Ontario

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The Mining and Lands Commissioner
Le Commissaire aux mines et aux terres

File No. OG 007-01

Lorne F. G. Carter)
Deputy Mining and Lands Commissioner)

Friday, the 8th day
of March, 2002.

THE OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

An application under clause 8(1)(b) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P.12, as amended by 1994, c. 27, s. 131; 1996 c. 30, s. 56-70; 1998, c. 15, Schedule E, s. 24; 1999, c. 12, Schedule N, s. 5; 2000, c. 26, Schedule L, s. 8 and section 15 of Ontario Regulation 245/97, amended to O. Reg. 22/00, for an Order requiring and regulating the joining of the various interests further described herein, within a specific pool for the purpose of drilling or operating wells, the designation of, the Applicant, Talisman Energy Inc. as the initial unit operator and the apportioning of the costs and benefits of such drilling or operation, hereinafter referred to as "the Application for Unitization of the Wigle Pool, Unit 12";

(Amended March 8th , 2002)

AND IN THE MATTER OF

An application by Talisman Energy Inc. (the "Applicant") for an order joining the interests of Industrial Boiler Specialties Limited and the interests of Peter Lusetti and Marie Louise Lusetti and the interests of 916841 Ontario Inc. and 957464 Ontario Inc. and the interests of Edward Albert Bartel and Diane Lynne Bartel (hereinafter collectively referred to as the "Unleased Landowners"), further described in Schedule "B"attached to this Order and pursuant to the above-noted provisions;

(Amended March 8th , 2002)

AND IN THE MATTER OF

That part of the Ministry of Natural Resources - Petroleum Resources Centre, MERSEA 3-4-IV, Spacing Order 2000-125, comprised of the Spacing Units 1/2-6-3, 3/6-6-3, 4/5-6-3 Mersea, being located in the North three-quarters of Lot 6, Concession 3, in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, being tracts #1, #2, #3, #4, #5 and #6 and adding tracts #7 and #8 in the sequence, comprised of the South one quarter of Lot 6, Concession 3, in the Municipality of

Leamington, which is not subject to a Spacing Order, on a Plan of Drilling Spacing Units, introduced as an exhibit to the Application, and further described on Schedule "A"attached hereto and forming part of this Order.

(Amended March 8th , 2002)

AND IN THE MATTER OF

All and singular those certain parcels, lots or tracts of land and premises, situate lying and being in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, Province of Ontario, more particularly described in Schedule "E" attached hereto and forming part of this Order, hereinafter referred to as "the Unit Boundaries";

(Amended March 8th , 2002)

BETWEEN:

TALISMAN ENERGY INC.

APPLICANT

- and -

ALL LEASED AND UNLEASED LANDOWNERS IN THE WIGLE POOL, UNIT 12, more particularly described in Schedule "D" attached hereto and forming part of this Order

RESPONDENTS

(Amended March 8th , 2002)

AND IN THE MATTER OF

An Application for an Order requiring and regulating the joining of the interests of the Respondents, lands and those of the Applicant in a unitized area comprising tracts #1, #4, #5 and #8, in Lot 6, Concession 3, in the Municipality of Leamington, formerly patly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, in accordance with the above-noted statutory authority, providing the relationship between the Applicant and the Unleased Landowners (Respondents) be governed by a Petroleum and Natural Gas Lease/Grant (attached as Schedule "C" to this Order) and the relationship between the Applicant and all the Leased and Unleased Landowners (Respondents) be governed by a Unitization Agreement (attached as Schedule "H" to this Order).

(Amended March 8th , 2002)

AND IN THE MATTER OF

In the alternative, an Application for an Order which joins the interests of the Respondents with the interests of the Applicant within a unitized area comprising

tracts #1, #4, #5 and #8, Lot 6, Concession 3, in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, in accordance with the above-noted statutory authority, on terms and conditions specified and filed with the Application.

ORDER FOR COMPULSORY UNITIZATION

WHEREAS a Hearing was held in this matter commencing at ten-thirty o'clock in the forenoon on the 30th day of October, 2001, in Kingsville Rooms A and B of the Holiday Inn Select, at 1855 Huron Church Road, Windsor, Ontario with Mr. Marko Pasic, Counsel for the Applicant, having introduced evidence and submissions, with Mr. James K. Ball, Counsel for the Respondents Industrial Boiler Specialties Limited, and Mr. Peter Lusetti and Mrs. Marie Lusetti, having arrived unannounced at the hearing, having introduced evidence and submissions in opposition to the application and with no one appearing for other Respondents opposing the application;

AND WHEREAS the tribunal was advised by Mr. Pasic that previously unleased landowners and Respondents, 1223305 Ontario Limited, Cervini Farms (1993) Inc., and Deeanne Kay Cervini, identified on earlier documents as Respondents of the Second Part, have entered into Petroleum and Natural Gas Lease/Grants with the Applicant, copies of which have subsequently been provided to the tribunal;

AND WHEREAS the tribunal was advised by Mr. Pasic that unleased landowner and Respondent, 916481 Ontario Inc. caused through a land sale, a partial transfer of a portion of their lands within the proposed unit area to 957464 Ontario Inc. and that 957464 Ontario Inc. should therefore be added as a Respondent to the Second Part, with copies of documentation verifying the transfer, received into evidence by the tribunal;

AND WHEREAS the "Respondents" to this application are hereby amended and include; Industrial Boiler Specialties Limited, Peter Lusetti and Marie Lusetti, 916841 Ontario Inc., 957464 Ontario Inc. and Edward Albert Bartel and Dianne Lynne Bartel respectively, as submitted and verified before this tribunal noting corrected spellings;

AND WHEREAS the Applicant, Talisman Energy Inc. has obtained Petroleum and Natural Gas Lease/Grants with a majority (90 percent) of landowners in the proposed unit area;

AND WHEREAS to promote the conservation of oil, gas and unitized substances, to prevent waste, to ensure the greatest ultimate recovery of unitized substances and to ensure to each of the parties to this Order obtaining his, her or their equitable share of unitized substances producing under and by virtue of the terms of this Unitization Order, it is deemed necessary and desirable to unitize the lands, tracts of land, oil and gas leases, formations and substances hereinafter described;

UPON reading the documentation filed and hearing the evidence in support of and in opposition to this application;

1. **THE TRIBUNAL ORDERS** that a portion of page two(2) of the Title of Proceedings be amended by deleting the description of the "RESPONDENTS" and replacing them with the words "ALL LEASED AND UNLEASED LANDOWNERS IN THE WIGLE POOL, UNIT 12", more particularly described in Schedule "D" attached hereto and forming part of this Order .

2. **THIS TRIBUNAL FURTHER ORDERS** that the unit to be known as Wigle Pool Unit 12 shall be described as all and singular those certain parcels, lots or tracts of land and premises, situated lying and being in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, Province of Ontario, more particularly described in Schedule "E" attached hereto and forming part of this Order, being of Ordivician age of the Trenton formation.

3. **THIS TRIBUNAL FURTHER ORDERS** that this Order include the addition of spacing units Tract #7 and #8, wherein Tract #8 is included within the boundaries of the proposed unit which description is provided in Schedule "E" attached hereto and further described as Tracts #7 and #8 within Schedule "A"(at page 2) attached hereto and forming part of this Order.

4. **THIS TRIBUNAL FURTHER ORDERS** that the spacing unit additions, Tract#8, changes shall take effect on the 1st day of March, 2001 in advance of the Unitization Agreement, being part of this Order and coming into effect on the 1st day of March, 2001.

5. **THIS TRIBUNAL FURTHER ORDERS** that the Order will be effective the 1st day of March, 2001 and **FURTHER ORDERS** that for purposes of the effective date of this Order, all Petroleum and Natural Gas Lease/Grant(s), between Talisman Energy Inc. and the Respondents; Industrial Boiler Specialties Limited, Peter and Marie Lusetti, 916841 Ontario Inc., 957464 Ontario Inc. and Edward and Diane Bartel, further described in Schedule "B", attached hereto and forming part of this Order, will be deemed to have been ordered and executed on or prior to the 1st, day of March, 2001.

6. **THIS TRIBUNAL FURTHER ORDERS** the Petroleum and Natural Gas Lease/Grant between Talisman Energy Inc. and the Unleased Landowners, being effective the 1st day of March , 2001, in advance of the Unitization Agreement Order, shall continue until the 2nd day of September, 2003 and **FURTHER ORDERS** that the relationship be governed by the various clauses of the Lease and the Unitization Agreement attached hereto and forming part of this Order.

7. **THIS TRIBUNAL FURTHER ORDERS** that the interests of the Applicant, Talisman Energy Inc. and the interests of the Landowners described in Schedule "D" (being all Leased and Unleased Landowners) attached hereto and forming part of this Order, be and are hereby joined and unitized for the purposes of drilling or operating oil and gas production wells.

8. **THIS TRIBUNAL FURTHER ORDERS** that the relationship between the Applicant, Talisman Energy Inc., and the Landowners described in Schedule "D" (all Leased and Unleased Landowners) attached hereto and forming part of this Order, be regulated in respect of such lands as if each of them had reached agreement on the terms and conditions, as set forth in the Unitization Agreement, being Schedule "H" attached hereto and forming part of this Order and attached to any pre-existing agreement or lease in respect of oil and gas rights in the Wigle Pool Unit 12 accordingly.

9. **THIS TRIBUNAL FURTHER ORDERS** that the unit boundaries, tracts and participating section of the Wigle Pool Unit 12 shall be in accordance with the Plan marked as Schedule "F' attached hereto and forming part of this Order, and **FURTHER ORDERS** that the allocation of each of the Landowner's oil and gas interests shall be as set out in the Summary of Tract Allocation, in accordance with Schedule "G" attached hereto and forming part of this Order.

10. **THIS TRIBUNAL FURTHER ORDERS** that in the event of conflict between the Unitization Agreement and this Order, the terms of this Order shall prevail.

