ORAL ARGUMENT – 09/29/04
03-0836
VALENCE OPERATING CO. V. DORSETT

LAWYER: The Texarkana CA in this case in construing those widely used Model Form joint operating agreement, committed an error of grave significance to the oil and gas industry in Texas by ruling or construing for the first time an implied 30 day standstill requirement on the commencement of operations proposed under a joint operating agreement. They compounded this error by saying that you couldn't start even a negligible part of the proposed operation until the 30 day election period had transpired.

The way it works under the joint operating agreement is you send out a notice proposing the operation specifying the well location, the estimated costs, and other particulars and you give the other nonproposing parties 30 days within which to decide whether they want to share in the risk of the operation and the cost, or whether they want to let the other parties do that and give up a multiple of the production that they would be entitled to out of that operation if it's successful.

It's undisputed in this case that the nonproposing party had the full opportunity afforded for under the operating agreement to make her election within the 30 day period. What the respondent did in this case, is she sat back the first of the 8 wells drilled was drilled in 1996. She waited four years. She never elected to participate within a 30-day period. She let the operation go on at the cost, and expense and risk of the other parties. Four years later she comes in and says, oh, you started some part of the operation before the end of the 30-day election period, therefore, you can't avail yourself of the nonconsent provisions in this operating agreement. That flies in the face of industry custom and practice. It's very important in the oil and gas industry that you are able to conduct operations when you need to conduct those for rig availability, ____ markets, and to address lease concerns: lease termination issues; drainage; development issues. You've got to be able to commence the work when the industry dictates through the rigs and everything else. You can't wait necessarily always for the entire notice period to go.

Now what the CA did is they said, Well Ms. Dorsett, the respondent would be harmed because we started early. But she wouldn't. Because the CA was concerned that the information needs to be conveyed through the nonproposing party, and they need to have the opportunity to elect. They had that. In fact, by starting an operation early, you get even more information which you can consider to make your election. So you benefit from the early commencement of operations. The CA acknowledged that there was a benefit from the early start of operations, but then said, Well surely Valance couldn't have intended to confer such a benefit on Ms. Dorsett.

What the CA needed to consider is all the reasons why Valence would do that: Because of rig availability, the market factors, the lease concerns. And those are all things that this court and appellate courts have commonly taken notice of for decades in oil and gas cases.

HECHT: Or because they just felt like it. Don't you think they have the - isn't it your position that Valence had the right to do that whether there was a good reason or a bad one?

LAWYER: Yes. That is the position. As long as the party is afforded their 30 day election period, Yes. Then you can start those operations before that period commences. Absolutely. Or during that period.

WAINWRIGHT: So if notice was served on day 1 and the spud date was day 2, then the working interests owners would have 29 days worth of drilling information as a benefit?

LAWYER: Absolutely.

WAINWRIGHT: Is there any harm not allowing the 30 days to fully run?

LAWYER: I tried to think of every possible harm there could be, and I couldn't come up with any harm. The CA when they construe the provision, they looked - they basically made three errors when they construed the operating agreement. The first is, they looked at a provision that dealt with consenting parties in evaluating the nonconsent party. What they said is there is a provision that says that after the 30 day period runs, then the proposing party or operator needs to advise all the consenting parties of who is in and give them an opportunity to take part in the nonconsent benefit that the parties who have not consented have given up. And the CA said, well they wouldn't be afforded that opportunity if you started early. Well of course they would. They would be in the same exact position, the consenting parties, that the nonconsenting party was in by the early start of operations. They got that much more information on which to base their decision. So the consenting parties are not harmed. They are benefitted by the early start of an operation. So the looking to that provision was wrong in the first place to construe the nonconsent provision. But then they misconstrued it anyway.

Then the other error they made is they looked to the provision that said that in order to be entitled to the benefits of the nonconsent provision, actual work must commence within 60 days after expiration of the notice period, and must be completed with due diligence. They construed the word within to mean only during that magical 60 day period. But if you look at a couple of definitions even in Websters dictionary it is before the expiration of; within the fixed limits of. Which means anytime before expiration of that 60 day period you could start the operation. And more importantly, what all the courts have said is, you've got to construe these model forms where you have a trade or a profession, you've got to construe it in light of the custom and practices in the industry. And the custom and practice in the industry as demonstrated by the TxOGA brief, which represents 90% of the production in Texas, said this is what operators do all the time. They've got to start operations when the factors require it. So if you construe the word within in its proper context, don't do it in the ordinary natural meaning, you do it in the context in which it is used in the industry.

