

David Bengtson and Frank Basgall Discuss Habendum Clause and Production in Paying Quantities at KIOGA Conference

Insight

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The Wichita Bar Association's KIOGA conference is an annual oil and gas conference for lawyers, oil and gas producers, landmen and other participants in the oil and gas industry.

[David Bengtson](#) and [Frank Basgall](#) were featured speakers, presenting on a topic entitled "Production in Paying Quantities and Maintaining Oil and Gas Leases Beyond Their Primary Term." The presentation highlighted how courts have interpreted the habendum clause and how courts determine whether a well is producing in paying quantities. Below are six high-level takeaways from that presentation.

- Absent an applicable "savings clause," after the expiration of the primary term, most habendum clauses require production of leased substances in "paying quantities" to perpetuate the lease.
- Production in "paying quantities" means that the working interest revenue exceeds, by any margin, the current costs of operations to produce and market the leased substances.
- Costs incurred to drill, complete, equip and rework wells, including depreciation, are not considered.
- Recurring routine expenses are included when determining paying quantities and non-recurring expenses are excluded.
- The time period over which "paying quantities" will be determined is a period that is long enough give a prudent operator enough information to determine whether to continue or abandon operations.
- Consider modifying language in the habendum clause to expressly eliminate the "paying quantities" requirement, so that any production will perpetuate the lease or to more clearly define what expenses are included in the "paying quantities" determination.

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Other presenters addressed updates in oil and gas law, joint operating agreements and joint interest billing statements, evaluating oil and gas properties through an engineering lens and indemnity provisions.

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