a flaring torch, she hovered over it, as if it were a sick babe's cradle."

Weeks dragged on as the money dwindled, but the well finally came in. Encouraged, Summers drilled another well, and another, and another. She later recalled, "When I found myself $10,000 in debt, I thought if I ever got that paid and as much more in the bank, I would be glad to quit." But she didn't quit. Summers became a constant presence in the forest of oil rigs that had turned the heart of Los Angeles into a "vibrant, oil-soaked little canyon." The population doubled between 1890 and 1900 and her oil business prospered. By 1901, Summers was operating fourteen paying wells of her own and leasing others to meet the market demand. "It has been like this with me always," she recalled. "I saw a chance in the oil business and sunk a well, and that carried me on and on until I couldn't stop."

Her wells produced 50,000 barrels each month. At first she sold her oil through local brokers, but eventually took on that challenge in addition to managing her supplies, 40 horses, 10 wagons and a blacksmith shop. Summers sold her oil to downtown hotels, factories, Pacific Light & Power Co. and railroads. "There are men in Los Angeles who do not like Emma A. Summers" proclaimed the July 1911 issue of Sunset magazine. The former piano teacher had made enemies along the way to becoming known as the "Oil Queen of California." Summers expanded her holdings into real estate as World War I demand for petroleum increased her profits. She bought some of the first motion picture theaters in Los Angeles as well as apartment houses, several San Fernando Valley ranches, and a Wilshire Boulevard mansion. As the Los Angeles oil boom waned, Summers moved into her elegant hotel appropriately named the Queen. Years later she recalled, "Oh, how scared I was sometimes! I would start in on a big deal and then get scared and wonder where I'd land. But I usually came out all right."

She lived out her last years at the Biltmore and Alexandria hotels. Emma Summers' "genius for affairs" put her in control of the Los Angeles City Field's production and earned her oil queen title. She died in a Glendale nursing home in 1941 at age 83.

SPECIAL EVENT REVIEW

WESTCOAST LANDMAN INSTITUTE A SUCCESS

This year's WCLI was sponsor by the Los Angeles Association of Professional Landmen. The site of the WCLI was again held in the beautiful and breathtaking City of Santa Barbara. The attendance broke ALL past records; the speaker line up was second to none; evening dinners were spectacular, accommodations great and the city's ambiance topped it all.

Of course, coordinating the efforts of this WCLI goes to Chairmen Edgar Salazar, Plains Exploration & Production Company, and Kevin Rupp, CPL, California Landman Services.

Committee members: [Alphabetical order] Terry Allred, RPL, - Transamerica Minerals Company; Chris Boyd - Aera Energy, LLC; Stephen Burke, CPL, - Plains Exploration & Production Company; Thomas G. Dahlgren - Warren E & P, Inc.; Charlotte Hargett – Plains Exploration & Production Company; Joel Miller - Transamerica Minerals; Pat Moran – Venoco; and Lisa Rupp, Events Coordinator and Consultant. For those not recognized here; the LAAPL members and all who attended appreciate your steadfastness and efforts in organizing this year's WCLI. Lest we forget the companies who employ these fine professionals by allowing them to donate their time in making this event happen.

Last but not least, our speakers and sponsors for the WCLI who ensured its success. In our next issue, we will gather up photos of our speakers and share with the readers.

CASE OF THE MONTH

RCRA INJUNCTION IS NOT DISCHARGEABLE IN BANKRUPTCY
UNITED STATES V. APEX OIL
(CASE NO. 08-3433, 7TH CIR., AUGUST 25, 2009)

By

Thierry R. Montoya, Esq. - Ardno, Yoss, Alvarado & Smith

EPA obtained a grant of injunction under RCRA ordering Apex Oil ("Apex") to cleanup a contaminated site in Hartford, Illinois. The site was contaminated by millions of gallons of discharged oil that created a "hydrocarbon plume" that had contaminated groundwater, and was shallow enough to emit fumes that rise to the surface entering homes in the Hartford area. The oil was discharged from an oil refinery that was owned by a corporate predecessor of Apex. Apex declared bankruptcy under Chapter 11 restructuring in 1986, and alleged that the government's claim was discharged as part of its Chapter 11 proceeding that discharged "any debt that arose before the date of" confirmation. Apex alleged that since it had sold the property before bankruptcy confirmation and could not cleanup the site as it was no longer in the oil refinery business, the costs incurred to hire a third party to clean it for Apex were dischargeable in bankruptcy. In other words, Apex argued that its cleanup cost was a monetary expense arising from the injunction and that is specifically dischargeable. The 7th Circuit rejected Apex's argument holding that an injunction cannot be discharged in bankruptcy as RCRA does not authorize any form of monetary relief. A right to equitable remedy for breach of performance can be discharged under bankruptcy if such breach gives rise to a right to payment. However, RCRA does not entitle a plaintiff to demand, in lieu of action by the defendant, payment of cleanup costs. The mere fact that equitable relief may cost a defendant something cannot justify the discharge of equitable claims.

