BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:	MEWBOURNE OIL COMPANY	)	
		)	
RELIEF SOUGHT:	POOLING	)	CAUSE CD NO. 200604826
		)	
		)	
LEGAL DESCRIPTION:	SECTION 1, TOWNSHIP 20 NORTH, RANGE 24 WEST, ELLIS COUNTY, OKLAHOMA	)	

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CORPORATION COMMISSION
OF OKLAHOMA

BRIEF IN SUPPORT OF MOTION FOR ORAL ARGUMENT

Mewbourne Oil Company's ("MOC") Motion to Dismiss presents an important legal question of first impression:

> Whether the Oklahoma Corporation Commission ("OCC"), as a tribunal of limited jurisdiction, has the subject matter jurisdiction to award money damages, as sanctions, to a party for alleged intrinsic fraud that purportedly caused the OCC to issue an erroneous order.

No constitutional, statutory or regulatory provision confers such subject matter jurisdiction nor does any decision either of this Commission or the Oklahoma Supreme Court.

PROCEDURAL HISTORY BEFORE THE OCC

MOC filed an Application for a Pooling Order and Appointment as Operator ("Application"). Optima Oil & Gas Company ("Optima") owned an interest in the subject acreage. As required by rule to afford due process, MOC served notice on Optima by certified mail, return receipt requested. The employee authorized by Optima to receive mail and sign the return receipt signed for that notice. MOC also published notice.

At the time noticed for the hearing Optima did not appear. The Administrative Law Judge ("ALJ") conducted the hearing and then issued a report recommending that the OCC grant MOC's application.

Prior to the date set for OCC consideration of the ALJ's report, Optima appeared and objected after discovering the notice, which was unopened. Optima asserted that it would have contested MOC's Application if it had been aware of the Application and that MOC knew the Application was not uncontested. Subsequent to Optima's filing before the OCC as to MOC's knowledge, but before it was scheduled to be heard, the OCC entered its order granting MOC's Application.

Optima then filed a motion to vacate the pooling order entered by the OCC. A record, including live testimony, was developed before an ALJ. As part of that record, Optima offered testimony from its local manager that the employee who had received and signed for the notice of the Application and Hearing was disaffected and failed to notify her supervisors of the service. The disaffected employee did not testify before the ALJ. Additionally, a MOC employee testified that a contractor had told him, before the Application was filed, that Optima had told the contractor that Optima would oppose pooling orders sought by MOC for acreage in which Optima had an interest. Optima's local manager testified that he told MOC's employee of that intent prior to the Application being filed.

The ALJ recommended that the motion to vacate be granted, although the ALJ did not find fraud. The Appellate Referee also recommended the motion to vacate be granted but likewise did not find fraud.

The OCC found that the mail service accepted by Optima's authorized employee was valid and per se controlling and denied the motion to vacate.[1] The language of OCC's order did not address (1) Optima's testimony concerning its pre-Application communication that Optima intended to oppose any pooling application by MOC for acreage in which Optima had an interest

[1] See OCC Order No. 529450, attached hereto as Exhibit A.

or (2) MOC's failure to disclose to the OCC that communication prior to entry of the OCC order granting the pooling order, although that testimony was before the OCC.

That OCC order made clear that the OCC did not rely on the absence of disclosure by MOC of any pre-service statement by Optima of its intent to protest.

PROCEDURAL HISTORY IN THE OKLAHOMA APPELLATE COURT

Optima appealed the OCC order denying the motion to vacate the pooling order. On appeal, the Court of Civil Appeals ("COCA") reversed the OCC order denying the motion to vacate the pooling order and accordingly vacated the pooling order. MOC's Application was remanded to the OCC for a full hearing on the merits of MOC's pooling Application and any further proceedings consistent with the COCA opinion. Slip opinion attached hereto as Exhibit B.

In its opinion, COCA, although having stated that MOC's attorney "mislead the OCC," did not find that the OCC relied on the MOC's misleading statement in denying the motion to vacate.[2]

Although COCA had labelled its opinion as for publication, the Oklahoma Supreme Court withdrew that opinion for publication when MOC's petition for certiorari was denied.

After remand, MOC as applicant for the pooling order did not pursue its application since MOC's leases of the acreage at issue had expired. At that time, both MOC and Optima effectively treated the OCC matter as concluded.

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[2] Since the OCC was aware of the factual record as to Optima's claim of pre-Application statement of intent prior to denying Optima's motion to vacate, the record could not support such a statement of reliance. In fact, on appeal, the COCA noted that the OCC did not consider "the evidence concerning lack of notice and its denial of due process" and continued that "[i]nstead, the commission appears to have viewed the question of notice strictly on the veneer of adherence to a statutory guideline." (slip op. ¶36.)

THE FEDERAL COURT PROCEEDINGS FILED BY OPTIMA WITHOUT SUBJECT MATTER JURISDICTION IN STATE DISTRICT COURT

Optima initiated a common law action in state district court for money damages against MOC for alleged litigation misconduct concerning the pooling Application. The case was removed to federal district court. Over Optima's objection, that court dismissed the case for lack of subject matter jurisdiction. Optima appealed that jurisdictional dismissal to the Tenth Circuit Court of Appeals. The Tenth Circuit Court rejected Optima's claim of subject matter jurisdiction and affirmed the dismissal by the district court.[3]

OPTIMA'S MOTION FOR MONEY DAMAGES AS "SANCTIONS"

Years after COCA remanded the moot pooling Application, Optima, in its search for money damages, initiated this proceeding. Optima seeks damages for alleged intrinsic fraud in the OCC's denial of Optima's motion to vacate.[4] MOC moved to dismiss the claim for money damages labelled as "sanctions" due to the OCC's lack of subject matter jurisdiction to award such money relief. The ALJ recommended denial of the motion. MOC sought review by the

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[3] Neither the Tenth Circuit Court of Appeals nor the United States District Court for the Western District of Oklahoma have the judicial power to determine whether the OCC has subject matter jurisdiction to award money damages of any kind. That question is exclusively within the control of the OCC in the first instance and ultimately of the Oklahoma State appellate courts.

Since the federal courts did not have subject matter jurisdiction as to Optima's claims, those courts lacked jurisdiction to determine anything other than their jurisdiction. Any other determinations are void as ultra vires. *See, U.S. v. Hartwell*, 448 F.3d 707, 715 (4th Cir. 2006) ("any action by a court without subject matter jurisdiction is 'ultra vires' and therefore void.")

[4] Intrinsic fraud is not practiced on a party in a proceeding such as Optima's. Rather, it is fraud committed on a tribunal, such as the OCC. The usual remedy is vacation of the tribunals order or judgment. The order denying the motion to vacate the pooling order has previously been reversed by the COCA. Consistent with the lack of intrinsic fraud, not to mention its lack of subject matter jurisdiction to award money damages, no motion for money sanctions of any kind has been initiated by the allegedly defrauded party, the OCC.

appellate ALJ, who also recommended denial of the motion. See Referee's Report attached hereto as Exhibit C.

