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LOUISIANA OIL AND GAS UPDATE

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I. ROYALTIES CLAIMED FROM HEDGING/DERIVATIVE ACTIVITY PROFITS

Recent case in the Western District of Louisiana.

As many had predicted, in August of 2011, an oil and gas lessee ("Lessee") received its first demand letter from a lessor ("Lessor"), claiming that royalties should have been paid on the revenue Lessee realized as a result of certain hedging and/or derivative activities undertaken with respect to hydrocarbon production. The demand letter purported to make demand not only on behalf of the Lessor, but also on behalf of all lessors similarly situated for the purposes of bringing a class action. The demand letter alleged that, in response to recent commodity market fluctuations, Lessee entered into derivative contracts with banks and other financial/trading institutions designed to protect itself against significant drops in price with respect to a portion of its oil and gas production.

Pursuant to the Louisiana Mineral Code, Lessee responded to the demand letter within thirty days, asserting that the letter did not constitute adequate notice with regard to both the Lessor and the unnamed putative class claimants; there is no basis for the claimed entitlement to royalties, as any hedging/derivative activities were separate, purely financial transactions, not "economic benefits" derived "solely" by virtue of the lease and not reflective of the market value of the oil or gas at the well, lease, or field; all claims for alleged improper royalty payments relating to the period prior to three years before a judicial demand is made are barred by prescription; even if a court should find that Lessee has underpaid royalties, Lessee would not be liable for legal interest, penalties, or attorney's fees; and the demand for an immediate accounting is premature. Lessee additionally filed a federal declaratory judgment action in the United States District Court for the Western District of Louisiana against Lessor, named individually and as purported class representative, seeking a judgment declaring same. At present, the Lessor is contesting jurisdiction in the federal court.

II. SCOPE OF THE COMMISSIONER OF CONSERVATION'S AUTHORITY IN CREATING DRILLING UNITS

Robert Gatti, Sr., et al. v. State of Louisiana, et al., Docket No. 589350,
19th Judicial District Court, East Baton Rouge Parish, Louisiana.

On April 8, 2010, the named plaintiffs, including Robert H. Gatti, Sr., filed a class action petition against a number of operator companies involved in developing the Haynesville Zone, as well as the State of Louisiana through the Office of Conservation. Plaintiffs allege that the Commissioner of Conservation's creation of large drilling units, typically 640 acres, violates LA. REV. STAT. § 30:9, which provides that "a drilling unit . . . means the maximum area which may be efficiently and economically drained by one well." Specifically, Plaintiffs claim that these large units do not meet the statutory definition of "unit" because they typically are drained by a unit well and one or more alternate unit wells.

Plaintiffs seek a declaratory judgment holding that the Commissioner lacks the authority to create these large units and to authorize alternate unit wells. Plaintiffs also seek damages from the private defendants for those defendants' alleged failure, while acting as unit operator of an affected unit, to provide the Commissioner with appropriate information that would indicate the need to revise the unit boundaries. The named plaintiffs also purport to represent a class of all mineral owners, other than mineral lessees, in the Haynesville Zone who are affected by the orders at issue, divided into two sub-classes: (a) those who own minerals within the drainage area of a Haynesville well, and (b) those who own mineral rights within a large unit but outside of the drainage area of a Haynesville well.

One of the primary issues in this suit, the Commissioner's authority to authorize alternate unit wells, has been addressed by the 19th Judicial District Court in several lawsuits, most recently in *James Tigner Walker, et al. versus J-W Operating Company, et al.*, Docket No. 555247, 19th Judicial District Court, East Baton Rouge Parish, Louisiana. In every case the Court unambiguously upheld the Commissioner's authority. Moreover, the Louisiana legislature established an exclusive procedure for attacking orders of the Commissioner in LA. REV. STAT. § 30:12, and the claims concerning the vast majority of the orders attacked in this suit plainly would be untimely under that statute.