But I submit, even if you go to the ordinary and customary meaning and you

look at the definitions in Websters, you still come back to the fact that as long as you start it before the expiration of the 60 day period, following the 30 day notice period you are fine, whether it be during that 60 day period or before that 60 day period.

WAINWRIGHT: So you would assert then that one absolute in these time periods is that commencement of work on the proposed project has to begin within 90 days after notice. That's an absolute.

LAWYER: That's absolute. And the reason for that provision, the CA misconstrued the reason for that provision and TxOGA talks about that in their brief. The reason for that provision says you've got to commence actual work within the 60 days following the expiration of the notice period, and complete it with due diligence. The very purpose of that provision is to keep an operation from being still. They don't want you to AFE or notice an operation, wait 2 years to do it when all the factors in the world have changed and then still hold someone to the nonconsent provisions.

The provision was put in there to require diligence on the part of the operator. Yet, the way the CA construes it it's make them delay operations. Say for example, you have a drilling rig will you can get, but you are going to get it on the very first day after the 30 day period. But you need to prepare the location, put in a road that might take 2 weeks. Under the CA's opinion, you have to have that rig, pay for that rig starting on the first day after the 30 days period, possibly for a period of 2 weeks while you are preparing a road and location, because you can't start even the most minimal operation before the end of that 30 day period. So you get to sit back and wait before you can even do anything.

The most important factor of their opinion was that one of the requirements, there is only five requirements that you have to set forth in a notice, one of those requirements is you have to specify the well location. But yet the CA says that surveying your well location could constitute the commencement of operations. So you go out, you use diligence, you prepare a proper notice, you survey the well location, you put it in your notice, but yet now you've commenced the operation because you've surveyed the well. So you could never have the benefits of the nonconsent provisions. So that's what the CA's opinion does. It's directly contrary to the business activity to be served, which this court addressed in great length in the ______ decision. It flies right in the face of that. The whole purpose of these provisions is the allocation of risks, and the allocation of benefits to those parties who want to take the risk.

WAINWRIGHT: Does your logic also apply, the spud date is before the notice, which looks like it happened in a couple of the 8 wells?

LAWYER: It happened on - well one was in...

WAINWRIGHT: Happened on 6th?

LAWYER: On the 6th.

WAINWRIGHT: Then there's a question about whether it happened on 9.

LAWYER: Correct. It wasn't in evidence but there was a question on that.

WAINWRIGHT: As to the spud date?

LAWYER: Right. It was just put in in the appellate briefing. I would say that it would pertain even if a well were spudded prior to the sending out of the notice. Once again the party is still given their full opportunity of their 30 day election period. They have more information within which to make their decision. They benefit. There's no harm. And it's clearly a benefit to the other parties. Keep in mind. The operator is the one that starts the operation. What the CA is saying, if he starts early he also knocks out the benefits of all the other consenting parties who have chosen to take the risk. It's not just the operator that loses out.

Another difficulty you have with the CA's construction is, say that the operator is not the proposing party. Say it's a nonoperator, because anybody can propose a drawing of a well under an operator agreement. And say the nonoperator does it. Well say the operator doesn't want to consent to it. He still does the operation. He could purposely start the operation early to keep the proposing party from ever having any benefit of the nonconsent provisions. There's a lot of problems that this CA's opinion raises. The court has probably seen in some of the materials that we filed, some of the commentators have already started raising these type of issues.

WAINWRIGHT: Let's assume that the language in the operating agreement did require from your standpoint an absolute adherence to the 30 day notice period. That notice period had to expire before there could be any commencement of operations. And those were strict. And the language under the operating agreement was such that you would agree that those were strict time periods. Would you still assert the same arguments and say even if we violated those time periods, started operations early for instance, that provided more information to the working interest owners, that that still would be something that we should say was okay.

LAWYER: I would originally say no to that. We addressed that in our brief because the situation you have outlined is the New Mexico case that was cited. They had a specific agency order that said you cannot start operations until the 30 day period has expired. I mean this agreement could have said that if that's what the party intended. It didn't. And in that case they held you had to wait. They held you couldn't take advantage of the nonconsent provisions because you didn't wait.

