

BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA

**FILED**  
SEP 08 2011

<u>APPLICANT:</u>	I SYSTEMS, LLC	)	COURT CLERK'S OFFICE – OKC CORPORATION COMMISSION OF OKLAHOMA
<u>RELIEF SOUGHT:</u>	REPEAL, AMEND, MODIFY POOLING ORDER NO. 524367	)	CAUSE CD NO. 201101110
<u>LAND COVERED:</u>	S/2 OF SECTION 16, TOWNSHIP 10 NORTH, RANGE 6 EAST, SEMINOLE COUNTY, OKLAHOMA	)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON  
AN ORAL APPEAL OF A MOTION TO DISMISS**

This Motion came on for hearing before **David Leavitt**, Administrative Law Judge ("ALJ") for the Oklahoma Corporation Commission, at 9 a.m. on the 12<sup>th</sup> day of April, 2011 and the 16<sup>th</sup> day of May, 2011, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for purpose of taking testimony and reporting to the Commission. The ALJ subsequently took the matter under advisement after receipt of the transcript on June 1, 2011 and filed his Initial Report of the ALJ on July 11, 2011.

**APPEARANCES:** **Charles B. Davis** and **Glenn J. Shrader**, attorneys, appeared for I Systems, LLC ("I Systems"); **Ron M. Barnes**, attorney, appeared for New Dominion, LLC ("New Dominion"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The ALJ issued his Report of the Administrative Law Judge in response to the Motion to Dismiss to which Oral Exceptions were timely lodged and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 29<sup>th</sup> day of August, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

**STATEMENT OF THE CASE**

On May 4, 2006, the Commission issued Order No. 524367 pooling the interests in the S/2 of Section 16, T10N, R6E, Seminole County, Oklahoma, comprising a 320-acre drilling and spacing unit for the Misener-Hunton common source of supply created by Commission Spacing Order No. 523533. The Pooling Order No. 524367 was issued pursuant to Cause CD No. 200603144-T filed by New Dominion.

On March 9, 2011, I Systems filed an Application to Repeal, Amend or Modify Pooling Order No. 524367, alleging that New Dominion submitted fraudulent testimony to the Commission because it did not exercise due diligence in locating all the respondents that were subject to the pooling. I Systems further alleged that a respondent having an interest in the unit was not notified of the pooling and thus not subject to it, and that said respondent's interest was acquired by I Systems.

On March 11, 2011, I Systems filed an amended application alleging that at the time of the original application by New Dominion (in Cause CD No. 200603144-T that resulted in Commission Pooling Order 524367), testimony regarding diligent efforts to contact all mineral interest owners and attempts to reach an agreement for development of the unit as to all mineral owners was not true, and that New Dominion acquired interests which were un-pooled by virtue of a failure of notice and consequent failure of the Commission to be vested with jurisdiction over the interests of those parties. I Systems' amended application was protested by New Dominion and the cause was set for a hearing.

Also on March 11, 2011, I Systems filed discovery motions in this cause with respect to New Dominion's activities regarding Commission Order No. 524367. New Dominion subsequently filed its Motion to Dismiss Cause, alleging that none of the respondents from whom I Systems took leases are owners of the right to drill and produce in the unit and therefore, I Systems lacks standing to bring the present cause of action before the Commission.

A hearing was held in front of the ALJ on April 12, 2011 where New Dominion presented testimony and evidence in support of its motion. The hearing was continued to May 16, 2011 for the presentation of additional testimony and evidence by both parties.

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

**ALJ David Leavitt** reported that the evidence presented by I Systems appeared to indicate that when New Dominion filed its pooling application in CD No. 200603144-T on March 31, 2006, Connie J. Price, Deborah E. Leonard, Laura

Terry Felts and G. Terry Felts all owned mineral interests in the unit. Such evidence of ownership in the unit is corroborated by New Dominion's expert in title, Alvin Wright, who testified that Alpha Search, Connie Price, George M. Felts, Deborah Leonard and G. Terry Felts all owned interests in the unit at that time, subject to his requirement with respect to comment 32 concerning defects of title. New Dominion appeared to agree with their expert because they named Connie J. Price, Deborah E. Leonard, Alpha Search, Inc., c/o G. Terry Felts, G. Terry Felts and George N. Felts as respondents in their pooling application.

