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Area of Mutual Interest Clauses: *Opportunities and Pitfalls*

Chris Champion
Norton Rose Fulbright
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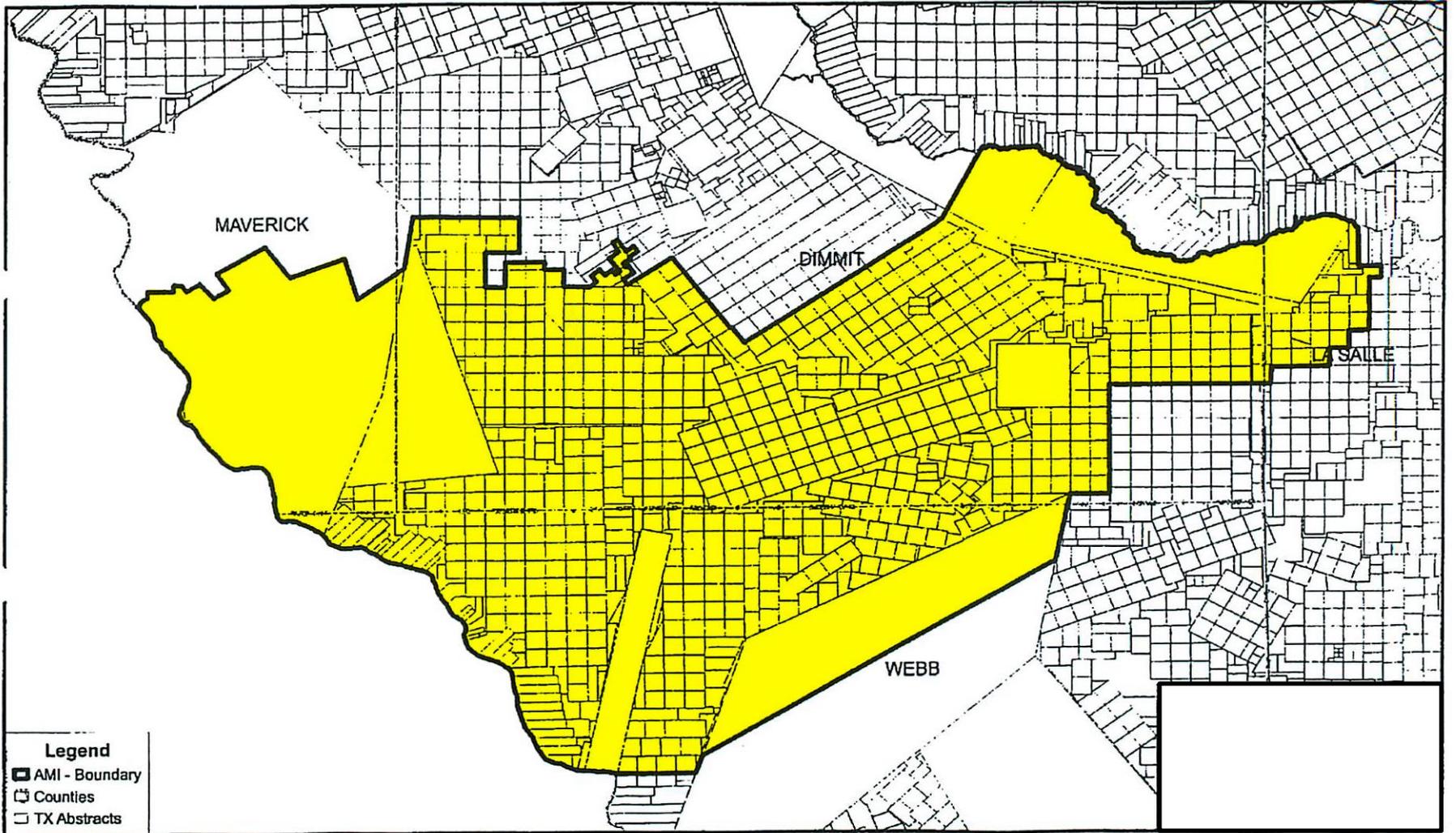


