



THE Energy Dispatch

A PUBLICATION OF THE
IEL YOUNG ENERGY
PROFESSIONALS' COMMITTEE

CONTENTS

EXPERT INTERVIEW OF KATHLEEN MAGRUDER HIERSCHE	2
WORTH THE EFFORT – BUILDING AND MAINTAINING YOUR PROFESSIONAL NETWORK	4
YEP MEMBER HIGHLIGHT.....	5
UNLIQUIDATED DECOMMISSIONING OBLIGATIONS CLAIMS IN CHAPTER 11.....	6
CAREER TRANSITION HIGHLIGHT – JUSTIN TSCHOEPE	8
AUTHORITY TO CONVEY MINERALS	8
A MINERAL LIEN IN NAME ONLY: WHY TEXAS MINERAL LIENS DO NOT ATTACH TO THE FEE MINERAL INTEREST.....	9

Issue Editor

Kelly Ransom

Publications Co-Chairs

Eric Camp, Erin Potter Sullenger,
and Kelly Ransom

Newsletter Subcommittee Members

Joe Castelli, Tod Everage, Anna Gryska, Miles Indest, Marcella Lunn, Charles Nixon, Brittany Salup, Aditi Suresh

Interested in writing for *The Energy Dispatch*? Young energy professionals may submit articles or ideas for our next issue to IEL's Associate Director, Vickie Adams (vadams@cailaw.org).

Upcoming IEL Events

[Young Litigator Oil & Gas Conference](#)

November 13, Spring, TX

[18th Annual Energy Litigation Conference](#)

November 14, Spring, TX

[6th Midstream Oil & Gas Law Conference](#)

December 11, Houston, TX

[7th ITA-IEL-ICC Joint Conference on International Energy Arbitration](#)

January 23-24, Houston, TX

[71st Annual Oil and Gas Law Conference](#)

February 20-21, Houston, TX

[4th National Young Energy Professionals' Law Conference](#)

March 25-27, Austin, TX

Visit our [website](#) for our full calendar and a list of our online offerings!

Conference Highlight

Young Litigator Oil & Gas Conference – Energy Litigation Boot Camp November 14

IEL will host the Young Litigator Oil & Gas Conference on November 14 in Spring (Houston Metro Area). This conference is a continuation of last year's Energy Litigation 101 Conference and is created specifically for those working in energy litigation with less than ten years of experience in the field. The co-chairs (Katie Baker, Bradley Murchison Kelly & Shea LLC and Brittany

Salup, Chevron Upstream) have put together a day full of essential topics for those in energy litigation. The program, which offers 7 hours of CLE credit, contains sessions that teach participants science, technology, the role of a litigator in agreements, practical tips for managing litigation, how to deal with social media, how to make presentations to win, and much more! This program is only \$195 for IEL members or IEL Supporting or Sustaining Member Employees and the regular registration is only \$260. [Click here](#) to view the full schedule and [register online!](#)

Expert Interview of Kathleen Magruder Hiersche

Kelly Ransom, Kelly Hart Pitre

Kathleen Magruder Hiersche recently retired from a long and successful legal career in the U.S. energy industry as a lawyer, lobbyist, compliance officer, and expert witness. She is the immediate past chair of the State Bar of Texas's Section for Oil, Gas and Energy Resources Law and recently retired as Vice President of U.S. Regulatory Affairs of BP Energy Company.

I met Kathleen earlier this year when I had the privilege of officiating her beautiful wedding in New Orleans. During the celebration that followed, I had the opportunity to learn about Kathleen's fascinating legal career in the energy industry, and I left wanting to know more about Kathleen's pathway to success! Luckily, Kathleen agreed to share more about her career and experiences in the following interview.

KR: Where did you start your career?

KMH: I started at Amoco Production Company, which was Standard Oil of Indiana, in 1980. I was the first female attorney that they ever hired in their Houston office. People would stand in the hall and peer into the door to see me sitting there. It was if they were looking at the new animal at the zoo and saying "You know, we heard there was one here, but we wanted to come see it for ourselves."

I started out at Amoco as an oil and gas lawyer doing title opinions and obtaining permits for everything from drilling wells to flooding fields. I was also getting permits to frack wells back in the 80s.