Following an unsuccessful attempt to remove the suit and try the declaratory judgment action and damages claim separately, the suit is once again in the 19th Judicial District Court. Plaintiffs are in the early stages of seeking class certification.

III. PROPERTY TAX ISSUES

Bonvillain v. Louisiana Land & Exploration Co.,
2011 WL 2555761 (5th Cir. 2011).

The Assessor for Terrebonne Parish filed suit against some 30 oil and gas operators, alleging that they failed to properly report their property on the LAT-12 forms. The allegations ranged from omitting property on the LAT-12 forms to significantly undervaluing property that was reported. The allegations were apparently based on studies done by consultant Visual Lease Services out of Oklahoma, a group that has performed similar studies in other states. In addition to claims for unpaid or underpaid property taxes, the Assessor made claims of fraud so as to allow claims going back ten years rather than three years. Finally, the Assessor interposed civil RICO claims against individuals in the various companies. The Defendants filed motions to dismiss on a number of grounds, including the plaintiff's standing, sufficiency of the allegations of fraud and/or RICO, and personal jurisdiction.

The United States District Court for the Eastern District of Louisiana granted the motions, finding that under Louisiana law, a parish assessor has no authority to sue for collection of *ad valorem* taxes, as the authority to file such suits is granted solely to the sheriff of the parish. The court further dismissed the Louisiana fraud claims, stating that in addition to the Assessor's lack of standing, Louisiana law provides an assessor with a limited remedy where any property is omitted or erroneously assessed, which the Assessor here failed to exhaust. The court held that since Louisiana law does not grant the Assessor the exclusive authority to assess or collect taxes, the Assessor lacked standing to bring a RICO action on behalf of the parish. Additionally, the court found the Assessor's allegations regarding the fraud and RICO claims insufficient under Federal Rules of Civil Procedure 8 and 9. Finally, the court held that the Assessor failed to establish the individual defendants' minimum contacts with the forum necessary for the court to exercise specific jurisdiction over these defendants. On appeal, the Fifth Circuit affirmed the district court's judgment.

IV. ASSIGNMENT AND CONTRACT

Walker v. Chesapeake Louisiana, LP,
2011 WL 3444162 (5th Cir. 2011).

Six lessors of mineral rights filed an action seeking cancellation of their leases, due to the lessee's alleged breach of several lease provisions. The lessee moved for summary judgment, arguing that it had substantially performed under the leases and alternatively, that any breach should not cause dissolution of the leases pursuant to the doctrine of "judicial control." The doctrine of judicial control allows a court under certain circumstances to decline to order termination of a contract, despite finding that its terms have been breached, and instead order a lesser remedy. The United States District Court for the Western District of Louisiana applied this doctrine, finding that even accepting as true the allegations that the lessee had breached the lease provisions, such breaches were not so substantial or injurious to the lessors to warrant the harsh, disfavored remedy of lease dissolution. Because the lessors only sought the remedy of lease cancellation, the court granted summary judgment in favor of the lessee. The United States Fifth Circuit Court of Appeals affirmed.

The district court additionally held that the lessors were not entitled to attorneys' fees. The court reasoned that pursuant to Louisiana jurisprudence, "[w]here a lessor demands full cancellation of a lease and, upon suing, is granted only a partial cancellation, he is not entitled to attorney's fees…if, however, the lessor's demand is for only a partial cancellation, and he is granted the entire relief which he seeks, he is entitled to attorney's fees." Accordingly, the court concluded that if a lessor seeks full cancellation of a lease and the court finds no cancellation of the lease is warranted, attorneys' fees should not be granted. *See Walker v. Chesapeake Louisiana, LP*, 2010 WL 3843692 (W.D. La. 2010).

Ballard v. XTO Energy, Inc.,
2011 WL 1113518 (W.D. La. 2011).