ORAL ARGUMENT IS APPROPRIATE SINCE NO AUTHORITY RECOGNIZES JURISDICTION TO AWARD DAMAGES AS SANCTIONS

The lack of express authority for the OCC to award money damages as sanctions is not subject to dispute. First, neither the Oklahoma Constitution nor state statute confers such jurisdiction on the OCC, as the absence of any supporting citation in the appellate ALJ report confirms (the "Appellate Report"). Second, neither rule nor prior order of the OCC recognizes subject matter jurisdiction to award damages as sanctions, as the absence of such a citation in the Appellate Report further demonstrates.[5]

Likewise, no decision of the Oklahoma Supreme Court holds the OCC has subject matter jurisdiction to award damages as sanctions or otherwise, as confirmed by the Appellate Report's absence of any high court decision authorizing damages. As the Appellate Report does recognize, the Supreme Court has held on multiple occasions, that the OCC lacks subject matter jurisdiction to award damages, citing *Kingwood Oil Company v. Hall-Jones Oil Corp*., 1964 OK 231 and *Texas Oil and Gas Corporation v. Rein*, 1974 OK 8.

Although the Appellate Report concludes that the OCC has jurisdiction to enter a money judgment for damages as sanctions as part of its inherent powers, no decision is offered discussing the OCC's "inherent power." Likewise, the Appellate Report provides no Supreme Court decision holding that the OCC is a court with inherent powers and that those general equitable powers include the subject matter jurisdiction to award damages of any kind.

[5] Constitution, statute and rule authorize the OCC to entertain contempt proceedings in certain instances and accordingly to impose fines. No contempt proceeding has been instituted by the OCC or Optima.

Specifically, the Appellate Report does not explain how those "inherent powers" can be exercised without violation of the Supreme Court's repeated teaching that the OCC cannot award damages.[6]

Finally, although the Appellate Report invokes *Leck v. Continental Oil Co.,* 1989 OK 173, 800 P.2d 224*,* to aid its conclusion that the OCC has jurisdiction to award money damages as sanctions, as the opinion's actual language confirms, *Leck* does not so hold. In *Leck*, which was an advisory opinion issued to the Tenth Circuit Court of Appeals in response to a certified question, the Supreme Court did not hold that the OCC has subject matter jurisdiction to award damages for intrinsic fraud. Rather, after citing *Chapman v. Chapman*, 692 P.2d 1369 (Okla. 1984), a divorce case not addressing damages for intrinsic ground, the court noted that the remedy for intrinsic fraud is a "direction action" in the tribunal upon whom the fraud was committed. Direct action means seeking the vacation of the order or judgment of the tribunal resulting from the intrinsic fraud on that tribunal. The court then merely stated that the OCC should "hear allegations of the intrinsic fraud and rule upon them." An award of money damages by the OCC is not mentioned, much less authorized in *Leck's* holding in favor of a party as the court intimated in its concluding paragraph of the advisory opinion.[7] In answering

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[6] That claim of inherent power of a court is further complicated by the Appellate Report acknowledging that the Supreme Court on multiple occasions has held that, constitutional (or statutory) identification of the OCC as a "court of record" notwithstanding, the OCC is not a court and its members are not judges. *State ex rel. Edmondson v. Corporation Com'n*, 1998 OK 118; *Vogel v. Corporation Com'n*, 1942 OK 14, 121 P.2d 586. The Appellate Report's mention of *Monson v. Corporation Com'n,* 1983 OK 115, 673 P.2d 839, brought to the Appellate Referee's attention by MOC, does not diminish that prior and subsequent decisional law. In *Edmondson*, the author of *Monson* and the four other concurrees in *Munson* then still on the Supreme Court concurred and reasserted *Vogel's* earlier express teaching that the OCC is not a court.

[7] The Appellate Report does not indicate that an action for money damages for intrinsic fraud was commenced and subsequently authorized by the OCC in *Leck*.

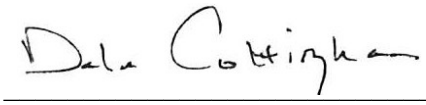
the question presented, the Supreme Court in *Leck*, held that the district court lacked subject matter jurisdiction over the claim:

> We find that the allegations of misrepresentations as averred in the petition are allegations of intrinsic fraud because they refer to false information given by the appellee at the adversarial hearing before the commission on plaintiffs' application for a reduction in the allowable of the Wosika well. Consequently, subject matter jurisdiction does not lie in the district court for a cause of action on these alleged misrepresentations.

CONCLUSION

Because of (1) the lack of applicable authority in the Appellate Report expressly recognizing the OCC's subject matter jurisdiction to award money damages as sanctions for intrinsic fraud allegedly practiced on the OCC, (2) the expansion of OCC jurisdiction recommended by the Appellate Report and the impact of such expansion on matters generally before the OCC and (3) the likelihood of Supreme Court review of the fundamental issue of subject matter jurisdiction addressed by the Appellate Report, MOC requests oral argument on this important legal question of first impression.

Respectfully submitted,



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CERTIFICATE OF MAILING

This certifies that a true and correct copy of the foregoing was emailed this 12th day of October 2021, to:

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SAS 9-8-04 2

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT:	MEWBOURNE OIL COMPANY	)	CAUSE CD NO. 200604826
RELIEF SOUGHT:	POOLING	)	
LAND COVERED:	SECTION 1, TOWNSHIP 20 NORTH, RANGE 24 WEST, ELLIS COUNTY, OKLAHOMA.	)	ORDER NO. 529450

ORDER DENYING MOTION TO VACATE ORDER NO. 528230 AND MOTION TO STAY ISSUANCE OF ORDER AND TO REOPEN

These Motions came on for hearing before Michael Decker, Administrative Law Judge for the Oklahoma Corporation Commission, on the 14th and 15th days of August, 2006, 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.

Richard Grimes, on appeal, and James W. George, on the merits of the motions, attorneys, appeared for applicant, Mewbourne Oil Company ("Mewbourne"); John C. Moricoli, Jr., attorney, appeared for Movant, Optima Oil & Gas Company ("Optima"); and Sally Shipley, Deputy General Counsel for Conservation, filed her appearance for the Oklahoma Corporation Commission.

The Administrative Law Judge ("ALJ") issued his Oral Ruling recommending the Motions to which an Oral Appeal was timely lodged and proper notice given of the setting of the Oral Appeal.

The Oral Arguments on the Oral Appeal were referred to Randolph S. Specht, Oil and Gas Appellate Referee ("Referee"), on the 21st day of August, 2006. The Referee issued his report recommending that the ALJ be affirmed on the 22nd day of August, 2006.