11. **THIS TRIBUNAL FURTHER ORDERS** that the Unitization Agreement may be amended by the Applicant, Talisman Energy Inc. with the agreement of no fewer than that number of Leased Landowners corresponding with 60 (sixty) per cent of the unit area of the Wigle Pool Unit 12, or no fewer than that number of Landowners corresponding with 60 (sixty) per cent of the unit area of the Wigle Pool Unit 12, as may be amended from time to time, for the purposes of expending the size of the unit area through inclusion of additional lands in the vicinity of and abutting the current unit area;

(a) by executing an agreement with the Leased Landowner(s) which conforms with the Unitization agreement attached to this Order as Schedule "H", with the necessary modifications;

(b) by serving on each Leased Landowner a copy of this Order for Compulsory Unitization, with Schedules attached and;

(c) by registering on the title of the lands of each of the aforementioned Landowners, or additional, a Unit Amending Agreement along with Schedules attached setting out the following information;

(i) a plan of the newly defined unit area;
(ii) the metes and bounds of the enlarged or reduced unit area; and
(iii) a summary of the names of the individual Landowners and tract allocation of each party's oil and gas interest within the tract and unit area.

12. **THIS TRIBUNAL FURTHER ORDERS** that, in accordance with subsection 15(4)(g) of O. Reg. 245/97, amended to O. Reg. 22/00, the Applicant, Talisman Energy Inc., is appointed as the Initial Unit Area Operator.

13. **THIS TRIBUNAL FURTHER ORDERS** that the royalty payments to Leased Landowners shall be as set out in Clause (4) of the Unitization Agreement (Schedule "H" attached hereto), and shall be determined on an areal (proportion by area) basis, in accordance with Schedule "G" attached to and forming part of this Order.

14. **THIS TRIBUNAL FURTHER ORDERS** that service of the Order, together with the appropriate and individual Petroleum and Natural Gas Lease/Grant(s), will be affected by the tribunal by registered mail and by the Applicant, Talisman Energy Inc. through hand delivery to the residences of the Unleased Landowners as indicated by Schedule "B" attached to and forming part of the Order and **FURTHER ORDERS** that service of the Order, pursuant to the Unitization Agreement, will be affected by the tribunal through regular mail delivery to the residences of all the Landowners as indicated on Schedule "D" attached to and forming part of the Order.

15. **THIS TRIBUNAL FURTHER ORDERS** that this Order will be effective until such time as all of the recoverable oil and gas reserves in paying quantities have been produced from the Wigle Pool Unit 12 and without limiting the generality of the foregoing, continue so long as operations are conducted from the Wigle Pool Unit 12, as may be enlarged or reduced from time to time, or until such time as wells located on the aforementioned pool have been abandoned or plugged.

16. **THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by any party to this application.

17. **THIS TRIBUNAL FURTHER ORDERS** that upon payment of the require fees, Notarized Copies of this Order according to its part(s) respectfully be filed in the Registry Division of the Land Registry Office, 3 rd Floor, 250 Windsor Avenue, Windsor, Ontario, on the lands corresponding to each of the land parcels listed in Schedules "B" and "G", attached hereto and forming part of this Order.

18. **THIS TRIBUNAL FURTHER ORDERS** that this Order is binding on the Applicant and the Leased Landowners and their heirs, executors, administrators, successors and assigns.

Reasons for this Order are attached

DATED this 8th day of March, 2002

Original signed by
L.F.G. Carter

Lorne F.G. Carter
Deputy Mining and Lands Commissioner

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24th floor, 700 Bay Street
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The Mining and Lands Commissioner
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File No. OG 007-01

Lorne F. G. Carter)
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Friday, the 8th day
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THE OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

An application under clause 8(1)(b) of the **Oil, Gas and Salt Resources Act**, R.S.O. 1990, c. P.12, as amended by 1994, c. 27, s. 131; 1996 c. 30, s. 56-70; 1998, c. 15, Schedule E, s. 24; 1999, c. 12, Schedule N, s. 5; 2000, c. 26, Schedule L, s. 8 and section 15 of Ontario Regulation 245/97, amended to O. Reg. 22/00, for an Order requiring and regulating the joining of the various interests further described herein, within a specific pool for the purpose of drilling or operating wells, the designation of, the Applicant, Talisman Energy Inc. as the initial unit operator and the apportioning of the costs and benefits of such drilling or operation, hereinafter referred to as "the Application for Unitization of the Wigle Pool, Unit 12";

(Amended March 8th , 2002)

AND IN THE MATTER OF

An application by Talisman Energy Inc. (the "Applicant") for an order joining the interests of Industrial Boiler Specialties Limited and the interests of Peter Lusetti and Marie Louise Lusetti and the interests of 916841 Ontario Inc. and 957464 Ontario Inc. and the interests of Edward Albert Bartel and Diane Lynne Bartel (hereinafter collectively referred to as the "Unleased Landowners"), further described in Schedule "B"attached to this Order and pursuant to the above-noted provisions;

(Amended March 8th , 2002)

AND IN THE MATTER OF

That part of the Ministry of Natural Resources - Petroleum Resources Centre, MERSEA 3-4-IV, Spacing Order 2000-125, comprised of the Spacing Units 1/2-6-3, 3/6-6-3, 4/5-6-3 Mersea, being located in the North three-quarters of Lot 6, Concession 3, in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, being tracts #1, #2, #3, #4, #5 and #6 and adding tracts #7 and #8 in the sequence, comprised of the South one quarter of Lot 6, Concession 3, in the Municipality of

Leamington, which is not subject to a Spacing Order, on a Plan of Drilling Spacing Units, introduced as an exhibit to the Application, and further described on Schedule "A" attached hereto and forming part of this Order.

(Amended March 8th , 2002)

AND IN THE MATTER OF

All and singular those certain parcels, lots or tracts of land and premises, situated lying and being in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, Province of Ontario, more particularly described in Schedule "E" attached hereto and forming part of this Order, hereinafter referred to as "the Unit Boundaries";

(Amended March 8th , 2002)

BETWEEN:

TALISMAN ENERGY INC.

APPLICANT

- and -

ALL LEASED AND UNLEASED LANDOWNERS IN THE WIGLE POOL, UNIT 12, more particularly described in Schedule "D" attached hereto and forming part of this Order

RESPONDENTS

(Amended March 8th , 2002)

AND IN THE MATTER OF

An Application for an Order requiring and regulating the joining of the interests of the Respondents, lands and those of the Applicant in a unitized area comprising tracts #1, #4, #5 and #8, in Lot 6, Concession 3, in the Municipality of Leamington, formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, in accordance with the above-noted statutory authority, providing the relationship between the Applicant and the Unleased Landowners (Respondents) be governed by a Petroleum and Natural Gas Lease/Grant (attached as Schedule "C" to this Order) and the relationship between the Applicant and all the Respondents be governed by a Unitization Agreement (attached as Schedule "H" to this Order).

(Amended March 8th, 2002)

AND IN THE MATTER OF

In the alternative, an Application for an Order which joins the interests of the Respondents with the interests of the Applicant within a unitized area comprising tracts #1, #4, #5 and #8, Lot 6, Concession 3, in the Municipality of Leamington,

formerly partly in the Township of Mersea and formerly partly in the Town of Leamington, in the County of Essex, in accordance with the above-noted statutory authority, on terms and conditions specified and filed with the Application.

REASONS

APPEARANCES:

Marko Pasic	Counsel on behalf of the Applicant, Talisman Energy Inc.
James K. Ball	Counsel on behalf of the Respondents, Industrial Boiler Specialties Limited and Peter and Marie Louise Lusetti

No one attending for or on behalf of the other Respondent(s)

PRELIMINARY/PROCEDURAL MATTERS

At the commencement of the hearing the tribunal was informed that Mr. James K. Ball was appearing as counsel for the Respondents; Industrial Boiler Specialties Limited and Mr. Peter Lusetti and Mrs. Marie Lusetti. In addition he announced that Mr. Peter Lusetti would be in attendance in the afternoon. These last minute announcements were unopposed by counsel for the Applicant.

Mr. Ball noted for the record the correct name of one Respondent as Industrial Boiler *Specialties* Limited, who he represented.

Mr. Pasic, counsel for the Applicant, submitted that Oil and Gas Lease/Grant agreements had been obtained from several of the Respondents of prior record in the Appointment for Hearing. He submitted into evidence the lease documents for property (parts #'d 21 and 24) owned by 1223305 Ontario Limited, Cervini Farms (1993) Inc. (part # 22) and the property (part # 23) owned by Deeanne Kay Cervini. The properties numbered by part(s) is provided in Schedule "F" (Plan/Map) attached to this Order.

Mr. Pasic further submitted that the Respondent 916841 Ontario Inc. had recently completed a partial land transfer to 957464 Ontario Inc. and the Transfer/Deed of Land document was submitted ans entered as Exhibit 5. He explained that the latter company had been placed on immediate notice of these proceedings (affidavit submitted as Exhibit 4 hereto), and noted the President of each numbered company was the same Mr. Fouad Boutros. He pointed out that the transfer neither increased nor decreased the unit boundaries of the proposed unitization area introduced in the Application.

Mr. Ball, counsel for Respondents attending, voiced concern at the short notice given 957464 Ontario Inc. of these proceedings, however he accepted and agreed the Transfer/Deed of Land documents did bear out Mr. Fouad Boutros as the principal party (President) of both companies

of the transaction. He moved for an Order adding 957464 Ontario Inc. as a Respondent based on the combined effect of the affidavits of service [Exh. 3 & 4] and the transfer document [Exh. 5] received into evidence. The tribunal agreed with the interpretation of the evidence in this regard and accepts the due that due notice was given to 957464 Ontario Inc., a company owned by Mr. Fouad Boutros.