In 2008, Plaintiff joined together with a "pool" of landowners seeking to lease their mineral rights. A representative of the pool began to negotiate with a representative of XTO, resulting in an exchange of emails that Plaintiff argued constituted an offer and acceptance of a three year mineral lease. Although ultimately concluding that a contract was not created between the parties and therefore finding that it need not address the issue, the court did not foreclose on the possibility that an email exchange could constitute a contract forming a mineral lease. The court stated, "[w]hile we are convinced that a mineral lease contract has some type of writing requirement, this requirement's source and scope, and whether an email exchange suffices to satisfy it remains unclear."

Cutting Underwater Techs. USA, Inc. v. Con-Dive, LLC,
2011 WL 1103679 (E.D. La. 2011).

Hurricane Rita dismantled a platform that was connected to an inactive well on the Outer Continental Shelf. The lessee hired a contractor to remove the platform, but the contractor failed to pay its subcontractors for their work. The subcontractors recorded liens over the lessee's property pursuant to the Louisiana Oil Well Lien Act (LOWLA), which provides that a subcontractor may assert a lien over the property of an operator or lessee in order to secure "the price of his contract for operations." "Operations" is defined in the statute as including "every activity conducted by or for a lessee on a well site for the purpose of drilling, completing, testing, producing, reworking or abandoning a well." The court found that the work done to remove the platform constituted part of the process of abandonment, as "[f]ederal regulations have long indicated that following well depletion, the removal of a platform is a typical well site activity and that it is integral to the process of abandoning the depleted wells connected to the platform." The court additionally stated that because "the well site" as defined in the LOWLA "is not restricted to the exact physical location of the well," a subcontractor that conducted a sonar survey of the site, assisted with the positioning of vessels, divers, and equipment during the removal operation, and conducted a post-salvage survey of the site clearly rendered services "on a well site" within the meaning of the statute. Accordingly, the court held that the lien at issue was valid and enforceable.

Alyce Gaines Johnson Special Trust v. El Paso E&P Co.,
773 F. Supp. 2d 640 (W.D. La. 2011).

In 1950, Plaintiff's ancestors in title executed a standard form lease – a Louisiana Bath form 14-BRI-24 – in favor of Defendant's ancestor in title. The lease granted rights "exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and mining for and producing oil, gas and all other minerals" from the leased area. At the time the lease was executed, no wells in the area had been drilled deeper than 7,500 feet. Plaintiff began receiving offers from third parties to lease the Haynesville Shale, located at a depth of 10,400 feet, and when Defendant refused to state, in writing, that their lease was not intended to include the Haynesville Shale or similar deeper mineral formations inaccessible at the time the lease was executed, Plaintiff filed a declaratory judgment action seeking same. The court initially denied Defendant's motion to dismiss; however, on reconsideration, the court held that pursuant to Louisiana jurisprudence, the language of the lease's granting clause was broad and unambiguous, and as it contained no limitations as to depth on the grant of mineral rights to the lessee and no amendments purporting to impose any such restriction, its effect was to convey to the lessee the right to explore and drill to all depths. Accordingly, the court dismissed all of Plaintiff's claims.

Adams v. Chesapeake Operating, Inc.,
2011 U.S. Dist. LEXIS 146142 (W.D. La. 2011).

Plaintiff owned property located in a drilling and production unit being produced by an oil and gas well completed and operated by defendant, Chesapeake. Plaintiff's property was not subject to any mineral lease. Plaintiff sent Chesapeake a letter requesting reports, information and statements regarding the costs of drilling the well and production therefrom pursuant to LA. REV. STAT. § 30:103.1. Plaintiff alleged that Chesapeake failed to respond within thirty days as required by LA. REV. STAT. § 30:103.2, and therefore, Chesapeake forfeited any right to demand contribution from Plaintiff for his share of the cost of drilling the well. Plaintiff additionally sent another letter to Chesapeake detailing the effect of its failure to respond and containing a demand for production payments to begin within thirty days of the receipt of the letter. Plaintiff then filed suit alleging that he was owed production payments as well as a penalty up to twice the amount owed and interest from the date due, plus reasonable attorney's fees. The court granted Chesapeake's motion for summary judgment on the issue of penalty and attorney's fees, finding that the Mineral Code articles under which plaintiff requested the penalty and attorney's fees, LA. REV. STAT. § 31:212.21-23, required either a mineral lease or the purchase of a production payment, neither of which the plaintiff had. Plaintiff was therefore not entitled to double damages, legal interest or attorney's fees pursuant to LA. REV. STAT. § 31:212.21-23.