It is kind of hard to fathom this today, but Amoco was an oil company at that time. Back then, if you found gas, it was just a disaster! Companies like Amoco really did not want to deal with natural gas. But I worked on a lot of regulatory cases with an engineer who believed that natural gas would soon come into its own. We thought that if we really

understood natural gas production, we were going to be able to write our own ticket, so to speak. He and I built sort of a sub-specialty on natural gas wells. Anytime there was an issue around natural gas, we would volunteer to present it before the regulators.

Then Pennzoil found me. Pennzoil, unlike Amoco, was really more of a natural gas company. At Pennzoil I transitioned from what was referred to as a “dirt lawyer” (someone who works with the title issues and permit issues and so on) to being a gas regulatory lawyer. My focus then became pipeline jurisdiction, regulation of natural gas pricing, and state regulation of the natural gas business. This was good for me because that is what I was doing when ARCO found me in 1988.

KR: What type of work did you do at ARCO?

KMH: Because I had the experience dealing with the state agencies, I was the ARCO attorney who got to deal with the state lobbyists. In some ways, this work was eye-opening and really fun. But in other ways, it was kind of scary.

Through working on legislation, I also became an expert witness. One day, I was sitting with my Texas state guy after dinner. He asked if there was one thing I could do to help our natural gas business in Texas, what it might be. At that time, the Section 29 federal tax credit that covered gas wells was getting ready to expire. It was going to have a huge impact on our East Texas gas business. So I responded that I would write a bill that would give severance tax forgiveness to any high-cost gas well drilled in Texas. He told me to write it up.

So, literally, on the back of a cocktail napkin, I wrote up the plan, and we then turned that into a bill. We then shopped it around and found a legislator who was willing to carry the legislation. In 1989, I was the only person who appeared to testify in favor of the bill. In fact, I was the only one who showed up to testify on the bill at all. And it passed and became law.

It created so much economic benefit to gas drillers in the state that when it came up for renewal six years later, I had to fight to get into the hearing room to testify on the bill because there were so many people saying that the tax exemption should not be allowed to expire. That legislation has been invaluable to shale development in Texas. A lot of other states have also used that piece of legislation as a model.

Because I understood the business and the law and was able to work with someone who helped me work through the legislative process, I was able to achieve something that was really good for the business and good for the state. And that is when I just really began to love what I did.

It was fun before, but I really began to love what I did at that point.

KR: Earlier you mentioned that you were the first female attorney at Amoco. Looking back, do you think that being a female in a relatively male-dominated industry had any impact on your career?

KMH: I never thought about it. When I started there were so few women around that there was little to compare my experience. My biggest fear was that they would hire women just because they had to hire a woman. The last thing you need is to hire women who are not qualified, and I saw that happen. That’s the worst possible thing that could happen to women. My goal was always for people not to think of me as a female, but to think of me as a competent attorney. I think being blonde was one of my best attributes because no one took me seriously until it was too late.

The oil and gas industry is still very male-dominated, but that never really kept me from doing what I wanted to do. I do not know if I am prepared to speak to whether it kept me from what I could have done. But I did what I wanted to do. So I can’t complain.

KR: After ARCO, you had several other corporate counsel positions and also spent some time in private practice. Where did you end your career?

KMH: I went to BP in 2011 and retired in 2019. After being a lawyer, a lobbyist, a compliance officer, and an expert witness, I ended up going back to the corporate life with BP in 2011. I ran the regulatory affairs group for the BP company that sold electricity and natural gas. Once again, it was a great opportunity to work inside the business and effect change.

KR: Why did you prefer being a corporate attorney rather than being in private practice?

KMH: So, corporate versus law firms...what I saw as a benefit of being an in-house corporate attorney was that I really was the client in some ways. I was able to really see the business in a way that outside lawyers generally do not. Corporate counsel are often able to help avoid problems early on because they are able to look at something, determine that it is not going pass muster, and advise that it should be done a different way. Corporate counsel are often there ahead of time and can help avoid issues that require calling in outside counsel. That said, there is an important place for outside counsel in the corporate world.

I sent a lot of money to outside counsel because that is where a lot of expertise is. I was a generalist in many respects. I had the opportunity to work in 28 different states. Most lawyers deal with the law in one state and often on one very narrow area of law. I had the benefit of

being able to travel to a bunch of different states. I would learn how Michigan looks at things differently than New Hampshire; how New Hampshire looks at things differently than Texas; and how Texas looks at things differently than California, for example. From my perspective, this was much more interesting, a lot more fun, and gave me a really big picture of what this business was from the well head all the way to the burner tip.