Background

Following a 17-day bench trial, the district court held that Apex was legally responsible for abating the "hydrocarbon plume" nuisance because this plume was created by an oil refinery owned by a corporate predecessor of Apex. Apex's challenge to these findings was based on the issue of whether EPA's claim to an injunction was discharged in bankruptcy and, therefore, could not be pursued in this subsequent lawsuit.

Apex declared bankruptcy under Chapter 11 in 1986. The bankruptcy judge's approval of Apex's Chapter 11 proceeding discharged the debtor from "any debt that arose before the date of" confirmation, with immaterial exceptions. "Debt" is defined as "liability on a claim," and "claim" as either a "right to payment," or, a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." [Emphasis added.] This case hinged on the meaning of "gives rise to a right of payment."

As Apex had ceased refining oil and had no internal capacity to cleanup the contaminated site, Apex alleged that it would have to hire another company to perform the cleanup for it in order to comply with the injunction. Apex estimated that it would have to pay this company about $150 million for the cleanup, although the possibility of recovering some of that money back from contributors is possible under RCRA. Apex argued that the cost of compliance should be deemed a money claim, that would be dischargeable under bankruptcy.

Court's Rationale

The 7thCircuit's interpreted the discharge of equitable claims to apply "if the holder of an equitable claim can, in the event that the equitable remedy turns out to be unobtainable, obtain a money judgment instead…" However, Apex's claim fails as RCRA, which forms the basis of EPA's equitable claim, does not entitle a plaintiff to demand, in lieu of action, the payment of cleanup costs. RCRA's provisions, to include citizen suits, has consistently been held as not authorizing monetary relief. Therefore, EPA's equitable claim could only entitle the government to require Apex to cleanup the contaminated site at Apex's expense.

This left Apex with the argument that the cost to comply should be considered a money claim. Apex cited to two cases: Ohio v. Kovacs and Johnson v. Home State Bank, both of which were distinguishable.

The Ohio case involved an equitable obligation to cleanup a contaminated site owned by the debtor. The Supreme Court allowed the discharge in bankruptcy of the injunction ordering the cleanup that had been issued before the bankruptcy. However, the facts are not applicable to this situation. After the debtor failed to comply with the injunction and a receiver was appointed to seize the debtors assets to secure money to pay for the cleanup, at that point the receiver was seeking money rather than an order that the debtor cleanup the contaminated site. Here, EPA was not seeking money and could not under RCRA.

The Seventh Circuit was not persuaded by Apex's reliance on the Johnson

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case. The Johnson Court held that a mortgage, an equitable interest, could be discharged in a Chapter 13 bankruptcy. As a mortgage secures a loan, and thus entitles a lender to force the sale of the collateral giving rise to a right to payment to the lender, like Ohio, the holder of an equitable claim can obtain a money judgment instead.

The Seventh Circuit did concede that the United States v. Whizco case did support Apex's position. However, this decision cannot be reconciled with other decisions holding that cost incurred is not equivalent to a "right to payment," and the Whizco decision further set no limits that would distinguish cases under RCRA from other cases in which compliance with an equitable decree requires expenditures by a defendant. Apex's distinction, that all equitable claims are dischargeable in bankruptcy absent a specific limitation in the code was far too sweeping. Apex's distinction fails to consider distinguish between injunctions calling for specific action and injunctions calling for one to refrain from something, between injunctions that require major expenditures and those that require minor ones, and between injunctions where a defendant can comply internally and one that require the retention of an independent contractor to achieve compliance.

The Seventh Circuit held that Apex's position was simply untenable as whether one can cleanup a site oneself or has to hire someone else to do it is irrelevant under the Bankruptcy Code or RCRA. Apex's position would essentially discourage polluters from developing any internal capacity to cleanup their pollution, even if resorting to an independent contractor would be more expensive. Moreover, whether remediation costs are incurred by the polluter himself or a third party, the Seventh Circuit held that such costs are as real regardless of whether they are borne internally or are incurred via checks written to a third party.

Conclusion

This decision affirms that a debtor remains liable for remediation of property under RCRA even though they no longer own the property and the contamination occurred before bankruptcy confirmation. Moreover, Apex affirms the importance of a RCRA remedy in that it cannot be discharged in bankruptcy at all, providing the government with an important tool to enforce remediation against a "potentially responsible party" that either is in bankruptcy or had previously received a bankruptcy discharge.

Photo courtesy of Andreas Mulch

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Jerry M. Harris, Director, Center for Computational Earth and Environmental Science, Professor and Former Chair, Department of Geophysics, Stanford University; Director, Stanford Wave Physics Laboratory; Past Distinguished Lecturer, Society of Exploration Geophysicists, American Association of Petroleum Geologists, and Society of Petroleum Engineers.

The alumni-managed Stanford Petroleum Investments Funds own, manage, and acquire producing oil and gas royalties and other energy investments. Income from these investments provides essential discretionary funding in support of energy and environmental education and research and other programs of the Stanford School of Earth Sciences. The Petroleum Investments Funds provided seed funding to help launch the Stanford Center for Computational Earth and Environmental Science.

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