Mr. Ball objected to accepting Mr. Inwood as an expert witness and noted that it simply does not comply with the Commissioner's directions under the appointment for a hearing. In his opinion, if experts are being presented, a list of those expert witnesses along with a summary of the evidence to be presented, a C.V., correspondence, maps, photos and copies of reports the experts or consultants may rely upon when giving evidence also has to presented. To his knowledge, none of these had been delivered to the Respondents, notwithstanding an affidavit of service to the contrary. It is his contention that if no notice is given prior to the hearing then no expert witness status should be granted. Therefore he is not accepting Mr. Inwood as an expert witness

He stated that he has difficulty seeing how the tribunal can receive opinion evidence in the circumstances of this case. Simply put the Applicant, by his estimation, has not done what was expected for the application. He stated further that it is probably because the Applicant anticipated, that no one would ever respond to these proceedings. He expanded on his contentions that counsel for the applicant wishes to adduce evidence from an expert, when the Respondents have no idea of who that expert witness will be or in what context he will be providing evidence. Information on the expert witness should have been distributed prior to the hearing. It was his understanding that there was no reason to believe that there would be any expert evidence given at the hearing. Counsel for the Respondents continued that with regard to natural justice and procedural fairness, the introduction of an expert witness in this way is most irregular and could mislead the Commissioner. He noted his difficulty in accepting an expert witness in this manner and at this late date. However, he reasoned, if there was some accommodation that can be made, then they would certainly be prepared to make concessions.

Mr. Ball submitted that the proceedings are governed by the **Statutory Powers Procedure Act** in relation to the Commissioner's power of decision and this tribunal is actually constituted under Part VI of the **Mining Act**. He noted that there are provisions within the **Act** to move the proceedings from the Commissioner into the Superior Court of Justice. He pointed out the fact that because there is a lawyer here for these proceedings indicates the Respondents take these matters very seriously. He noted his surprise that upon attending there was to be expert evidence provided. The application, in his opinion, is prefaced on the belief's of the Applicant, which is different than established facts. It is his belief that the Commissioner reported decisions under the **Mining Act** and that the Applicant's belief is not enough. Proceeding in this way, he contends, is a fundamental violation of the basic norms of procedural fairness. However, he noted that if the witness is giving evidence as to the facts then there was no objection to proceeding.

In light of the objection and in the interest of moving forward Mr Pasic responded that Mr. Inwood would be called upon to provide evidence as a witness with no particular status as an expert.

The tribunal accepted the discussions and explanations declaring the proceedings move forward with the agreement of the parties present.

SERVICE

Mr. Pasic provided an Affidavit of Mailing [Exh. 3] to six potential Respondent parties declaring that unleased landowners;

Bartel, Edward Albert and Diane Lynne
Cervini, Deeanne Kay
Cervini Farms (1993) Inc.
Industrial Boiler Specialties Limited
Lusetti, Peter and Marie Louise
1223305 Ontario Limited (Christopher R. Cervini, President)
916841 Ontario Inc. (Fouad Boutros)

have been provided with notice of the appointment for hearing.

The notice provided to 957464 Ontario Inc., a company owned by Mr. F. Boutros was deemed to have been provided in the original notice to 916841 Ontario Inc. The ownership of property being deemed divided and transferred after the original notice. This issue was dealt with in preliminary matters herein and the title of proceedings was amended accordingly.

Those lessor/landowners under executed Petroleum and Natural Gas Lease/Grants with Talisman Energy Inc. prior to this application date were deemed notified of the unitization process through receipt of the specimen Unitization Agreement and acknowledged their acceptance by returning the specimen copies signed. Copies of the hearing notices and the acknowledged Unitization Agreement [Sch. "H"] specimen were provided to the tribunal and entered into evidence accordingly [Exh. 8].

BACKGROUND

Talisman Energy Inc. is a company incorporated under the laws of Canada with its head office in Calgary, Alberta. The company is well known to the governing bodies in the province of Ontario as a hydrocarbon explorer/producer. Their experience within Canada is extensive with an estimated 700 wells under various stages of exploration or production. Their operations extend worldwide.

The proposed unit area is reported (public records) as having been actively under drilling operations in the 1980's with an estimated ten wells previously bored by various operators.

The Applicant, Talisman Energy Inc., relying on their experience will concentrate on the Trenton formation/layer, once their licence is granted, which to their knowledge will yield

hydrocarbons from a series of vertical columns. The Applicant is reasonably confident that directional/horizontal drilling methods may produce a successful well in this area.

In order to accommodate the Ontario Regulations[1] and the Policy(s)[2] of the Ministry of Natural Resources, which states that a joining of interests is required in an area prior to exploration drilling and /or production can commence. The Applicant notes that they have attempted to execute petroleum and natural gas leases with all forty-six landowners in the proposed unit area. They have been successful in executing leases with forty-two (90 percent) of the landowners.

The Applicant also identified the need to expand the spacing units to include tracts #7 and #8 which best followed the expected hydrocarbon field and the fabric/patterns established by the Ministry. The tract changes will follow the Mersea 3-4-IV, Spacing Order 2000-125 [Schedule "A" herein].

Subsequently the Applicant filed for a Compulsory Unitization Order from the Office of the Mining and Lands Commissioner on August 17th, 2001. In support of the application Talisman has received the acknowledgment and acceptance, in writing, from the executed lease landowners (90 percent) for the unitization of the area. This application for Unitization is designed to accomplish three tasks. Firstly, the Unit Boundaries will take in another tract of land, extending the spacing units accordingly. Secondly, the unleased landowners (five), not yet under a Petroleum and Natural Gas Lease/Grant, will be placed under lease to complete the unit area. This compulsory pooling respects respecting the landowners correlative rights to the potential discovery of hydrocarbons. Lastly, the application suggests the area be unitized as a collective unit for the purposes of efficiency of operations and the protection of the correlative rights of the landowners.

Notice of this October hearing was issued to all those with an interest in the application by letter on August 29th, 2001.

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[1] **Ontario Regulation 245/97, amended by Ontario Regulation 22/00**, subsection 8(3);

[2] **Ministry of Natural Resources**, Spacing and Pooling Policy;

> 6.0 Pooling
>
> ...
>
> Pooling of an exploratory or development oil or gas well's spacing unit is required prior to drilling or producing the well (see section 8(3) of the Regulation);
>
> ...
>
> Generally, a well licence will not be issued for a new well where the spacing unit for a well has not been pooled at the time of the application for a well licence.
>
> 6.3 Compulsory Pooling of a Spacing Unit
>
> ...
>
> Where a well licence application is made and the applicant has not pooled the spacing unit for the well the Ministry shall not issue a well licence. If pooling can be accomplished by the applicant immediately upon establishment of a spacing unit through the pooling clause of the lease(s) for lands within the necessary spacing unit for the well, a well licence may be issued.

ISSUES

1. Can the purpose of the Oil, Gas and Salt Resources Act be ascertained?

2. Is an Order for Unitization justified under the circumstances of this application? Namely, that there are no drilling operations at present to indicate that substances in paying quantities can be expected, not all leases are executed and the spacing units in the unit area have not been completely designated.

3. If granted, what should the area of the unit be?

4. If granted, what should the effective date and term of the ordered compulsory pooling of Leases be?

5. If granted, what should the effective date of the Ordered Unitization Agreement be?

EVIDENCE

Statements - Mr. M. Pasic, Counsel for Applicant

Mr. Pasic submitted that at the time of the application for unitization of the area [Exh. 1] they had identified thirty-nine (39) landowners that agreed with unitization. This translates into 83.337 acres of the 100 acres area or 81.209 per cent of the proposed unit area. However, since the pre-hearing application there is now approximately 90 per cent of the area subject to oil and gas leases and agreeable to unitization. The focus of the hearing, in his opinion, is on the remaining 10% owned by Industrial Boiler Specialities Limited, the Lusettis, the Bartels and the numbered companies (957464 Ontario Inc. and 916841 Ontario Inc.) of Mr. F. Boutros.

He introduced, the Applicant's witness, Mr. Robin Inwood [Exh. 2, *Curriculum Vitae*], who they consider to be an expert in the field.

Statements - Mr. J. K. Ball, Counsel for Respondents

Mr. Ball submitted that the interests of Industrial Boiler Specialties Limited, and Peter and Maria Lusetti are engaged in this process only if a unitization order is issued. It is his contention that an Order under clause 8(1)(b) is not necessary. Further he stated; if the evidence demonstrates that there is absolutely no need for an Order then the issues particularly germane to the Respondents represented need never be addressed. Their concerns are about the terms of what, they consider the Applicant is propounding in a "non-consensual lease" and a "non-consensual unitization agreement". It was Mr. Ball's contention that the terms of the unit agreement ought not be terms to be imposed on the Lusetti's. He submitted into evidence a summary of suggested changes [Exh. 6(a) & 6(b)] and

indicated that it was the Respondent's position that the specimen lease and unit agreement wording makes this application a questionable case for unitization. It was his contention that many of the agreement terms are irrelevant to Talisman achieving its objectives. He stated that the Applicant, Talisman Energy Inc., believes they will find hydrocarbons through their drilling efforts as a result of this application going forward, but the evidence will establish that there is no factual record that is made that would serve to elevate Talisman's belief to the force of fact.

In summary, Mr. Ball queried whether this was an appropriate case for unitization including the Lusetti's lands? He noted his concerns for the unitization agreement being ordered without the consent of the landowners. He noted further that if the order is warranted, then changes in the terms would be appropriate for an ordered non-consensual lease and unitization agreement as relayed in the summary presented into evidence (above noted). He cited, for example, wording in paragraphs 17, 18, and 21 as inappropriate for an order by the Mining and Lands Commissioner. He stated there is real concern about the Commissioner's Order as it is not compelling. It appears that whatever the Commissioner sees fit is the basis of the order. He noted that he saw the position of Talisman being that all economic terms in the unit agreement ought to be carried forward by the Order.

Mr. Ball reflected that, it is fair to say, that the Applicant could have drafted term changes before these hearings were brought, and certainly before we appeared today, that would have offered specific terms to the Commissioner for inclusion with the Order. Terms that are consistent with a unitization order under O. Reg. 245/97, ss. 15 and clause 8(1)(b) of the **Act**.

Mr. Robin Inwood (for the Applicant)

Mr. Inwood outlined that he has been employed in the oil and gas industry in Ontario since 1967. Over the past 24 years as a practicing landman, city landman and Vice President of exploration for a large exploration company and is currently employed by Elexco Ltd. as a regulatory affairs specialist. In the latter capacity he has acted as a witness in oil and gas matters before the Ontario Energy Board (gas storage) and the Mining and Lands Commissioner (joining of interests for the purposes of drilling a well).