That is not to dismiss by any stroke of the imagination the expertise that an outside lawyer can bring. When I needed a Louisiana lawyer, I hired a Louisiana lawyer. When I needed an Arkansas lawyer, I hired an Arkansas lawyer. It is a very rare case when you find a lawyer who is familiar with more than two states. And most lawyers are only experts in one state. And when you need an expert, you need an expert.

One thing that I learned through lobbying and writing bills is that at the end of the day a lot of it comes down to knowing who the people are who get to vote on these things. Do you know the legislator who is going to be able to kill a bill or do you know the legislator who can make a bill fly? Do you have the kind of relationship with a legislator so that he or she will pick up the phone to ask you what you think about something?

Often times, the relationship with the judge matters in a similar way: knowing what the judge hates to hear, what the judge likes to hear, how the judge likes things presented. That makes a huge difference, too. I think in the long run, it all comes back to relationships. And that's something that outside counsel can often give you that most inside counsel will probably never have.

So, there are benefits and detriments to both sides. At the end of it all, the corporate life worked for me because I really liked being part of something. One thing that bothered me in private practice was I would work on a case or help a client get a permit or certificate to do something and then never know what happened after spending years on that particular project.

But in-house, you live it from beginning to end. One of the really cool things about working for Amoco years ago was that I could go talk to the guy who sat on that well when it was drilled 40 years earlier. I had the big picture of why that well was drilled and how it was completed. It was easy to see the complete picture.

It depends on your personal preferences and where your skill set lies. I found a lot more comfort being inside of something like a corporation and being able to understand and influence the business compared to being the guy that tends to put out fires after it's all over.

As a lawyer you are always going to be a counselor. You are not really going to be a decider. If you are on the business side, you get to be the decider. Now there are some places where they let the lawyer make the decisions. But the thing that shocked me the most when I worked at a law firm was that for years I had been paid to make decisions...and I am really good at making decisions. But nobody wanted me to make a decision for them as their outside lawyer. I would make recommendations and they would not make a decision. But it was not my job to be a decider. I was supposed to be a counselor. So in addition to the relationships, you need to understand your role. With any luck, you find a place where you are comfortable with your role and you feel you are respected and contributing to the enterprise.

We each come with a different set of skills. Part of it just has to do with knowing yourself—knowing what you are capable of and knowing what makes you happy. What makes me happy is the opportunity to learn something new and to understand the big picture. Having had the opportunity to work in the oil business—and the gas business and the power business – helped me learn something new every day. The U.S. energy business is big and complex and has helped this country become great in so many ways. It was a privilege to have been a part of its development.

Worth the Effort – Building and Maintaining Your Professional Network

Eric C. Camp, Decker Jones, PC

None of us work in a vacuum. We all have law school classmates, clients, colleagues, and other professional contacts with whom we regularly interact over the course of our careers. These people make up our professional networks.

Building and maintaining your network will yield significant personal and professional dividends. The more you put in, the more you will benefit. Many former classmates, clerks, and associates will soon be in positions to send you work, recommend you for jobs or awards, and otherwise help your career. None of this is rocket science. However, most of us do not do a great job of building and maintaining our professional networks. Why? Because we are busy, and this takes a little consistent, non-billable effort. It does not happen on its own.

The following simple tips may be useful to start and keep your professional network:

Building Your Professional Network

Get Organized. You have probably already accumulated 100+

people in your professional network from law school and later professional interactions. But do you know how to reach them and where they currently work?

LinkedIn is an easy way to keep up to date with certain contacts, but not everyone is on LinkedIn. And even if they are, people frequently neglect to update their profiles or do not include their contact information. Other resources may include alumni networks and membership lists from state bars and professional organizations. You can also simply make your own list of contacts from your Outlook contacts or elsewhere. This should be more than just a generic Outlook global contact list. It should include helpful notes such how you know the person or common interests. The point is to have an organized list of people in your existing professional network.

Continually Build Your Professional Network. As you meet people you like professionally, connect with them via LinkedIn and add them to your contact list (whatever that may be). And do this as soon as possible!

