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January 2009

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\$66 MILLION

Shell Oil to Pay \$66M to Royalty Owners

By Justin Rebello
Staff writer

It took nearly four decades, but an Oklahoma jury ordered Shell Oil Co. to pay \$66 million to five royalty owners (several of them deceased) for their share of a lucrative oil well dug in the early-1970s.

The payments will go to two families who owned the land where Shell drilled for oil but were never informed when the company struck a huge reserve and built a well on the land in 1973.

Time was not an ally for plaintiffs' attorney Randy Calvert, given that it took 20 years for his clients to even realize there was a well. Once they finally filed a complaint in 1995, Shell and then-lease owner Maynard Oil Co. switched counsel and dragged their feet on the case.

"Shell told us [in 1995] that if we didn't want to accept a nuisance value settlement, they would drag the case out and my clients would be dead before they ever got the money," said Calvert. "They ended up being partly right."

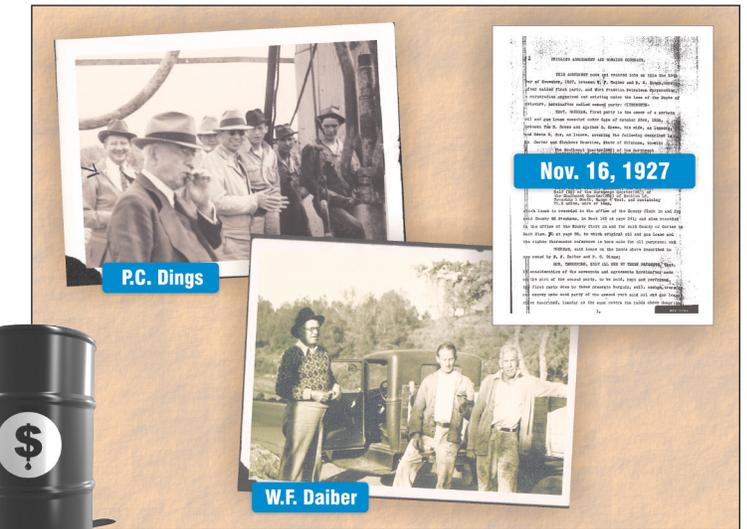
Three different judges later, Shell based its defense on a statute of limitations theory. To defeat that defense, Calvert had to show Shell's breach of fiduciary duty was not a mistake, but a deliberate attempt to keep his clients in the dark.

The defense claimed the missed payments were a simple mistake with no intent to shortchange the plaintiffs. Furthermore, they contended the plaintiffs were responsible for keeping track of what was owned them.

Their cross-examination of the royalty owners revolved around blaming them for being unaware of the well in the first place, a strategy that didn't resonate particularly well with jurors.

"Every single time they pointed the finger at my clients and said they should have been able to connect the dots, we responded by asking [the defendants] why [Shell] didn't know what was happening," Calvert said.

Attorneys for the defense



P.C. Dings and W.F. Daiber signed the lease in the 1920's, but their heirs were never told the well had been drilled.

could not be reached for comment.

Shell is appealing the verdict.

Tracking ownership

The original lease owners, W.F. Daiber and P.C. Dings, signed the Crews Lease in 1927, providing 20 acres of land in Stephens County, Okla. for exploratory drilling.

According to the terms of the lease, the owners were

owed a quarter of the net profits that came from the land.

Dings later transferred his ownership rights to a close friend, Ed Galt, who, upon his own death, passed those rights on to his three daughters, Betty Brown, Gloria Galt and Patricia Steves.

Upon Daiber's death, his share went to his wife, Adah, who died in 1976, willing the shares to two nieces and a

nephew – Elizabeth Gardner (who died in 1998), Mary Ramsay (who died in 1980) and Thomas Fuller (who died in 1990).

Amidst all these deaths and inheritances, Shell erected the Brittain Deep No. 2 oil well on the land covered in the Crews Lease. But profits from the well were left off the monthly statements sent to Galt and Daiber's heirs.

