Stewart Bulletin

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NY000524

Date: February 21, 2013
To: All New York State Agents, Office Counsel and Managers
RE: Oil and Gas Leases - Force Majeure Extensions

As reported to you in UNDERWRITING BULLETIN NY000472 (Oil and Gas Lease / Mineral Rights Affirmative Coverage), in recent years there has been an increase utilization of oil and gas leases and grants of mineral rights in New York State. The aforementioned Underwriting Bulletin (NY000472), issued March 14, 2011, provides to you the appropriate affirmative coverage for Stewart Title policies in connection with the terms and conditions of an oil and / or gas lease or grant of mineral rights exception.

On July 23, 2008 former New York Governor Paterson issued a Directive to the New York Department of Environmental Conservation to draft a Supplemental Generic Environmental Impact Statement (SGEIS) in connection with “high volume horizontal hydraulic fracturing (fracking) in New York. In response to this Directive many oil and gas companies issued a written notice to property owners that Governor Paterson’s Directive to the New York Department of Environmental Conservation was essentially a moratorium halting all natural gas development in New York State and, therefore, constituted a “force majeure” or “frustration of purpose” affecting all oil and gas leases in New York State and, as a result, automatically extended all existing oil and gas leases until the Supplemental Generic Environmental Impact Statement (SGEIS) has been issued by the Department of Environmental Conservation.

A number of property owners in both Broome and Tioga Counties initiated an action in United States District Court (Northern District of New York) entitled “Aukema et al vs. Chesapeake Appalachia, LLC et al (Northern District, Case 3:11-CV-00489)” which resulted in a decision granting the property owners partial summary judgment on November 15, 2012.

In his decision, U.S. District Court Judge David N. Hurd determined that the oil and gas leases in the lawsuit were “. . . terminated at the conclusion of their primary terms, and defendants cannot invoke force majeure, the doctrine of frustration of purpose nor the prescribed payments clause to extend the leases.” The Court then directed that its decision be filed as a “document in recordable form cancelling the leases as of record in the county where the leased lands are situated” pursuant to New York General Obligations Law Section 15-304. Please note, however, this Federal Court decision and its filing in both Broome and Tioga Counties affects only the oil and gas leases litigated in the Aukema et al vs. Chesapeake Appalachia, LLC et al decision.

As a result of the position being taken by oil and gas producers doing business in New York State concerning force majeure and frustration of purpose concerning the automatic extension of their oil and gas leases, Stewart Title Insurance Company will require, until further notice, that all issuing offices seek underwriting approval before insuring the termination of oil and gas leases, pursuant to their terms, where the termination occurs on or after July 23, 2008 (the date of the former Governor Patterson’s Directive). The affirmative coverages set forth in our Underwriting Bulletin (NY000472), issued March 14, 2011, continue to apply to all oil and gas leases considered to be currently in effect in connection with lands insured under our policies. Stewart Title will update this Underwriting Bulletin when the New York DEC issues its SGEIS.

If you have any questions relating to this or other bulletins, please contact a Stewart Title Insurance Company Legal Services Representative at 212-922-0050.