New Dominion contended that such evidence presented by I Systems was not persuasive towards a determination of whether they should have standing in this cause because the evidence is not of record in Oklahoma, and suggested that it sort out and perfect its interest by a quiet title action in District Court before it makes an application to the Commission. A pending quiet title action, however, does not prevent the Commission from exercising its duty with respect to an application to amend a pooling order. See *DLB Energy Corporation v. Oklahoma Corporation Commission*, 850 P.2d 657 (Okl. 1991). The Oklahoma Court of Appeals found in *Sampson Resources Company v. Oklahoma Corporation Commission*, 859 P.2d 1118 (Okl. Civ. App. 1993) that:

The determination of ownership of minerals or the right to drill is a finding of fact to be made by the Commission, whose findings must be supported by substantial evidence....The Commission has the power to receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit.

In light of the above, the Commission doesn't have to wait for a quiet title action to be decided but has jurisdiction now to determine if I Systems or its predecessors or its owners have mineral interests or the right to drill in the unit. Here the evidence so presented by I Systems, even though not of record in Oklahoma, is evidence accepted by a court of competent jurisdiction in the State of Washington and is thus substantial to show that Connie J. Price, Deborah E. Leonard, Deborah E. Leonard and G. Terry Felts were mineral owners in the unit at the time of the pooling application. Since Terry Felts was an owner of Alpha Search and successor to its interest and also is an owner of I Systems, the Commission has jurisdiction over a cause that would determine if I Systems is presently a mineral owner in the unit.

New Dominion also contended that regardless of whether I Systems, Alpha Search, Connie Price, George M. Felts, Deborah Leonard, G. Terry Felts or anyone else pooled by Order No. 524367 filed May 4, 2006 were mineral owners or had the right to drill before the Order was issued, their working interests and drilling rights were extinguished by the Order. Since they no

longer had any mineral interests to convey or sell, New Dominion opined that they no longer had standing to file an application to amend or clarify the pooling order. Although this position would appear to be in harmony with Title 52, to accept it would have the effect of denying anyone who is forced pooled the right and opportunity to seek relief from a Commission order. Such a denial of one's due process right to seek regress from a governmental action would be unfair and capricious. To address this issue, the legislature passed 52 O.S. Section 112 to allow those affected by a Commission order to have standing before the Commission.

52 O.S. Section 112 provides an alternate path to that shown in 52 O.S. Section 87.1 for anyone affected by a Commission order, including non mineral interest owners, to have standing before the Commission to seek relief. *Marshal Oil Corporation v. Adams*, at 688 P.2d 37 (Okl. 1983). 52 O.S. Section 112 provides:

Any person affected by any legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same. Such application shall be in writing and shall be heard as expeditiously as possible after notice of the hearing thereon shall have been given in the manner provided by Section 14 of this act.

As stated by the Supreme Court in *Forest Oil Corporation v. Corporation Commission*, 807 P.2d 774 (Okl. 1990):

Under Section 112, any person affected by a Corporation Commission order has standing to apply to the Commission for relief.

Alpha Search, Connie Price, George M. Felts, Deborah Leonard and G. Terry Felts were all pooled by Order No. 524367 and thus were affected by the Order. Under 52 O.S. Section 112, all of them who retained an mineral interest at the time of the pooling and had their interest pooled have standing to repeal, amend or modify that pooling order by showing a change in conditions or knowledge of conditions necessitating the repeal, amendment or modification of the Order. With respect to I Systems, Terry Felts retained a mineral interest in the unit at the time of the pooling and was an affected person who has standing under the statute, and I Systems appears to have standing through Felt's being an owner of that company.

The question of whether Order No. 524367 should be repealed, modified or amended involves the presentation of testimony and evidence about the

allegations made by I Systems in its application. I Systems alleged that New Dominion failed to exercise due diligence notice and committed fraud in its testimony at a hearing on the merits that resulted in the Order. I Systems testimony in this present motion hearing primarily addressed issues of standing before the Commission and did not specifically or thoroughly address the issues to be heard on the merits. There thus appears to be a substantial controversy with respect to factual issues that remain unresolved that should be addressed by the hearing before the Commission.

Although I Systems has standing before the Commission under 52 O.S. Section 112 with respect to a hearing on the merits of its cause, it has a high burden to overcome in order to prevail. The Commission made a special finding in Order No. 524367 that it examined the affidavit, notice and proof of publication and approved them, and the record showed that the Order is not void on its face. When requesting an amendment or modification of a Commission order, an applicant must present evidence showing that a change of conditions or change in knowledge of conditions has occurred since the issuance of the order. Such a request without an adequate showing of a change of conditions would be an impermissible collateral attack upon an order of the Commission. See 52 O.S. Section 111; *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98 (Okl. 1985); *French v. Champlin Exploration, Inc.*, 534 P.2d 1302 (Okl. 1975); *Wood Oil Co. v. Corporation Commission*, 239 P.2d 1021 (Okl. 1950); and *Phillips Petroleum Company v. Corporation Commission*, 482 P.2d 607 (Okl. 1971).