Pilkinton v. Ashley Ann Energy, LLC,
46,650 (La. App. 2 Cir. 11/2/2011), 2011 La. App. LEXIS 1290.

On August 7, 2008, Plaintiff landowners executed an agreement to lease in favor of defendants, under which defendants would acquire a "top lease" that would become effective after the primary term of the existing mineral lease to KCS Resources had expired on December 1, 2008. The defendants presented plaintiffs with a draft for $431,000 at the time of execution of the agreement to lease, which was one-fourth of the total bonus payment. The remainder of the bonus would be paid if the KCS lease terminated. The face of the draft stated, "upon approval of title but not later than 20 banking days after sight." On August 21, 2008, KCS was issued a permit to drill an oil and gas well. Defendants considered this permit a title defect and refused to honor the draft. Plaintiffs filed suit, and the trial court granted plaintiffs' motion for summary judgment and ordered defendants to pay the $431,000. On appeal, the Louisiana Second Circuit Court of Appeal affirmed, finding that the parties clearly agreed that their contract was a prospective agreement for a lease that conditionally might become effective on December 2, 2008. Further, the defendants were aware of the clause in the KCS lease allowing the term of the lease to extend as long as any minerals were produced or it was maintained in force in any other manner provided. The court stated that a well permit alone was not sufficient to extend the lease, as a permit is not the equivalent of production nor was it one of the stated manners for lease maintenance. Accordingly, the parties' agreement was clearly a binding contract to acquire a lease upon the execution of their agreement to lease and the payment of the $431,000 draft, with the remainder of the bonus to be paid if the KCS lease terminated.

The court additionally rejected defendants' argument that error in the formation of the contract vitiated consent because plaintiffs were aware that KCS was planning to drill a well and had they shared that information with defendants, they would not have been interested in leasing the property. The court found that both parties to the contract acknowledged the continuing existence of the KCS lease, and the lease itself implied that the company would desire to develop its investment in the lease by exploring for oil and gas during the remainder of its primary term. Regardless of the plaintiffs' knowledge, the drilling of a well by KCS remained a clear contingency, which was an accepted risk by defendants upon entering the agreement to lease. Accordingly, the court agreed with the trial court that no error in the formation of the contract existed to vitiate defendants' consent to the agreement and affirmed the trial court's ruling.

V. ROYALTIES

Wells v. Zadeck,
46,138 (La. App. 2 Cir. 4/13/11), 62 So. 3d 861.

Plaintiff's mother was the owner of an undivided one-fourth mineral interest in certain property, which was part of a unit in which a well achieved production on 1965. When the lessee conducted a search of the public records in connection with the leasing of the property, Plaintiff's mother's interest was not discovered and therefore she was not provided notice of the mineral activity on the property. Plaintiff's mother passed away in 2002, and in 2008, Plaintiff was contacted by a landman regarding the mineral interest, leading Plaintiff to discover the history of production. Plaintiff then filed suit against the lessee, among others, for failing to pay him and his mother their rightful share of proceeds from the production. The court granted Defendants' exception of prescription, finding that the doctrine of *contra non valentum* did not suspend the tolling of prescription. Defendants argued that Plaintiff's claims prescribed ten years from Defendants' cessation of involvement with the producing well, which occurred on September 3, 1994. The Louisiana Second Circuit Court of Appeal affirmed, finding that Plaintiff could not show that his ignorance of his cause of action was not attributable to his own willfulness or neglect. The court stated that Plaintiff's mother participated in leasing her mineral interest in the 1950's and was fully aware of the process of exploration, leasing and production of minerals, yet remained silent and inactive with regard to her interest for more than 40 years. The court held that Plaintiff failed to demonstrate that his mother exercised any diligence to protect her mineral interests, that her ignorance of a potential claim was attributable to her own neglect, and that such was attributable to Plaintiff. Accordingly, the court found that the trial court did not commit manifest error in granting Defendants' peremptory exception of prescription.

