

Scenario #1: Notice of Assignment Dispute

THE ISSUE: Company A is operator of record under governing agreement and operates 10 producing wells on behalf of all joint interest parties. Company B, a joint interest party under the governing agreement, sells its entire interest under the governing agreement to Company C. Further to the provisions of the governing agreement, Company B serves a Notice of Assignment to all current third parties. The consent period and binding date pass with no correspondence from any of the current third parties. Prior to the binding date, Company B was forwarding all invoices and revenues to Company C. Company C paid all invoices it received. Two months past the binding date Company C is no longer receiving any bills or revenue in relation to the wells assigned under the governing agreement. Company C contacts Company A and is informed that Company A does not recognize Company C as a party to the governing agreement or related wells.

Initial internal assessment

Applying the elements of this case study to your own issue or dispute, consider the following analysis and questions:

- Identify *all* of the *participants* in your dispute.
- What are the issues that are having a major impact on your company? What additional information do I need? Describe the problems and issues.
- What has happened to date? What resolution options have been explored? *Have the parties talked face- to- face?*
- What are *all* the costs of these issues if they continue to go unresolved – including permanent damage to the business relationship?

Important considerations in selecting a method for resolution:

- How important are existing relationships to the success of my business?
- Is this an isolated issue or event (a dispute) symptomatic of bigger systemic problems (a conflict) between your companies?
- Will there be an ongoing relationship between the parties? Could you do business in the future together?
- What references or authorities might exist that all parties could rely on for guidance in finding a solution?

COMPLICATING FACTORS: After the binding date, Company A requested Company B to make a revision to the Notice of Assignment between Company B and Company C. Company A will not amend its records until it has received this revision. Company B does not feel the revision is required as the consent period and binding date has passed and refuses to make the revision. Company A continues to forward all bills and revenue to Company B. Company B returns all bills and revenues to Company A, with letters stating that it no longer has an interest under the governing agreement and in the wells and all bills and revenue should be forwarded to Company C. Company A starts withholding revenues to cover unpaid bills.

Cost Benefit Analysis:

Analyzing the costs, risks and benefits of resolution is critical to selecting the appropriate resolution option or options. Consider the following analysis and questions:

- What are the complicating factors in your dispute? What additional information is needed?

- What are the major risks in allowing the current situation to continue? What are the costs and the benefits of resolving versus not resolving the issue?
- Identify the direct and indirect costs and the benefits in terms of people, money and time spent, in resolving versus not resolving the issue? (Refer to Cost Benefit Analysis Tool in the Resources section)
- What is your best and worst alternative to a negotiated agreement (BATNA / WATNA)? What are the incremental steps that could be taken towards settlement of the current issue(s)?
- What is the cost for resolution by one party, all parties or no parties?
- What is the impetus for a resolution by all parties? What are the barriers to resolution thus far?

THE BUSINESS RELATIONSHIP: Company B has sold its entire interest in the area and currently does not have other operations with Company A or Company C. Company A and Company C have joint interests in this area governed under a number of other agreements. These agreements cover large amount of lands and numerous wells. This area is a core area for both Company A and Company C.

Resolution Potential & Options

- What common interests in resolving the dispute do the parties have? What is the common ground?
- Other than the threat of litigation, what incentive does the other party to your dispute have for settling the outstanding issue or issues? How many parties must be in agreement for resolution to occur?
- Which of the informal, confidential or flexible, various ADR processes could be used to encourage various resolution options?
- What are your major cost factors in determining the best resolution option - including litigation?

APPROPRIATE DISPUTE RESOLUTION: After assessing the on-going situation, the responsible Land Administrators at Company A and Company C get together for coffee to talk over outstanding issues. Company A outlined for Company C what amendments they required to the Notice of Assignment prior to them changing their records. The amendment was required due to an internal company policy. Company A and Company C reviewed the related parts of the governing agreement and assignment procedure and discussed how these provisions applied to their situation. Company C was unable to get Company A to agree to any other possible solutions to get Company C recognized.

The responsible Land Administrator at Company C met for lunch with the Administrator at Company B to discuss the outstanding issues. Company B was informed as to the amendment Company A wanted and why. Company B and Company C reviewed the related parts of the governing agreement and assignment procedure and discussed how these provisions applied to their situation. Upon review of this information, Company B was unwilling to make the amendment itself but would accept the amendment if Company C made the amendment and prepared the documents.