I am certainly guilty of meeting someone, hitting it off, and then moving on to the next thing without ever following up or taking steps to develop a deeper professional relationship. More than I care to admit, I attend professional conferences, have great conversations, exchange a lot of business cards, and have every intention of coming back to the office and updating my contact lists and sending follow up emails reiterating how great it was to meet, etc. But, before I know it, I am catching up on work and a month has gone by without me reaching out and by then it feels awkward to do so.

Failing to follow up on a new contact to deepen your relationship results in a lost opportunity to build your professional network.

Maintain Your Professional Network

Stay in Touch. This does not mean sending weekly updates about everything going on in your work and home life. And it is not about constantly asking contacts for work. Rather, this is about reaching out when there is a reason to do so—when you are doing something for them (and not the other way around). Examples include: sending a note to say congrats when someone changes jobs; giving kudos, privately or publicly, when someone has a successful verdict or transaction or wins an award; sending articles that may be of interest to the recipient; reaching out for advice on a matter about which your contact has expertise; and sometimes just reaching out to catch up and see how someone is doing.

Be Seen, Read, and Heard. You cannot keep up with everyone all of the time. But the more you are seen at events, write articles or post online, or give presentations, the more your professional network is reminded of you and knows what

you are doing. This helps you stay fresh in their minds even when you may not have shared personal interactions in a long time.

Most Importantly, Help People in Your Professional Network. To paraphrase JFK, “Ask not what your professional network can do for you, but what you can do for your professional network.”

When a contact reaches out for advice, give it generously. Help your contacts whenever possible and without asking for anything in return. Frequently I take calls from recruiters not because I am interested in a new job, but because the job might be a fit for someone in my network who I can recommend to the recruiter. We all need help from time to time, and we fondly remember those that helped us. The more you give your professional network, the more you will receive. Karma just works like that.

Many of my clients today are people from my professional network who I helped with advice over the years. I did so without asking for anything in return and when they were simply not in a position to help me. But later, some were in a position to hire me and they reached out—I think in large part because of the relationship we formed and maintained over the years.

I will close with words I heard my father say a thousand times, “Never forget an old friend and never be afraid to make a new one.” The same can be said for your professional network. May you grow and maintain it well.

YEP Member Highlight

Interview by Miles Indest, McGuireWoods LLP



Meghaan C. Madriz

Partner at McGuireWoods LLP

Energized Employment Litigator and Super-Mom

Meghaan Madriz, a mother of two kids under three, is an employment lawyer full of energy and zeal: she has argued before the United States Court of Appeals for the Fifth Circuit, federal and Texas courts,

and represented clients before the Equal Employment Opportunity Commission, the Department of Labor, and the Texas Workforce Commission. It is no surprise that she is certified by the Texas Board of Legal Specialization in labor and employment law.

Meghaan has helped companies resolve wage and hour

disputes, Department of Labor investigations, class and collective actions, discrimination claims, and trade secret and non-compete disputes. As energy companies face new legal battles, Meghaan constantly stays ahead of the curve on what's trending in the employment law world. She has had a passion for employment law since her second year of law school and continues to dedicate 100% of her practice to protecting employers' interests.

Cajun Cooking and Travel

As a Louisiana-native, Meghaan prides herself on being a great cook—particularly meals with Cajun flavor. Meghaan spends her free time trying new restaurants with friends and enjoying time with her husband, Yasser, and her children, Emilia and Liam. She also loves traveling (even with two kids in tow) and has been to France, Spain, Austria, Germany, Ireland, England, Greece, Croatia, Bosnia, Switzerland, Italy, Poland, Czech Republic, Costa Rica, Nicaragua, Mexico, Belize, the Bahamas, and over 25 states in the United States.

Advice for Young Lawyers

“Find a mentor who believes in you, who is willing to commit his/her time and energy to your advancement, who stands up for you, and whom you admire, trust, and most importantly, consider a friend. This advice holds true whether you are just starting your career or have been practicing for 15 years.”

Unliquidated Decommissioning Obligations Claims in Chapter 11

Amelia Bueche, Kelly Hart Pitre

As market analysts predict a new onslaught of bankruptcy cases in the oil and gas industry, the issue of how bankruptcy courts classify decommissioning obligations is of particular interest. A decommissioning obligation owed by an oil and gas debtor should be evaluated under the same framework as any other equitable obligation in bankruptcy. In the most general sense, obligations owed by a debtor are either a claim subject to discharge in a Chapter 11 plan process or not a claim and, thus, not subject to discharge. Because decommissioning obligations are often among the largest dollar value claims in oil and gas bankruptcy cases, whether such obligations are claims subject to discharge or are instead equitable obligations that are unaffected by bankruptcy is a significant issue.

