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Tennant v. Range Resources – Appalachia, LLC: The Market Enhancement Burden

If a “Market Enhancement” addendum provision specifies that post-production costs can be deducted only if they result in a net-value enhancement of the products, is the lessee/producer obligated to provide proof of this net-value enhancement to its lessor? “No” is the short answer the United States District Court for the Western District of Pennsylvania gave in its September 21, 2021, decision in *Tennant v. Range*.^[1] *Tennant* is important because it deals with addendum language prevalent in thousands of leases across Appalachia and highlights the distinction between what is required under a lease and who must prove compliance (or, more accurately, non-compliance).

Tennant involved two sets of Washington County, Pennsylvania, landowners/lessors with identical leases, each containing a “Market Enhancement” addendum provision. These provisions commonly appear in lease addenda throughout Appalachia and provide, in summary, that only those post-production costs whose purpose is to enhance the value of the oil and/or gas will be proportionately deducted from the lessor’s royalty.^[2] Here, however, the Market Enhancement provisions also stated that “[t]hese deductions shall only be charged to the Lessor if they result in a net increase in the value of the oil and/or gas or other products produced from the leased premises, or any property pooled therewith.”^[3]

The plaintiffs interpreted this addendum language as obligating Range to *prove to the plaintiffs* its compliance by showing how the post-production cost deductions actually enhanced the value of the hydrocarbons sold.^[4] Thus, when Range did not provide this information, via its royalty statements or in response to the plaintiffs’ direct request, the plaintiffs concluded that Range failed to uphold its end of the bargain and, as a result, it was not permitted to deduct post-production costs.^[5] In their complaint, the plaintiffs asserted a single breach of lease claim premised upon this alleged duty: **“Plaintiffs claim that Defendant has breached**

its contractual obligations under the Leases by deducting post-production costs without demonstrating that said costs resulted in a net increase in the value of the produced hydrocarbons.^[6] As the Court points out, the plaintiffs' deposition testimony "confirmed that their breach of contract claim is premised on Defendant's alleged duty to demonstrate to them that post-production costs deducted from their royalty payments resulted in a net increase in the value of the gas produced...."^[7]

Range rejected the plaintiffs' premise first and foremost because the leases contained no language creating this duty.^[8] Even if the plaintiffs' claim was broader (and not just a breach of the alleged duty to demonstrate net-value enhancement), the plaintiffs' claim nevertheless failed because the plaintiffs admittedly proffered no evidence that Range's deductions did not result in a net-value increase.^[9] To the contrary, so said Range, the record demonstrated that Range's deductions had enhanced the value.^[10]

Ruling on cross-motions for summary judgment, the District Court agreed with Range, resting its decision first on the fundamental requirement that a plaintiff must prove, among other elements, a breach of a duty imposed by the contract.^[11] On this point, the District Court found no language obliging Range to prove compliance: "The language of Addendum ¶ 12 is clear and unambiguous that it **does not** impose upon Defendant a duty to demonstrate that post-production costs deducted from Plaintiffs' royalty payments resulted in a net increase in the value of the gas produced."^[12] The Court likewise rejected any argument that this duty was implied, noting that the plaintiffs' complaint did not allege breach of an implied duty and the basic rules of contract interpretation give effect to the terms of the agreement, not the "silent intentions of the contracting parties."^[13]

Even assuming the plaintiffs' claim was broader than Range's alleged failure to prove a net-value increase (i.e., that Range breached the lease for deducting post-production costs), Plaintiffs still had no evidence that Range's deductions did not enhance the value of the oil and gas.^[14] The record was replete with deposition testimony of the plaintiffs admitting they had no proof, with Mr. Tennant admitting the only proof he has "is that [Range] has not replied to

our request to provide evidence.”^[15] On this point, the Court noted Mr. McIlvaine’s testimony and the Williams & Meyers Oil and Gas Law Treatise, both of which confirmed that the plaintiff/lessor still has the burden of proving claims for breach of contract in lease royalty disputes.^[16] With no legal premise and no proof, the plaintiffs’ complaint failed as a matter of law.

The *Tenant* decision is not precedential and may be appealed, but it is still important. First, its analysis sheds light on what is and what is not required by this type of Market Enhancement provision—an addendum likely contained in many leases throughout Appalachia.^[17] Second, it is a reminder that the burden of proof is still on the plaintiff and that there is a very real difference between the belief of what an obligation *should be* and what the obligation actually is, based on the words used. In all, *Tenant* stands as an internally consistent decision that provides certainty and, as such, real guidance to those tasked with administering royalties and dealing with these disputes and claims.

For more information, please contact [Christopher Rogers](#), or any attorney in Frost Brown Todd’s [Oil & Gas](#) industry team.

^[1] *James S. Tenant et al. v. Range Resources – Appalachia, LLC*, C.A. 18–1533, 2021 WL 4288365 (W.D. Pa. 2021). Law.justia.com provides the opinion [here](#).

^[2] *Id.* at * 2.

^[3] *Id.*

^[4] *Id.* at *5.

^[5] *Tenant* at *2.

^[6] *Id.* (internal quotation marks omitted; emphasis added).

^[7] *Id.* at *3.

^[8] *Id.* at *4.

^[9] See *id.* at *3–4 (summarizing Range’s position on p. *4 and quoting and summarizing the deposition testimony of Messrs. McIlvaine and Tenant on pp. *3–4).

^[10] *Id.* at *4.

^[11] *Tenant* at *5.

^[12] *Id.* at *6 (emphasis in original).

^[13] *Id.* at *7 (internal citations and quotation marks omitted).

[\[14\]](#) *Id.*

[\[15\]](#) *Id.* at *3.

[\[16\]](#) *Id.*

[\[17\]](#) The author is making an assumption about the prevalence of this Market Enhancement provision.

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