The Commission en banc deliberated this matter on August 25, 2006. After review of the record in this cause the Commissioners voted 3-0 to reverse the recommendations of the Administrative Law Judge and Referee and to deny the motions described above. In support of such ruling the Commission finds as follows:

FINDINGS

1. This is an Application of Mewbourne Oil Company for pooling oil and gas interests in certain named common sources of supply in the 640-acre drilling and spacing unit consisting of Section 1, Township 20 North, Range 24 West, Ellis County, Oklahoma. Optima was the only respondent named in this Application.

3. Mewbourne caused a copy of the Application and Notice of Hearing in this cause to be mailed to Optima by certified mail at least fifteen (15) days before the scheduled hearing date. Optima signed for and accepted that certified mailing but contends that its manager in Oklahoma City was not made aware of such fact by the employee who signed for the mailing.

4. Optima did not appear on the date this cause was set for hearing and Mewboume obtained the recommendation of an Administrative Law Judge for the requested relief. Order No. 528230 was issued in this cause on August 10, 2006.

5. Optima seeks to vacate Order No. 528230 and have this cause reopened for the purpose of a protest concerning certain issues, including operations and values.

6. The Commission finds that notice was properly given to Optima in this matter and that the Motion to Vacate Order No. 528230 should be denied. The issuance of that Order moots the need to consider the Motion to Stay Issuance of Order and same should be denied.

EXHIBIT A

ORDER

IT IS, THEREFORE the order of the Corporation Commission of Oklahoma that the Motion to Stay Issuance of Order and Motion to Vacate Order No. 528230, both filed by Optima Oil & Gas Company, are denied.

OKLAHOMA CORPORATION COMMISSION

Jeff Cloud
JEFF CLOUD, Chairman

DENISE A. BODE, Vice Chairman

Bob Anthony
BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS 8 DAY OF Sept., 2006.

BY ORDER OF THE COMMISSION:

Peggy Mitchell
PEGGY MITCHELL, Commission Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings and order are the report and recommendations of the Administrative Law Judge.

Michael Decker
Michael Decker,
Administrative Law Judge

9-8-2006
Date

Technical Review

Date

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

OPTIMA OIL & GAS COMPANY, LLC, Appellant, vs. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and MEWBOURNE OIL COMPANY, Appellees.	)	Case No. 103,742

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
APR - 8 2008
MICHAEL S. RICHIE
CLERK

APPEAL FROM THE CORPORATION COMMISSION

P. O. 528230 IS VACATED AND REMANDED WITH INSTRUCTIONS
COMMISSION ORDER 529450 IS REVERSED AND REMANDED WITH INSTRUCTIONS

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DEPUTY GENERAL COUNSEL

EXHIBIT
B

OKLAHOMA CORPORATION COMMISSION
Oklahoma City, Oklahoma

For Appellee Oklahoma Corporation Commission

Richard A. Grimes
GRIMES, ANDERSON & DAY, P.L.L.C.
Edmond, Oklahoma

For Appellee Mewbourne Oil Company

OPINION BY KEITH RAPP, CHIEF JUDGE:

¶1 Optima Oil & Gas Company, LLC (Optima) appeals a Corporation Commission pooling order and an order denying Optima's Motion to Stay Issuance of Order and Motion to Vacate Order No. 528230 in this action involving a Pooling Application filed by Mewbourne Oil Company (Mewbourne).

BACKGROUND

¶2 Mewbourne filed a Pooling Application with the Corporation Commission (Commission) on June 1, 2006, in Cause CD No. 200604826, seeking to force pool Optima's rights in Section 1, Township 20 North, Range 24 West, Ellis County, Oklahoma (the Unit). Optima owns 85 percent of the oil and gas leasehold rights underlying this property and Mewbourne owns the remaining 15 percent. Optima was the only respondent listed on the Pooling Application.[1]

[1] Optima, Mewbourne, and others had drilled another section in April 2006. There had been a meeting between the parties concerning the Fagala well in this section, which apparently is in the same local area. Thus, it can be said that Optima and Mewbourne were acquainted and had an apparent ongoing interest in the Fagala well.

¶3 On that same date, Mewbourne mailed, via certified mail, return receipt requested, the Pooling Application and the Notice of Hearing to Optima at its Oklahoma City business address.[2] The certified mail receipt was accepted and signed by Optima's receptionist/secretary on June 2, 2006. On July 31, 2006, the secretary quit her job with Optima, without notice, due to personal problems.[3] She did not notify anyone with Optima of the certified mail received from Mewbourne. The certified letter remained unopened until William Jack, Optima's local operations manager, discovered the letter in the secretary's file drawer on August 8, 2006, after the Pooling Application hearing. William Jack, upon discovery of the letter, notified Optima's attorney of the letter.

¶4 Mewbourne presented the Pooling Application to the Commission as an uncontested application on June 27, 2006, before Michael Porter, the Administrative Law Judge (ALJ). Optima did not appear at the hearing because it did not know about the hearing.[4]

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[2] Mewbourne mailed the Application and Notice of Hearing to:

Optima Oil and Gas Company
211 N. Robinson, Suite 1600 South
Oklahoma City, OK 73102

Record, page 137-E. This Court notes this is the same street address as Mewbourne.

[3] Record, Vol. I of II, p. 43, lines 16 - 24 (August 14, 2006, hearing).

[4] Record, Vol. I of II, p. 39 (August 14, 2006, hearing).

¶5 At the hearing, Mewbourne presented one witness, Chuck Falkenstein, a petroleum landman for Mewbourne to testify regarding whether it had made a diligent effort to reach a private agreement with the other owners in the Unit, as required by Corporation Commission Rule 165:5-7-7. He also testified concerning the fair market value of the oil and gas interests within the Unit.

¶6 Falkenstein testified that Mewbourne sent a proposal letter to all owners on May 21, 2006. He stated that he had made a diligent effort to reach an agreement with the owners for the purpose of drilling the Unit well. He also testified that Mewbourne filed the Pooling Application because it was unable to reach agreement with the other owners.[5]

¶7 As to the fair market value issue, Falkenstein testified that he had made a diligent investigation regarding the values paid for other interests in the Unit and surrounding eight units.[6] Based on this investigation, Falkenstein stated he ascertained that the fair market value should be $250 per acre with a corresponding 3/16th royalty interest. Falkenstein stated that the amount listed in the Pooling

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[5] Record, Vol. I of II, p. 8 (June 27, 2006, hearing).

[6] Falkenstein testified that the highest price paid per acre was by Chesapeake, which had paid $325 per acre. The next highest price paid was $250 per acre, which was paid by Optima. After Optima, the next highest price was $200 per acre.

Application reflected his investigation and, in his opinion, it reflected the current accurate market value.