Because I Systems alleged in its application that proper notice was never given to them due to New Dominion's fraudulent testimony, it must show with particularity the material facts constituting the fraudulent conduct. *Chapman v. Chapman*, 692 P.2d 1369 (Okl. 1984). It must also show that extrinsic fraud was employed in failure of notice and that the consequent failure of the Commission to be vested with jurisdiction over the I Systems interest was the result of that conduct. *Hazel-Atlas Glass Company v. Hartford-Empire Company*, 322 U.S. 238, 64 S.Ct. 997. Since such evidence and testimony was not heard at the motion hearing, I Systems should be allowed to present its case on the merits before the Commission as a person affected by the pooling of the unit.

## **POSITIONS OF THE PARTIES**

### **NEW DOMINION**

1) **Ron Barnes**, attorney, appearing on behalf of New Dominion, stated that I Systems had no standing to bring this present application to clarify pooling Order No. 524367 due to I Systems having no mineral interests to either convey or sell.

2) New Dominion asserts that I Systems is attempting to persuade the Court that the transfer documents from a third party, who is not June Mottman, the record owner is adequate color of title to support I Systems belief that it does have mineral ownership here. New Dominion disagrees with that statement.

3) New Dominion asserts the record would show there was neither a probate or power of attorney filed in Oklahoma. Further, New Dominion believes the filings had in Washington State do not apply to Oklahoma Courts/law. New Dominion believes it is unreasonable to require a party to check all 49 states in order to verify possible misfiled probates had in surrounding states.

4) New Dominion notes that I Systems' interest originated from the Mottman's estate in Seminole County where the deed and assignments were discovered. New Dominion notes the title attorney in reviewing the county records found no showing of a Washington State probate or a showing of legal power of attorney for any listed interests here.

5) New Dominion notes the Washington state probate was recognized by the ALJ due to his belief that the Washington Court was a court of competent jurisdiction which would have resulted in its being available for Oklahoma title researchers, even though it was never shown in said title opinions. New Dominion notes there were no probate records filed in Seminole County where these mineral interests were located.

6) New Dominion submits that the party who gives the lease to another party still owns that interest, until, that party files it of record here within Seminole County.

7) New Dominion notes in order to trace a probate interest such probate must be filed of record in the proper county to show that the chain of title has shifted. New Dominion submits it was impossible to locate the ancillary probate from Washington State or record of a power of attorney on said interests.

8) New Dominion believes the Commission has jurisdiction to determine if I Systems is a current unit mineral owner. However, New Dominion disagrees that the Washington State probate is substantial evidence valid to identify the parties who later took leases from the deceased's heirs.

9) New Dominion notes that regardless of subsequent leasing had here, the title opinions indicated the owner of record was pooled by Pooling Order No. 524367. All parties that claimed an interest through or from the owner of record have already been pooled and would not have standing before the Commission in the present cause.

10) New Dominion disagrees that such party can come back years after the pooling and claim that Oklahoma never had notice of the Washington State probate in an effort to avoid liability.

11) New Dominion submits a 2006 pooling order to now require inclusion of an heir of a deceased interest who was unfound at that time in Oklahoma records to be improper. New Dominion does agree that once an interest is pooled that interest is done, whether it be filed of record or not.

12) The case boils down to the two deceased parties' interests which were the only ones that needed to be pooled. New Dominion submits that any parties who had claimed an interest from Mottman or through Mottman were subject to pooling Order No. 524367.

13) New Dominion believes there are no issues left relating to pooling Order No. 524367 that would require any more Commission hearings.

14) New Dominion would request the ALJ's decision be reversed with the Motion to Dismiss being granted.

### **I SYSTEMS**

1) **Charles Davis**, attorney, appearing on behalf of I Systems, stated that a review of the transcript would show at least 8 to 10 reasons for the ALJ's ruling. One, there is an argument for equitable estoppel. I Systems notes that in CD 201000454 there was a Motion to Dismiss filed by New Dominion and standing was not an issue. Thus, the first Motion to Dismiss filed by New Dominion implied that I Systems had standing at that time. If there was no allegation made in the first Motion to Dismiss as to standing then the standing argument is waived.

