

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 11
	:	
CHISHOLM OIL AND GAS NOMINEE, INC.	:	Case No. 20-11595 (BLS)
	:	
Reorganized Debtor	:	
	:	
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**RESPONSE OF PEGGY WISDOM, PERSONAL REPRESENTATIVE OF ESTATE OF
C.W. WISDOM, TO SIXTH OMNIBUS OBJECTION (SUBSTANTIVE) TO CLAIMS**

This brief states the response of Peggy Wisdom, Personal Representative of Estate of C.W. Wisdom (“Wisdom”), to the Sixth Omnibus Objection. Wisdom objects to the reclassification of the Wisdom claim from a secured claim (secured by Wisdom’s mineral property in Kingfisher County, Oklahoma) to an unsecured claim.

Peggy Wisdom, Personal Representative of Estate of C.W. Wisdom (“Wisdom”), filed her Proof of Claim (the “Wisdom claim”) in this matter on August 20, 2020, and received the following confirmation:

Case Number	Debtor	Claim Number
20-11593	Chisholm Oil and Gas Operating, LLC	418

Creditor Name: Peggy Wisdom, Personal Rep of Estate of C.W. Wisdom

Eleven months later, Wisdom received the Sixth Omnibus Objection (Substantive) To Claims (“Sixth Omnibus Objection”), stating at page 28 of Exhibit F that the Wisdom claim will be treated as an unsecured claim unless Wisdom objects.

Wisdom objects to the reclassification. For the reasons stated herein, the Court should find that the Pooling Order bonus money being withheld by Chisholm is not property of the bankruptcy estate and should be remitted to Wisdom without further delay. Alternatively, (i) Wisdom's claim should be classified as a secured claim with payment of the bonus money to come from 100% of the production attributable to Wisdom's land; or (ii) Chisholm should disclaim any interest in Wisdom's property.

FACTUAL BACKGROUND

Wisdom's claim is unusual:

- Wisdom is **NOT A PARTY TO ANY AGREEMENT** with Chisholm.
- Wisdom has **NEVER CONVEYED ANY PROPERTY** to Chisholm.

Nevertheless, Chisholm is taking oil and gas attributable to real property owned by Wisdom in Kingfisher County, Oklahoma. Wisdom is record title owner of the land in question. Chisholm holds no record title to the land. Although there is no agreement with Wisdom and no conveyance from Wisdom, Chisholm is taking 80% of the mineral rights in Wisdom's land. Chisholm's claim to 80% of the mineral rights is based entirely, if at all, on a Pooling Order entered by the Oklahoma Corporation Commission on August 13, 2019. *A copy of the Pooling Order is attached here as Exhibit "1" and is referred to herein as the "Pooling Order" or simply "the Order."*

The Pooling Order resulted from a petition filed by Chisholm in the Oklahoma Corporation Commission, to which Wisdom was made an involuntary party.¹ Similar to a condemnation proceeding, the Order "force pools" the Wisdom land, requiring that

¹ The Corporation Commission is established under the Oklahoma Constitution to regulate oil and gas development in the state.

Wisdom relinquish ownership of a portion of her mineral land in exchange for consideration equal to the fair market value of the land taken. The Pooling Order provides, upon Chisholm's compliance with the Order, that Wisdom will be "deemed to have relinquished unto Operator all of such owner's right, title, interest, or claim in and to the unit" except for the consideration mandated by the Order. *See last sentence of ¶8 of the Order.*

In exchange for the real property interest taken under the Pooling Order, Chisholm is required to transfer to Wisdom either (i) "\$2,600 per acre plus a total royalty of 1/5" or (ii) "no cash and a total royalty of 1/4". *See ¶7.4 and ¶7.5 of the Order.* In August 2019, Wisdom informed Chisholm of her election under ¶7.4. *See Exhibit 2 attached hereto.* The Pooling Order at ¶7.4 mandates that the cash bonus "shall be paid within 35 days from the date of this Order and when so paid shall be satisfaction in full for all rights and interests of such owner in the unit covered hereby."