¶8 In addition, Falkenstein testified that the scheduling requested in the Pooling Application reflected a fair length of time. Falkenstein also testified that Mewbourne requested the Commission appoint it operator of the Unit.

¶9 Falkenstein admitted at the hearing, upon the ALJ's questioning, that Optima owns 556.6 acres of the Unit and Mewbourne owns 102 acres.

¶10 After hearing testimony, the ALJ concluded that the Pooling Application should be granted and made the recommendation to the Commission.

¶11 Optima filed a Motion to Stay Issuance of Order and to Reopen the next day, on August 9, 2006, after discovery of the unopened Notice of Hearing. Optima argued that it was the sole respondent in the matter and the owner of 85 percent of the oil and gas leasehold interests in the Unit. It further argued that Optima would have contested Mewbourne's application if it had been aware of the filing and that Mewbourne knew this was not an uncontested matter between the lease owners. Optima asked the Commission to stay issuing an order on the matter, to reopen the cause, and to remand it to the ALJ for a full trial on the merits. The Commission set Optima's motion for hearing on August 14, 2006.

¶12 On August 10, 2006, the Commission entered Pooling Order No. 528230 (P. O. 528230) granting Mewbourne's Pooling Application as requested. This pooling order was entered before Optima's motion was heard, but after its filing. P. O. 528230 set forth the provisions governing the participation or nonparticipation by any owner within the Unit, including naming Mewbourne, as a minor lease interest holder, operator of the Unit well.

¶13 On the same day that the Commission entered P.O. 528230, August 10, 2006, Optima filed a Motion to Vacate Order No. 528230, seeking to vacate P. O. 528230 and to allow a full hearing on the merits of the Pooling Application. Optima argued that, prior to the Commission entering P. O. 528230, it had filed a motion asking the Commission to stay issuance of the order and to reopen the cause for a trial on the merits. Optima further argued that the Commission needed to conduct a full hearing of the issues.

¶14 On August 11, 2006, Mewbourne filed with the Commission an Affidavit of Mailing, certifying it had mailed a copy of P. O. 528230 "to each owner whose interest was pooled by said order," pursuant to P. O. 528230, paragraph 11. Mewbourne sent the Affidavit to Optima at both the Oklahoma City address and its Denver, Colorado address, as well as to Optima's counsel.

¶15 The ALJ, Michael Decker, heard Optima's Motion to Stay Issuance of Order and to Reopen on August 14, 2006. The parties noted that the only issue before the ALJ was the motion to reopen because the motion to stay was moot in light of the Commission previously entering P. O. 528230.

¶16 Optima presented the testimony of William Jack, the operations manager for Optima in Oklahoma City and a certified petroleum landman. Mr. Jack testified that he is a contract employee for Optima and handles all the day-to-day functions. He also testified that a partnership in Colorado, M & M Oil and Gas Properties (M & M), owns the stock in Optima and that the two partners of M & M reside in Denver, Colorado. Mr. Jack testified he makes recommendations to the owners and they make the decisions based on his recommendations.

¶17 Mr. Jack also testified regarding Optima's business relationship with Mewbourne. He stated that Optima is a working interest participant with Mewbourne in an offset well, the Mewbourne No. 1-6 Fagala (Fagala well). The Fagala well is located in the adjacent quarter section to Mewbourne's proposed wellbore in P. O. 528230. Mr. Jack testified that Optima originally had 52 percent of the spacing unit of the Fagala well, but sold "25 percent of 8/8 of a working

interest"[7] to Crusader Energy III during the drilling of the well in April 2006.[8] Mr. Jack testified that Mewbourne was aware of this transaction and the terms of the transaction.[9]

¶18 Mr. Jack also told the ALJ that he spoke with Mr. Falkenstein in February, 2006, regarding the fair market value Optima paid on the Pagala. Mr. Jack testified he also told Mr. Falkenstein that Optima had "86.875 percent of this unit by our acreage position and that any attempt to pool this matter would be such that we would protest."[10] According to Mr. Jack, he also advised Mr. Falkenstein that Optima intended to operate the well and that it "would be protesting any matter that would be filed."[11] Mr. Jack also stated on cross-examination that he could have presented his testimony and evidence on fair market value, operations, and other issues concerning the proposed Pooling Application at the June 27, 2006, hearing.

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[7] Record, Vol. I of II, page 31, lines 7 - 8 (August 14, 2006, hearing).

[8] The terms were for "$200 an acre, transferring a 25 percent interest in the unit at $200 an acre at 75 percent net revenue interest the transferee put a quarter back interest after the well, the initial well, had produced 7/10 of a Bcf." Record, Vol. I of II, pp. 31 - 32, lines 24 - 4 (August 14, 2006, hearing).

[9] Record, Vol. I of II, page 33 (August 14, 2006, hearing).

[10] Record, Vol. I of II, page 36, lines 15 - 17 (August 14, 2006, hearing).

[11] Record, Vol. I of II, page 36, lines 23 - 24 (August 14, 2006, hearing).

¶19 Mr. Jack also testified concerning his initial discovery of the unopened, certified letter containing Mewbourne's Pooling Application in his secretary's drawer on August 8, 2006.[12] Mr. Jack explained that his ex-secretary was having personal problems and abruptly quit her employment with Optima on July 31, 2006.[13] He discovered the unopened certified letter from Mewbourne in her desk.

¶20 On cross-examination, Mr. Jack testified that Brent J. Morse, one of the partners of M & M, sent an August 1, 2006, letter to its vendors and participants asking that future correspondence and documents be sent to Optima's Denver office.[14]

¶21 Optima's attorney argued that Mewbourne had notice that Optima, an 85 percent interest owner, intended to protest any Pooling Application and Mewbourne's request to be appointed operator based on Mr. Jack's conversation with Mr. Falkenstein. He further argued that Mewbourne had an obligation to apprise the Commission of this information at the June 27, 2006, hearing rather than submitting the Pooling Application as an uncontested application.

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[12] Record, Vol. I of II, p. 37, lines 10 - 19 (August 14, 2006, hearing).

[13] Record, Vol. I of II, pp. 43 - 44 (August 14, 2006, hearing).

[14] Record, Vol. I of II, pp. 45 - 47 (August 14, 2006, hearing).

¶22 In addition, Optima's attorney argued that procedural due process was not satisfied because Optima was not given a fair opportunity to be heard. Optima also argued that proper notice was not given to it as required by the Oklahoma Statutes, Oklahoma Constitution, and Commission Rules.

¶23 In response, Mewbourne argued that it followed the requisite notice requirements and that Optima failed to appear at the hearing to protest. Thus, fairness to the parties and to counsel and judicial economy required the Commission to follow strict compliance and to deny the motion. Mewbourne did not deny that it had actual knowledge of Optima's intent to protest any attempt by Mewbourne to pool the matter.

