

Hydraulic Fracture Related Damage Claim: Federal Court Addresses Application of Consent and Release Agreement



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A United States District Court (Western District Oklahoma) addressed in an October 10th Order issues associated with a producing vertical well's claim for damages related to another company's subsequent installation of a horizontal well. See *Singer Oil Company, LLC v. Newfield Exploration Mid-Continent, Inc. and Halliburton Energy Services, Inc.*, CIV-16-768-M.

The Court addressed whether various damage claims were waived by the execution of a Consent and Release Agreement ("Agreement").

Singer Oil Company, LLC was the owner and operator of the Smith No. 1 Well ("Smith Well"), a vertical well, located in Kingfisher County, Oklahoma. The Smith Well produced from the Big Lime, Skinner, and Mississippi Lime formations.

Newfield Exploration Mid-Continent, Inc. ("Newfield") began drilling the Edgar 1H-18X well ("Edgar Well"). Edgar Well is characterized as a horizontal well that was to be drilled laterally through certain Sections in Kingfisher County. It was to be completed in the Mississippi formation.

Singer and Newfield apparently anticipated the potential temporary disruption of production from the Smith Well during the completion operation of the Edgar Well. As a result, Newfield and Plaintiff Singer entered into a Consent and Release Agreement. The Agreement was effective June 29, 2015.

Singer filed an action in the United States District Court on June 9, 2016, alleging that Newfield's hydraulic fracturing activities during the completion operation of the Edgar Well damaged the Smith Well. Plaintiff Singer alleged various contract and negligence claims. Punitive damages were also sought.

Newfield moved for summary judgment on all of Singer's claims except those for actual damages for diminution in value of the Smith Well. The company argued that Singer knowingly and intentionally waived all claims for damages except for actual damages for diminution in value of the Mississippi formation in the Smith Well in the Agreement.

Newfield also argued:

- It could not be held to be negligent per se since its well was drilled in accordance with Oklahoma Corporation Commission Rules and Regulations.
- No facts could be proven which would entitle Singer to punitive damages.

The Court first reviewed the lengthy Agreement. It cited the pertinent parts of the Agreement which read as follows:

Irrespective of whether Singer has consented to the drilling of a Newfield Horizontal, if Singer believes that its ultimate recovery of hydrocarbons from the currently producing interval of any Affected Existing Vertical Well that is attributable to such Newfield Horizontal has been permanently decreased (or said well is otherwise adversely affected) as a result of a Newfield Horizontal, then Singer shall within ninety (90) days after the conclusion of the completion operations on the applicable Newfield Horizontal (such date with respect to each Newfield Horizontal, the "Claim Deadline") provide Newfield with written notice of any claims that Singer has that such Newfield Horizontal has caused any such adverse effect or decrease in production along with supporting information reasonably necessary for Newfield to verify the existence and accuracy of such claim (each such notice a "Claim Notice"). To the extent that prior to the Claim Deadline for each Newfield Horizontal Singer does not provide Newfield with a Claim Notice with respect to Affected Existing Vertical Wells attributable to such Newfield Horizontal, Singer shall be deemed to have waived any and all rights, claims or causes of action to recovery of damages or otherwise with respect to any such Affected Existing Vertical Wells (including, without limitation, any rights to indemnification pursuant to this Agreement that are attributable to such Newfield Horizontal.) From and after receipt of a Claim Notice by Newfield, the Parties will thereafter enter into good faith negotiations to resolve the amount of compensation, if any, to which Singer owns an interest in the applicable Affected Existing Vertical Well(s) that are the subject of such Claim Notice may be entitled and which are determined to have been caused by the applicable Newfield Horizontal. Such good faith negotiations shall give preference to (but shall not mandate) the selection of a mutually satisfactory third party engineer for purposes of providing a binding determination as to the amount of compensation, if any, to Singer which owns an interest in the applicable Affected Existing Vertical Well(s) shall be entitled to receive. If after such negotiations, the Parties are unable to agree regarding selection of a third party engineer and/or the amount of compensation which may be due to Singer which owns an interest in the applicable Affected Existing Vertical Well(s) at issue, then, without limitation to the waivers provided in this Agreement, Singer may seek such relief as it deems reasonable and appropriate without regard to the existence of the other Sections of this Agreement.

Without limiting the foregoing, the Parties represent, acknowledge and agree that Newfield shall indemnify and reimburse Singer for the diminution in value to the interests of Singer in any Affected Existing Vertical Well to the extent determined to have been caused by the drilling, operation and/or production of a Newfield Horizontal attributable to such Affected Existing Vertical Well(s) and such indemnity (subject to the terms of this Agreement shall be the sole and exclusive remedy that Singer shall have against Newfield with respect to such Affected Existing Vertical Wells. Notwithstanding anything in this Agreement to the contrary, the "diminution in value" with respect to any Affected Existing Vertical Well noted in this Agreement shall be limited to the decrease in the new present value of the remaining hydrocarbon reserves ultimately recoverable from the Mississippian formation from the Affected Existing Vertical Well that was caused by the drilling, operation and/or production from the applicable Newfield Horizontal.

Defendant Newfield cited the second paragraph in the Agreement in support of its assertion for the waiver of most damages. In contrast, Plaintiff Singer cited the last sentence of the first paragraph for the proposition that it was not restricted in its ability to "seek relief." ("Singer may seek such relief as it deems reasonable and appropriate without regard to the existence of the other Sections of this Agreement.")

The Court found the cited paragraphs "clearly contradictory and inconsistent," noting:

The end of the first paragraph purports to allow Plaintiff, "without limitation to the waivers provided in this Agreement", to seek such relief, i.e., bring such claims, as it deems reasonable and appropriate "without regard to the existence of the other Sections of this Agreement." The second paragraph purports

to provide that Newfield's indemnity "shall be the sole and exclusive remedy that Singer shall have against Newfield with respect to such Affected Existing Vertical Wells."

As a result of this inconsistency and contradiction, the Court found the Agreement ambiguous.

The Court noted that if the terms in the contract are ambiguous it must be construed against the drafter. Newfield is stated to have drafted the contract and therefore the Court found that the terms at issue should be construed against Newfield. As a result, the Court found that Plaintiff Singer was not limited in its remedies to only a claim for actual damages for diminution in the value of the Mississippi formation in the Smith Well. Singer was deemed able to bring "any claim that it deems reasonable and appropriate."

The Court next addressed Defendant Newfield's assertion that it cannot be held to be negligent per se since it drilled and completed its well in accordance with Oklahoma Corporation Commission's Rules and Regulations. It determined Singer did not specifically address Newfield's arguments as to this issue. Therefore, the Court found that Singer had confessed this portion of Newfield's motion for partial summary judgment. Newfield was therefore entitled to summary judgment as to Singer's claim for negligence per se.

Finally, in regards to the request for punitive damages, Newfield contended that Singer could not prove any facts which might otherwise entitle it to punitive damages. The Court noted that in order for a plaintiff to be awarded punitive damages a jury must find "by clear and convincing evidence that the defendant has been guilty of reckless disregard for the rights of others or that the defendant has acted intentionally and with malice toward others." It found, after reviewing the parties' briefs and evidentiary submissions in the light most favorable to Plaintiff Singer (including all reasonable inferences), that Defendant Newfield was entitled to summary judgment on this issue. Singer was found to have not set forth sufficient evidence to create a genuine issue of material fact as to reckless disregard for the rights of others or acting intentionally with malice toward others.

[A copy of the Order can be found here.](#)