

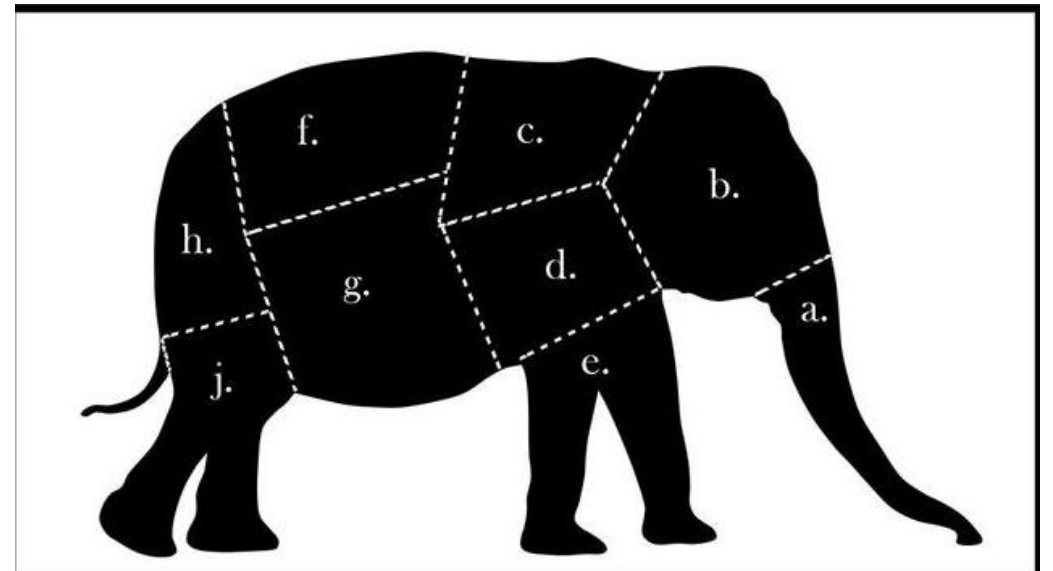
State Bar of Texas
Handling Your First (or Next) Oil & Gas Case:
Who is the Client? Operative Documents,
Necessary Parties, and Knowing Your Limits

Presented by
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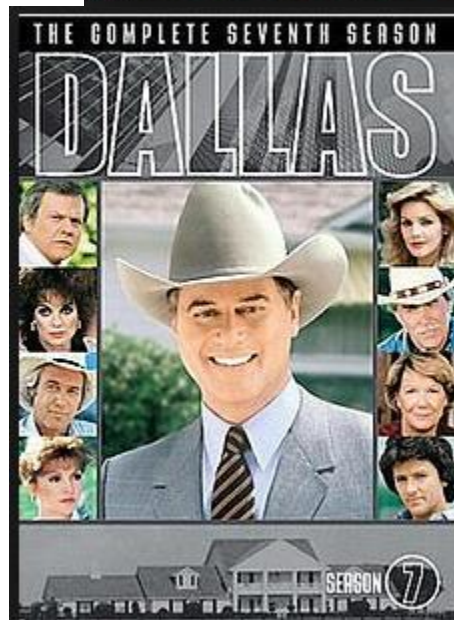
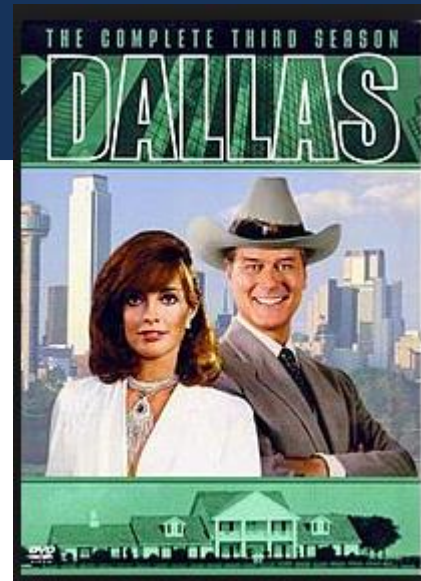
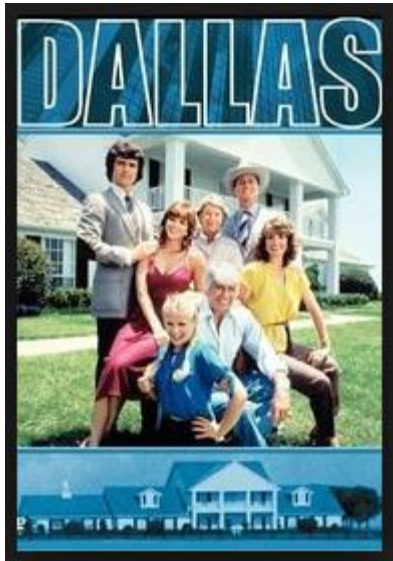