Area of Mutual Interest Clauses – *Opportunities and Pitfalls*

- 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*

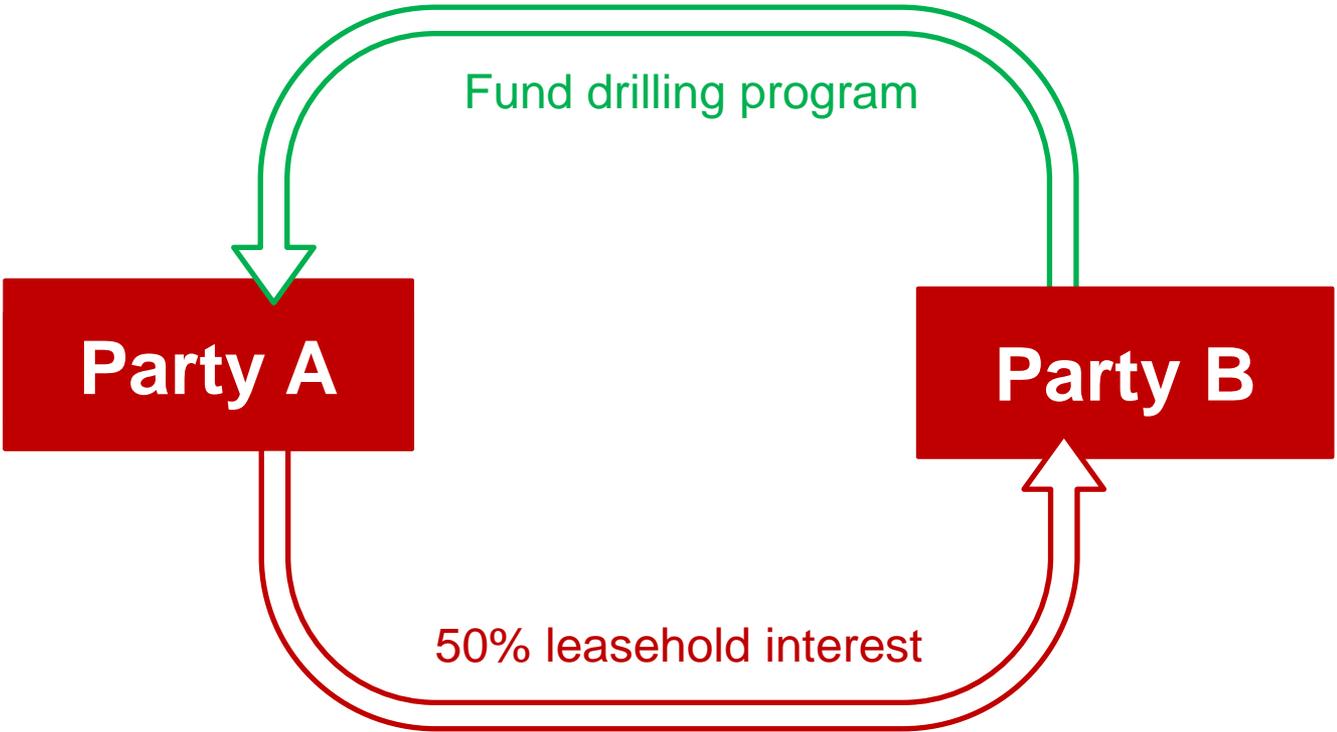
- Purpose of AMI clauses
 - Prevent parties to joint operations from competing with each other for additional land in the area of the joint operations
 - Encourage uniformity of ownership as joint operations grow



