

AMERICAN INSTITUTE OF MINERAL APPRAISERS

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Sickness and Health

In early July, Sam Pickering, AIMA President, fell while inspecting an attapulgit mine in Florida. He suffered multiple fractures/breaks to his right tibia bone. This bone is the inner and larger bone of the leg between the knee and ankle articulating with the femur above and with the talus below. His recovery has been painful and slow. He is in physical therapy and has progressed from a walker to a cane. The good news is; he is now back to work part time.

Sam, our prayers are with you for a full recovery and a speedy return to full time working.

Legal Decisions

Editors Note: Legal decisions can affect the appraisal of a mineral property.

Michael Cartwright has furnished the following legal decisions for our edification

O'Shaughnessy v Commissioner of Internal Revenue.

No. 02-1532/1603 (8th Cir. June 13, 2003)

Taxpayer was entitled to depreciate molten tin used in flat glass manufacturing under 26 U.S.C. section 167, as the tin underwent exhaustion, wear and tear under that provision. Because the tin initially qualified as depreciable capital property, taxpayer appropriately depreciated the tin under section 168.

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To read the full text of this opinion, go to:
<http://caselaw.lp.findlaw.com/data2/circs/8th/02153p.pdf>

*Civil Procedure; Property Law & Real Estate,
Trade Secrets
In RE Bass, No. 02-0071 (Tex. July 03, 2003)*

Geological seismic data are trade secrets, and non-participating mineral royalty interest owners failed to establish the existence of a claim against the mineral estate owner, justifying discovery of the trade secret data.

To read the full text of this opinion, go to:

<http://caselaw.findlaw.com/scripts/getcase.pl?>

*Civil Procedure, Class Actions, Commercial Law,
Oil & Gas Law
Union Pac. Res. Group, Inc. v Hankins, No. 01-0836 (Tex. July 03, 2003).*

Because a covenant to obtain the best price reasonably attainable is implied under Texas law only to proceeds leases, not to market-value leases, gas royalty owners have not established “questions of law or fact common to the class” sufficient to support certification.

To read the full text of this opinion, go to:

<http://caselaw.findlaw.com/scripts/getcase.pl?>

*Administrative Law, Oil & Gas Law
Fina Oil and Chem. Co. v Norton, No. 02-5241
(D.C. Cir. June 27, 2003)*

Because the applicable Minerals Management Service regulation for calculation government royalties unambiguously requires valuation of natural gas based on the initial sale, the Secretary’s contrary interpretation of valuing the gas based on the contract price of the resale is rejected.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/de/025241a.html>

*Contracts, Indian Law, Oil & Gas Law, Property
Law & Real Estate
US v Navajo Nation, No. 01-1375 (U.S.S.C. March
04, 2003)*

An Indian tribe’s claim for compensation from the federal government, for alleged breach of trust in approval of coal lease amendments negotiated by the Tribe and a private lessee, fails as it does not derive from any liability-imposed provision

of the Indian Mineral Leasing Act of 1938 or its implementing regulations.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/us/000/01-1375.html>

*Landlord Tenant Law, Oil & Gas Law, Property
Law & Real Estate
Natural Gas Pipeline Co. of AM. V Pool, No. 01-0057/8 (Tex. August 28, 2003)*

The court of appeals erred in failing to hold that oil and gas lessee acquired fee simple determinable mineral estates by adverse possession; it is unnecessary to decide whether the leases terminated due to cessation of production.

To read the full text of this opinion, go to:

<http://caselaw.lp.findlaw.com/data2/texasatatecasescs/sc/010057.htm>

Abandoned Mine Redevelopment Act Introduced; Receives Industry Support

Article Furnished By Michael Cartwright

Rep. Paul Kanjorski, testified on behalf of is Abandoned Mine Land Area Redevelopment Act on July 23, with the aid of a letter of support sent that morning by the Appraisal Institute and the National Association of Realtors. The bill, H.R. 419, provides tax credit bonds as incentive for the private sector cleanup of the sites.