¶24 The next day, August 15, 2006, Optima's Motion to Vacate P. O. 528230 was heard by the ALJ, Michael Decker. The ALJ incorporated by reference the testimony and evidence from the August 14, 2006, hearing on Optima's Motion to Reopen. The parties also submitted additional testimony and evidence.

¶25 Mewbourne offered the testimony of Mr. Falkenstein, the petroleum landman who testified at the Pooling Application hearing. Mr. Falkenstein contradicted Mr. Jack's testimony by stating he had never had any conversations with Mr. Jack. However, on redirect, he admitted that he knew that Optima objected to the Pooling Application and to Mewbourne acting as operator of any

well to be drilled on the Unit. Mr. Falkenstein testified that Mewbourne hired a brokerage firm to do the market value checks on the Unit. The landman from this firm contacted Mr. Jack regarding the price Optima paid for a lease. Mr. Jack advised the landman that Optima would "protest any pooling hearing that was filed" and the landman relayed this information to Mr. Falkenstein.

¶26 After the hearing, the ALJ concluded "that the motion to vacate the order be added to my previous statement and that we reopen this cause for a protested hearing on the merits of the pooling application."[15] The ALJ opined that, pursuant to *Gose v. Corporation Comm'n*, 1969 OK 137, 460 P.2d 118, the Commission has the "authority in a pooling matter to do what is necessary to make sure their correlative rights are protected," including reopening the pooling order.[16] The ALJ noted that after considering all of the factors, his decision was that it was best to reopen the pooling application and allow a complete hearing on the merits. He stated there had been "extraordinary circumstances regarding the delivery of the application and notice to the party" and, after hearing testimony regarding Optima's ownership being in Denver, Colorado, there was a question whether the

[15] Record, Vol. I of II, p. 86, lines 17 - 20 (August 15, 2006, hearing).

[16] Record, Vol. I of II, p. 90, lines 14 - 22 (Decision of ALJ - August 15, 2006).

real party in interest had been given notice.[17] Finally, the ALJ noted that Mewbourne had received notice of Optima's intent to protest the Pooling Application.

¶27 On August 16, 2006, Optima filed a Motion to Stay Effectiveness of Order No. 528230 and a Motion to Set Appeal and For Expedited Appellate Process and Entry of Final Order.

¶28 Mewbourne's oral appeal of the ALJ's recommendation to grant Optima's motions to reopen and to vacate P. O. 528230 was heard on August 21, 2006, by Randolph S. Specht, Oil and Gas Appellate Referee (Appellate Referee). After hearing a statement by the ALJ and argument of counsel, the Appellate Referee entered his Report, filed August 22, 2006, affirming the ALJ's recommendation to grant the reopening and to remand to the ALJ for a full hearing on the merits. The Appellate Referee concluded:

> Therefore, when one reviews the totality of the circumstances presented in this cause: including the fact that Optima and Mewbourne had an ongoing business relationship the fact that Optima had noticed Mewbourne of its intent to protest the future pooling application of Mewbourne; the lack of actual receipt due to inefficiencies within Optima's office and other concerns support the granting of the motion to reopen and remand as well as vacate the pooling order.[18]

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[17] Record, Vol. I of II, p. 91, lines 4 - 17 (Decision of ALJ - August 15, 2006).

[18] Record, Vol. II of II, pp. 175 - 76.

¶29 Mewbourne appealed the Appellate Referee's Report to the Commission. The Commission issued a Deliberations Report on August 25, 2006. The Commission reversed the recommendations of the ALJ and the Appellate Referee to grant Optima's motions to vacate and to reopen.

¶30 The Commission also entered an Order Dismissing Motion to Stay Effectiveness of Order No. 528230 and an Order Dismissing Motion to Set Appeal and Expedite Appellate Process and Entry Final.

¶31 The Commission's Order Denying Motion to Vacate Order No. 528230 and Motion to Stay Issuance of Order and to Reopen was entered on September 8, 2006 (Order No. 529450). The Commission made the following findings, in part:

> 1. This is an Application of Mewbourne Oil Company for pooling oil and gas interests in certain named common sources of supply in the 640-acre drilling and spacing unit consisting of Section 1, Township 20 North, Range 24 West, Ellis County, Oklahoma. Optima was the only respondent named in this Application.
>
> 3 [sic]. Mewbourne caused a copy of the Application and Notice of Hearing in this cause to be mailed to Optima by certified mail at least fifteen (15) days before the scheduled hearing date. Optima signed for and accepted that certified mailing but contends that its manager in Oklahoma City was not made aware of such fact by the employee who signed for the mailing.
>
> 4 [sic]. Optima did not appear on the date this cause was set for hearing and Mewbourne obtained the recommendation of an Administrative Law Judge for the requested relief. Order No. 528230 was issued in this cause on August 10, 2006.

> 5 [sic]. Optima seeks to vacate Order No. 528230 and have this cause reopened for the purpose of a protest concerning certain issues, including operations and values.
>
> 6 [sic]. The Commission finds that notice was properly given to Optima in this matter and that the Motion to Vacate Order No. 528230 should be denied. The issuance of that Order moots the need to consider the Motion to Stay Issuance of Order and same should be denied.

Based on these findings, the Commission denied Optima's request to vacate P. O. 528230 and to stay issuance of P. O. 528230.

¶32 Optima appeals the Commission's initial P. O. 528230 and the Commission's Order No. 529450, denying its request to vacate and stay issuance of P. O. 528230.

STANDARD OF REVIEW

¶33 The Oklahoma Constitution provides two standards of review in appeals from a Corporation Commission order, depending on the issue raised by the appealing party. If a violation of a constitutional right is asserted, this Court must "exercise its own independent judgment as to both the law and the facts." Oklahoma Const., art. 9, § 20. On all other issues, a more deferential standard is applied and, the review is confined to determining whether "the Commission has regularly pursued its authority, and whether the findings and conclusions of the

Commission are sustained by the law and substantial evidence." *Id*; *see*, *Application of Southwestern Bell*, 2007 OK 55, ¶ 9, 164 P.3d 150, 156.

ANALYSIS

¶34 Optima's appeal is grounded on lack of notice and misrepresentation by Mewbourne before the Corporation Commission. Such lack of notice involves constitutional concerns. First, Optima argues the Corporation Commission erred in entering P. O. 528230 and Order 529450, denying Optima's motion to reopen and vacate P. O. 528230. Optima argues the Commission's action deprives it of constitutional rights to due process and also presents a jurisdictional issue capable of being raised at any time. Optima also argues the Corporation Commission erred because the initial pooling order, P. O. 528230, is based on fraudulent and misleading evidence and is not supported by substantial competent evidence.

¶35 The question is this: Did the Corporation Commission err in not vacating P. O. 528230 when faced with the facts and the findings of its own ALJ and Appellate Referee, and, in doing so, did the Corporation Commission err in failing to vacate P. O. 528230?

