



**Thomas G. Smart**  
**Jasmine B. Bertrand**  
Onebane Law Firm  
P. O. Box 3507  
Lafayette, Louisiana 70502  
337-237-2660

[smartt@onebane.com](mailto:smartt@onebane.com)  
[bertrandj@onebane.com](mailto:bertrandj@onebane.com)  
[www.onebane.com](http://www.onebane.com)

### **Second Circuit Applies Continuous Operations Provision to Find Lease Maintenance**

In an unpublished opinion, the Second Circuit in *H&K Limited of La, LLC v. Martin Producing, LLC*, 46,338 (La.App. 2 Cir. 5/18/11), --- So.3d ---, held that application of a continuous operations provision in a mineral lease applied to the facts at issue, so that said mineral lease was maintained. The Lease, effective March 14, 2005, had a three year primary term and was assigned to Chesapeake Energy Corporation (“*Chesapeake*”) on March 29, 2005. The pertinent facts are as follows: on December 6, 2007, the tract subject to the Lease was unitized and Chesapeake was named operator of the drilling unit; in August of 2007, Chesapeake began vertical drilling of the Chiggero 14-1, located on the drilling unit, with no production at that time; on February 17, 2008, Chesapeake drilled the horizontal portion of Chiggero 14-1 with continuous operations as reflected by the well activity report. The completion process for Chiggero 14-1 began on June 12, 2008 and ended on June 18, 2008, with production in paying quantities beginning therefrom on June 19, 2008. The sole issue at trial was whether the primary term of the Lease had been extended by its own terms. The Lease included the following provisions:

*Subject to the other provisions herein contained, this lease shall be for a period of three (3) years from the date hereof (called “primary term”) and as long thereafter as (1) oil, gas, sulphur or other mineral is produced from said land hereunder or from land pooled therewith, or (2) it is maintained in force in any other manner herein provided (the “Primary Term Provision”).*

*If within ninety (90) days prior to the end of the primary term, Lessee should complete or abandon a well on the lands described above or on land pooled therewith, or if production previously secured should cease from any cause, this lease shall continue in force and effect for ninety (90) days from such completion or abandonment or cessation of production. If at the expiration of the primary term or at the expiration of the ninety (90) day period provided for in the preceding sentence, oil, gas, sulphur or other mineral is not being produced on said land or on land pooled therewith, but Lessee is then engaged in operations for drilling, completion or reworking thereof, or operations to*

*achieve or restore production, or if production previously secured should cease from any cause after the expiration of the primary term, this lease shall remain in force so long thereafter as Lessee either (a) is engaged in operations for drilling, completion or reworking, or operations to achieve or restore production, with no cessation between operations or between such cessation of production and additional operations of more than ninety (90) consecutive days, or (b) is producing oil, gas, sulphur or other mineral from said land hereunder or from land pooled therewith (the “Continuous Operations Provision”).*

The plaintiff argued that the original vertical well was *abandoned* on October 8, 2007, which resulted in the termination of the Lease under the first sentence of the Continuous Operations Provision. The Second Circuit first noted that the plaintiff’s characterization of the well as being *abandoned* was incorrect and that the record disclosed that operations on the vertical well were suspended while Chesapeake decided whether it would complete the well vertically or begin horizontal drilling. However, the Court noted that the drilling of the vertical well was irrelevant to any determination regarding the effect on the term. The vertical well was drilled within the primary term; however, under the Lease, Chesapeake was under no obligation to drill at all during the primary term of the Lease. Even if the vertical well could be considered as abandoned, the Court stated, this would have occurred well over the required time frame contemplated by the first sentence of the Continuous Operations Provision, which was therefore inapplicable to the facts at hand. The Court found that the two alternatives set forth in the Primary Term Provision were only applicable after the primary term of the Lease had run. Only at that point would consideration of the Continuous Operations Provision come into play. The Court then gave a thorough analysis of the facts at issue to find that the Continuous Operations Provision served to extend the Lease beyond its primary term. The commencement of drilling of the horizontal portion of the well on February 17, 2008, which was prior to the expiration of the primary term of the Lease, coupled with Chesapeake’s continuous operations with respect to same through to completion on June 18, 2008, extended the Lease beyond March 14, 2008 under the terms of the Continuous Operations Provision.

**DISCLAIMER**

The information contained herein presents general information about a legal issue and should not be considered legal advice. Before acting on any of the materials presented here, we advise you to seek legal counsel. We welcome your calls, letters, and e-mail; however, contacting us does not create an attorney-client relationship. Please refrain from sending any confidential information to us until such time as an attorney-client relationship has been established.