The two trade organizations lauded the bill as an efficient, cost-effective way to reclaim and improve land near abandoned coal mines, an important issue for job creation and future development of the affected areas. Tax incentives are an efficient private sector means of drawing capital to environmental enhancement endeavors,” the two stated in a letter.

Tax credit bonds require minimal governmental outlays in that investors receive tax reductions in lieu of interest. The proceeds of the bonds are then used in the private sector to finance projects. The hope is that over time both the entities doing the clean up and the communities will benefit.

NAR and the Appraisal Institute have a history of supporting tax incentives for the clean u of environmentally damaged land, including past support for deductions for Brownfield clean up expenses and a pledge to work towards having that provision extended before it expires at yearend.

From
<http://www.appraisalinstitute.org/publications/ano/2003/07.asp#story25>

IVSC Seeks Comment on Valuation of Owner-Occupied Properties

Article Furnished By Michael Cartwright

As companies around the world make the shift to preparing their accounts in accordance with the International Financial Reporting Standards (formerly International Accounting Standards), it will become vital to measure property assets carried at fair value in such accounts on a basis that is “internationally consistent and comparable,” according to International Valuation Standards Committee. To that end, the IVSC has released for comment a consultation paper seeking to clarify guidance on the valuation of owner-occupied property, as defined under IAS – 16, Property, Plant and Equipment.

IVSC Chairman John Edge said, “although IAS – 16 allows property to be carried at fair value in the account, it has no guidance on how to arrive at that fair value. Yet the national accounting and valuation standards in those countries that currently permit reevaluation of assets have some significant differences. For example, ‘depreciated replacement cost’ is defined differently in different countries. Or, in some countries, owner-occupied property is valued as if vacant, in others; it is valued on the basis of a capitalized national lease. This can lead to differing valuation conclusions although all will be reported as ‘fair value.’

Comments on the consultation paper, which can be viewed on the IVSC Web site at www.ivsc.org/pub/exp_drafts/cp-owneroccprop.pdf, are due by October 31, 2003.

From:
<http://www.appraisal institute.org/publications/ano/2003/09.asp#story9>

Effects of Royalty Incentives for Gulf of Mexico Oil and Gas Leases

The Department of Interior, Mineral Management Service, Procurement Operations has prepared a report concerning the effects of royalty incentives for Gulf of Mexico oil and gas leases. It can be viewed at;

<http://www.eps.gov/spg/DOI/MMS/PO/71722/listing.html>.

Signing An Appraisal Report

Editors Note: The following is a letter written by John Gustavson to a member concerning a FAQ on the proper way to sign a report to indicate certification as a minerals appraiser

Alan:

You have asked how AIMA membership and certification are shown when signing an appraisal report. We have certain policy in that regard, namely:

Your membership number is the year of certification followed by a dash plus a number signifying the chronological order in which the member was certified that year. (you are 2003-1.)

A person can be a member (for example an Associate Member) without being certified as a Certified Minerals Appraiser.

A Certified Minerals Appraiser may sign his/her report in one or two ways:

Name, CMA Number

Or

Name, Certified Minerals Appraiser Number

Either one of the above may be followed by the line:

“by the American Institute of Minerals Appraisers”

Alternatively, a certified Member might indicate the AIMA authority as the certifying body by a listing in his/her CV *Professional Accreditation*: “Certified by the American Institute of Minerals Appraisers.”

Finally, some of our members add their Certificate sheet of their appraisal reports the words:

(I certify)...that I have been certified as a Minerals Appraiser by the American Institute of Minerals Appraisers.....

Regards,
John Gustavson

Appraisal Standards

The following is a letter written by Trevor Ellis to John Gustavson

John:

I am impressed that you had already secured a copy of IVS (International Valuation Standards) 2003.

The following are my attempts to answer your questions.