We did make an argument in our brief that it's still not a condition precedent. And you would have to show damages. But I would say that I think the way the New Mexico court decided that is proper, and if it expressly, clearly says that like they did in the New Mexico 10th circuit case, then yes, I think you would be governed by that.

JEFFERSON: In that New Mexico case, did the court say why, or did the court explain the

reasons behind that requirement, the strict adherence of the 30 day waiting period?

LAWYER: They really didn't. That case was an odd case because they were upset with the operator, because they sent out notice and it never got responded to in any form or fashion. They felt the operator had an obligation to make sure the notice was received and they had an opportunity. So it was really one of those type of cases where they were really concerned the operator just didn't give any notice of anything to the party and give them an adequate opportunity to participate. But they didn't really discuss why the agency expressly worded it that way.

JEFFERSON: Is there any circumstance where there would be less than 30 days for the nonworking owner to...

LAWYER: There is if there is a rig on location. The way the operating agreement works is, say you had proposed to drill a well. Everybody consents, you drill it. It's a dry hole. You want to deepen the well. If you've got a rig sitting on that well, then there's a 48 hour provision that applies and you have to respond in 48 hours. That does not mean that you can go out, contract a rig, put it on your location and then say it's 48 hours. It's for a rig that's already on location for an operation that has been consented to and you're just going to do something additional while you've got the rig out there. So that's the purpose of that provision.

WAINWRIGHT: Going back to the Montana case. If this language in the operating agreement in this case is properly interpreted as requiring strict adherence to the 30 day notice requirement, then you lose.

LAWYER: When you say that, I guess it depends - when you say even strict adherence, this operating agreement does not say that you cannot commence operations until the expiration of the 30 day period.

WAINWRIGHT: I posited that. If the language in the operating agreement is interpreted to say that, then you lose.

LAWYER: If the operating agreement was interpreted to say that.

WAINWRIGHT: You don't think it says that?

LAWYER: It doesn't say that. It clearly doesn't expressly say that. And to construe that you would have to ignore industry custom and practice. Completely throw it out, and I think you would have to ignore the common definition of within even to get there.

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RESPONDENT

BUCKNER: I think it's important that at the outset of this case that we acknowledge that

what we're dealing with is the imposition of a penalty, and the circumstances under which the penalty can be imposed.

As I listened to counsel's argument, as I listened to counsel's argument in the CA, one could have the notion that they are saying Ms. Dorsett's attempting to prohibit the drilling of a well. And she is not attempting to prohibit the drilling of a well. What Ms. Dorsett seeks to do is to require moderately strict adherence to the notice provisions as a prerequisite for imposition of the nonconsent penalty. And that's what we're dealing with here. And so when we hear all about the lack of rig availability and these other force majeure type arguments, we're talking about the imposition of a penalty.

WAINWRIGHT: I've seen the use of the term penalty and forfeiture in some of the case law. I've haven't studied it closely yet. But I wonder, is that an appropriate term. At the outset the parties have an option to participate in a risk. Correct?

BUCKNER: Yes.

WAINWRIGHT: There are costs to that risk. There's another side potentially to that risk. The parties that opt not to participate in the risk, then have to wait on the sidelines while the parties who did participate in the risk put some of their monies, their assets on the line, get 300% of the proceeds, then the others get to jump back into the income stream. Why is that a penalty or a forfeiture to compensate parties for opting to undertake a risk at the expense of parties who did not or decided not to risk their assets?

BUCKNER: In this case, Ms. Dorsett says that she didn't receive the requisite notice and the time line wasn't complied with.

WAINWRIGHT: Well let's put the notice issue to the side. Why is just compensating folks who participated in a risk 300% before the others get to participate in the income stream a penalty?

BUCKNER: It says it's a penalty in the operating agreement. I guess you could phrase it in a different way and say it's extra compensation for putting up the money, for taking the risk. I'm not sure - if you're asking if there is different terminology, the CA says it's a liquidated damage clause. I suppose there could be different terminology. But my point is, in this case because the requisite notices weren't provided, Ms. Dorsett and Valence operate the status of co-tenants and the 300% penalty is out.

HECHT: Petitioner says that if the cause means what the CA said, and if starting work means what the CA said, then as a practical matter this clause is not going to be enforceable in many, many instances, because of the exigencies of the oil field. What's your response to that?