VI. NOTICE REQUIREMENTS

Williams v. Chesapeake Louisiana, Inc.,
2011 WL 1868750 (W.D. La. 2011).

Plaintiff sent her individual notice to Defendants pursuant to Mineral Code article 137, then filed an action both individually and on behalf of a putative class of similarly situated plaintiffs seeking a declaration that the Defendants breached their obligations under both their lease(s) and the Mineral Code and seeking recovery for allegedly unpaid or underpaid royalties. The court granted Defendants' Motion to Strike Class Allegations, finding "as a matter of law that Plaintiff's Notice Letter is insufficient to satisfy the notice requirement of Article 137 with respect to the putative plaintiff class members." The court followed the reasoning of *Chevron USA, Inc. v. Vermillion Parish School Board*, 377 F.3d 459 (5th Cir. 2004), in which the United States Fifth Circuit Court of Appeals held that "the notice given of a lessee's failure to make timely or proper payment of royalties on behalf of a putative class does not satisfy the requirement of the Louisiana Mineral Code for the unnamed members of the class."

VII. MOST FAVORED NATIONS CLAUSES

Hoover Tree Farm, L.L.C. v. Goodrich Petroleum Co., L.L.C.,
46,153 (La. App. 2 Cir. 3/23/11), 63 So. 3d 159.

Hoover entered into a mineral lease with Goodrich, which granted Hoover a 25% royalty and a $1000 per acre lease bonus. The lease also contained a most favored nations clause, providing that if Goodrich or its "successors and assigns" paid a higher royalty or bonus to any other lessor within a specified area during the primary term of the lease, Hoover must be paid the difference. Goodrich subsequently transferred an undivided 50% interest in the lease to Chesapeake Louisiana, LP, but the transfer did not provide Goodrich with an overriding royalty on the transferred interest. After learning that Chesapeake obtained oil and gas leases that paid a $25,000 per acre lease bonus and a 30% royalty on property located within the area specified in the most favored nations clause during the primary term of Hoover's lease, Hoover filed suit against Goodrich and Chesapeake, among others, seeking the difference from the lease bonus amount and royalty percentage it received.

The trial court found that the transfer to Chesapeake was an assignment, not a sublease as the Defendants argued; therefore, Chesapeake's acquisitions of the third party leases triggered the most favored nations clause. As such, the court held that the difference in lease bonus payments and the higher royalty were owed to Hoover, yet only found Goodrich responsible for the difference. The Louisiana Second Circuit Court of Appeal affirmed the lower court decision to the extent that the transfer of an undivided interest in a mineral lease was properly characterized as an assignment and not a sublease, sufficient for the obligations under the most favored nations clause to arise when Chesapeake obtained the third party leases. However, the court further held that both Chesapeake and Goodrich were liable for the higher royalty and bonus pursuant to the Mineral Code article 128, which provides that an assignee is directly responsible to the original lessor for the obligations of the lessee.

VIII. REASONABLY PRUDENT OPERATOR STANDARD

Ferrara v. Questar Exploration and Production Co.,
46,357 (La. App. 2 Cir. 6/29/11), 2011 La. App. LEXIS 830.