He stated that it was his task to prepare the application for unitization. He referred to the posted props and indicated that from the Applicant's point of view and upon an order being issued, they propose drilling a horizontal well in an area encompassing tract #'s, 1, 4, 5 and 8 in Lot 6, Concession 3 in the Township of Leamington, formerly part of the Township of Mersea. He outlined that in southwestern Ontario, areas are divided into land tracts and in this application there are eight tracts starting from the northeastern corner of the Lot numbered as "1" and moving westerly to "2" and directly below is tract "3" and then back east for tract "4" and down again for tract "5" and on in the same fashion completing the area at tract "8". Each tract is 25 acres which satisfies the regulations. He noted that the Ministry of Natural Resources, through regulations, has set minimum requirements prior to drilling. He noted from experience that the Trenton formation is a potentially producing level (2500/3500 feet) in the Leamington, Essex and Colchester fields (Ordovician age). He continued, that the Applicant proposes directional drilling that will horizontally traverse the unit

and tract #'s 1 , 4, 5 and 8. Based on the current policy of the Ministry all interests within the 100 acres must be combined before drilling a well and placing in on production. The Order will satisfy this pre-requisite.

Mr. Inwood stated that Talisman has submitted evidence that over 90 per cent of the acreage is currently under lease agreements with the landowners. The properties owned by Industrial Boiler Specialties Limited, the Lusettis, both Ontario numbered companies of F. Boutros (916841 and 957464) and the Bartels, are the only un-leased, un-unitized parcels outstanding in the 100 acre area.

He noted the Applicant is seeking a compulsory unitization order to shorten the process. He stated that proceeding through an order under clause 8(1)(a) of the **Act** would only pool the interests, whereas an order under clause 8(1)(b) of the **Act**, as he understands it, allows the application to deal with changes to the spacing units required here and join the interests of all.

In short he explained that the Ministry of Natural Resources is not prepared to issue a licence to drill a well without receiving the evidence that a pooling of interests within the proposed area has been achieved. This, he concluded, requires a unitization of the area through the order applied for here.

Continuing with the application explanation, he stated that the Applicant is requesting that the Mining and Lands Commissioner order the Respondents into a Petroleum and Natural Gas Lease [Exh. 1,"C"] and pooled with the others. Secondly, the order will join and regulate Respondents in a common unitization agreement [Exh. 1,"D"] for all landowners. He noted that the unitization agreement must be the same for all the landowners in the entire 100 acre unit.

He noted the lease on the Respondents (Lusettis) properties expired 12 months ago and re-signing has been fruitless. The Applicant, he noted further, is prepared to grant to, the Respondents, Industrial Boiler Specialties Limited and Mr. & Mrs. Lusetti the caveat that no operations will take place on their surface lands, only within the subsurface. In respect to the lease terms, the Lusetti's and Industrial Boiler Specialties Limited will be paid $25 per acre for a suggested term of five years. In the case of Mr. Boutros' numbered companies, they will be paid $150 in a paid-up fee, given the small amount of acreage calculated on a five year period. The Bartel's lease terms will be dealt with in a similar fashion with a paid-up fee of $150.00 over a suggested five year term.

In regard to negotiations, he noted that during the unsuccessful negotiations with one Respondent, Mr. Boutros held that he should be paid a fee of $2,000 which would have exceeded the arrangments with the other landowners fees considerably (calculates to $260 per acre). In the case of the Bartels, they had a reluctance to sign a lease because they had concerns about encumbering the title of the property which was currently offered for sale. However in the later situation the Bartels indicated that they will be bound by the tribunal's order.

Mr. Inwood stated that to his knowledge there are wells producing at the Trenton formation level in the neighbouring Mersea and Romney Townships and there have been over one hundred (100) wells drilled in this area. He concluded that horizontal well drilling is a relatively new technology advancement which has perhaps exceeded the reach of current Ontario Regulations. Further, based on this modern technology the need to reconstruct the spacing orders from time to time is required to reorganize accordingly to new information gained in the field.

Mr. Inwood, responding to Counsel's questions, regarding the proposed unit area and drilling, noted that there have been many horizontal wells drilled in the surrounding areas of which the Ministry of Natural Resources has simply issued a licence with the condition that all parties in the spacing area must be joined before production can commence.

He stated that there are incremental benefits to drilling a horizontal well to both the landowners and the Applicant. There is the potential for more royalty payments from the oil produced and that is a benefit to the landowners. There is spin-off benefits in that the money is spent in the local community and the wages are paid into that community. He noted that this well is considered to be a development well which means the discovery of hydrocarbons in the area has already been made and this is just one of several wells being developed to exploit the reserves found there. He stated further that the Applicant, Talisman, is hopeful the well will be a success and the unitization of the area affords more landowners the potential benefits from a successful well.

The Order, a pre-requisite to drilling, will benefit the landowners already in agreement and under lease. Ninety per cent of the landowners are under lease and in agreement with the unitization proposed. Mr. Inwood, through counsel for Talisman submitted a summary of the executed leases and the acknowledgments for unitization currently in place, consistent with the pre-hearing Exhibit #1 filings and introduced into evidence as Exhibits #7 & #8. Further he referred to the introduced documents and stated that the terms of the unitization agreement and the pooled oil and gas leases has to be consistent with the documents of the other landowners in Lot 6, under signed agreements.

Mr. Inwood (cross-examination)

Mr. Inwood pointed out that his evidence is drawn from what the Applicant has conveyed to him, along with his skills, training, education and extensive experience in the industry. He noted that information on a number of producing wells (at least one hundred) in the neighbouring area is available through the Ministry of Natural Resources. He continued that he was previously the Vice-President of Exploration for Telesus Oil and Gas, a predecessor company, that developed part of the area. The original discovery areas were in the Townships of Romney and Mersea where a horizontal well has been drilled by Talisman on the west half of Lot 5.

Mr. Inwood stated the unitization order is being sought to accommodate Talisman's desire to drill a horizontal well. He referred to [Exh. 1, map] and agreed the well will be spudded[3] from a location in the southwest corner of Lot 6, Concession 4, north of the 4th Concession Road. He noted that it has been Talisman's experience that horizontal well drilling is the most successful in the highly fractured Trenton fields. These fractures are vertical columns and horizontal drilling cuts through each column in a series with production coming from more than one column in the series. He pointed out that there is a very real risk with vertical drilling methods in these areas that the hole drilled may miss the primary fracture pattern. He noted that the horizontal well drilling costs are greater than the vertical well method costs. He noted further that in this formation there is in all likelihood oil and entrained gas (released at the surface). The reserve in this area is not proven yet.

He responded further to questions, pointing out that Talisman Energy Inc., based on its considerable technical expertise and on the fact that drilling has been successful in the area since 1983 (by several other companies), is confident that it will find hydrocarbons in this area. Their technical evidence, experience and knowhow has lead them to believe there are a series of fractures with trapped hydrocarbons within Lot 6, Concession 3. Experience has shown them that Trenton formations do not uniformly give up oil, except in the fractured areas. The horizontal drilling in these areas increases the chances of a successful find and an economic reward for Talisman and the landowners. The landowners benefit from royalties paid from the earnings distribution over a greater area, as purposed and these finds are capable of producing large quantities of oil and gas. Talisman is not prone to frivolous drilling efforts. Costs of drilling can exceed one million dollars and without some fundamental geological belief that hydrocarbons can be found, the Applicant would not be in a position to drill. The advantage to a horizontal well hole is that while more land is required to drill from a spacing unit to a unit area, the risk of having a dry hole is reduced.

He pointed out that his company, Elexco, negotiates oil and gas leases and unit agreements on behalf of clients, but does not speculate on its own. The clients choose the land areas and direct Elexco accordingly. He agreed that the application submitted is to accommodate Talisman in its drilling efforts and economic interests within the confines of public policy. He continued that each drop of oil produced from Ontario sources means that much less dependency on oil from outside the Province which be believes is consistent with the public policy statement by the Minister in 1996.

He stated that he was not personally involved in the negotiation of the Lusetti and Industrial Boiler Specialties Limited lands, however, he is aware of the file as a manager of the firm. He agreed that the direction Talisman wants to drill the proposed well requires access to the sub-surface of the Industrial Boiler Specialties Limited and the Lusetti's properties. Without them under lease and within the unitization, the Applicant proceeding to explore for oil would be difficult in the area given the regulation requirements. He continued that there is a requirement of no less than 50 acres of area before a well can be drilled within the ordivician age Trenton formation. In the absence

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[3] "spudded" (O. Reg. 245/97, amended to O. Reg. 22/00), definition: with respect to a well, means the commencement of actual drilling of the well's surface casing hole using a cable tool or rotary drilling rig, but does not include activities to prepare a site for drilling the well, including installing a conductor pipe.

of the land being unitized, no one would not be able to drill under Tract #1 and Tract #4. Neither a horizontal well hole nor a vertical well hole in the north half areas would be allowed.

Mr. Inwood referred to the drawings and outlined the Wigle Pool Unit 12 as it relates to spacing units laid-down and stood-up. He noted the location of tracts 2,3,6 and 7 immediately west of the proposed unitization area and congruent with the spacing unit numbering within. He stated that Elexco has been contracted by Talisman Energy to negotiate unit agreements with area landholders of the other adjacent tracts. He noted that while it may be speculative on his part, as a former explorationist, it is possible Talisman may choose to drill another horizontal well on the adjacent properties. He noted that considerable technical information is required when considering drilling a horizontal well and again making the further decision to drill an adjacent horizontal well. He stated that it is self-evident that any successful well in the neighbourhood generates activities to try and find more successful wells in the area. In this case he noted the results of the proposed horizontal well may or may not produce results that will help make further drilling and location decisions.

He indicated that he has been a party to proceedings dealing with an application for a Mining and Lands Commissioner's Pooling Order under clause 8(1)(a) of the **Act**. He offered the opinion that an Order under clause 8(1)(b) of the **Act** does not mean an oil and gas lease is signed by virtue of the Order but the Order is registered against the property supported by the oil and gas lease.