When an Obligation is Generally a Claim

Under the Bankruptcy Code, a claim is defined as broadly as possible. The definition of claim includes more than just a traditional right to payment and encompasses a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. 11 U.S.C. § 101(5)(b). This is true even if the right to an equitable remedy is contingent or

has not yet matured. *Id.*

Determining whether an equitable remedy gives rise to a right to payment can be an esoteric exercise. The quintessential illustration of this issue is a seller of a unique property who has an enforceable obligation to convey the property to a buyer. If that obligation is breached, a court may order the remedy of specific performance. Under some state's laws, the specific performance obligation may be satisfied by an alternative right to payment. If this is the case, the breach of the seller's obligation to the buyer to convey the property gives rise to a right to payment. Therefore, the buyer would have a claim against the seller under the Bankruptcy Code.

While the Bankruptcy Code certainly encourages creditors to select money damages among alternative remedies, it does not require creditors entitled to an equitable remedy to select a suboptimal remedy of money damages. Thus, courts have held that a claimant's right to certain equitable remedies constitutes a “claim” if an award of monetary damages is a viable alternative to the equitable remedy sought.

Decommissioning Obligations Specifically

First, it is well-settled that the obligation to stop ongoing pollution can never give rise to a right to payment and is therefore never a claim. In the context of decommissioning obligations (cleanup after past actions), actual costs incurred by a regulatory authority to remediate a debtor's property in accordance with applicable law during a bankruptcy are always claims although a more advantageous administrative claim. See *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434 (5th Cir. 1998) (concluding that the cost of plugging the debtor's unproductive wells per state law that were incurred by the state while the bankruptcy case was pending was an actual, necessary cost of managing the estate, and, thus, the state's claim was entitled to administrative expense priority). This is true of actual post-petition expenditures that satisfy decommissioning obligations that existed before bankruptcy as well. Such obligations are claims because the debtor's obligation to decommission the property was liquidated (i.e. reduced to dollar amounts) by the regulatory agency's performance of the obligation and then seeking reimbursement of costs. So while an equitable remedy [decommissioning] was once owed by the debtor, the breach of performance of this remedy gave rise to a right to payment.

But what about when a debtor's decommissioning obligations have not been reduced to a dollar amount for reimbursement (i.e., when the decommissioning obligations are unliquidated)? Just like the illustrative example of the seller of a unique good, courts must look to the applicable state law to determine if a breach of the debtor's obligation would give rise to a right to payment.

A statute may not entitle a claimant to perform the

decommissioning obligation and then seek reimbursement from the debtor; and instead, only require a debtor to clean up the site at its own expense. Thus, the decommissioning obligation would not give rise to a right to payment and therefore cannot be a claim. See *U.S. v. Apex Oil Co.*, 579 F.3d 734, 735 (7th Cir. 2009). But if the applicable regulatory statute allows the enforcement authority to either (1) order the the debtor to perform the decommissioning obligations or (2) perform the decommissioning obligations itself and then seek reimbursement of costs, courts have found that the regulatory authority has a right to payment. Thus, the regulatory authority would have a claim that could be discharged in bankruptcy. *In re Chateaugay Corp.*, 944 F.2d 997, 999 (2d Cir. 1991) (concluding that such a claim would be an administrative claim).

Therefore, where an equitable obligation to decommission property has not been reduced to a dollar amount, courts must determine whether the enforcing agency has a claim, which will hinge on whether, under applicable law, the enforcing agency has a right to cleanup a site and then recover costs [a claim] or whether it can only require the debtor to perform the cleanup [not a claim]. See *Route 21 Assocs. of Belleville, Inc. v. MHC, Inc.*, 486 B.R. 75, 88 (S.D.N.Y. 2012), subsequently aff'd, 542 Fed. App'x. 41 (2d Cir. 2013). Distilled, this framework regarding unliquidated decommissioning obligations enforced by a regulatory authority mirrors the analysis applied to the scenario involving the seller of a unique item described above—the seller owed the obligation of specific performance [decommissioning] but, if under applicable law [regulatory law], the specific performance obligation can be satisfied by an alternative right to payment to the buyer [regulatory agency], then the regulatory authority should have claim.

