

**FILED**

JAN 12 2011

**BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA**

COURT CLERK'S OFFICE -- OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

<u>APPLICANT:</u>	I SYSTEMS, LLC	)	
		)	
<u>RELIEF SOUGHT:</u>	POOLING	)	CAUSE CD NO.
		)	201000454
		)	
<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 D. Leavitt**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 12<sup>th</sup> day of October, 2010, 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.

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

The Administrative Law Judge ("ALJ") issued his Oral Ruling on 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 12<sup>th</sup> day of November, 2010. 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 Spacing order No. 523533. The order was issued pursuant to Cause CD No. 200603144 filed by New Dominion.

On February 4, 2010, I Systems filed an application to pool 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.

On July 23, 2010, I Systems filed an amended application alleging that at the time of the original application (in CD 200603144 that resulted in Pooling Order No. 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 unpooled by virtue of a failure of notice and consequent failure of the Commission to be vested with jurisdiction over the interests of those parties. The amended application was protested by New Dominion and the cause was set for a hearing.

New Dominion subsequently filed its Motion to Dismiss Cause, alleging that I Systems' application in this present cause is an impermissible collateral attack upon Order No. 524367.

### **REPORT OF THE ADMINISTRATIVE LAW JUDGE**

**ALJ David Leavitt** recommended denial of New Dominion's Motion to Dismiss and that the hearing on the merits go forward. The question of whether a Commission order should be vacated for lack of jurisdiction or whether a limited collateral attack be allowed to cure a notice defect involves the presentation of testimony and evidence concerning notice at a merit hearing. Such testimony could be instrumental in a determination of whether an existing Commission order is void or voidable. There appears to be a substantial controversy with respect to factual issues that remain unresolved that must be addressed at a merit hearing. Thus a Motion to Dismiss is premature and should be denied.

### **POSITIONS OF THE PARTIES**

**NEW DOMINION**

1) **Ron Barnes**, attorney, appearing on behalf of New Dominion, stated that the application herein is a request to repool what has already been pooled. A pooling order currently exists for this unit. Contrary to I Systems' belief, this is not about an application to vacate the previous pooling as to a respondent that failed to receive proper notice.

2) New Dominion notes that there was no reference made to any previous pooling order. New Dominion believes that before I Systems can properly move forward with their present pooling application that I Systems must vacate the previous pooling Order No. 524367. New Dominion asserts this to be a collateral attack upon a previous pooling order. The ALJ ruled otherwise.

3) New Dominion cites the cases of *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okl. 1968) dealing with notice in a quiet title action; *Cravens v. Corporation Commission*, 613 P.2d 442 (Okl. 1980) dealing with notice requirements; *Harry R. Carlisle Trust v. Cotton Petroleum Corp.*, 732 P.2d 438 (Okl. 1986) dealing with parties' jurisdiction relating to a spacing order; *James Energy Co. v. HCG Energy Corp.*, 847 P.2d 333 (Okl. 1992) dealing with the fact that a court is limited to an examination of the record to determine if proper notice was given; *Anson Corporation v. Hill*, 841 P.2d 583 (Okl. 1992) dealing with extrinsic evidence used for notice purposes. New Dominion believes that the above stated law is determinative of the present case. Lastly New Dominion would cite *Rothrock v. Hartley*, 233 P.3d 810 (2010 Okl.Civ.App.) dealing with a quiet title action and a collateral attack.

4) New Dominion asserts that those issues above need to be dealt with. I Systems' current application does not deal with these issues and is a collateral attack on Order No. 524367 which has already pooled I Systems' predecessor in interest.

5) New Dominion reiterates that the proper application for I Systems' requested relief is not before the Commission. New Dominion would request that the ALJ be reversed and the Motion to Dismiss granted.

**I SYSTEMS**

1) **Charles Davis and Glenn Shrader**, attorneys, appeared on behalf of I Systems. Mr. Davis first stated that I Systems agrees with the ALJ's determination that the Motion to Dismiss was premature. I Systems concurs with the New Dominion cited cases in that they all relate to notice, which is what I Systems' case basically boils down to.