Mr. Inwood stated further that it is his understanding that the Lusetti's, Respondents, are taking the position that there is trinity appearing throughout the Oil and Gas Lease and the words; "the said lands", "the pooled lands", and "were the unitized lands" should be reduced to "unitized lands". However in defense of the wording, Mr. Inwood stated that the development of the Petroleum and Natural Gas Lease/Grant has a long history and any reduction or change is a lengthy exercise worth of caution to maintain the document clause by clause. He noted that the application suggests that the Petroleum and Natural Gas Lease and Grant and the Unitization Agreement be taken at face value as submitted and that it is up to the tribunal to order accordingly. He further noted that he did not recall, if any, changes made to an oil and gas lease as it is brought into a unit. Mr. Inwood agreed further that an oil and gas lease contains a confidence and agreement between the lessor and lessee.

He indicated that the Lessee, upon negotiating an oil and gas lease, usually favours a longer term while the lessor wants a shorter term. A settlement term somewhere in between is negotiated.

Mr. Inwood stated that in negotiations of lease agreements there is usually uniformity, with regard for standard payments, terms, etc., established for the landowner and that is brought forward in any application as such. He reflected on the current documents and noted that this standard is being applied to the Respondents contracts here and it makes economic sense to negotiate an inexpensive deal on behalf of the Lessee wherever possible.

Mr. Inwood reflected on the level of landowner knowhow about the industry and stated that to his knowledge there are some very experienced landowners who are aware of oil and gas jargon and operations, based on his personal business and contact.

He further stated that to his knowledge there is no jurisdiction in oil and gas matters to obtain properties on an appraised basis, similar to the methods outlined in the **Expropriations Act**. Expropriations, to his knowledge are not allowed in the industry. He noted that it would be very difficult to establish a common ground in the industry respecting appraised values. There is too much risk and uncertainty with regard to finding hydrocarbon substances.

He noted that a level of remuneration has been suggested to the tribunal which is consistent with other landowners in the neighbourhood. He further stated that it is the Applicant's position that the arrangements be uniform for all landowners regardless of whether they have voluntarily agreed or are opposing Respondents today. He noted the royalty payment is based on a 12.5% calculation and from the lessee's perspective that is not negotiable. Mr. Inwood in response to a series of questions concerning specific paragraphs of the specimen unitization agreement [Exh. 1, Sch."D"] agreed that paragraph #8 mades reference to paragraphs #5, #6 and #7 in relation governance of the unit as to increases and decreases in its size.

He pointed out that in his experience subsequent changes to the unitized area are done by further orders of the Mining and Lands Commissioner, similar to its predecessor the Ontario Energy Board and that the Order has to maintain the consistency between the Lease and the Unitization Agreement. He further stated that it is his belief that the issues of how an Order is structured is covered off under the regulations dealing with the issuance of orders. He reflected that it would be surprising if the salient facts and terms of the unit agreement were very much different from the order. Further there is a considerable body of law dealing with unit agreements and the concept that a unit agreement is one for all and all for one. He noted that all participants (landowners) within the unit will be dealt with equally; one party can not be different. There are salient terms in the unit agreement that can not be modified. The agreement must stand as one. He repeated that in his opinion the hearing is for the application and there is no statute or orders compelling on the tribunal to do what the Applicant would like to see done.

Mr. Inwood responding to questions on unitization noting that there is case law supporting unitization from other jurisdictions. He noted that in his experience, Ontario is not a leader in case law matters for Oil and Gas and has to rely on others for precedents.

Mr. Peter Lusetti (Respondent)

Mr. Lusetti, prompted by Counsel, pointed to the map parcels #1 and #4 and noted that they were owned respectively by himself and his company, Industrial Boiler Specialties Limited. He conveyed to the tribunal that on parcel #1 there is a boiler sales and repair shop of approximately 9,000 sq. ft. in size. The shop is engaged in the business of refurbishing and rebuilding of boilers, as well as, the assembly of new boilers for delivery. He pointed further to parcel #4 on the map and

noted he has an older 2,400 sq. ft. building used for inventory and parts storage. He concluded that the business is perhaps the largest of its kind in the Leamington area.

He stated that he is aware the Applicant is applying to have the area designated as one for the purposes of drilling a well. However he was not aware that the Applicant wanted to drill a horizontal well prior to today. He offered the observation that he was aware there are different types of drilling used in the industry today.

Mr. Lusetti noted that his properties were previously under lease to the Applicant, but the term had expired and negotiations have been ongoing for some time now to renew the oil and gas lease for three years. He stated further that discussions with the agent at negotiations included his desire that no drilling will take place on his properties but he noted it was not presented in writing, only conveyed verbally told him by the agent, that there would be no drilling on the property.

He recalled that the agent indicated drilling would take place to the west of his property, quite a distance away, near the by-pass and north of Hwy#3, in the westerly portion of Lot 6. He pointed out that he and his wife had been reluctant to sign the lease because it was not clear enough to them. He stated that upon reviewing and discussing the lease they did not see a "no drilling" clause, the payment amounts were the same as before and insufficient to them. He noted that the payments were non-negotiable according to the agent. He stated that the language of the lease document was not familiar to him. Mr. Lusetti recalled that the agent left the lease document in order that he could take it to a lawyer for review and it was some time before the lease document was taken to the lawyer.

Mr. Lusetti, in his objection, stated that his property is a commercially zoned site and that he is concerned that being in the vicinity of the well location there will be increased traffic on the roads during construction/drilling of the well and once the well is operational there is concern for the odour, he expects, it will omit. He anticipated that the value of the property will be affected by the well location in the vicinity. He concluded that to his recollection the offer was for a three year lease term with a payment of $1,000 for the seven acres of land in Parcel #1.

Mr. Lusetti (Cross-Examination)

Mr. Lusetti indicated that he had been contacted several times regarding the proposed lease renewal and to his recollection the first time was in August, 2000. He recalled the agent advised there would be a no entry and no drilling clause added to the lease. He noted that he had advised the agent that a $2,400 payment was required over three years rather than the $1,000 offered. Mr. Lusetti stated that in February, 2001 he told the agent they would take the proposed lease to a lawyer (Stutts and Strosberg of Windsor) for review.

He noted that in May 2001, the agent delivered a copy of a unitization agreement and after discussions concerning the contents he still did not understand it. He recalled seeing the display diagram contained in the unitization documents, but was still confused by the concept. He recalled his concerns about drilling on the lands and the activity that will take place if a drilling location to the

west/southwest is used. Mr. Lusetti further indicated his concern that there would be an increase in truck traffic during the construction phase alongside his properties and the farm lands to the west.

Mr. Lusetti noted that his buildings covered approximately two acres of the property and the balance was used for outdoor storage of boilers parts and some farm lands. He reflected that the property has a commercial value consistent with the commercial zoning assigned the property. He also indicated that a lease for the oil and gas rights may hinder a sale or lease of the lands and therefore they were not keen on having a well drilled in the proximity of the land. He recalled that in recent visits the agent had intimidated him indicating that it didn't matter if they signed on or not because the drilling would proceed regardless.

Mr. Lusetti stated that to his knowledge there are two or three operational wells approximately one mile away in the 4th Concession. He agreed that if the well was drilled further away from his property, on the Regehr lands, he had less concern.

Final Submissions (Mr. J. Ball)

Mr. Ball submitted that the Applicant, Talisman, has failed to make its case for an order to unitize the area. Further he submitted that the application should be dismissed without prejudice to the rights of the Applicant and reapply at a later date once the west half of Lot 6 is organized to allow them to direct a horizontal well into that area. Mr. Ball indicated that he was submitting this course of action because it is impossible for the tribunal, within the confines of these proceedings, to provide for orderly drilling in the area. He noted in support of this position that Mr. Lusetti, in his evidence, had recounted the agent's discussions indicating that the well will be drilled to the west of the property in tracts 2 and 3, north of Highway #3. He also recalled Mr. Inwood's evidence that permission for another horizontal well will be sought, that will be directed into the westerly area not yet organized.

He submitted that the Applicant is desirous of defeating Mr. Lusetti's property rights in parcels #1 and #4 of the Wigle Pool Unit 12 and that Mr. Lusetti views deserve weight in this decision. He noted that the Respondent's commercial property is going to be directly affected by the location of the drilling works and in an effort to stop the drilling he is not prepared to cooperate with the process.

Mr. Ball recalled that based on Mr. Inwood's evidence, the Trenton formation hydrocarbons are found in vertical columns and fissures. He noted that the Applicant produced no evidence as to where the fissures run, whether; north or south, east or west or at random. He repeated that it is not unreasonable in these circumstances to defer and dismiss proceedings until the Applicant has the property to the west organized (tracts #2,3,6&7). Mr. Ball submitted that in the alternative, if the tribunal should make the Order it follows that the Petroleum and Natural Gas Lease/Grant and the Unitization Agreement has to be incorporated within the Order. He submitted for the tribunal's consideration and inclusion in the Order that the Exhibits No.6(a) and No.6(b) contain specific and alternate wording for both agreements.

He stated that it is troubling, in that, this is not a simple case where the Applicant is seeking to advance a drilling program in anticipation of a reward but the Applicant expects the tribunal to define the economic terms for the Applicant which he considers interferes with the interests of the landowners. He further noted the submissions and evidence presented, which in his opinion, does nothing to advance the case for the economic factors proposed in the Lease and Unitization documents.

Mr. Ball reflected on the evidence the fact that Talisman was able to execute consensual agreements with neighbouring landowners and therefore the same terms and agreements should be binding on Peter and Maria Lusetti and Industrial Boiler Specialties Limited on the grounds that persons similarly situated ought to be similarly treated. He submitted that in legal circles it is called "Equity is Equality" and in the circumstances of this case does not make a great deal of sense.

Mr. Ball submitted the Lusetti's and Industrial Boiler Specialties Limited occupy a special position and this warrants special economic treatment. These Respondents are distinguished from all others because they are being compelled to enter agreements rather than proceeding with consent. The Applicant, he contended, has to come forward with clear and convincing evidence why the terms they offer should be imposed. He submitted that, in his opinion, the Applicant's answer to such an enquiry was, if terms have been negotiated and struck with others then they should be imposed on the Respondents also. He further noted; it appears by natural consequences and Mr Inwood's evidence that the parameters of the lease terms are set for unitization agreements on a uniform basis. However, in his opinion, this is not a negotiated unitization agreement but proceedings that, at the very heart, are non-consensual and constitute exploitation.