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*



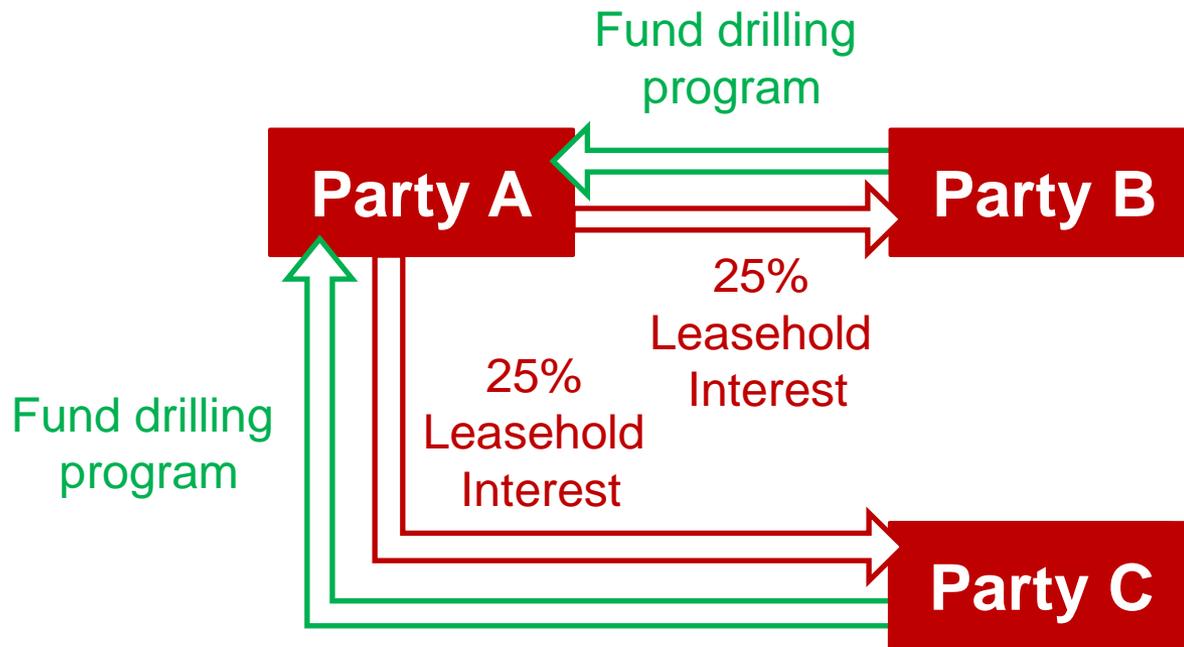
Land values approximately \$250 per acre

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

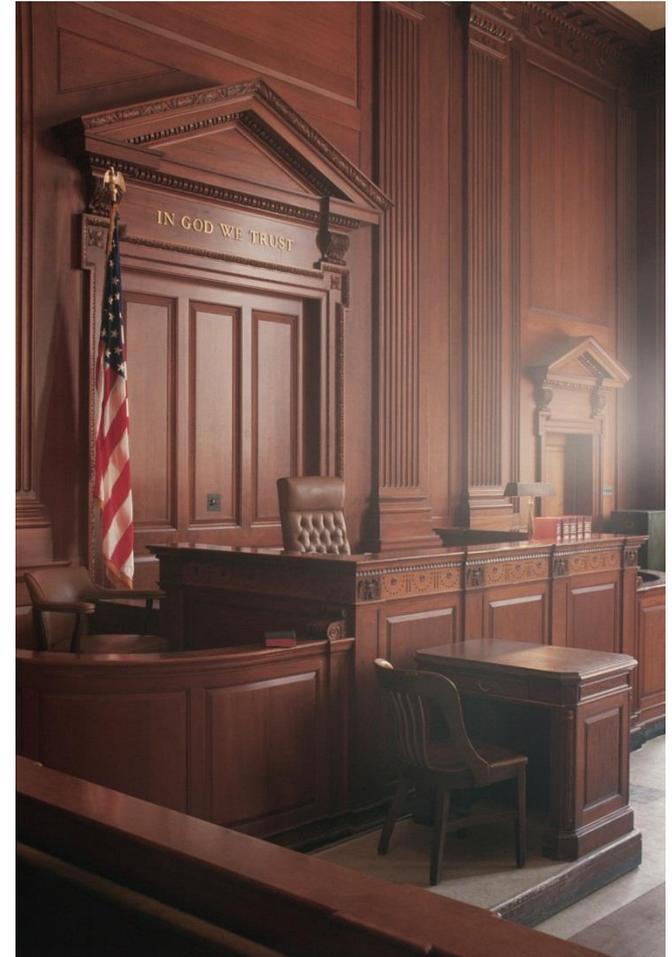


AMI Case Study – *Shale Development*

- 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

- Dante L. Zarlengo, Area of Mutual Interest Clauses Regarding Oil and Gas Properties: Analysis, Drafting, and Procedure; 28 Rocky Mt. Min. L. Inst. 837 (1982).
- Mark T. Nesbitt, Area of Interest Provisions – Two Edged Swords; 35 Rocky Mt. Min. L. Inst. 21-1 (1989).
- Allen D. Cummings, Old Area of Mutual Interest and Dedication Agreements - New Problems; 52 Rocky Mt. Min. L. Inst. 27-1 (2006).
- 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).

Contact Information



J. Christopher Champion

Senior Associate

Norton Rose Fulbright

(713) 651 5515

chris.champion@nortonrosefulbright.com



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