¶36 Moreover, the Corporation Commission has failed to account for the evidence concerning lack of notice and its denial of due process. Instead, the

Commission appears to have viewed the question of notice strictly on the veneer of adherence to a statutory guideline.

¶37 Under the circumstances of this case, this Court finds the Corporation Commission erred in denying Optima's request to vacate P. O. 528230 for the reasons set out in subsequent paragraphs.

¶38 It is undisputed that Mewbourne presented its Pooling Application to the Corporation Commission on the uncontested docket in the face of its actual notice that Optima, an 85 percent interest owner in the Unit, opposed any pooling application in this Unit proposed by Mewbourne. Second, it is undisputed that Mewbourne had actual knowledge that Optima opposed Mewbourne's request to be appointed operator of the Unit. Optima's opposition to Mewbourne's plans for Section 1 is confirmed by the fact that Optima took immediate corrective measures either the same day, or the following day, it learned of adverse action taken by Mewbourne, which was inimical to Optima's interest.

¶39 The Appellate Referee correctly summarized the effect of these circumstances when he wrote:

> Thus, based on: (1) the fact that Optima had informed Mewbourne that it wished to protest any future pooling application in the area; (2) the fact that Optima never had actual notice of the pooling application covering Section 1 that was heard on June 27, 2006 until August 8, 2006; (3) given the fact that Optima knew of other transactions in the area of which both parties had notice but were not brought out at the

> hearing; (4) the fact that that [sic] Optima would have sought operations as a 85% owner; (5) the fact that that [sic] Optima would have challenged the well costs established for the proposed Section 1 unit well; and (6) as the ALJ found: given the totality of the circumstances, the cause should be reopened and the order vacated for the taking of additional evidence in a protested setting.

The Appellate Referee concluded:

> 2) The Referee believes that on the face of the proceedings, Mewbourne did properly notify Optima of the pooling application and hearing. Moreover, as one looks at the *totality of the circumstances* involved; on receipt of service the placing of the application and notice in a disgruntled employee's drawer until after the hearing on the merits, the request of Optima that Mewbourne serve all process upon the Colorado office; and the fact that William Jack notified Mewbourne that it would protest all future pooling applications; one can find that due process was not properly served in this particular case.
>
> 3) Just because service may be facially valid, but latently ineffective, means that the judgment is not impervious to an attack for an infirmity that lies beneath the *record's* surface. The ALJ's reliance upon the *Vance* and *Shamblin* cases is not totally inappropriate as applied to these circumstances. As noted in *Shamblin*: "It is the totality of circumstances - not the particular norms of statutory requirements - that dictates the quality of service necessary to safeguard an individual's property interest at stake." (Emphasis of court and footnote omitted). One must also consider that the validity of service in any case rests on the particular facts and circumstances of *that* case.
>
> 4) Therefore, when one reviews the totality of the circumstances presented in this cause: including the fact that Optima and Mewbourne had an ongoing business relationship the fact that Optima had noticed Mewbourne of its intent to protest the future pooling application of Mewbourne; the lack of actual receipt due to inefficiencies within Optima's office and other concerns support the

granting of the motion to reopen and remand as well as vacate the pooling order.

¶40 The facts here are similar to a cause of action where a default judgment has been taken. The courts are reluctant to sustain such as not being in the interests of justice and can operate as a denial of access to the courts. *See St. John Med. Ctr. v. Brown*, 2005 OK CIV APP 101, 125 P.3d 700. For example, in *Brown*, the appellant's attorney failed to timely file a pleading due to a mishap of events, which resulted in the trial court entering a default judgment.

¶41 The Court of Civil Appeals concluded the trial court abused its discretion in granting summary judgment on the petition to vacate. *Id.* at ¶ 14, 125 P.3d at 703. The Court also reiterated several tenets that should be considered in determining whether the trial court abused its discretion in ruling on a motion to vacate a default judgment as outlined by the Oklahoma Supreme Court:

> "[I]n proceedings of this character each case must depend on the facts of the particular case; default judgments are never viewed with favor; litigated questions should be tried on their merits; it is the policy of the law to afford every party to an action a fair opportunity to present his side of a cause; . . . discretion should always be exercised so as to promote the ends of justice. . . ."
>
> [*Burroughs v. Bob Martin Corp.*, 1975 OK 80, ¶ 23, 536 P.2d 339, 342-43.] Trial courts should also consider whether the defaulting party had a valid defense, whether vacation could be granted without substantial delay or injustice, and whether allowing the default judgment to stand would work a serious injustice.

Id. at ¶ 10, 125 P.3d at 702. In concluding the trial court abused its discretion, the Court of Civil Appeals found:

> [T]he trial court's denial of the petition to vacate the default judgment does not further justice. The default judgment would work a serious injustice against Brown, and there has been no showing that vacation of the default judgment would cause substantial delay or injustice.

Id. at ¶ 14, 125 P.3d at 703. Thus, the Court of Civil Appeals reversed and remanded the matter for further proceedings.

¶42 This Court finds the principle set forth in *Brown* instructive in the present action. Here, Mewbourne and Optima had a prior working relationship. Also, although Mewbourne mailed the Pooling Application to Optima, it is undisputed that Optima never had actual notice of the Pooling Application and hearing because of the disgruntled secretary's failure to notify anyone from Optima of the receipt of the application. Furthermore, Mewbourne presented the Pooling Application as uncontested although it had actual notice and knowledge that Optima intended to oppose any pooling application on the Unit submitted by Mewbourne and any application by Mewbourne to be appointed operator. Further, it is undisputed that Mewbourne did not present to the Corporation Commission a complete disclosure of facts to allow the Corporation Commission to make an informed decision. This failure denies the Corporation Commission the opportunity to perform its duty in an informed, intelligent manner. In so doing,

Mewbourne's counsel misled the Corporation Commission and caused it to enter an erroneous order granting P. O. 528230. In addition, it does not appear from the record that allowing the matter to proceed on the merits would cause substantial delay or injustice.

¶43 The totality of the circumstances require this Court to find the Corporation Commission erred in denying Optima's motion to reopen or to vacate P. O. 528230. Thus, Order 529450 denying Optima's motion to reopen or to vacate is reversed and remanded for further proceedings consistent with this Opinion.

¶44 Based on the foregoing, this Court also finds that P. O. 528230 is not supported by substantial evidence and the Corporation Commission erred in entering P. O. 528230. P. O. 528230 is hereby vacated and the matter remanded to the Corporation Commission for a full hearing on the merits of Mewbourne's Pooling Application and any further proceedings consistent with this Opinion.

¶45 P. O. 528230 IS VACATED AND REMANDED WITH INSTRUCTIONS. COMMISSION ORDER 529450 IS REVERSED AND REMANDED WITH INSTRUCTIONS.