Non-Regulatory Authority Claimants

Most cases regarding decommissioning obligations involve claims asserted by a regulatory authority. But decommissioning obligations are also sometimes owed to private parties, such as landowners or subsequent purchasers. Similarly to regulatory authorities, where a private party performs a decommissioning obligation owed by a debtor when a bankruptcy case is pending and then seeks reimbursement, the debtor's obligation is a claim (likely an administrative claim).

The more salient issue arises when decommissioning obligations owed to a private party are unliquidated, meaning they have not yet been reduced to a dollar-value reimbursement claim. The analysis should hinge on the source of the obligation owed to the private party and whether that source gives rise to a right to payment for breach of an equitable obligation. The most likely source of a

debtor's decommissioning obligation owed to a private party in an oil and gas bankruptcy is a private contract between the claimant and the debtor that imposes a decommissioning obligation on the debtor at the end of lease. Though, unlike other equitable obligations, specific performance generally gives rise to a claim that can be discharged in bankruptcy, the analysis of whether contractual decommissioning obligations give rise to claims should turn on whether money damages can be awarded in lieu of specific performance under applicable state law. This often turns on whether the obligation owed can be measured in damages with some sufficient degree of certainty. At least one bankruptcy court has noted that decommissioning obligations can be properly monetized, particularly where the claimant provided the bankruptcy court with an estimate of the costs necessary to perform the cleanup. Therefore, whether unliquidated, contractual decommissioning obligations can give rise to an obligation that is not subject to discharge depends on whether applicable state law allows money damages in lieu of performance of decommissioning obligations.

Another source of a private right to compel decommissioning are regulatory statutes that allow private parties to essentially act as a regulatory authority by way of a "citizen suit." For example, a claimant in one case obtained a cleanup order under the Resource Conservation and Recovery Act (RCRA), which only allows a citizen to compel cleanup rather than perform the cleanup and seek reimbursement. The Seventh Circuit recognized that "[w]hether a cleanup order can be discharged in bankruptcy depends on whether the order can be converted into a monetary obligation," and "[o]nly orders which can be turned into a 'right to payment' are considered dischargeable 'claims' for bankruptcy purposes." *AM International Inc. v. Datacard Corp.*, 106 F.3d 1342 (7th Cir. 1997). Because the RCRA order only allowed the citizen to compel cleanup rather than cleanup and recoup its costs, there was not a dischargeable claim. Louisiana has a similar citizen suit statute (La. R.S. §30:16) which allows an aggrieved party to bring suit to prevent any ongoing or further violations of Louisiana's minerals, oil, and gas and environmental quality laws. But recently landowners in Louisiana have asserted causes of action under the citizen suit statute for wholly past violations. Because the statute does not provide for a right to payment in lieu of performance such decommissioning obligations would not be claims and not subject to discharge.

Another unresolved issue is when there are dual sources of a single decommissioning obligation obligation—one source is a private contractual right and the other source is a citizen suit. If a party has a private contractual right to compel decommissioning giving rise to a right to payment under state law and also has standing to bring a citizen suit to compel decommissioning, does that party have a claim

in the absence of a statutory right to payment? Case law in other contexts is clear that when an aggrieved party has an alternative remedy of money damages to the equitable remedy, the aggrieved party has a claim. Therefore, because a party with dual sources of a single decommissioning obligation has an alternative contractual remedy of money damages, it should be foreclosed from asserting an equitable remedy for decommissioning under a citizen suit.

The Bankruptcy Code provides no basis for treating decommissioning obligations differently than any other equitable remedy absent any ongoing risk to public health and safety. Therefore, if any source of a decommissioning obligation gives rise to a right to payment for breach of that obligation, these obligations will be treated as claims in a bankruptcy.

Career Transition Highlight – Justin Tschoepe

Interview by Vickie Adams, Institute for Energy Law



Justin Tschoepe is a young litigator who recently made the transition from a global law firm to a boutique firm. The timing of his transition allowed him to help launch the firm's energy litigation practice.

I reached out to Justin to find out a little bit more about the preparation that went into making this career transition. Justin shared

some great information about planning, understanding the type of lawyer you want to be, and taking advantage of opportunities when they arise.

VA: What type of preparation went into your decision to make a lateral move?