BUCKNER: First, there is no evidence of that.

O'NEILL: It's sort of intuitive though isn't it? Whether we have evidence of it or not, can't we just intuit that that would be the case?

BUCKNER: I disagree. As of today, we've never heard a reason such as an exigent circumstance as to why these 8 notices weren't timely furnished. There wasn't an explanation in the TC, there wasn't an explanation in Texarkana.

O'NEILL: If she were seeking to assert an interest as opposed to avoid a penalty, do you think that the language should be interpreted differently?

BUCKNER: I'm not sure I understand the question. She's asserting a co-tenant interest as opposed to a co-tenant interest burden with 300% penalty or...

HECHT: No. If the notice was given very late, 5 days before they finished, and it was clear at that point that it was going to be a gusher, and she says oh, I want in on that. J. O'Neill's asking would you just say I'm sorry, the notice was late, you don't get any.

BUCKNER: Again, I assume that if she were afforded that information, certainly she would participate and particularly on well 6 and 9, when they were drilled after - or commenced drilling actual spudding after the notice was given.

HECHT: But you're saying the provision might operate differently if she were trying to take advantage. She wanted to participate and was trying to say her election was timely as opposed to if she was resisting paying the 200% and trying to say it was untimely.

BUCKNER: I would assume that Valence could not prevent her from participating in that case.

O'NEILL: So you would treat it differently?

BUCKNER: I would think that she would be able to come in late and participate. There's this notion that well she has this information that's invaluable to make a decision given the late notices. First there is no evidence that, and it didn't happen in fact. So it's just not feasible. Valence wants to look at the nonconsent penalty and say well there is a notice requirement, and we gave notice. It doesn't matter when we gave notice. In fact the notice provision is very strict. My words are it sets forth a time line. C.J. Morris said it sets forth a chronological process.

OWEN: All she's entitled to under this is notice of the proposed work. Now she got notice of the proposed work, and whether they actually started or not, what more notice could she have legitimately be entitled to under this document? I mean why wasn't that timely. She had her 30 days to elect or not. What was tardy about that?

BUCKNER: It specifically says that in order to be entitled to the benefits of this article, the

party given the notice shall within 60 days after the expiration of the 30 day notice period commence work. That wasn't complied with. And again what we're seeking is not to prevent the drilling of a well, not to prevent Valence recouping 100% of Ms. Dorsett's share of drilling, completion and operational costs, but to prevent the imposition of a penalty.

OWEN: You keep saying she got late notice, she got late notice. That's really not your argument. Your argument is they drilled ___________.

BUCKNER: No. I disagree. I think that plays into what Valence says. Valence says Ms. Dorsett attempted to prevent the drilling.

OWEN: What notice did she get that was untimely?

BUCKNER: Every notice. Everyone of the 8 wells...

OWEN: Why was it untimely?

BUCKNER: Because they had commenced operations on 7 of the 8 wells at the time she received notice...

OWEN: But that has nothing to do with the notice. It has to do with when they drilled ________.

BUCKNER: It does. It has to do with whether the imposition of a penalty is permitted as to when the notice is received and when the operation is commenced. And on two of the wells the well was actually drilling at the time she received the notice.

WAINWRIGHT: Is that in evidence?

BUCKNER: Yes. It is. The no. 9 well was addressed and it's in the record, and it was addressed in a motion for preliminary injunction that's in the file. And it's also not challenged by Valence.

WAINWRIGHT: Is it in the summary judgment record?

BUCKNER: I believe it is in the summary judgment record.

BRISTER: And she's harmed by not getting notice until some work has started how?

BUCKNER: Counsel alluded to one reason that J. Morris cited and that was that she would have - if the notice provision was complied with, she would have an election at the 30th day as to whether to pick up other nonconsenting interests owners or whether to maintain her share. The other reasons I believe she was harmed - I do want to say I don't think she has to prove that she's harmed

to...

BRISTER: So she waits to see what everybody else is going to do and everybody else also waits to see what everybody else is going to do. So in fact, you can't wait to see what everybody else is going to do since everybody is going to do it on the last...

