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The Limits to Summary Judgement in Oil and Gas Compensatory Royalty Cases

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Case commented on: *Laird v Sword Energy Inc.*, [2014 ABQB 13](#)

This decision of Justice Don Manderscheid confirms that it will a rare case in which a lessor will be able to obtain summary judgement for a claim of compensatory royalties under an offset well clause under an oil and gas lease. As such it casts further doubt on the correctness of Justice Lee's judgement in *1301905 Alberta Ltd v Sword Energy Ltd.*, [2013 ABQB 113](#), which was the subject of an earlier post [here](#).

Three co-owners leased the section 5 lands to Thunder, Sword's predecessor in interest, in 2003. Sword drilled the 1-5 well on the lands in May and June 2004 and tested the Belly River formation for both coalbed methane and conventional gas. Sword concluded that the well was not capable of production. Commercial production was obtained from the Belly River formation from the offsetting section 32 lands as of 2006.

The lessors served a default notice on Sword on April 23, 2007 stipulating that Sword had an obligation to produce rateably from the section 5 lands and, since it had failed to do so, was obliged to make compensatory royalty payments. Sword advised in return that the leases would expire on their own terms on May 11, 2007. The lessor subsequently re-leased the lands to Quicksilver but no further well had been drilled on the lands as of June 2009. The fact pattern was complicated by a rather bizarre incident in which a representative of the lessors persuaded an employee of Sword to calculate the compensatory royalty that might have been payable were that obligation triggered.

Justice Don Manderscheid denied the lessors' application for summary judgement. He concluded that there were a number of disputed factual issues between the parties as well as a number of legal issues that were intertwined with those factual issues. Justice Manderscheid identified as many as four sets of triable issues. One set of issues related to the default notice including the question of whether or not Sword had an obligation to respond to a technically defective default notice. A second set of issues related to the precise nature of Sword's alleged breach. A third set of issues related to the question of whether the termination of the leases in accordance with their

own terms qualified as a timely surrender within the meaning of the offset clause. A fourth set of issues concerned the well that Sword had already drilled and tested. Given those activities on the leased lands it was not clear whether Sword could have any outstanding obligations under the offset well clause. All of these issues raised questions which were highly intertwined with the facts of the matter and as such should not be resolved by way of summary judgement.

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