Area of Mutual Interest Clauses: Opportunities and Pitfalls

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Area of Mutual Interest Clauses – Opportunities and Pitfalls

• History of AMI Clauses
  • AMI clauses not a new feature in oil and gas contracts
  • Few reported cases regarding AMI clauses
  • AMI clauses generally work the same, but overlooked details can and do lead to disputes
Area of Mutual Interest Clauses – Opportunities and Pitfalls

• Purpose of AMI clauses
  • Prevent parties to joint operations from competing with each other for additional land in the area of the joint operations
  • Encourage uniformity of ownership as joint operations grow
Area of Mutual Interest Clauses – Opportunities and Pitfalls

• AMI Challenges
  • Does AMI clause suit specific contract?
  • How might contract change?
  • Risky to rely on accepted industry definition of AMI clauses
AMI Case Study – Shale Development

Party A

Fund drilling program

Party B

50% leasehold interest

Land values approximately $250 per acre
AMI Case Study – Shale Development

- AMI Clause: If, during the term of the AMI, either Party acquires an oil, gas and mineral lease, mineral interest, ORRI, royalty interest, or any other interest in oil or gas or any contractual right to acquire interests in oil and gas leases by any means within the AMI, the acquiring party shall within 30 days of finalizing the acquisition, offer to the non-acquiring Party the right to purchase…
AMI Case Study – Shale Development

- Party C acquires 50% of Party B’s interest in the JEA
AMI Case Study – Shale Development

• One year later, Party A purchased Party B’s interest in the Joint Exploration Agreement
  • Bankruptcy sale
• 30 days pass, does this purchase trigger the AMI?
• Land values have gone up – Party A pays approximately $1100 per acre
AMI Case Study – Shale Development

• 18 months later – shale play is booming
  • Party C sues Party A – says it is entitled to share of Party B’s interest

• Land prices now exceed $15,000 per acre
  • Interest C seeks is worth more than $300 million
AMI Case Study –
Shale Development

• Does the AMI apply to Party A’s purchase of Party B’s interest in the Contract Area?
  • Party A: No, AMI clauses only apply to leases added to the Contract Area
  • Party C: Yes, this AMI clause is not limited to new leases or additional leases
AMI Case Study – Shale Development

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AMI Case Study – Shale Development

• Dispute decided by commercial arbitration
  • Six months of discovery
  • Expert witnesses hired by both sides
  • Two-week arbitration hearing

• Witnesses agree: AMI clause lifted from earlier agreement involving Party B
  • No negotiations re wording of AMI clause
AMI Case Study – Shale Development

• 30 days after hearing, Panel agrees with Party A’s interpretation by a 2-1 vote
  • AMI clause did not apply to purchase of interest in existing leases
• $300 million worth of oil/gas interests swung on a single vote
AMI Case Study – Lessons Learned

• How could this dispute have been avoided?
• Need to review AMI language before dropping it into an agreement
• Consider how the deal may change in the future
Additional AMI Considerations

- “Part In, Part Out” problem
  - What happens when a party acquires acreage that partially lies within the AMI?
  - Should the entire acquisition be subject to the AMI or only the part inside the geographic boundary?
Additional AMI Considerations

- **Term of the AMI**
  - Courts have generally found that AMI’s run for the term of the existing leases
  - Is that appropriate in your case?
  - Does it make more sense to have AMI terminate after the initial exploration and appraisal phase is over?
Additional AMI Considerations

• AMI Procedure – what if you don’t receive an offer that you believe you are owed?
  • Do not delay
  • Investigate diligently
  • Ready, willing, and able to purchase?
Additional AMI Considerations

- Remedies for breach of an AMI
  - Specific Performance
    - Usually, Plaintiffs’ Preferred remedy
  - Damages
    - Can be difficult to prove
Additional AMI Considerations

- Who is bound by AMI?
  - If it applies to affiliates or related parties, be sure to say so
- How does the AMI treat corporate acquisitions?
- Is the AMI limited to future acquisitions?
AMI resources


• 8-A Williams & Meyers, Oil and Gas Law A (2011).

• Ernest E. Smith & Jacqueline Lang Weaver, Texas Law of Oil and Gas §§ 3.3[A][3], 16.4[A] (2d ed. 2011).
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