BUCKNER: I don't know if that's true. That was what J. Morris said. My position is, she doesn't have to prove harm to rely upon the contractual language for imposition of the penalty. But she is harmed in that there - when you sign up to participate in a well as a working interest owner, you advance your drilling costs. After the well is drilled, if the well is deemed capable of producing oil and gas in commercial quantities, you advance your completion costs. And the way the operating agreement is set up with the notice language and the 60 days commencement of work after the notice period expires, she staggers her payments. She puts up her drilling costs. Six, eight, ten weeks elapse she puts up her completion costs. And that gives a person such as Ms. Dorsett an opportunity to raise funds, to cash in investments to come up with the money over a period of time rather than coming up with the money in a compressed period of time when the notice is not given. Her interest was 4%. These were million dollar wells. So she would have $20,000 due at the time of the drilling of the well or election to participate. And $20,000 due 6, 8, 10 weeks later at the time of completion.

OWEN: But that's pure speculation. Conceivably the well could be drilled in 5 days. All it really gives her is 30 days to get her money together. Because conceivably the well could be spudded the 32nd day and completed in 2 to 3 days.

BUCKNER: This was a 10,000 ft. well.

OWEN: I'm talking about contractually. That's not going to be the case. If it was our situation where they got the rig on location, she's only got 48 hours. From the _____ standpoint, the most she could get was 30 days to get capital.

BUCKNER: I agree with you that if it was a very shallow well, that the time period would be compressed. And I agree with you that the 48 hour period, if Valance had utilized that, that would push her to her election sooner. But that wasn't done in this case.

OWEN: I'm just saying from a contractual construction standpoint, not well by well.

BUCKNER: I guess a practical effect is, that she had her financial obligations compressed on her rather than spread out over this cotton valley venture.

O'NEILL: But she could have consented and avoided the imposition of this penalty. And what about the notice problem prevented her from doing that. There is sort of a disconnect there.

BUCKNER: The disconnect is she doesn't believe the notice provisions were complied

with.

BRISTER: She got the certified mail. There's no question she got a notice. And no question she had 30 days after receipt of the notice within which to notify the parties whether she elected to participate. She had that.

BUCKNER: No question about that.

BRISTER: So whenever you say she didn't get notice, you mean only because they started work before the end of the 30 days.

BUCKNER: If you go down to paragraph 2, it clearly says in order to be entitled to the benefits of this article, meaning the 300% nonconsent penalty, the operator must within 60 days after the expiration of the 30 day notice period commence work. And it's very specific. It says in order to be entitled to the benefits of the nonconsent penalty this is what the operator must do.

WAINWRIGHT: The CA misquoted Art. 6(b)(2), the relevant provision here. You are familiar with that right?

BUCKNER: Yes.

WAINWRIGHT: Is that determinative of the CA's outcome that they quoted the language correctly and interpreted the correct language in that part of the opinion. Does that make a difference or do you contend that the language they quoted compared to the actual language in the operating agreement the substance means the same?

BUCKNER: I don't see a really substantial difference. The other way I believe Ms. Dorsett is harmed by not getting a notice properly is that she has - and the CA cited a law review article saying that not only with proper notice does an investor have a time to reflect financially on the venture, but also a ______ on the venture and it's to whether it makes sense to her. And this is a 677 acre unit. For example, no. 9, at the time the no. 9 was drilled there were 8 wells in the unit, 8 cotton valley wells. Approximately 60 acres per well. Ms. Dorsett may have very well have said, if she had received notice of the no. 9, I think there's enough cotton valley wells in this unit. There is 80-acre spacing. That's been complied with. I want to drill a well, but I would like to see a well drilled to a different formation. A shallow formation for example. And that would be difficult to propose or suggest once the well is already at 7,500 feet when she received the notice.

Valence doesn't like the citation of the lease perpetuation cases by the CA. No explanation is ever given for quarreling with those citations. Valence repeatedly uses the term spud, the actual bit going into the ground. The agreement does not say spud. It says commencement of work, or commencement of operations.

I also want to address the so called industry usage or industry custom.

Valance and the amicus curie parties have said that if moderately strict adherence to the notice requirement is imposed or utilized for imposition of the penalty, then it will disrupt oil and gas operations. It will delay oil and gas operations. And even today we heard that there may be a situation where a lease is about to expire. I can't see that happening. Again, we're talking about imposition of a penalty. An operator is not going to delay operations. It's not going to disrupt operations and an operator is certainly not going to let a valuable lease expire because they can't impose a penalty as a result of their own refusal or failure to provide timely notice.