JT: While I had thought a lot about whether I should move firms, the actual preparation for the move I ultimately made was very minimal due to the circumstances. I left with a team of attorneys, and the timeline of the move was significantly accelerated after the senior partner in our group announced that he would be leaving my prior firm. After doing some quick soul searching, I knew the move was the right one for me and that I had to take the opportunity while it was there.

VA: Did you have an action plan in place before your made your move?

JT: I did not have a concrete plan in place before I decided to move, but I did by the time I arrived at my new firm. It was

not difficult to put the plan together because it was primarily adapting what I had hoped to do as a partner at my prior firm to what I would now be able to do at my new firm. In the process of updating and adapting my plan, I further confirmed what I knew to be the case when I made my decision, which was that a boutique model was better suited for the client base I believe I can serve best through my skill set and expertise.

VA: Would you have benefitted from additional or different resources before or during the transition?

JT: It would have been a good idea to have spoken informally with more attorneys that had made lateral moves. In particular, I would have liked to have spoken with attorneys that moved to different size law firms to better understand the less obvious differences between big and small firms. I have found all of them to be manageable, but advance notice and planning always helps.

VA: What information would you recommend others gather when considering a similar career transition?

JT: I think the best information to gather first is what you want to do with your own career. You can then compare that to how firms market themselves and the particular niches they occupy to determine what is the best fit for you. It is too difficult to start by looking at other firms because you will not even know what to look for if you have not first decided what is most important for you.

VA: What is one piece of advice that you would like to share with others about lateral career moves?

JT: Do not be afraid to take chances. I have been very pleasantly surprised at the great relationships I have been able to maintain at my prior firm and the encouragement I have received from my former colleagues. I learned through the process that generally most attorneys understand that everyone has their own unique circumstances that make certain situations better than others, and there is typically nothing personal about career moves. So if you have a great opportunity, do not be afraid to take it.

Authority to Convey Minerals

Tiffany Means, Kelly Hart & Hallman, LLP

In drafting instruments conveying mineral interests, attention must be paid to the description of the grantor's capacity. A grantor may wear several "hats," such as executor of an estate, trustee, or simply as an individual. And the mineral interests owned and intended to be conveyed may differ depending on which "hat" the grantor is wearing at the time of the deed's execution.

A document conveying real property, including mineral

interests, must sufficiently designate the grantor so that he or she may be identified with certainty. Under the legal principle known as *descriptio personae*, where a grantor is adequately identified, the inclusion or omission of other words will not affect the validity of the deed.

Courts in many states have confronted the question of whether a deed that does not specify a grantor's capacity conveys title to real property held by the grantor in multiple capacities. For example, in *West 17th Resources, LLC v. Pawelek*, 482 S.W.3d 690, 695 (Tex. App.—San Antonio 2015, pet. denied), the court held that a grantor who expressly conveyed “all” of her interest in the subject property conveyed not only any title she held individually but also any title she held as trustee, even though the deed did not specify that she was acting in such representative capacity.

This aligns with the general principle that when a grantor conveys property to a grantee, the deed will be construed as conveying the greatest estate possible. In other words, a grant of “all my minerals in the land” conveys all mineral interests owned by the grantor in any capacity in which he or she holds title. Such a conveyance may however be voidable, but is not void *ab initio*. But where a grantor lacks any authority to act in a representative capacity and holds no interests in his or her individual capacity, a conveyance is void *ab initio*.

This distinction is significant for limitations purposes. When a claimant seeks to set aside a deed for the failure to specify the capacity in which the grantor intended to convey title, the claimant must bring an action to rescind or cancel the deed. This claim is subject to the statute of limitations for equitable rescission and cancellation of a deed. However, if the deed is void *ab initio* because the grantor had no authority to execute the deed and owned no title to the property at the time the deed was executed, the owner may bring an action for trespass to try title or to quiet title, and there is no applicable statute of limitations to bar such a claim.

The bottom line is that a grantor must have authority to convey property to effectively transfer title. A deed executed by a grantor without authority to convey the property is void and can be set aside at any time. But, if the grantor owns property in multiple capacities and has authority to convey the property in a representative capacity, the conveyance may still be effective even when the grantor's capacity is not correctly specified in the conveyance. Such an instrument is effective as a conveyance of legal title unless set aside through a judicial proceeding within the applicable limitations period.