Despite numerous communications between employees of Chisholm and representatives of Wisdom, Chisholm did not distribute to Wisdom the \$51,155.00 bonus payment required under ¶7.4 of the Pooling Order. *See Exhibit 3 and Exhibit 4 attached hereto.* Although the 35-day period expired in September 2019, Chisholm has never distributed the \$51,155.00 bonus. Chisholm, however, has delivered royalty checks to Wisdom for one-fifth of the production attributable to Wisdom's land, beginning with a check in April 2020 covering production months of October 2019 thru January 2020. *See Exhibit 5 attached hereto.* (Note: As of April 1, 2020, there was no title issue that precluded distribution of royalty; and similarly there was no title issue that justified withholding Wisdom's bonus money.)

Important Dates

Date of Pooling Order: August 13, 2019

Date of Pooling Order Election: September 2, 2019

Last Day for Payment of Bonus (35 days after date of Order): September 17, 2019

First Production: October 1, 2019

Last Day for Bonus to Be Put Into Escrow: November 11, 2019

First Royalty Check: April 1, 2020

ARGUMENT AND AUTHORITIES

CHISHOLM HOLDS THE WISDOM BONUS IN ESCROW FOR THE BENEFIT OF WISDOM, AND NOT AS AN ASSET OF THE CHISHOLM BANKRUPTCY ESTATE.

The taking of mineral land by force of law for unit development is strictly regulated under Oklahoma law. The Commission does not have jurisdiction to alter vested titles, does not have the power to award money judgments, and can only act where public rights are at stake. *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶ 8, 230 P.3d 853, 858, as revised (Feb. 4, 2010), as revised (Mar. 8, 2010); *Tucker v. Special Energy Corp.*, 187 P.3d 730, 733, 2008 OK 57, ¶ 9 (Okla. 2008); *Samson Res. Co. v. Oklahoma Corp. Comm'n*, 1993 OK CIV APP 67, 859 P.2d 1118, 1120, 1993 WL 379071 (“Commission does not have jurisdiction to determine title in vested property interests”).

The forced taking of pooled property can occur only in strict compliance with statutory authorization, with rules promulgated by the Commission, and with a jurisdictionally sound pooling order. *Marathon Oil Co. v. Corp. Comm'n*, 1994 OK 28, ¶ 12, 910 P.2d 966, 969–970. Under statutory law, under Commission rules, and under express provisions of the Pooling Order, Chisholm was required to pay the bonus in order to acquire an interest in Wisdom’s land. .

The Pooling Order provides that, if there is a delay in distributing the bonus, the bonus “shall be paid into an escrow account within 90 days after [the] Order and **shall not be commingled with any funds of the Applicant or Operator**” and shall be held **“for the exclusive use of, and sole benefit of”** Wisdom. Pooling Order, ¶ 15 (emphasis supplied; see also, Commission Regulation 165:10-25-2; 52 Okla. Stat. § 552).

The Oklahoma Statutes, Title 52, § 552, compel Chisholm to maintain the escrow account “for the benefit of the rightful recipient of the monies.” The statute requires that, upon “proof of ownership of the property, **the sum accumulated for [the owner’s] benefit in the escrow account**” **shall be distributed to the owner**. The statute further requires that Chisholm “have a designated officer or employee to whom claims upon the escrow account may be made.” If a pooling bonus has not been distributed within one year after the date of the pooling order, the holder of the funds “shall transmit to the Corporation Commission the funds that have been so held.” 52 Okla. Stat. § 552(E).

Oklahoma Corporation Commission Regulations §§ 165:10-25-1, et. seq., further define the escrow account required by statute: “Escrow account” means an account established in a financial institution and held in the name of the holder and an escrow agent.” “Holder” means “any person in possession of ... bonus payments ... directed to be paid under a Commission pooling order.” § 165:10-25-1.