Eat the elephant one bite at a time

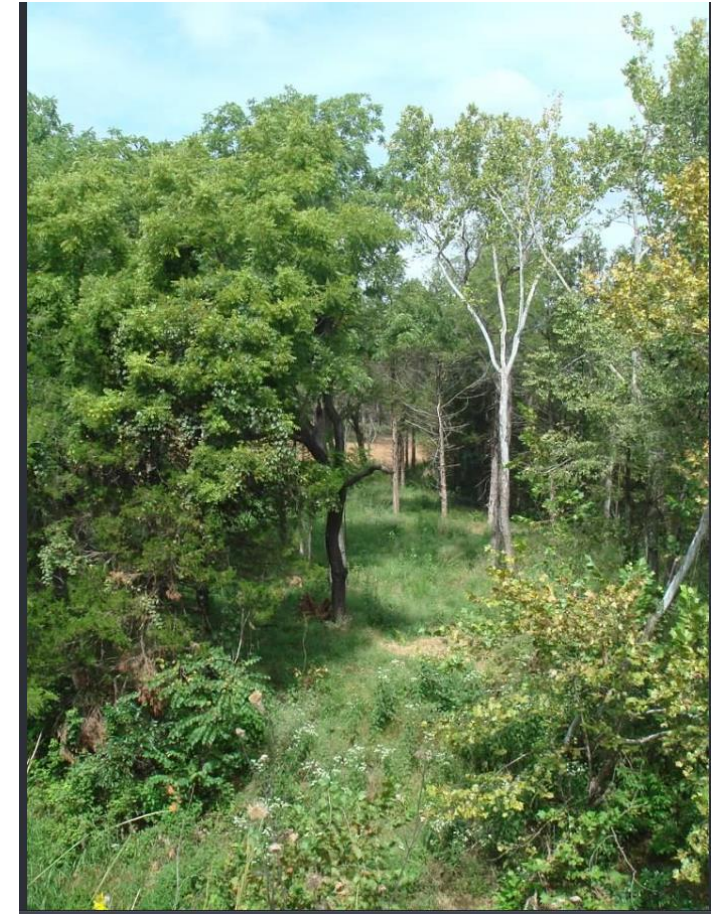
- Step by step
- “Hands on” practical guide
- New attorneys or experienced attorneys handling their first oil and gas case



What I envisioned

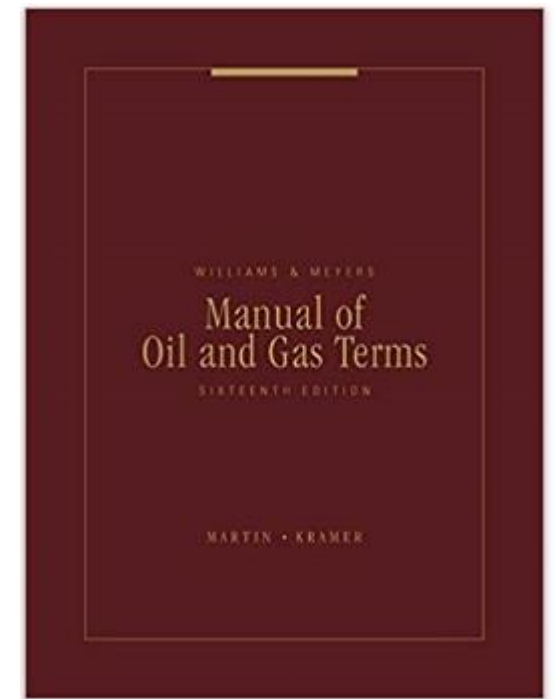


Reality



Getting started

- Williams & Meyers Manual of Oil & Gas Terms
- Desk reference - words and phrases useful to lawyers and industry members
- New on Amazon (check with firm librarian) for \$200
- Used edition for use as dictionary/watch case law updates



Getting started

- Make your own term list
- Many terms you hear will not be in Manual of Oil & Gas Terms
- Witness interviews, your client, depositions
- Jot down terms and meanings and put in a Word document/word-searchable=valuable later
- Build list as you continue your practice
- Ask for explanation if you need to



Who is the Client?