He noted the unitization agreements, in general, modify the underlying lease. In the case of the specimen unitization agreement [Exh. 1, "D"] at paragraph #4; "notwithstanding anything to the contrary expressed or implied in the lease", he noted the term is certainly open for contracting parties to enter into a lease or modify additional unitization agreements. However, it does not follow that an Order by this tribunal made under clause 8(1)(b) of the **Act** can specify inconsistent terms within the lease and unitization agreements where one modifies the other. The objections submitted note that the language of terms must be consistent and the various deletions and inclusions suggested are consistent.

He further submitted that the Applicant has failed to convince the tribunal that the terms are fair and reasonable in a non-consensual setting. Mr. Ball pointed out further that the unitization agreement acts as a document that amends the underlying leases. He stated that from evidence, the terms of the lease, relating to duration are "all over the place" within the document. Mr. Ball stated that he considered the Petroleum and Natural Gas Lease and Grant to be fundamentally false, deceptive and misleading. He noted blanks within the document which relate to negotiated terms and items. The specimen, in his opinion was standard text and suggested an unacceptable primary term of ten years. Mr. Ball further reflected that some terms of the lease are long and some are short and given a ten year term the Applicant has a significant economic advantage based on self-interest not fairness. In Mr. Ball's view, upon expiry of a lease term, any further drilling

or production from the lands should be open for further negotiations on issues of royalty and compensation to the landowners.

The tribunal, he continued, is expected to accept the terms put forward through the application. Mr. Ball submitted that under Regulations, the Applicant Talisman, is bound to produce documents that govern the relationship between royalty and working interests. The terms presented here are clearly to their advantage and there is no evidence offered on the subject of whether the provisions are fair nor do they support the claim for relief.

He further reflected that the tribunal, if it is inclined to make a unitization Order has to ask and instruct itself as to what term should be forced onto the unwilling landowners. Mr. Ball noted from reviewing the evidence summary [executed leases - Exh. 7] that several terms of duration are for only two years. He submitted that the economics of the leases are, supposedly identical, but in fact, they differ in terms of duration. He noted that, in his opinion, the Applicant was not putting forward fair terms. He posed the questions; "how long is it going to take to drill this well and how long is it going to take before Talisman knows whether it is a dry or productive well?" He noted that if there is a two year lease term does that set the minimum standard? Mr Ball concluded that there was no evidence that the term could be only one year. He submitted that the Lusetti's and Industrial Boiler Specialties Limited term should not exceed one year.

He submitted further that the 12.5% royalty payment has no supporting evidence that it is fair, only the evidence that others have accepted it. He stated that, as certain as the sun rises in the east, Talisman Energy knows what to expect upon drilling and they have no reasonable grounds for disbelieving that the horizontal well will be anything other than productive. He expressed the opinion that Talisman Energy was operating on an informed basis while the landowners are not privy to any information. He asked; What risks are they running here? And questioned whether the 12.5% royalty may suddenly not be fairly representative of the risk? Mr. Ball submitted that Talisman was seeking to have the tribunal enforce terms on the landowners under circumstances where material, information was kept from the tribunal and non-public information was kept from the parties that they seek to adversely affect. He expressed the opinion that the one thing the tribunal knows is that the economic terms are predicated on keeping the landowners and the Commissioner in the dark.

Mr. Ball continued that in his opinion there was nothing at all that the Applicant, Talisman, was offering which indicates the economic terms it seeks to have the tribunal impose on its behalf are fair and reasonable in the circumstances. He offered that the Applicant has 90 per cent of the area landowners under agreement to unitize and there was nothing to indicate that their terms are fair. The area sought to be unitized is the minimum area that can be unitized, however there is no definition of a maximum that ought to be unitized. Based on Mr. Inwood's evidence, Mr. Ball noted that the Applicant was actively seeking to lock up adjacent tracts #2,3,6 &7. He reflected that they apparently know something that the other parties do not.

In summary he submitted that if the tribunal is inclined to grant an Order under clause 8(1)(b) of the **Act,** the terms other than economic terms should be those outlined in the objection summaries [Exh. 6(a) & 6(b)] submitted to this tribunal. He continued that the economic terms of

the unitization order should probably be referred to binding arbitration. He reflected back on his threshold question as to whether a unitization order should be made at this time or at all. He noted the caveat that the Applicant will be bound to the terms such that no surface works will be installed on the Lusetti and Industrial Boiler Specialties Limited properties. Mr. Ball noted the Respondent's opposition to a well head or drilling at all and charged the tribunal, that in the event it should render an Order it should do so specifying that there will be no well heads located in any of the tracts of Lot 6, Concession 3 lying north of Hwy #3. Mr. Ball noted his confusion with the issues and added he would be raising the subject of costs and pursuing the tribunal to rule in his favour through the discretionary powers of the tribunal to consider costs under Part VI of the **Mining Act**.

Final Submissions (Mr. M. Pasic)

Mr. Pasic submitted that the Applicant is requesting an order by the tribunal enacting the terms and conditions of the Petroleum and Natural Gas Lease/Grant and the Unitization Agreement respectfully submitted as Exhibit 1, "C"and"D"of the application. He further stated that the documents mentioned above have been executed and agreed, through signature, by 90 per centof the landowners in the unit area. He repeated and emphasized that the joining of the interests will allow for the drilling of a horizontal well and without it no drilling will take place.

He further submitted that the evidence presented by the Respondent, at the hearing, is not sufficient to deny the application and the resulting benefits to a clearly agreeable majority of landowners within the unit.

He further indicated that if the tribunal chose to amend or modify any terms and conditions of the Lease and the Unitization Agreement that the essential terms of the document be carried forward in order to allow for drilling and operating to proceed.

Mr. Pasic stressed that unitization is required in order to acquire a licence to drill a horizontal well and add a spacing tract. He reflected that further drilling in the west half of the area will depend on the results from the first well drilled in the east half. Mr. Pasic continued that there is no requirement to unitize the entire 200 acres. To do so would serve only to dilute revenue from production spread amongst landowners over the 200 acres. He noted that the Applicant is aware that there is no guarantee of success as drilling can be a failure.

He noted that it is his understanding that Mr. Lusetti is not objecting to the lease or the unitization agreement, but only to the compensation issue and the effect on property values. He reflected that in his opinion the Respondents, Lusettis and Industrial Boiler Specialties Limited, were asking to be treated differently from the other landowners in the unit, and that is their only distinction. Mr. Pasic stated that the Applicant will forego surface rights on the Lusetti and Industrial Boiler Specialties Limited properties. He noted, in fact, that the surface well location will be closer to the other landowners not actually within the unit and not benefitting from the unit area royalty pay-outs. He continued that the Lusetti's, in fact, will suffer no more or no less than their neighbours and that the development of a wellhead in the area is consistent with the use of these commercial properties.

He submitted that the Order must be consistent with respect to all Respondents and those agreeable landowners with no special treatment for any particular landowner.

The terms and conditions, in the Applicant's opinion, are consistent for all landowners and a 90 per cent majority is currently in agreement. He continued that the Order should not necessarily reflect the longer time frame or the shorter time frame as each of the negotiated agreements are executed at different points in time. Mr. Pasic re-emphasized that the application and the unit proposed supports the Provincial Policy regarding long term economic development, generates revenue for the operator and the landowners alike..

FINDINGS

Purpose of the Act

In Ontario, the **Oil, Gas and Salt Resources Act** was enacted in 1990 and in subsequent years amended. Within the **Act** there are now roles for the Mining and Lands Commissioner appointed under the **Ministry of Natural Resources Act** , and the Ministry of Natural Resources - Petroleum Resources Institute. The **Act** does not contain a purpose statement. However after examination of several Statute and Regulation sources, a clear indication of the purpose can be ascertained.

Within subsection 2. of the **Mining Act**, the legislation notably encourages exploration for mineral resources and it states;

> 2. The purpose of the Act is to encourage prospecting, staking and exploration of the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario.

and within that **Act** is the definition which clearly supports a purpose for oil and gas exploration,

> "minerals" means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt,...

Generally, the purpose of the **Oil, Gas and Salt Resources Act** may be derived from the **Mining Act** and specifically through the above notables.

In addition, it may be possible to infer the purpose of the **Act** from a number of provisions. Within Ontario Regulation 245/97, amended to O. Reg. 22/00, with the definition of pooling;

> "Pooling" means the joining or combining of all the various oil and gas interests within a spacing unit for the purpose of drilling and subsequently producing from a well;

Within the latter half of the statement the purpose implies "drilling" and "producing" from a well. In this tribunal's opinion, it is consistent with the term "exploration of the development of mineral resources" found in the **Mining Act** aforementioned..

In addition the O. Reg. 245/97, amended by O. Reg. 22/00 advances "pooling " in subsection 8(3) as a requirement for drilling and production of oil or gas, which is consistent with the tribunal's reasoning;

> 8(3) No person shall,
> (a) drill a well in a spacing unit that has not been pooled;
> (b) produce oil or gas from a spacing unit that has not been pooled;

Next the provisions of clause 8(1)(a) and (b) of the **Act** and the O. Reg. 22/00 subsections 14 and 15 clearly define methods to develop oil and gas pooled resources. Clearly, the intent of the **Act** is focused on oil and gas exploration and production.

Alternatively, rather than a clear directive stating the purpose of the **Act**, the tribunal is satisfied on the circumstances of this case that the underlying purpose of the legislation can be ascertained through a consideration of the consequences of no exploration. Specifically, if the exploration and production for hydrocarbons from under these lands was to go untouched, the economic benefits to operators, employees, royalty interests and the economy overall would never be seen. While the foregoing discussion is by no means conclusive, it is noted by the tribunal that the purpose of the **Act** is evident through the various definitions and references.