2) Second, 52 O.S. Section 87.1 has no requirement for marketable title, rather just that the interest be owned. Hence, I Systems believes the evidence shows the issue here concerns only standing to bring this application. I Systems finds it is irrelevant here to discuss the issue of marketable title when the real issue is standing.

3) I Systems further notes that 52 O.S. Section 112 allows for any party affected by a Commission order to have standing to file an application to clarify said order.

4) Previous to this application being filed, Wenexco had drilled a well in 1984. I Systems assumed the escrow account monies had come from this well.

I Systems notes that when I Systems claimed these monies from the escrow account from the 1984 alleged Wenexco well, I Systems then learned that the Wenexco well had actually played out and the escrow monies given to I Systems were actually from the New Dominion well. Further, for I Systems to have received this escrow money, I Systems would have had to possess standing. I Systems was able to satisfy the State of Oklahoma that they had interest sufficient to obtain the funds from the mineral owner's escrow account. We wonder why now New Dominion wishes to say that I Systems no longer has standing.

5) I Systems notes the ALJ comments on page 24 of his Report that Exhibit 8 was not of record yet in fact it was of record prior to the pooling application being filed. Further, I Systems notes under the Full Faith and Credit clause of U.S. Constitution that a final order in the Washington State probate would be recognized by the other 49 states, despite not being filed in Oklahoma.

6) I Systems notes a review of the chain of title following Mottman's interest supports I Systems request herein. The uncontroverted testimony in the record has to do with the chain of title from the Mottmans through an individual named Elizabeth Ann Gibson, who was an heir, into Alpha Search, ultimately into the lessors of I Systems.

7) I Systems notes that Exhibit 3 is a portion of the drilling title opinion. If you look on page 26, Tract 5 lists the individuals as owners who are lessors of I Systems. These are the same people that they are now saying have no standing and have no basis to do what the application seeks to accomplish.

8) If you look at Exhibit 4 page 13, once again, Tract 5 is listed and those same people that are lessors of Alpha Search and ultimately of I Systems are listed again in this title opinion.

9) I Systems notes there may be some controversy as to material facts here. I Systems believes that a Motion to Dismiss is appropriate only where it appears there is no substantial controversy as to any material facts and where one of the parties is entitled to judgment as a matter of law. The ALJ cited *Flanders v. Crane Co.*, 693 P.2d 602, 605 (Okl. 1984); and Rule 13(e), Rules for the District Courts of Oklahoma, 12 O.S., Ch. 2, App.

10) A review of the record here shows the ALJ got it right. I Systems does have standing to have a merit hearing to present evidence on their claims. I Systems believes the Motion to Dismiss should be denied.

**RESPONSE OF NEW DOMINION**

1) New Dominion notes that I Systems' predecessor in interest names for Tract 5 shown in Exhibit 3 are mostly unknown third parties, which New Dominion believes are not record owners here. New Dominion agrees that title attorneys routinely list strangers for curative purposes due to their names showing up in the chain of title, regardless of whether they are real owners or not. Hence, New Dominion finds these miscellaneous documents referred to by I Systems are not the correct documents that would indicate such parties to be pooled, as those listed parties have no record interest in this unit.

2) New Dominion asserts that just color of title alone is insufficient to meet the Commission's rule requirements. New Dominion also notes the title opinion did not list the last will and testament of probate for the parties Jane Mottman, June Mottman or George.

3) New Dominion had their title attorney review the records as New Dominion believed due to the gap in the chain of title that I Systems had no interest here. New Dominion believed at that time per the *Samson* case and the color of title issue that I Systems did not own any interest here.

4) New Dominion also cited the case of *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204 (Okl. 1982) as an alternate view per the color of title issue.

5) New Dominion notes the lack of filing of this Washington State probate created a gap in the chain of title. Hence, the title attorney was required to rely on the current Oklahoma records to determine which parties would be affected by pooling Order No. 524367.

6) New Dominion finds it is unrealistic to require an operator to be aware of record filings out of state that are unfiled in Oklahoma courts. New Dominion submits that a party tracking Oklahoma title must rely on Oklahoma records. Further, when a Washington State party, six years later suddenly appears and asserts they have a current mineral ownership despite being unfiled of record in Oklahoma, New Dominion does not believe that party has standing. The Washington party was not entitled to any interest here in this unit.