- 2) I Systems notes that there are several issues in their appeal. One, being whether this is a collateral attack or a direct attack of a Commission order. I Systems believes that the Commission will find upon review that proper notice was never given to said Respondent(s). I Systems would also allege that fraud is apparent in the record.
- 3) I Systems notes that where notice is improper the Commission lacks jurisdiction to take necessary action. I Systems believes their application is proper. I Systems would call their filing a "reverse pooling" due to these parties lack of proper notice. Regardless of how the relief is labeled/titled, I Systems does not want the cause dismissed.
- 4) Both the ALJ and I Systems disagreed with New Dominion's position that this is a collateral attack on a prior pooling order. I Systems finds that where fraud is committed upon a U.S. court, this vitiates and renders any subsequent orders or judgments void or voidable, with such being declared void ab initio, i.e. back to the original judgment date.
- 5) I Systems provided the Court with the original transcript whereby pooling Order No. 524367 (CD 200603144) was created. I Systems would opine that should this Court review such it would find that New Dominion did not exercise due diligence and perpetrated a fraud on the Commission to obtain that pooling order.
- 6) I Systems claims their client never received proper notice of the previous pooling order due to the alleged fraud scheme followed by New Dominion in getting this previous pooling order. I Systems believes that New Dominion used a scheme to establish a system where it would be assured that all respondents would be deemed to elect a 1/8th royalty in order to maximize the royalty interest for New Dominion and its participants in their wells.
- 7) I Systems believes it is the Commission's duty to protect and safeguard the public, which also includes protection against possible fraudulent acts. I Systems thinks that fraud should not be tolerated by any Court. It is absolutely clear in the law that the decision produced by fraud on the court is, in essence, not a decision at all and never becomes final. That is why this is not a collateral attack. The effect of a fraud on the court makes the order void or voidable. And that is exactly what the ALJ discussed in his order, whether it is void or voidable. When it is void or voidable it is void ab initio, and it relates back to the very date that the order was issued and vitiates the entire proceeding. This is an issue where the statute of limitations never tolls, because there is no underlying basis for jurisdiction to thwart a respondent their constitutionally protected right of due process of the law under the 14<sup>th</sup> Amendment to the U.S. Constitution. As the ALJ ruled in his findings, the only way to determine the allegations of fraud on the Court and whether they're indeed true involves taking testimony from witnesses with a full trial on the

merits. This is the only proper means at this stage to determine whether the existing order is void or voidable.

8) I Systems would further cite *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, in support of the ALJ's recommendation. I Systems requests that the ALJ's finding that the case go to merit hearing for a determination of the issues be affirmed so it can be decided whether pooling Order No. 524367 is void or voidable.

### **RESPONSE OF NEW DOMINION**

1) New Dominion would remind I Systems that the Commission has limited jurisdiction. Neither the Reports of the Referee or Initial ALJ referenced fraud. New Dominion notes that even if there had been fraud, the proper venue for this would be district court. The ALJ merely said that this needed to be resolved in a merit hearing before an ALJ where evidence could be had as to its resolution. New Dominion has never seen a fraud case argued before the Commission. New Dominion asserts it was the only party that cited any relevant case law related to the true issues at bar, i.e. being a collateral attack.

2) New Dominion would refer the Court to the original application that gave rise to Spacing Order No. 523533 and Pooling Order No. 524367. A review of I Systems current application shows no mention of a prior pooling order. New Dominion points out I Systems' pleading is a request to pool previously pooled parties. The language in pooling Order No. 524367 at paragraph 13 is final and indicates that due diligence was had to locate all the known respondents. The case of *Rothrock v. Hartley*, supra, would apply here.

3) New Dominion believes that the present application's requested relief is improper. The fraud issue raised by I Systems on appeal was not raised and presented to the ALJ. If I Systems believes that fraud is present, I Systems should take their case to District Court. The Commission is not the proper forum for such a complaint. New Dominion would assert that for the Commission to properly act here, the proper application for relief must be filed by I Systems.

### **CONCLUSIONS**

**The Referee finds that the ALJ's recommendation to deny New Dominion's Motion to Dismiss should be reversed.**

1) First, the Commission lacks jurisdiction to entertain the pooling application filed by I Systems because I Systems' predecessor was force pooled by the previous Order No. 524367. The proper application for I Systems requested relief is not before the Commission. I-Systems needs to file an application to repeal, amend or modify the prior pooling Order No. 524367. The Commission has the power to repeal, amend or modify a prior unappealed order upon a showing of change of conditions. *Kaneb Production Co. v. GHK Exploration Company*, 769 P.2d 1388 (Okl. 1989). In *Nielson v. Ports of Call Oil Company*, 711 P.2d 98 (Okl. 1985), the Court stated:

In the case of *Cabot Carbon Company v. Phillips Petroleum Company*. [287 P.2d 675 (Okl. 1955)] we specifically recognized the power of the Commission to clarify its previous orders under the authority of 52 O.S. 1951 Section 112. In making this ruling we distinguished between the power granted to clarify, or "supplement," previous orders, the exercise of which does not effect a change in the prior order or in the rights accrued under that order, and the powers granted to repeal, amend or modify a previous order. The power to effect a change in a previous order, we have held, requires a showing before the Commission of a change of conditions or knowledge of conditions necessitating the repeal, amendment or modification. Failure to make such a showing renders an attempt to modify a prior order subject to the prohibition on collateral attacks set forth by the legislature in 52 O.S. 1981 Section 111. *Id.* 711 P.2d at 102.

\* \* \*

[a] collateral attack is an attempt to avoid, defeat, evade, or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial. *Id.* 711 P.2d at 101 n.5.

The face of the record resulting in pooling Order No. 524367 pools I Systems' predecessors in interest.