Whether the Order is justified under the circumstances

The relevant issue is the requirement for a unitization of the area in order to proceed to drilling and production from a pool(s) allegedly under the surface of the identified area. Within the Ministry's Spacing and Pooling Policy it is stated; (item 6.3) "where a well license application is made and the applicant has not pooled the spacing unit for the well the Ministry shall not issue a well licence". The Applicant is convinced this issue applies and considers relief by way of a compulsory unitization order is the most efficient procedure. The O. Reg. 245/97, amended by O. Reg. 22/00 in subsection 8(3) confirms the above noted policy.

A Compulsory Order to unitize, under clause 8(1)(b) of the **Act**, is designed to create/join an area's interests consistent with a pool or field of hydrocarbon found or anticipated under the land surface, for the purposes of drilling and production from a well head. The **Act**, directs the Applicant under subsection 8(4) of the O. Reg. 245/97, amended to O. Reg. 22/00 where it spells out the options for unitization;

> 8. (4) If an area is unitized by a voluntary agreement among the oil and gas interest owners within the area and the Minister agrees with the unitization, **or** if an area is unitized by an order of the Commissioner, the Minister shall revoke or amend any pooling conditions on licences for wells located in the unitized area, and may, as the circumstances of the unitized area warrant, do one or both of the following:
>
> 1. Waive the requirements under section 11 to establish spacing units.
>
> 2. If the unitized area is subject to a spacing order, amend the spacing order to remove the spacing units from the unitized area O. Reg. 22/00, s. 4.

The tribunal finds that the clause 8(1)(b) of the **Act** and the subsections of the O.Reg 245/97, amended to 22/00 are applicable as to its jurisdiction in this matter.

The Mining and Lands Commissioner has called for a hearing into these matters relating to an application whereby it creates the opportunity for the tribunal to hear evidence from the Applicant supporting the application and those opposed.

Circumstances applicable to this application have been entered into evidence by those opposing it. In their opinion, they dismiss the application as premature and the terms of the agreements as non-consensual, unreasonable or unconscionable. The tribunal finds that in order for such a suggestion to succeed as a plea, the Respondent will have to establish a dominant position on the part of the Lessee and gross differences of consideration. The tribunal takes direction from the case, Crommie *v.* California Standard Company[4] , wherein the court noted the lessor/landowner appeared to be a person of reasonable intelligence, who carried on a successful farming operation. In that decision the landowner/lessor could not be considered to be subservient to the oil company or the agent. It appears that Counsel for the Respondent would be hard pressed to establish a basis for subservience. In addition the terms may appear onerous or inadequate to some of the Respondents, but the terms are uniform amongst all lessors and the individual variations as to duration will not likely meet the test either. All royalty amounts are at the 12.5% level with no deviation. If one contract was reduced to a 5% calculation against the others at 12.5%, a definite weakness in lease terms is readily noticeable and the lease contract could certainly be argued as flawed in its terms. However this is not the case in this application.

Counsel for Mr. Lusetti and his corporate interests noted the terms of the Petroleum and Natural Gas Lease/Grant and the Unitization Agreement as inconsistent with what he envisaged the Order should achieve. The tribunal will follow the protocol established by its predecessors, the Ontario Energy Board and will affix a copy of the Petroleum and Natural Gas Lease/Grant and the Unitization Agreement to the Order for filing with the appropriate wording and terms deemed by the tribunal to represent the situation best. Experience with this methodology has served the process adequately to date. The tribunal will proceed with caution in this regard to apply the spirit of the **Act**.

Adequacy of Notice

The tribunal is satisfied that the parties to this application have been given adequate notice of the proceedings. Notices (Appointment for Hearing) have been addressed to all current unleased landowners in the proposed Wigle Pool Unit 12. Further relevant notice is deemed to be through the contact and signed acknowledgments of the 90 per cent executed lease landowners indicating a willingness to enter into a unitization agreement..

Specific to notice, the Respondent Counsel for Peter and Maria Lusetti and Industrial Boiler Specialties Limited raised an adequacy of notice issue in the case of Respondent, Mr. Boutros' companies, 916841 Ontario Inc. and 95764 Ontario Inc. Subsequently through discussion and

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[4] (1962) 38 W.W.R. (N.S.) 447 (Alta. S.C.T.D.)

submissions by the Applicant the issue was satisfied and the companies were found to be under the ownership and direction of the same person (Mr. F. Boutrous) and the definition of the proposed unit boundaries as proposed was not being altered from the original application except to add another part landowner. Mr. F. Boutros is deemed to have been notified of the hearing on behalf of both companies. The Respondent parties, whether attending or absent, did not pose any further opposition to the notice given.

The tribunal finds that the parties to the application have been justly notified of the hearing and it is their choice to attend. Several Respondents saw fit to attend and engage the support of counsel to voice their concerns, taking advantage of the hearing process. The hearing is purposely designed to allow Respondents the opportunity to be heard. Those not attending leave the tribunal wondering as to their objections to the application. However, from past experience in these matters, those opposing rarely attend.

Salient to the notice process is the Appointment for Hearing notice and the contents that the Mining and Lands Commissioner charges those receiving the notice:

> **Take Notice** that the parties are required to be prepared to proceed at the hearing with all documentation, evidence and things to be relied upon in hearing the application...

The Applicant, the tribunal finds, followed the prescribed directions as set out in the regulations.

Merits of the Application

Mr. Ball in his address and final submissions made reference to the facts and evidence not showing a volume or tangible worth to the expected discovery of hydrocarbons. He challenged the applicant's motive to explore and whether it was in their best interests to proceed on the minimum of information.

This tribunal found those arguments to be whether the hydrocarbons will be found *in paying quantities*. The Office of the Mining and lands Commissioner dealt with the issue of "in paying quantities" in the Gaiswinkler decision[5] and therein referred to Ballem[6];

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[5] Gaiswinkler Decision, December 3rd, 1999, Mining and Lands Commissioner - file OG 003-98 (unreported)

[6] Ballem, John Bishop, The Oil and Gas Lease in Canada, 2nd Ed., (Toronto: University of Toronto Press, 1985)

> The standard habendum clause request that the substances 'are producing' in order to extend the primary term. There is no minimum quantitative limit. American Courts in most of the important oil producing states interpret the word 'produced" as 'producing in paying quantities'[7]

and in the case Stevenson *v.* Westgate[8];

> *Stevenson v. Westgate* stands for the proposition that a Canadian court forced with the test of 'producing in paying quantities', would opt for revenues versus operating costs rather than some other guideline such as whether a 'reasonably prudent operator' would continue to operate the well.

The tribunal finds from this discussion that if the Lessee/operator is willing to risk its drilling investment with no onus or financial support required of the Lessor(s), then their sole determination and decision to satisfy requirements and acquire a licence to drill and produce hydrocarbon substances is sufficient.

Mr. Inwood, for the Applicant, introduced the spacing unit changes proposed for the unit area. Which, in effect, creates the adjacent tracts #7 and #8. The spacing unit designation follows the currently accepted practice of following the survey fabric of land areas and established tract references.

The tribunal's authority to alter boundaries and specifically spacing orders is found in the **Act**;

> 8(2) An order under clause 8(1)(b) prevails over an order under section 7.1 and a regulation made under 17 (1)(e.1) or (e.2). 1996, c. 30, s.63.
>
> ~
>
> *7.1 (1) The Minister may, by order,*
> *(a) establish a spacing unit by designating a surface area and the* subsurface beneath the surface area as a spacing unit;
> *(b) amend or revoke a designation of a spacing unit; and*
> *(c) specify where wells may be located within a spacing unit.*
>
> ~
>
> *17. (1) The Lieutenant Governor in Council may make regulations,*
> ...
> *(e.1) limiting the number of wells in a spacing unit from which a person may produce;*
> *(e.2) requiring the joining of interests in oil or gas in a spacing unit as a condition of drilling a well in the spacing unit or producing from a well in the spacing unit;*

The tribunal finds the proposed unit boundaries expansion to include tract #8 is consistent with the Ministry's Mersea 3-4-IV, Spacing Order 2000-125 (January 2nd, 2000). The property addition follows with the existing spacing configurations. Tract #8 parcel parts include leases for Parcels #27 through #46. There are two parcels not yet under lease; Parcel #31 owned by

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[7] Summers, Oil and Gas, vol. 2, 198

[8] [1941] 2 D.L.R. 471 (Ont. S.C.O.), [1942] 1 D.L.R. 369 (C.A.)

the Respondents 916841 Ontario Inc. and 957464 Ontario Inc., and Parcel #43 owned by Respondents Edward & Dianne Bartel. The properties in tract #8 under executed leases and those agreeable to unitization consists of 90.5 per cent of the area. The Applicant's choice to include this tract at the outset will avoid further applications to expand spacing unit tracts which would probably follow closely on the heels of this application.

The Respondents argued that the boundaries is still undergoing organization with regard to adjacent lands (tracts #2,3,6&7) and this unitization application is premature. The tribunal finds that the proposed unitization area meets the regulation criterion (100 acres) to allow for a drilling/producing operation. The adjacent tracts do not deter from the purposed operations planned in the purposed unit area. The tribunal finds justification in hearing this application for a compulsory unitization order with the proposed boundaries.

Including tract #8 in the proposed Unitization is deemed consistent with the good management of an area under a Unitization Agreement. In the alternative, temporarily withholding benefits from twenty-one landowners in the tract, currently under executed leases, will serve no purpose.

The Applicant has introduced a specimen lease document [Schedule."H"] for the tribunal's consideration in joining interests in a prescribed spacing unit. The tribunal finds the lease generally meets the industry required determinates and provision changes are contained within this Order.

The Respondents, present, argued the Petroleum and Natural Gas Lease/Grant, if ordered, is expropriation and non-consensual. The Respondents present, took further exception with the terms of the lease duration and the insufficiency of remuneration. They felt the Applicant is operating under the philosophy that "Equity is Equality", with which they do not agree. The Counsel for the Respondents (present), while ultimately opposing unitization all together, contended that the lease wording required wholesale changes to be effective and reflect the reality of the ordering document.

The tribunal finds the arguments with this application to be broad, but lacking in support. The Respondent is challenging the core value of a Petroleum and Natural Gas Lease/Grant. This tribunal finds no basis for the argument in oil and gas law. With respect for their opinions on the process of expropriation, the tribunal finds no basis has been established to evaluate a commodity or chattel other than that which it will fetch in the marketplace once captured.