JABBARD, P.J., and GOODMAN, J. (sitting by designation), concur.

April 8, 2008

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: MEWBOURNE OIL COMPANY		)
		) CAUSE CD NO.
RELIEF SOUGHT: POOLING		) 200604826
		)
LEGAL DESCRIPTION:	SECTION 1, TOWNSHIP 20 NORTH, RANGE 24 WEST, ELLIS COUNTY, OKLAHOMA	)

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

HEARING BEFORE APPELLATE REFEREE:

September 17, 2021 in Virtual Courtroom D
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Jan Preslar, Oil and Gas Appellate Referee

HEARING BEFORE ADMINISTRATIVE LAW JUDGE:

March 24 & 25, 2021 in Courtroom F
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Kendal Huber, Administrative Law Judge

APPEARANCES: Dale Cottingham and Dean Luthey, on behalf of Mewbourne Oil Company; and Andrew J. Waldron and Russell J. Walker, on behalf of Optima Oil & Gas Company, LLC

REFEREE'S REPORT ON MEWBOURNE'S EXCEPTIONS TO ALJ'S RECOMMENDATION TO GRANT OPTIMA'S MOTION TO REOPEN TO DETERMINE SANCTIONS AND RESTITUTION AND ALJ'S RECOMMENDATION TO DENY MEWBOURNE'S MOTION TO DISMISS OPTIMA'S MOTION TO REOPEN TO DETERMINE SANCTIONS AND RESTITUTION

This case comes before the Oil and Gas Appellate Referee on the exceptions of Applicant Mewbourne Oil Company to the Administrative Law Judge's recommendations to grant Protestant Optima Oil & Gas Company, LLC's Motion to Reopen and Determine Sanctions and Restitution, and to deny Mewbourne's Motion to Dismiss Optima's Motion to Reopen and Determine Sanctions and Restitution.

EXHIBIT
C

I. SUMMARY OF REFEREE'S RECOMMENDATION

The Referee affirms the ALJ's recommendation to grant Optima's Motion to Reopen and Determine Sanctions and Restitution and to deny Mewbourne's Motion to Dismiss Optima's Motion to Reopen and Determine Sanctions and Restitution.

II. PROCEDURAL HISTORY

1. On June 1, 2006, Mewbourne filed its application seeking to pool the interests of owners in the 640-acre drilling and spacing units for the Morrow Sand, Tonkawa, Cottage Grove, Cleveland, Big Lime, Oswego, Cherokee Group, Atoka, Springer, and Chester separate common sources of supply underlying Section 1, Township 20 North, Range 24 West, Ellis County, Oklahoma. Optima was the only named respondent in the application.

2. On June 27, 2006, the cause was heard uncontested before ALJ Michael Porter and recommended for approval.

3. On August 9, 2006, Optima filed a Motion to Stay Issuance of Order and to Reopen the proceedings, claiming it owned 85% of the oil and gas interest in the subject units and was not aware of the filing of Mewbourne's pooling application.

4. On August 10, 2006, the Commission entered Order No. 528230, granting Mewbourne's pooling application in this cause.

5. Also on August 10, 2006, Optima filed a Motion to Vacate Order No. 528230.

6. On August 15, 2006, Optima's Motion to Reopen and Motion to Vacate Order No. 528230 were heard and recommended by ALJ Michael Decker. On the same day, Mewbourne announced oral exceptions to the ALJ's recommendations to grant Optima's motions.

7. On August 22, 2006, Appellate Referee Randolph Specht recommended the ALJ's recommendation to grant Optima's Motion to Reopen and Motion to Vacate Order No. 528230 be affirmed.

8. On September 8, 2006, the Commission issued Order No. 529450, rejecting the ALJ's and Referee's recommendations, and denying Optima's Motion to Reopen and Motion to Vacate Order No. 528230, saying, "Optima signed for and accepted certified mailing but contends that its manager in Oklahoma City was not made aware of such fact by the employee who signed for the mailing."

9. Optima appealed the Commission's Order No. 529450 to the Oklahoma Supreme Court.

10. On April 8, 2008, the Oklahoma Court of Appeals vacated Order No. 528230 and reversed Commission Order No. 529450 in a 20-page opinion, stating, "it is undisputed that Mewbourne did not present the Corporation Commission a complete disclosure of facts to allow

the Corporation to make an informed decision."[1] Mewbourne filed a petition for writ of certiorari to the Oklahoma Supreme Court.

11. On September 8, 2008, the Supreme Court denied Mewbourne's petition for writ of certiorari and withdrew the Court of Appeal's April 8, 2008 opinion from publication.

12. On January 17, 2014, Optima filed a Motion to Reopen to Determine Sanctions and Restitution Arising from Applicant's Adjudicated Misconduct.

13. On February 2, 2017, Mewbourne filed a Motion to Dismiss Optima's Motion to Reopen to Determine Sanctions and Restitution, and on June 20, 2017, Optima filed a response thereto.

14. On July 17, 2017, Mewbourne's Motion to Dismiss was heard by ALJ Andrew Dunn, who recommended Mewbourne's Motion be heard with Optima's Motion to Reopen to Determine Sanctions and Restitution because the motions would present much of the same material. The Referee agreed, and the Commission entered Order No. 714709, consolidating for hearing Optima's Motion to Reopen to Determine Sanctions and Restitution and Mewbourne's Motion to Dismiss such motion.

15. On March 1, 2021, Mewbourne filed an Amended Motion to Dismiss Optima's Motion to Reopen to Determine Sanctions and Restitution.

16. On March 23 and 24, 2021, Optima file a response to Mewbourne's Amended Motion to Dismiss and the motions were heard by the ALJ, who issued her report on August 12, 2021, recommending Optima's Motion to Reopen to Determine Sanctions and Restitution be granted and recommending Mewbourne's Motion to Dismiss Optima's Motion to Reopen to Determine Sanctions and Restitution be denied.

17. On August 16, 2021, Mewbourne filed written exceptions to the ALJ's August 12, 2021 report, which were heard by the Referee on September 17, 2021.

III. ANALYSIS

It is well-settled that the Commission is a tribunal of limited jurisdiction, having only those powers conferred upon it by the Constitution and statutes, either expressly or by necessary implication. *Amarex, Inc. v. Baker*, 1982 OK 155, 655 P.2d 1040, 1045; *Corporation Com'n v. Phillips Petroleum Co.*, 1975 OK 11, 536 P.2d 1284, 1290; *Choctaw Gas Co. v. Corporation Com'n*, 1956 Ok 110, 295 P.2d 800, 802; *Cities Service Gas Co. v. Peerless Oil & Gas Co*., 1950 OK 4, 220 P. 2d 279, 288.