How do you see the interface between these IVS and USPAP?
The Appraisal Foundation has adopted a policy of coordinating its USPAP standards with IVS. The Appraisal Standards Board is under pressure from the Appraisal Institute to modify USPAP to look like IVS. The Chairman of the Appraisal Standards Board is on the Standards Board of the IVSC (International Valuation Standards Committee). For the present, USPAP will remain the USA Standard, but my personal expectation is that it will eventually be replaced by IVS with a USA supplement.

Do international appraisers use the former and US appraisers the latter? That is largely correct. However, in 2005, most stock markets of the world outside the USA and Canada will be standardized on using the International Reporting Standards of the International Accounting Standards Board. USA-based companies reporting to stock markets outside the USA and
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Canada, and foreign companies with assets in the USA, will be required to report to those markets using the IFRS. The IFRS reference the IVS for fair value determination. In such circumstances, it seems that appraisers and accounts in the USA may need to use IVS. In the last 24 months, Canada and the USA have implemented high priority convergence policies designed for eventual near full adoption of IFRS.

What about conformity with the SAMVAL (South African Minerals Valuation) Code? The SAMVAL Code is being designed to fully comply with IVS and IFRS. In particular, it is being modified to operate subsidiary to Extractive Industries Guidance Note of IVS. Alastair Macfarlane, who is leading the SAMVAL Code development, is a member of our IVSC Extractive Industries Task Force. The existing Canadian CIMVal standard was designed with IVS compliance in mind, and Bill Roscoe who led its development is also a member of our IVSC Extractive Industries Task Force.

Regards,

Trevor Ellis

Notice of Member Address Change

Ben H. Slothower has changed his E-mail address from <mailto:hasben@in-tch.com> to <mailto:hasben@imt.net>.

Capes Mineral Appraisal Symposium

The Centre for Advanced Property Economics Announces its Mineral Appraisal Symposium will be held Oct. 1 – 3, in Denver, CO. Go to www.appraisers.org/images/fastread/july_15_03/fr03-07-15-Mineral.pdf to review the speakers and topics.

USPAP To Be Revised for 2004

The Appraisal Standards Board (ASB) at its public meeting in New York City on June 27 approved certain proposed revisions to the 2003 Edition of the Uniform Standards of Professional Practice (USPAP).

Go to www.appraisers.org/images/fastread/july_15_03/fr03-07-15-USPAP.pdf for more information.

Reconciled Value Among The Three Approaches

In August 2003, John Gustavson appealed to the AIMA membership for assistance concerning “reconciled value among the three approaches”. Below is his request, followed by responses from the membership. The responses has John received has simply demonstrated how AIMA members can come to the aid of other AIMA members.

The request:

Hi Guys,

Can you help me? I am involved in arbitration, where I diligently have used cost, DCF and sales comparison approaches. Now I am being challenged while using the reconciled value among the three approaches. I am used to reconciling in my appraisals, but now I am being asked to cite a law review, a textbook or a standard, which advises the use of a reconciled value. UASFLA calls it “correlation and Final Value Estimate.” I do not find it readily in USPAP. Do you know any? Time is of tremendous importance. Can you help? I promise to put your input in the next Newsletter of the AIMA.

John Gustavson

The responses:

John:

USPAP 2003, Standard Rule 1-6 is the one for which you are looking.

The International Valuation Standards 2003 states it more clearly in the section *General Valuation Concepts and Principles 9.5*, page 47: “The reason for having alternative approaches and methods is to provide the Valurer with a series of analytical procedures which will ultimately be weighed and reconciled into a final value estimate, depending upon the particular type of value involved.”

Regards,

Trevor

John:

In addition to Trevor’s comment, which should govern in this case. The Valmin Code requires a “preferred value” which is commonly the average of those obtained by various methods.