In 1985, Shell sold its interest in the lease to Dallas-based Maynard Oil Co., which also neglected to report the profits to the stakeholders. It wasn't until 1993 that a man doing oil and gas land deals with Maynard learned through conversation with company employees that the profits might not have been paid.

That man, who died before Calvert became involved in the case, informed the families in 1994, and they filed suit a year later.

'Why would I notify your client?'

The key piece of evidence in the case was correspondence written by Maynard officials to Shell asking about payment statements related to the land on which the well was dug. According to Calvert, these letters provided proof that Shell told Maynard it had never accounted to the Crews Lease owners.

The correspondence consisted of two certified letters from Maynard asking Shell to provide them with payout statements they had sent to royalty owners. One letter came back from the property administrative board at Shell verifying the plaintiffs owned an interest in those properties. The second letter came from the joint venture accounting department at Shell, claiming their records did not indicate any statements were pre-

pared for the owners that included profits from the well.

"It was essentially a written admission," said Calvert.

Shell documents also referenced the Crews Lease, including oil and gas instruction forms, which showed all relevant information about the Brittain Deep No. 2, including a notation about money owed to the plaintiffs.

Several witnesses from Shell claimed they couldn't remember actions the company took 30 years earlier, so the primary witness was Shell's manager of royalty owner relations, Brian Garrison, whose testimony further stained the defense's credibility.

During videotaped depositions, Garrison claimed Shell didn't owe the plaintiffs any profits, nor did they have a duty to notify the lease holders that they had drilled the well.

At trial, however, he blamed the miscommunication on the transition to a newer computer system and new accounting procedures.

Calvert responded by replaying several clips of the deposition which refuted the representative's testimony, including one in which he said "Why would I notify your client?"

Shell provided several defenses at trial, including a laches argument, claiming the plaintiffs invalidated their suit by waiting to file in order to increase the damages. But that argument was dismissed by the judge and never brought before the jury.

A conservative jury

During voir dire, one of the panelists who made it onto the jury answered on her questionnaire that she would never award punitive damages. According to Calvert, that's not an uncommon sentiment in Stephens County.

"This is a very conservative county," Calvert said. "They've heard all about the excess verdicts and juries gone wild."

The plaintiffs' lawyers made several strategic moves to increase their chances of winning punitive damages.

First, they streamlined their damages case by limiting their opening statement to one minute, calling just one witness – an accountant who testified to Shell's net income – and honing their closing argument to just eight minutes.

Calvert also compared his damages request to a speeding ticket. He argued that if someone was given a ticket of \$150, it would be a wake-up call and probably make him change his poor behavior behind the wheel. For someone who earns a \$20,000 salary, that ticket would constitute a high percentage of his weekly income.

So for a company that earns an after-tax annual net income of \$7.2 billion, an appropriate "wake-up call" would be approximately \$53.6 million.

In addition, the plaintiffs asked for \$13.2 million in actual damages.

Maynard Oil Co. settled prior to trial for a confidential amount, leaving Shell Oil as the sole defendant at trial.

AT-A-GLANCE

Verdict: \$13 million in compensatory damages, \$53 million in punitive damages

State: Oklahoma

Type of case: Breach of fiduciary duty

Status: All post-trial motions filed by the defense were rejected. An appeal is pending.

Case name: *Gardner v. Maynard Oil Co.*

Date: May 9, 2008

Plaintiffs' attorney: Randall K. Calvert of the Calvert Law Firm in Oklahoma City,

Okla.; Clark O. Brewster and Guy Fortney of Brewster & De Angelis, P.L.L.C. in Tulsa, Okla.

Defense attorney: Gary Davis and Mark Walker, Crowe & Dunlevy, Oklahoma City; Gregory A. McKenzie, Edmond, Okla.; Sharon T. Thomas, Hall, Estill, Hardwick, Gable, Golden & Nelson P.C., Oklahoma City; Brad Miller, Durbin, Larimore & Bialick, Oklahoma City; Mack Martin; Martin Law Office, Oklahoma City.

Questions or comments can be directed to the writer at: justin.rebello@lawyersusaonline.com