“Withdrawals from such escrow account by the holder may only be made for the following purposes:

- (1) To pay the rightful recipient of the monies upon presentation of a proper claim [or]
- (2) To submit and pay to the Commission the principal of all monies placed in escrow pursuant to 165:10-25-6

§ 165:10-25-3(d).

The holder is required to “have a designated officer or employee to whom claims upon the escrow account may be made” and “shall promptly pay the appropriate sum to any person showing the holder sufficient proof of ownership.” § 165:10-25-4.

Under the law, the taking of Wisdom’s land could have occurred only if the pooling bonus were put into escrow and distributed to Wisdom or to the Corporation Commission.

**TRANSFER OF THE POOLING BONUS FUNDS TO ANYONE OTHER THAN WISDOM
OR THE OKLAHOMA CORPORATION COMMISSION IS PROHIBITED BY STATE LAW
AND SUCH FUNDS ARE EXCLUDED FROM THE BANKRUPTCY ESTATE.**

The pooling bonus under applicable state law was held in escrow; and transfer to anyone other than Wisdom or the Oklahoma Corporation Commission was restricted under applicable state law. Under 11 USCA § 541(d), the escrowed funds are not property of the Chisholm bankruptcy estate or, alternatively, the Wisdom property, at all times titled only in Wisdom, is not an asset of Chisholm’s bankruptcy estate. Under 11 USCA § 541(c)(2), the restriction on transfer imposed under state law is enforceable.

In many reported decisions, funds held by the Debtor in escrow or restricted by State law for the benefit of another have been excluded from the bankruptcy estate under 11 USCA § 541(c)(2) or 11 USCA § 541(d), or both. See, for example, *In re Dameron*, 206 B.R. 394, 402-03 (Bkrcty.E.D.Va.,1997), in which funds “held by a debtor as a depository of an escrow were excluded from the bankruptcy estate.” The Court explained that “in reality, [the Debtor’s] account contains the plaintiffs’ money under an escrow. The funds are not the Debtor’s.” *Id.*, citing *Research Planning, Inc. v. Segal (In re First Capital Mortgage Loan Corp.)*, 917 F.2d 424, 427 (10th Cir.1990); *Gulf Petroleum S.A. v. Collazo*, 316 F.2d 257, 261 (1st Cir.1963); *Shron v. M & G Promo Service, Ltd. (In re*

Anthony Sicari, Inc.), 144 B.R. 656, 662 (Bankr.S.D.N.Y.1992), *aff'd*, 151 B.R. 60 (S.D.N.Y.1993).

In the case of *In re CMC Telecom, Inc.*, 383 B.R. 52, 49 Bankr. Ct. Dec. 163, 2008 WL 541720 (Bankr. E.D. Mich. 2008), the Court excluded from the bankruptcy estate funds held by the Debtor which represented “discounts to which schools were entitled in connection with telecommunications service for which they had already paid provider in full, and which provider was **statutorily obligated to pass on** to schools.” The Debtor “had merely a bare possessory interest on date that it filed for Chapter 11 relief”; and the funds “were not included in ‘property of the estate’.” *Id.* (emphasis supplied).

In the case of *In re Meehan*, 102 F.3d 1209, 1211-12 (C.A.11 (Ga.),1997) (footnotes omitted), the Court excluded from the bankruptcy estate an IRA that was subject to a restriction on transfer by a state statute:

Our conclusion is supported by the plain meaning of the language of § 541(c)(2), which requires only that the restriction be “enforceable under applicable nonbankruptcy law.”... Section 18-4-22(a) of the Official Code of Georgia Annotated clearly constitutes “applicable nonbankruptcy law.

Because Wisdom’s bonus funds are held in escrow and because State law restricts the transfer of those funds to anyone other than Wisdom or the Oklahoma Corporation Commission, Wisdom’s bonus funds cannot be a part of Chisholm’s bankruptcy estate.