One week following the Commissioner of Conservation's issuance of a memorandum recognizing that the Haynesville Shale zone was continuous and productive over an extensive area and dispensing with the production test requirement for proposed units in the Haynesville Shale, mineral lessors sent a certified letter to the lessee demanding that it release the lease below a certain depth or, alternatively, explore and develop the deeper zones. The lessee failed to respond, and 46 days later the lessors filed suit seeking dissolution of the lease or, in the alternative, a partial release below a specified depth. The trial court found that the lessee failed to present any evidence of its intention to develop the subject property as to the Haynesville Shale, considered the lessee's conduct towards the lessors "troubling," and concluded that the lessee never had any intention to develop the lessors' deep rights thereby violating its statutory duty to develop and operate the property leased as a reasonably prudent operator. Accordingly, the court dissolved the lease below a certain depth.

The Louisiana Second Circuit Court of Appeal reversed and rendered judgment dismissing the lessors' claims at their cost. The court stated that while it understood both the lessors' and the district court's "impatience and indignation" at the lessee's conduct in failing to even acknowledge the demand letter and declining to offer any evidence at trial, the record evidence simply did not support the district court's conclusions. The court found that there was no evidence that a reasonably prudent operator could have begun exploration, much less drilled a well to the depth of the Haynesville Shale area, within the short period of time that encompassed the Commissioner's memorandum, the lessors' demand, and the filing of the suit. The evidence thus did not prove that the lessee *persistently failed* to reasonably investigate the leased premises for potentially profitable oil and gas deposits. Consequently, the district court was "plainly wrong" to find that the lessee never intended to develop the lessors' deep rights and therefore failed to act as a reasonably prudent operator.

IX. EXPROPRIATION, SERVITUDES, RIGHT OF WAY

Neumin Prod. Co. v. Tiger Bend, Ltd.,
10-1307 (La. App. 3 Cir. 3/9/11), 58 So. 3d 1088.

A concursus proceeding was instituted to determine the owner of royalty proceeds of production from a well. The competing claimants were Tiger Bend, the landowner, and the Mikell Group, a group of individuals claiming to have a mineral servitude affecting the land. The Mikell Group claimed that a single mineral servitude was created over several contiguous tracts of land by an act of partition and exchange executed in 1983, such that production on a well on a neighboring tract of land interrupted the running of prescription on the mineral servitude where the instant well is located. The court disagreed, reasoning that because the co-owners of the properties that were partitioned were not all the same co-owners of each contiguous tract of land partitioned, by reserving the minerals prior to combining the lands for partition, the parties obviously intended to reserve the minerals each of them owned prior to the partition. Accordingly, different mineral servitudes were created on each tract of property that was part of the partition, and therefore, the mineral activity on a neighboring tract of land did not interrupt prescription on the mineral servitude on the tract of land at issue. The mineral servitude on the tract of land at bar thus prescribed in 1993 due to 10 years of nonuse, and Tiger Bend was entitled to the proceeds of production.

Petitjean II v. Samson Contour Energy E&P, L.L.C.,
10-496 (La. App. 3 Cir. 12/8/10), 51 So. 3d 200.

In 1993, Plaintiffs and other co-owners of certain tracts of land partitioned the land they owned in indivision and provided that "[a]ll mineral interests pertaining to any properties partitioned will remain in undivided ownership whether currently under production or not, for the maximum allowable period of time." In 2006, a productive well was drilled on a unit within which the partitioned tracts were located. The parties agreed that this was the only production that occurred on the tracts in over ten years. Plaintiffs sought their interests in the proceeds, but Defendants urged that Plaintiffs had no mineral ownership in the land, as any mineral servitude they may have had an interest in had terminated by prescription of nonuse. Plaintiffs argued that the language of their partition agreement was sufficient to meet the requirements of Mineral Code article 75, which states that "parties may agree, expressly and in writing, either in the act creating a servitude or otherwise, that an interruption of prescription resulting from unit operations or production shall extend to the entirety of the tract burdened by the servitude tract regardless of the location of the well or of whether all or only part of the tract is included in the unit."