- Role of client in dispute
- Initial meeting
- In person or phone
- Set aside adequate time to gather background so you can start your work
- Answer deadline: phone
- Usually one hour=productive
- Set up follow-up meetings after



Questions for Initial Call

- What was your role on the project?
- How was your relationship/role established?
- History of role/relationship?
- For dispute over particular well – understand name of well, status of well



Questions for Initial Call

- Copies of service documents
- Know your client: in-house counsel vs. business owner or consultant
- If plaintiff side, set timeline



Questions for Initial Call

- Manage expectations
- Clear and consistent communication as case unfolds
- Clarify client's relationship with other parties named in the suit and determine who hired each party



Questions for Initial Call

- Clarify responsibilities of all parties
- Counterclaim or crossclaim?
- Real life example: consulting agreement w/indemnification clause (crossclaims for breach of K and dec action)



Operative Documents

- After initial call, influx of documents
- Where to start
- Read initial pleading



Operative Documents

- Relevant contracts
- Contracts will provide framework: oil and gas disputes often boil down to contract disputes
- Keep a running list of additional information you will need from your client and discovery requests



List of documents to request

- Well file(s)
- All relevant contracts, i.e., farmout agreement, drilling contract, consulting agreements, lease, etc.
- Contracts with any third parties



List of documents to request

- Litigation hold to your client: working with in-house counsel vs. business owner/consultant
- Emails, text messages, and find out other ways communicated
- Determine type of operative documents you are dealing with



Budget

- Start to consider case budget
- Larger company – understand whether the company requires a quarterly case budget and get form to fill out so can determine early time allotment on case
- Smaller company or consultant – process may be more informal, make sure discussion happens early, address retainer



Budget

- Staff case appropriately
- Mutual understanding of expense and potential complications once litigation takes on life of its own



Necessary Parties

- Additional parties may need to be added or your client may be the added party
- Well site consultant/company man, a drilling engineer or project manager, or service provider for some portion of the drilling project
- When added: other contracts may come into play



Necessary Parties

- Determine early to avoid an empty seat
- FRCP 19 or TRCP 39 – requires joinder if feasible, not part of this paper
- Purpose of this speech is to give practical guidance to get started



Necessary Parties

- Plaintiff: start with a contract if you have one
- May assert several COAs – breach of contract claims are most manageable to litigate
- Review contract and determine client's rights



Necessary Parties

- Attorneys' fees clause?
- Choice of law provision?
- Venue provision?
- Clarify parties to the contract – watch for parents companies, holding companies, operating companies, etc.



Necessary Parties

- Defendant
- Make sure your client correctly named
- Being sued by correct party/standing?
- Real life example: parent company sued my client on a contract my client had with one of its subsidiaries.



Necessary Parties

- Many parties/many hats
- Crossclaims and counterclaims can make everyone a defendant
- Means other contracts, relationships, and COAs come into play
- When client brought in, assess potential claims and parties you may want to involve and assert claims against to fully resolve the matter



Knowing Your Limits

- Hire expert early
- Consult with an oil and gas attorney at your firm
- Your job=litigation



Knowing Your Limits

- This is specialized area – may find yourself out of your depth
- Consult with someone that deals with oil and gas transactions on daily basis as bulk of practice



Knowing Your Limits



Knowing Your Limits

- Mechanical issue w/well failure – need an engineer
- Transaction – need an expert that deals with oil and gas contracts



Knowing Your Limits

- Meet w/client and expert in person
- Room w/white board to explain crux of dispute
- Entire day & large space to sketch out discussion



Knowing Your Limits

- Separate expert to address damages
- Hire subject matter expert first, damages expert okay to hire later



Knowing Your Limits

- Meet w/client at client's offices
- Easier access to relevant case documents
- Fact witnesses
- Be cognizant of privilege issues



The expert can help you

- Know what documents to request
- Know what documents are missing from the other side's production – prepare motions to compel
- Retain expert(s) early enough to help you determine what to request in your requests for production and what is missing from the other side's production.



The expert can help you

- Interpret documents.
- Explain recent trends in drilling.
- Explain the “who’s who” of the drilling industry. There are many companies involved in the drilling industry and a good expert (this may be your client or client’s employee) can sit down and explain who the major players are when it comes to drilling companies, operators, fracking companies, and other energy industry service and product providers.



Knowing Your Limits

- Always have worked with a transactional oil and gas attorney from my firm
- Complicated area of the law
- You are expert on litigation
- Need someone w/knowledge of the business to deliver the best representation to your client



Knowing Your Limits

- Always hired expert early for cases where the client was not, or did not have an employee, that could provide necessary expertise
- Use as consulting expert if you do not want them to testify
- Client may be best expert
- FRCP 26(a)(2) disclosure if use client or client's employee



Final Thoughts

- Experience to build on
- Team with other attorneys that are experts in the field to forge a relationship that will deliver valuable client representation and future opportunities
- Team with client to offer business solutions to litigation
- Being part of the solution when it comes to oil and gas cases is invaluable to any Texas litigator



QUESTIONS?



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