Barney Guarnera

Trevor, John, Barney

According to the appraisal foundation USPAP, Frequently Asked Questions, 2003, pg 63, “Standards Rule 1-6, a binding requirement states, ‘in developing a real property appraisal, an appraiser must reconcile the quantity of the data available and
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Reconciled Value Among The Three Approaches, Continued from page 5

analyzed within the approaches used and the applicability or suitability of the approaches used”, see comments to standards 2-2(a)(ix) and 2-2(c)(ix)”

Jeffery Kern

The thank you:

Bob Frahme, etal

I know reconciliation seems basic for us as appraisers. However, this was an arbitration case, and I am assessing damages. That is not the same as estimating fair market value; but I am still using cost, DCF and market-as-a-floor as well as the amount of the drilling obligation, which was breached (whereby my client lost a valuable part of the oil & gas lease). My final action was then reconciliation after giving the various results weights. Our attorney wanted me to cite WHY a reconciled value opinion would be the most reasonable amount that the arbitrator should grant the plaintiff, in contrast to the arbitrator’s choosing one of the various results as THE “correct” one.

Thanks to everyone who answered me in the eleventh hour.

John Gustavson

Free Download of IVSC Available on Web; Subscription Service Offered

The International Valuation Standards Council has made the 2003 International Valuation Standards, 6th edition, available for download free of charge on its Web site, www.ivsc.org. After registering at the site, IVSC authorizes users to view and download a single copy of the International Valuation Standards solely for personal, non-commercial use.

The demand for valuations prepared under International Valuation Standards is being driven by the rapid adoption around the world of International Accounting Standards, the growing influence of the International Public Sector Accounting Standards, and the increasing need for users of valuation reports to have a consistent and comparable measurement of assets wherever they may be.

In addition to general valuation concepts and principles and a code of conduct, the sixth edition includes guide notes on valuation of real property, lease interest, plant/equipment, intangible assets, personal property, agricultural properties and businesses; consideration of hazardous and toxic substances in valuation; depreciated replacement cost; discounted cash flow analysis; and reviewing valuations.

A hardcopy is also available through the site for \$50, which includes postage and handling. In addition, the IVSC has introduced a subscription service to enable subscribers to keep up to date with changes to the International Valuation Standards. Subscribers to the IVSC subscription service will receive notification and printed copies of all exposure drafts, new standards/guidance and IVSC newsletters at a cost of \$25. Subscribers will receive notification and copies of all documents produced between May 1, 2003 and April 30, 2004.

From

<http://www.appraisal institute.org/publications/ano/2003/09.asp#story4>.

SME 2004 Annual Meeting

In our April Newsletter, it was stated that two mineral appraisal sessions would be featured at the 2004 SME Annual Meeting. Further, an AIMA member would chair each session.

Four AIMA members were shown to be presenting a paper along with the title of each paper. Subsequent to the April Newsletter, a fifth AIMA has been added to the list. J.B. Gustavson of Gustavson and Associates Inc. will be presenting a paper titled “Case Histories Dealing With Damage Valuation in Contrast To Takings Valuation”.

Your editor was hopeful to include abstracts of each paper in this Newsletter. However, he has been advised by SME that the Abstracts are currently under SME copyright protection, thus are not available for publication at this time.

Extractive Industries IVSC Task Force

The International Valuation Standards Committee (IVSC) Extractive Industries Task Force met on June 23rd in London, England. AIMA members, Trevor Ellis and Donald Warnken are members of the Task Force. Other Task Force members include; Raymond Westwood, Australia, Alastair Macfarlane, South Africa and Bill Roscoe, Canada. The purpose was to prepare a draft of guidance notes for the Committee for their use in formulating valuation standards for the extractive industries, which includes mining and petroleum.

The Guidance Notes purposes are to provide information, commentary, opinion, guidelines and instructions on the valuation of assets or interests held by entities involved in the extraction industries. The Guidance Notes discusses concepts that should be understood by financial reporting and regulatory authorities, financiers, investors, participants in resource transactions and other users of extractive industries valuation services.

In October, the Guidance Notes will be presented to the Committee in Hong Kong for their review and consideration. Their acceptance or non-acceptance of the Guidance Notes will be addressed in our next Newsletter.

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Historical copies of the Newsletter, including this
issue, can now be viewed on the AIMA Website at
www.mineralsappraisers.org