A Mineral Lien in Name Only: Why Texas Mineral Liens Do Not Attach to the Fee Mineral Interest

Nirav Patel, Kelly Hart & Hallman LLP

Chapter 56 of the Texas Property Code allows an oilfield service company—referred to in the statute as a “mineral contractor” or a “mineral subcontractor”—to file a lien to secure payment for the services and equipment that it has provided to an oil and gas lessee. The lien affidavit must contain the information described in Section 56.022, including the names of the property owners whose interests are subject to the lien. TEX. PROP. CODE § 56.022. In an effort to maximize the effect of the lien, lien claimants will often list the owner of the fee mineral estate as an owner whose interest is subject to the lien, in addition to the oil and gas leaseholder. After all, who better to exert pressure on a lessee to pay its contractors than an irritated mineral owner-lessee whose title has been clouded by a lien filed by an unpaid contractor?

Unfortunately for the lien claimant, Texas case law and Chapter 56 itself make clear that a mineral lien does not attach fee mineral interests. As the Texas Supreme Court explained, “it is the settled law of this State” that a mineral lien “extends only to the property of the person under whose auspices the labor or material is furnished.” *Bethlehem Supply Corp. v. Wotola Royalty Corp.*, 165 S.W.2d 443, 445 (Tex. 1942). In other words, the mineral lien does not attach “upon the property of third persons,” such as the fee mineral owner's reversionary interest under an oil and gas lease. *Id.* Most frequently, the lien claimant is hired by the leaseholder or one of its contractors to perform work on the lease, and the lien claimant has no contact with the fee mineral owner. As a result, the lien claimant has not performed any work at the direction of the fee mineral owner, and its lien cannot attach to the fee mineral estate. *See id.*

Although the Texas Supreme Court in *Bethlehem* analyzed a mineral lien filed pursuant to Title 90, Chapter 3, Article 5473 of the Texas Civil Statutes, that statute is now codified as Chapter 56 of the Texas Property Code. *McCarthy v. Halliburton Co.*, 725 S.W.2d 817, 821 (Tex. App.—Eastland 1987, writ ref'd n.r.e.). Consistent with the decision in *Bethlehem*, Section 56.003 states that although a mineral lien attaches to “the land, leasehold, oil or gas well, water well, oil or gas pipeline and its right-of-way, and lease for oil and gas purposes for which the labor was performed or material, machinery, or supplies were furnished or hauled,” the lien “does not attach to the fee title to the property.” TEX. PROP. CODE § 56.003(a)(2), (b).

An invalid lien filed against a mineral owner's interest clouds title. *Robinson v. Snyder Nat'l Bank*, 175 S.W.2d 482, 487 (Tex. Civ. App.--Eastland 1943) (defining a cloud on title as "semblance of title, either legal or equitable, or a claim of a right in land appearing in some legal form, but which is, in fact, invalid"). But a mineral owner whose title has been clouded by a lien may be able to convince the lien claimant to record a release of the lien as the fee mineral owner's interest. Once presented with the above analysis, lien claimants will often stand down and execute such releases to make clear that their lien does not attach to the fee mineral estate.

Another option for the mineral owner is to file a suit seeking a declaration that the lien does not attach to their interest. Section 56.041(a) allows a mineral lien to be enforced in the same manner as a mechanic's lien under Chapter 53, which specifically authorizes the filing of a lawsuit to have a lien declared "invalid or unenforceable in whole or in part." TEX. PROP. CODE § 53.156. In such lawsuits, "the court shall award costs and reasonable attorney's fees as are equitable and just." *Id.* It should be noted, however, that although the statute states that the court "shall award" costs and attorneys' fees, the awarding of fees "in an equitable and just way is a matter squarely within the trial court's discretion." *Endeavor Energy Res., L.P. v. Staley*, 569 S.W.3d 319, 328-29 (Tex. App.—El Paso 2019, no pet.). Thus, the award of fees under Chapter 53 (and therefore under Chapter 56) is discretionary and not automatic.



Institute for
ENERGY LAW

The Energy Dispatch
Institute for Energy Law
The Center for American and International Law
5201 Democracy Drive
Plano, TX USA 75024



IEL is an Institute of

**THE CENTER FOR AMERICAN
AND INTERNATIONAL LAW**



THE Energy Dispatch

A PUBLICATION OF THE
IEL YOUNG ENERGY
PROFESSIONALS' COMMITTEE