**BANKRUPTCY POWER CANNOT BE USED TO TAKE WISDOM’S
PRIVATE PROPERTY WITHOUT JUST COMPENSATION**

“Congress may not pass laws under its Bankruptcy power that would effect a taking of private property without just compensation. *U.S. v. Security Indus. Bank*, 459 U.S. 70, 103 S. Ct. 407 (1982) (citing *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 55 S. Ct. 854 (1935)). In the Sixth Omnibus Objection, Chisholm may be proposing to do

just what the United States Supreme Court has proscribed. If Chisholm were to retain 80% of Wisdom's mineral property without distributing the pooling bonus, Chisholm would be taking private property without just compensation. Either Chisholm must disclaim any interest in Wisdom's property or Chisholm must distribute the bonus.

When Wisdom's property is taken by force of law under the Pooling Order, the pooling bonus becomes a substitute for the property taken. There are numerous analogous cases where a mortgagee, with a lien only on the mortgaged real estate, asserts a right to condemnation proceeds or property damage proceeds in the hands of the mortgagor. See, for example, *State v. Holland*, 51 Tenn. App. 344, 353, 367 S.W.2d 791, 795 (1962), holding that, where property is appropriated through eminent domain, the award "is a substitute for the property so taken and, in equity, the mortgagee has a lien on the award to the extent of his unpaid debt."

Also instructive is the case of *In re D'Ellena*, 640 A.2d 530 (R.I.1994), in which the State had condemned a portion of the debtor's real property; but prior to the distribution of condemnation proceeds, the debtor filed for bankruptcy relief. The bankruptcy trustee asserted that the creditor did not hold a perfected security interest in the proceeds. Both the note and mortgage were silent on the issue of whether the mortgagee's interest extended to condemnation proceeds. The bankruptcy court certified the question to the Rhode Island Supreme Court, which held that where "part of a mortgaged parcel of land is taken by eminent domain, the mortgagee is entitled, under equitable principles, to the proceeds thereof up to the amount of its interest in the property." *Id.* at 532–33 (citations omitted). "The condemnation award equitably stood in the place of the land taken." *Id.*; see also, *In re Mendez*, 255 B.R. 143, 147 (Bkrtcy.D.N.J.,2000) ("condemnation award is considered a substitute for the land as a matter of law").

The same principal adheres in cases where a mortgagee asserts a right to money awarded for damages to mortgaged real estate. See, for example, *Tri-City Bank & Trust Co. v. Goforth (In re Goforth)*, 24 B.R. 100 (Bankr.E.D.Tenn.1982), where the Court held “money so awarded by the court as damages to the realty must be treated, in equity, as the land itself” and “such moneys stand now in the place and stead of the original uninjured mortgaged premises.” *Id.*

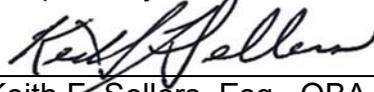
The taking of an owner’s mineral property under Oklahoma’s forced pooling law is analogous to the taking of property by condemnation. The pooling bonus is owned solely by Wisdom to the same extent that the underlying real property was owned by Wisdom at the time of taking under the Pooling Order. The Court should prohibit Chisholm from taking both Wisdom’s bonus and 80% of Wisdom’s property.

CONCLUSION

Under fundamental state law – the very law on which Chisholm rests its claim to 80% of Wisdom’s property – the forced taking of Wisdom’s land could have occurred only if the pooling bonus were distributed to Wisdom. The pooling bonus is owned solely by Wisdom to the same extent that the underlying real property was owned by Wisdom at the time of taking under the Pooling Order. Transfer of the pooling bonus to anyone other than Wisdom or the Oklahoma Corporation Commission is strictly prohibited under State law. The pooling bonus funds are excluded from the bankruptcy estate; they are merely held in escrow by Chisholm for the benefit of Wisdom, the rightful owner. The Court should prohibit Chisholm from taking both Wisdom’s bonus and 80% of Wisdom’s property.

Dated August 10, 2021.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 11, 2021, the foregoing paper was served electronically to the Court and to the following:

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