

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

**APPLICANT:** MEWBOURNE OIL COMPANY )  
)  
**RELIEF SOUGHT:** POOLING )  
)  
**LAND COVERED:** SECTION 1, TOWNSHIP 20 )  
NORTH, RANGE 24 WEST, )  
ELLIS COUNTY, OKLAHOMA )

CD 200604826

**FILED**  
AUG 12 2021

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

**REPORT OF THE ADMINISTRATIVE LAW JUDGE ON:**

**MEWBOURNE OIL COMPANY'S AMENDED MOTION TO DISMISS THE  
MOTION TO REOPEN TO DETERMINE SANCTIONS AND RESTITUTION  
AND ALSO, OPTIMA OIL & GAS COMPANY, LLC'S MOTION TO REOPEN TO DETERMINE SANCTIONS AND  
RESTITUTION ARISING FROM  
APPLICANT'S ADJUDICATED MISCONDUCT**

**DATE AND LOCATION:**

*March 24-25, 2021, Virtual Hearing Jim Thorpe Building, Courtroom 'F', 2101 N. Lincoln Blvd, Oklahoma City, OK.*

**ATTORNEY FOR APPLICANT/MOVANT:**

*Mr. Dale Cottingham, Mr. Dean Luthey and Mr. Benjamin Brown*

**ATTORNEY FOR PROTESTANT:**

*Mr. Andrew J. Waldron, Mr. Russell J. Walker*

**COURT REPORTER:**

Ms. Susie Dennis (March 24, 2021)

Ms. Susan Johnson (March 25, 2021)

**MOTION SUMMARY:** The above-mentioned Cause was opened before Judge Kendal Huber on March 24, 2021 and adjourned and reconvened on March 25, 2021, for the purpose of hearing the following:

Mewbourne Oil Company's (hereinafter "Mewbourne") Amended Motion to Dismiss the Motion to Reopen to Determine Sanctions and Restitution, and also, Optima Oil & Gas Company, LLC's (hereinafter, "Optima") Motion to Reopen to Determine Sanctions and Restitution Arising from Applicant's Adjudicated Misconduct

#### RECOMMENDATION OF THE ALJ:

The ALJ recommends a finding that Mewbourne's Amended Motion to Dismiss should be denied and that Optima's Motion to Reopen should be granted.

#### REPORT ON ORAL RECOMENDATION:

1. Synopsis: Mewbourne's Amended Motion to Dismiss seeks to dismiss Optima's Motion to Reopen Cause CD No. 200604826. Optima's Motion seeks to reopen Cause CD No. 200604826, to determine sanctions and restitution (if any) which are due on account of Mewbourne's adjudicated misconduct.
2. The parties respective Motions were argued to the undersigned Administrative Law Judge on March 24 and March 25, 2021, pursuant to Notice and the Rules of the Oklahoma Corporation Commission. No witnesses were called by either party.
3. Mewbourne argued that its Amended Motion to Dismiss filed on March 21, 2021, should be granted on four grounds: that (i) Optima lacks standing to seek the requested relief; that (ii) the Commission lacks jurisdiction to grant the relief Optima requests; that (iii) even if proved, intrinsic fraud upon the Commission cannot result in money damages to Optima; and that (iv) the doctrine of laches bars any claim by Optima relating to the 2006 Commission proceeding.
4. Optima's Motion to Reopen asserts that Mewbourne's litigation misconduct in this cause was established by the final decision rendered on April 8, 2008 by the Oklahoma Court of Appeals in Case No. 103,742. In this appeal, the Court found, *inter alia*, that "*Mewbourne's counsel mislead the Oklahoma Corporation Commission and caused it to enter an erroneous order granting P.O. 528230.*" Optima asserts that further Judgments issued by the United States District Court for the Western District of Oklahoma and ultimately, by the United States Court of Appeals for the Tenth Circuit on October 23, 2012, held that Mewbourne's misconduct was in the nature of "intrinsic fraud" and thus, jurisdiction to award damages or to grant relief was exclusively with the Commission. The Tenth Circuit specifically held that "[N]othing in *Leck (Leck v. Continental, 1989 OK 173)* precludes Optima from also seeking damages [arising from Mewbourne's intrinsic fraud before] the OCC. Optima's Motion seeks to reopen CD No. 200604826, so to determine sanctions and restitution which are due on account of Mewbourne's adjudicated misconduct.
5. The parties made their respective arguments and cited various legal authority on the record. Based upon the pleadings and exhibits submitted by the parties and fully considering the arguments of counsel, the ALJ recommends a finding that Mewbourne's Amended Motion to Dismiss should be denied and that Optima's Motion to Reopen should be granted. At this time, the ALJ makes no recommendation of any sort on what damages might be owed to Optima, if any; or whether Mewbourne's actions were intrinsically fraudulent or what might happen on the merits, making the distinction between a Motion hearing and a Merits hearing. The ALJ concludes that such issues should, however, be determined upon further evidentiary hearings on the merits; a result which necessitates the denial of Mewbourne's Amended Motion to Dismiss and the granting of Optima's Motion to Reopen.
6. In making this recommendation, the ALJ relies on *Leck v. Continental, 1989 OK 173*, specifically paragraph 20, where it states appellants alleged in their third claim that the appellees breached a duty to fully and fairly present the facts to the Corporation Commission to prevent it from relying on false or baseless contentions or testimony. In *Leck*, the appellants were in essence asking for damages because the appellee made misrepresentations to the Commission during the hearing on the application to have

the allowable on the Wosika well reduced. *Leck* discusses misrepresentation made to the Commission which is the equivalent of what the Oklahoma Court of Appeals ruled in this matter, in its final decision rendered on April 8, 2008, in Case No. 103,742. The ALJ makes no determination at this time that the misrepresentation at issue here was in the nature of "intrinsic fraud" but does note that such was the determination of the United States District Court for the Western District of Oklahoma and ultimately, the United States Court of Appeals for the Tenth Circuit, in its Order and Judgment filed on October 23, 2012, in Case No. 11-6230. Finally, the ALJ concludes that the Oklahoma Corporation Commission has the power and authority as a court of record, and thus, the Commission does have the subject matter jurisdiction to hear misrepresentations and to determine whether they are tantamount to intrinsic fraud.

7. On March 25, 2021, Mewbourne took exception to the recommendations of the AJL after they were announced.

RESPECTFULLY SUBMITTED THIS 12<sup>th</sup> of August, 2021.

*Kendal Huber*

Kendal Huber  
Administrative Law Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2021, a true and correct copy of the above and foregoing document was sent email, to the following:

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