2) Second, a Commission order, however, may be collaterally attacked to determine if the Commission had jurisdiction to issue the order. In *State v. Corporation Commission*, 590 P.2d 674, 677 (Okl. 1979), the Court states:

The prohibition against a collateral attack on an order of the Corporation Commission does not prevent inquiry into the jurisdiction of the tribunal where the questioned ruling is relied upon in a subsequent proceeding. The jurisdiction of any court exercising authority over any subject may be inquired into in every other court when the proceedings in the former are relied upon by a party claiming the benefit of that formal proceeding.

Consequently, an examination of the prior order may be made in a collateral proceeding for the limited purpose of determining the jurisdiction, or lack thereof, of the issuing tribunal. *Id.* 590 P.2d at 677.

3) In a subsequent proceeding to determine if the Commission was possessed of the necessary jurisdiction to issue the prior order, the determination is limited to an examination of the record in the prior proceedings. *Mullins v. Ward*, 712 P.2d 55, 59, n.7 (Okl. 1985); *Harry R. Carlile Trust v. Cotton Petroleum*, 732 P.2d 438, 441 (Okl. 1986). In *Mullins v. Ward*, *supra*, the Court stated:

A collateral attack on an order of the Commission which is not facially void is impermissible. Art. 9, Section 20, Okl. Const. and 52 O.S. 1981 Section 111. The district court's inquiry into the validity of Commission orders stands confined to determining, from an inspection of the face of the proceedings [i.e., the application, the process by which the parties were notified and the Commission order], if the Commission had jurisdiction to issue the order. *McDaniel v. Moyer*, Okl., 662 P.2d 309, 312 [1983]; *Chancellor v. Tenneco Oil Co.*, Okl., 653 P.2d 204, 206 [1982]; *Gulfstream Petroleum Corporation v. Layden*, Okl., 632 P.2d 376, 379 [1981]; *Woods Petroleum Corp. v. Sledge*, Okl., 632 P.2d 393, 396 [1981]; and *State v. Corporation Commission*, Okl., 590 P.2d 674, 677 [1979]. A Commission order is deemed void when the face of the record reveals that at least one of the three elements of agency jurisdiction was absent, i.e. jurisdiction over the parties, jurisdiction over the subject matter or jurisdictional power to pronounce the particular

decision that was rendered. *Gulfstream Petroleum Corporation v. Layden*, supra at 379. Id. 712 P.2d at 59 n.7.

The above quoted language states clearly that a collateral attack of a Commission order is limited to an examination of the face of the record to find a want of jurisdiction.

4) Pooling Application in Cause CD 200603144 states that "there are undivided interests separately owned for which the owners have not agreed to pool their oil and gas interests and to drill and develop the "drilling and spacing unit" and common source(s) of supply as a unit." The application also states:

2.b. Applicant has conducted a diligent and meaningful search of the local county assessor's records, county treasurer's records, and county deed records regarding the property involved for return addresses on recorded instruments, county probate records and city and county telephone directories and other sources of such information to locate each respondent and has made a bonafide effort to reach an agreement as to the development of the unit with each respondent located by such search."

The pooling Order No. 524367 states:

13. Special Finding: That Applicant exercised due diligence to locate each of the respondents subject to this Application and that a bonafide effort was made to reach an agreement with each respondent and that the Applicant has not agreed with all such respondents in such drilling and spacing unit to pool their interest and to develop the drilling and spacing unit common sources of supply as a unit; that the Applicant has proposed the drilling of a well on said unit and to develop said common sources of supply; that the Operator, hereinabove named, is an owner of the right to drill on said drilling and spacing unit and to develop and produce said common sources of supply."

Thus, Order No. 524367 clearly recites that the Commission examined the affidavit, notice and proof of publication and approved them. Thus, the record in the original pooling proceeding simply does not indicate that the Order No. 524367 is void on the face of the record as lacking jurisdiction over I Systems' predecessor in interest.

5) Lastly, I Systems asserts that proper notice was never given to I Systems' predecessors in interest and alleged that fraud is apparent in the record. I Systems must bring a petition or an application to vacate Order No. 524367 in Cause CD No. 200603144 based on extrinsic fraud and "must allege with particularity the material facts constituting "the fraudulent conduct." *Chapman v. Chapman*, 692 P.2d 1369 (Okl. 1984). "In essence, "acts which result in the Court being imposed on and by which interested parties are prevented from having their interests protected constitute extrinsic fraud that vitiates a judgment." *Id.* at paragraph 9, 692 P.2d at 1373. I Systems therefore may file an application seeking vacation of Order No. 524367 and may present evidence at a hearing that extrinsic fraud was employed in failure of notice and the consequent failure of the Commission to be vested with jurisdiction over the I Systems interest in procuring the pooling Order No. 524467. See *Hazel-Atlas Glass Company v. Hartford-Empire Company*, 322 U.S. 238, 64 S.Ct. 997.

6) For the above stated reasons, the Referee finds the ALJ's recommendation to deny New Dominion's motion to dismiss should be reversed.

**RESPECTFULLY SUBMITTED THIS 12<sup>th</sup> day of January, 2011.**

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

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