The court found that the agreement certainly created a mineral servitude, but disagreed with Plaintiffs' claim that their mineral rights had not prescribed. Noting that Plaintiffs' argument suggested that at some point between 1993 and 2003, operations were conducted on lands outside of the mineral servitude and that some portion of the mineral servitude was encompassed within the unit inside which the operations were conducted, the court stated that even if such had indeed occurred, the language of the agreement did not satisfy the "express" requirement as contemplated by Article 75. While parties need not specifically reference "La. R.S. 31:75" in their agreements, "the language used must leave no question that the parties intend to invoke the benefit of having the interruption of prescription extended to lands beyond what would occur under the default operation of law. It is not enough that the party's intent be discernable from a close reading of the contract." The court held that an analysis stricter than looking to the intent of the parties is necessitated by the requirement of Article 75 that there be an express writing, and the agreement at issue here was insufficient to satisfy this requirement.

X. LOUISIANA UNFAIR TRADE PRACTICES ACT

Bogues v. Louisiana Energy Consultants, Inc.,
46,434 (La. App. 2 Cir. 8/10/11), 2011 WL 3477033.

Mineral lessors filed a declaratory judgment action against Louisiana Energy Consultants, Inc. (LEC), the successor-in-interest to the original lessee, seeking termination of their leases and damages for failure to timely pay royalties and operate the leasehold as a reasonable and prudent operator. LEC filed a claim in reconvention seeking damages for tortious interference with business and for violations of the Louisiana Unfair Trade Practices Act ("LUTPA"). The trial court found that LEC failed to state a cause of action under either theory, and the Louisiana Second Circuit Court of Appeal affirmed.

Regarding the LUTPA allegation, the court noted that the issue before it was not whether LEC had a right of action by virtue of the status of the lessors, as the Louisiana Supreme Court recently held that LUTPA is not limited to consumers and business competitors, but rather applies to any person who suffers a loss due to the unfair methods and deceptive business practices of another. Instead, the court was required to determine whether LEC stated a cause of action under LUTPA, *i.e.* whether facts were alleged that, if taken as true, constitute the type of conduct to which the prohibitions of LUTPA were designed to extend. LEC claimed that the lessors attended public meetings and made knowingly false statements about LEC's activities as operator in a fraudulent effort to have the leases terminated and cloud LEC's rights and status as lessee to prevent LEC from farming out or otherwise developing its interest in the leases. The court found that while it was undisputed that the lessors and lessee were both dissatisfied with the leasing arrangement and the conduct of the opposing party(ies), allegations that the lessors attended meetings to discuss their leases with other similarly situated lessors and LEC's *belief* that the lessors communicated unfavorable opinions of LEC to others did not rise to the level of dishonest, immoral, or egregious conduct that LUTPA was intended to proscribe. The court also held that LEC failed to state a cause of action for tortious interference with business, which is a very limited theory of recovery in Louisiana, as LEC failed to allege any specific conversation between any lessor and any entity with whom LEC was attempting to confect a business relationship and failed to sufficiently plead the requisite element of malice, ill will or spite.

XI. State Tort Liability to Employees – Workers' Compensation

Crockett v. Therral Story Well Service, Inc.,
57 So. 3d 355 (La. App. 2 Cir. 1/5/2011).

The plaintiff, widow of an employee of Therral Story Well Service, Inc., brought a survival action after the employee was fatally injured while working on an oil rig. Normally, an employee and his successors are limited to recovering workers' compensation benefits rather than tort damages for injuries sustained on the job. However, this immunity does not protect an employer when the worker's injury is caused by the employer's intentional act. In such a situation, an employer's action will be considered intentional if it: (1) consciously desired the physical result of its act; or (2) knew that the result was substantially certain to follow from its conduct. Here the specific conduct the Plaintiff relied upon to fall under this exception was the employer's failure to install guard rails on the rig platform, the failure to provide sufficient training, supervision and safe equipment, the failure to follow proper safety procedure, and the failure to comply with OSHA requirements. The court granted summary judgment in favor of the defendant finding that even if the allegations were taken as true, the Plaintiff could not show that that the decedent's injury was "substantially certain" to follow because the standard requires more than a reasonable probability.