[1] Optima's operations manager in Oklahoma City had testified, that in February, 2006, he informed Mewbourne's landman and only witness at the uncontested hearing on its pooling application, that Optima would protest any attempt to pool and that Optima intended to operate the unit.

The question presented here is "whether the imposition of sanctions for intrinsic fraud committed on the Commission when acting as a court of record is one of the inherent powers conferred upon the Commission by necessary implication?"

Mewbourne argues the Commission is not a court and does not have authority to impose sanctions for intrinsic fraud, *citing State ex rel. Edmondson v. Corporation Com'n*, 1998 Ok 118, 971 P.2d 868 (Commission is not part of the judicial branch and the Commissioners are not judges for purposes of compensation); and *Vogel v. Corporation Com'n*, 1942 OK 14, 121 P.2d 586, syl. 7 (the Corporation Commission is not a court for purposes of Okla. Const. art. 2, § 25). However, Mewbourne acknowledged that in *Monson v. Corporation Com'n*, 1983 OK 115, 673 P.2d 839, the court said "when acting in an adjudicative capacity the Commission is to be treated as the functional analogue of a court of record."

Although the Oklahoma Supreme Court has said that for some purposes the Commission is not treated as a court and the Commissioners are not treated as judges, in *Leck v. Continental Oil Company*, 1989 OK 173, 800 P.2d 224, the court said the Commission has inherent power, as a court of record, to hear allegations of intrinsic fraud and rule upon them. In *Leck*, appellees obtained a location exception to drill an off-pattern well, and were granted a normal production allowable. Subsequently, appellants/mineral owners filed a district court action, alleging, *inter alia*, that appellees made misrepresentations to the Commission in order to secure the location exception. Appellees removed the case to federal district court, which found it did not have subject matter jurisdiction and dismissed the case. Appellants appealed, and the Tenth Circuit Court of Appeals certified the following question to the Oklahoma Supreme Court:

> Does the district court have subject matter jurisdiction to hear and decide an action for damages brought by mineral interest owners against the owner and operator of an oil and gas lease where the mineral interest owners allege... misrepresentations by the operator to the Oklahoma Corporation Commission during a hearing on the application of the mineral interest owners to restrict the allowable production from the other oil and gas well?

Id. at 225.

The Oklahoma Supreme Court found "[i]n essence, the appellants are asking for damages because the appellee made misrepresentations to the commission during the hearing on plaintiffs' application." *Leck*, 800 P.2d at 239. "Since the Oklahoma Corporation Commission has the power and authority of a court of record in this state, it naturally follows that if intrinsic fraud occurred during an adversarial trial before the commission, then under our holding in *Chapman*, the proper forum to hear allegations of the intrinsic fraud and rule upon them is the commission." *Leck,* 800 P.2d at 240.

Mewbourne argues it is well-settled the Commission cannot try a case for damages, citing *Kingwood Oil Company v. Hall-Jones Oil Corp.*, 1964 OK 231, 396 P.2d 510; and *Texas Oil and Gas Corporation v. Rein*, 1974 OK 8, 534 P.2d 1277, 1279. It argues Optima's Motion to Reopen to Determine Sanctions and Restitution should be dismissed because the only proper sanction the Commission may impose for intrinsic fraud is vacation of the ill-gotten order and

the Court of Appeals has already vacated Order No. 528230. In support, Mewbourne relies on *Chapman v. Chapman*, 1984 OK 89, 692 P.2d 1369(relief from intrinsic fraud must be by direct attack in the same case in which fraud was committed).

The Referee disagrees with Mewbourne's argument that the only relief the Commission may impose for intrinsic fraud is vacation of Order No. 528230 because the Commission may not try a case for damages. This is not a case for damages, but for sanctions. As part of a court's inherent power to hear allegations related to intrinsic fraud is the inherent power to fashion an appropriate sanction. *See Chapman v. NASCO, Inc*. 501 U.S. 32, 44-45. "It has long been understood that '[c]ertain implied powers must necessarily result to our courts of justice from the nature of their institution,' "powers" 'which cannot be dispensed with in a Court because they are necessary to the exercise of all others.'" *Id*. at 43.

In *Leck*, the Oklahoma Supreme Court has already recognized the Commission's inherent power to hear allegations of intrinsic fraud perpetrated on the Commission. It naturally follows the Oklahoma Supreme Court would also recognize the Commission's inherent power to fashion an appropriate sanction for such fraud. The Supreme Court did not expressly say the Commission could impose monetary sanctions for intrinsic fraud, but it certainly acknowledged "[i]n essence, the appellants are asking for damages because the appellee made misrepresentations to the commission during the hearing on plaintiffs' application," *Leck*, 800 P.2d at 239, and said, "the proper forum to hear allegations of the intrinsic fraud and rule upon them is the commission." *Leck,* 800 P.2d at 240.

The Referee finds imposition of an appropriate sanction for intrinsic fraud committed on the Commission when acting as a court of record is one of the inherent powers conferred upon the Commission by necessary implication, and affirms the ALJ's recommendations to grant Optima's Motion to Reopen for Determination of Sanctions and Restitution, and to deny Mewbourne's Motion to Dismiss Optima's Motion to Reopen for Determination of Sanctions and Restitution.[2]

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these matters pursuant to the provisions of Okla. Const. art. 9, § 19, and 52 O.S. § 87.1.

2. Due and proper notice of these proceedings was given as required by law and the rules of the Commission.

[2] Whether or not any fraud was perpetrated on the Commission in the course of the proceedings on Mewbourne's application is not before the Referee, and was not before the ALJ. Also, the merits of any defense Mewbourne may have to allegations of intrinsic fraud or sanctions are also not before the Referee, and were not before the ALJ. What is an appropriate sanction, if any, in addition to vacation of Order No. 528230, is also not before the Referee and was not before the ALJ. Those question may be addressed upon reopening of the record in this cause.

3. The Commission is the proper forum to hear allegations of intrinsic fraud and rule upon them.

4. The imposition of sanctions for intrinsic fraud committed on the Commission when acting as a court of record is one of the inherent powers conferred upon the Commission by necessary implication.

5. The ALJ's recommendations to grant Optima's Motion to Reopen for Determination of Sanctions and Restitution, and to deny Mewbourne's Motion to Dismiss such motion, is affirmed and the record should be reopened for the purpose of determining if intrinsic fraud was committed and, if so, an appropriate sanction, if any.

Respectfully submitted, this 6th day of October 2021.

Jan Preslar

Jan Preslar
Oil & Gas Appellate Referee

C:

Commissioner Dana Murphy
Commissioner Bob Anthony
Commissioner J. Todd Hiett
Nicole King
Matt Mullins
Elizabeth A.P. Cates
Ben Jackson
Curtis Johnson
Mary Candler
Michael Norris
Dale Cottingham
Dean Luthey
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