**CONCLUSIONS**

**The Referee finds the Report of the Administrative Law Judge in response to New Dominion's Motion to Dismiss Cause should be affirmed.**

1) The Referee agrees with the ALJ's determination that 52 O.S. Section 112 is controlling concerning the present standing issue and that under said statute I Systems does have an interest sufficient to bring an application seeking to repeal, amend, or modify pooling Order No. 524367.

2) 52 O.S. Section 112 allows any person affected by an order of the Commission the right to apply to the Commission to repeal, amend, modify or supplement the same. 52 O.S. Section 112 provides:

Any person affected by any legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same. Such application shall be in writing and shall be heard as expeditiously as possible after notice of the hearing thereon shall have been given in the manner provided by Section 14 of this act. An appeal shall lie to the Supreme Court for any order made by the Commission in any such proceedings or from the refusal of the Commission to make any order petitioned for therein, in the same manner and within the same time in which other appeals are authorized to be taken by the provisions of this act, and, on any such appeal, the Supreme Court may affirm the order of the Commission, or the Commission's actions in refusing to make the order petitioned for, or may itself make the order which the Commission should have made, or remand the cause to the Commission with directions to make such order as the Supreme Court may determine should have made. (footnotes omitted)

3) The Commission and the case law has always considered 52 O.S. Section 112 to be a separate standing statute which may also generate standing to seek relief from the Commission for any person affected by Commission order applying for relief from that order. *Marshall Oil Corporation v. Adams*, 688 P.2d 37 (Okl. 1983).

4) The Supreme Court in *Forest Oil Corporation v. Corporation Commission*, 807 P.2d 774 (Okl. 1990) stated:

Under Section 112, any person affected by a Corporation Commission order has standing to apply to the Commission for relief. Because of its

contractual status vis a vis Forest, ONG is affected by the prior orders covering the Belcher Unit. ONG is under contract with Forest to either to take or pay for gas produced from the Belcher Unit.

\* \* \*

We have held that Section 112 gives the Corporation Commission authority to clarify its orders. The power to clarify a previous order is continuous in nature, and flows from the entry of the original order. Section 112 provides that any person "affected by" a Corporation Commission order has the right to request the order's amendment, modification, or supplement to the order. Absent evidence that the Legislature intended a special or technical definition, words used in the statute are given their ordinary and common meaning. In its legal sense "affect" means to act injuriously upon persons or estates. It may also mean to concern, change, increase or diminish. In *United States v. Public Utilities Commission*, 151 F.2d 609, 613 (D.C.Cir. 1945), the District of Columbia Court gave a broad meaning to the word "affected" used in two statutes allowing consumers to challenge Public Utility Commission rulings. The court found that the term had been chosen to expand the privilege of complaint. The code language at issue in Public Utility Commission is almost identical to that of Section 112. Both the provisions under consideration in Public Utility Commission and Section 112 provide that any person "affected by" a ruling of the respective agency may apply for relief. Like the language in Public Utility Commission, Section 112's reference to parties "affected by" orders of the Corporation Commission must be given a broad meaning to encompass those parties whose positions are altered by the regulatory commission's orders. (footnotes omitted).

- 5) The ALJ stated in his Report on page 25:

Alpha Search, Connie Price, George M. Felts, Deborah Leonard and G. Terry Felts were all pooled by Order No. 524367 and thus were affected by the

Order. Under 52 O.S. Section 112, all of them who retained a mineral interest at the time of the pooling and had their interest pooled have standing to repeal, amend or modify that pooling order by showing a change in conditions or knowledge of conditions necessitating the repeal, amendment or modification of the Order. With respect to I Systems, Terry Felts retained a mineral interest in the unit at the time of the pooling and was an affected person who has standing under the statute, and I Systems appears to have standing through Felt's being an owner of that company.

6) The Referee agrees with the findings of the ALJ. Thus, under 52 O.S. Section 112, since I Systems is affected by Commission pooling Order No. 524367, I Systems should be allowed to pursue relief on the merits in the present proceeding. I Systems therefore has proper standing to invoke the Commission's jurisdiction to repeal, amend, or modify pooling Order No. 524367 as requested in the pending application.

**RESPECTFULLY SUBMITTED THIS 8<sup>th</sup> day of September, 2011.**

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy  
Commissioner Cloud  
Commissioner Anthony  
Jim Hamilton  
ALJ David Leavitt  
Charles B. Davis  
Glenn J. Shrader  
Ron M. Barnes  
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