Finally, it was alluded to by J. Ross and it's alluded to in one of the periodicals submitted by the petitioner. The simple solution to this is to give notice. And there's no reason why notice couldn't have been given in this case. And we're asking that the court affirm the CA.

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REBUTTAL

LAWYER: If I could start where he kind of concluded, where counsel mentioned the TXO and Valence indicated the custom and practice in the industry should prevent strict adherence to the joint operating agreement provisions. That's not what Valence is saying. That's not what TXO has said. The operating agreement does not provide you have to wait. You had to start the operations. The notice provision says nothing whatsoever about that. What TXO and Valence were saying is, that whenever you have a model form that's used throughout an industry, the parties are in the industry, you have to construe it in accordance with industry custom and practices. We're not saying that there's anything in the operating agreement that says that you can't start early. Their entire construction hinges on the word within. It never really comes out, but it all comes down to one word, the word within. They want to use the word within to mean that you have to do it only within that secret, magical 60 day period. That's an unreasonable construction of the word within. It isn't the common definition if you look at Websters, and it sure isn't what the industry custom and practice would dictate the definition of that word would be.

The CA also had a problem with the word proposed operation, that it meant something in the future. If you just look to the wording of the operating agreement. In the provision they say in order to be entitled to the benefits of this article, the operator must actually commence work within 60 days following expiration of a 30 day period and must complete it, that is the proposed operation with due diligence. The operating agreement itself contemplates that after you start it, the proposed operation is still proposed until you complete it. You finish it. It's the way the language reads. And proposed is really submitted for a consideration in any event. So even the CA conclusion as to what the word proposed means didn't have any real justifiable basis.

There's been a couple of appellate cases after the Hamilton case. The Hamilton case talked about it being a liquidated damages provision. And the current view of the court says that it's just a risk allocation provision. It's not in the nature of a penalty. It's a bargained upon benefit. The parties who will take the risk, step up to the plate, consent and pay their money

get.

I don't think it makes any difference whether it's a liquidated damages provision or whether it's just a risk allocation provision. It's not considered to be a liquidated damages provision. I don't think it makes any difference in the context of this case.

Counsel keeps trying to interject this new evidence. If you look back at it what happened was. If you look at the trial record, there is no evidence that custom and practice by either party was submitted. But what happened is when they get to the CA the respondent cites Prof. Conines(?) law review article for what the purpose of the provision is. And the CA latches on to that. The problem is they took some of the statements that Mr. Conine(?) made out of context. And although they took one provision where it says usually the election is afforded before operations commence, the CA failed to read on. And it say you must elect. You absolutely must elect within the 30 day period. So they take one small part and they ignore - it appears that they decided the case based on their erroneous idea of what custom and practice in the industry was.

If you look at the Nearburg case they relied on supposedly, the Nearburg case says the very purpose of the notice provision is to require the parties to make a timely election whether they are going to be in or out. That's the very purpose of it. And what the CA has done in this case is they've frustrated the very purpose of the notice provision.

HECHT: Were the circumstances that you argue here regarding the practice of the industry called to the attention of the CA?

LAWYER: The CA I believe did have the benefit of those. Unfortunately TxOGA a lot of times gets around to writing their briefs when it gets to the SC level. If you are going to rely on custom and practice, who is more credible. If you are going to look to custom and practice it seems more credible to look to TxOGA who represents 90% of production.

WAINWRIGHT: Theoretically is it possible that a strict 30 day notice period could be beneficial or on the other side of the coin harmful if the operators could by the speed at which they start a proposed operations, type of information that you get from when they start those proposed operations, and they might be able to manipulate the amount of information that a working interest owner may get. For instance, just theoretically, rush to the cite 2 days after notice and start doing a lot of work. It looks good. Verses taking their time by getting to the cite till the 31st day, begin drilling and then 31 days later they seem to suggest that there is not as much excitement about the cite. Theoretically is it possible to manipulate data so that a strict 30 day notice period is useful?

LAWYER: I think a lot of things are possible. Whether they are reasonable is the way I would really look at it. An operator almost always has a majority of interest, and if they don't they still have their own interests. They are not going to undertake actions that are detrimental to their own interests. They wouldn't go try to make something look different than it is because they would be harming themselves as well as anyone else.