The tribunal respects the questions by the Counsel for the Respondents (present) regarding expropriation and responds that no title is being taken from the landowners that is theirs to sell at will. The ownership of hydrocarbons is subject to the rule of capture and the licenced authority to drill. The ownership of the hydrocarbons becomes that of the captor or explorer. Regulations respect the mineral rights of surface landowners (correlative rights) by awarding them compensation for that which may be deep in the subsurface of their lands. The value of oil and gas commodities is uncertain at the outset and the volume on which value could be assessed, available

for extraction under one land surface can be different from that of the neighbouring properties. There is no certainty here, as the commodity is difficult to measure in volume and while some volume measurements at times could indicate reasonable volumes/pressures the hydrocarbons are wondering in nature and expectations can be shortened. In short, evaluating the hydrocarbon potential value is an uncertainty. There is a risk which has repeatedly produced dry wells in the past. In summary, there is no physical land title transfer being ordered, only a gain or share through protection of correlative rights for a time.

Referring to cases read by this tribunal it is evident that the Courts proceed on the principle that the *absolute* ownership of the oil or gas under a tract of land subject to an oil and gas lease is that of the owner of the land. However the lessee holds the authority through a licence to go under the land and reduce the oil or gas into their possession, whereupon it becomes a chatfel and his or their property. On this theory, the royalty is the purchase-price of a chattel reduced to possession on the land of another under licence to explore.

In the case Dawson *v.* Bell[9] reference was made to Kelley *v.* Ohio Oil Co.[10] and perhaps Burket C.J. at page 328 says it best;

> Petroleum oil is a mineral, and while in the earth it is part of the realty, and, should it move from place to place by percolation or otherwise, it forms part of that tract of land in which it tarries for the time being, and if it moves to the next adjoining tract it becomes part and parcel of that tract; and it forms part of some tract until it reaches a well and is raised to the surface, and then for the first time it becomes the subject of distinct ownership separate from the realty, and becomes personal property, the property of the person into whose well it came. And this is so whether the oil moves, percolates, or exists in pools or deposits. In either event it is property of and belongs to the person who reaches it by means of a well, and severs it from the realty and converts it into personalty.

With regard for the Respondents opinion as to non-consensual leases the tribunal relies on a learned source in this regard and a discussion by John B. Ballem[11] in his book at page 12 on the question, "what is an oil and gas lease";

> One of the more engaging characteristics of the oil and gas lease is that under common law it is not a lease at all. The conventional lease contemplates merely the use of property and the return of it to the lessor at the end of the term in a virtually unchanged state. The rights granted under an oil and gas lease are of an entirely different order and nature since the lessee, in order to enjoy the grant, must have the right to possess and remove the minerals.
>
> The most commonly quoted judicial definition of a mining lease is that of Lord Cairns in Gowan v Christie[12] as follows: 'Not in reality a lease at all in the same sense in which we speak of an agricultural lease... It is a liberty given to a particular individual for a specific

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[9] [1945] O.R. 825 [1946], 1 D.L.R. 327(C.A)

[10] [1897] 57 Ohio St. 317

[11] Ibidem (page 170)

[12] [1873], L.R. 2 Sc. & Div. 273, 284

length of time to go into and under the land to get certain things there if he can find them and to take them away just as if he had bought so much of the soil.'

The Supreme Court of Canada has characterized the oil and gas lease as a *profit a' prendre*, which, simple put, means the right to take something from the soil of another. This judicial definition was arrived at in the case of Berkheiser v. Berkheiser.[13]

What as a practical matter is sought by such a lessor is the undertaking of the lessee to explore for discovery and in the event of success to proceed with production to its exhaustion. Neither presence nor absence of the minerals was here known, and initial task was to verify the existence or non-existence of the one or the other. The fugitive nature of each is now well known; a large pool of either, underlying many surface titles, may in large measure be drained off through wells sunk in one of them, tapping the reservoir against such abstraction may, then, become an urgent necessity of the owner.

In that situation the notion of ownership *in situ* is not the likely thing to be suggested to the mind of any person interested because primarily of the difficulty of the factual conception itself. The proprietary interest becomes real only when the substances is under control, when it has been piped, brought to the surface and stored. Any step or operation short of that mastery is still in the stage of capture.

The tribunal concludes from this discussion that the Lease is a contract of liberties and only useable where the Lessee has the right to possess and drill for hydrocarbons, eventually bringing them into their personal ownership and control. The tribunal finds further that the consent of the Lessor is not for the Lessor to determine as a individual landowner. Determination and decisions to explore have to respect; the rights granted to drill (licence), the collective rights of all those whose lands are over the pool or field and the Lessee's rights to capture hydrocarbons. The issue is not so much individual consent, but the correlative rights of a reasonable majority of landowners.

Within the executed leases it is the Lessee's right to pooling and the Lessor's right to notice. The Lessor's approval to pool or combine with others is given within the initial lease and further authorization from the Lessor is not required for the Lessee to do so. The tribunal also finds that the 90 per cent of the landowners currently under a Petroleum and Natural Gas Lease/Grant and within the unitization boundaries proposed are bound by the terms of their agreements. In the forty-two executed Petroleum and Natural Gas Lease/Grants there is a clause as follows;

9. Pooling...
(a) The lessee is hereby given the right and power at any time and from time to time during and after the primary term to pool the said lands, or any portion thereof, or any zone or formation underlying the said lands or any portion thereof, or any of the leased substances therein, with any other lands or any zone or formation underlying such other lands or any portion thereof, together with the said lands or any zone or formation thereof, or any of the leased substances therein, but so that the other lands or any zone or formation thereof, shall not exceed one spacing unit. The Lessee shall thereafter give written notice to the lessor describing the extent to which the said lands are being pooled and describing the space unit with respect to which they are so pooled.

The closing statement is a courtesy notice according to Ballem[14] as the rights to pool have been bestowed upon the Lessee at the signing of the lease and follows;

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[13] [1957] S.C.R. 387, 7 D.L.R. (2nd) 721

[14] Ibidem

In Gas Initiatives Ventures Ltd. *v.* Beck[15], Moore J. (as he then was) applied *Gibbard*[16] to hold: 'The fact that there was no notice of pooling is immaterial.'

Counsel for the Respondent ventured that the Applicant is operating on the philosophy that "Equity is Equality" and the unleased landowners are subject to the same terms as the executed lease landowners without question. The Petroleum and Natural Gas Lease/Grant is based on ownership of a supposed consumable substance and the question is; "upon who and when is the ownership real?" The tribunal finds the hydrocarbon substance is owned by its captor and in this case expected to be Talisman Energy Inc. The rule of capture is recognized in the industry within Ontario and in reading Ballem (page 92) he explains;

> The "rule of capture", succinctly phrased by Hardwicke[17] is, "the owner of a tract of land acquired title to the oil and gas which he produces from wells thereon, though it may be proved that part of such oil and gas migrated from adjoined lands," is firmly entrenched in Canadian Law in Borys v. Canadian Pacific Railway and Imperial Oil Limited[18], the Privy Council said:
>
> The substances are fugacious and are not stable within the container although they cannot escape from it. If any of the three substances is withdrawn from his property which does not belong to the appellant, but lies within the same container and oil and gas situated in his property thereby filters from it to the surrounding lands, admittedly he has no remedy. So also, if any substances is withdrawn from his property, thereby causing any fugacious matter to enter his lands, the surrounding owners have a remedy against him. The only safeguard is to be the first to get to work, in which case those who make the recovery become owners of the materials which they withdraw from any well which is situated on their property or from which they have authority to draw.

Further found in the case Kelley v. Ohio Oil Co[19] is another explanation as to the *rule of capture*;

> The right to acquire, enjoy and own property, carries with it the right to use it as the owner pleases, so long as such use does not interfere with the legal rights of others.
>
> To drill an oil well near the line of one's land, cannot interfere with the legal rights of the owner of the adjoining lands, so long as all operations are confined to the lands upon which the well is drilled. Whatever gets into the well, no matter where it comes from. In such cases the well and contents belong to the owner or lessee of the land, and no one can tell to a certainty from whence the oil, gas or water which enters the well came.

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[15] [1979] 3 W.W.R. 741 (Alta. S.C.T.D.)

[16] [1961] S.C.R. 732, (1961-62) 36 W.W.R. 529 (S.C.C.)

[17] Hardwicke E., The Rule Of Capture And Its Implications As Applied to Oil And Gas, 13 Texas Law Review, 391, 393 (1935)

[18] [1953] 2 D.L.R. 65, (1952-53) 7 W.W.R. (N.S.) 546, 550 (J.C.P.C.)

[19] Kelley V. Ohio Oil Co., 57 O.S. 317, 327, 328 (1897)

Salient to the rule of capture in the balancing effect of the "correlative rights" of the landowners. The tribunal finds that the protection of correlative rights is for the benefit of two parties; those having an executed lease agreement and those who have not. The protection is extended to all parties in 100 per cent of this unit area. Those in executed agreements are protected and awarded rentals and royalties for their lands under lease and unitization and share in the worth of the captured hydrocarbon resources, which they are entitled to receive. Those Respondent landowners not yet in a lease and unit agreement are protected from having their rental and royalty rights to the resources, underlying their lands, siphoned-off without any compensation. The pooling and unitization references in the O. Reg. 245/97, amended by O. Reg. 22/00 are designed for the purpose of protecting correlative rights.

The tribunal is most considerate of the correlative rights of landowners in rendering a decision. The tribunal finds that 90 per cent of the landowners is a substantial number in executed agreements and joining their interests protects their correlative rights, to share in the royalties from production, is a natural step. The five parties not yet pooled with the executed lease landowners will be subject to a compulsory order joining their interests. The correlative rights of a clear majority and those subject to the Order are being protected through the pooling effort.

The tribunal finds that the Respondents issues on the rights of the landowners is a challenge to the industry and the protection for these rights has been argued extensively in law[20]. The Office of the Mining and Lands Commissioner has noted a need for explanations concerning terms used in this industry in the past and has provided several printed pamphlets on the terminology of this industry. The following explanation is offered on the subject matter raised;

> The Correlative Rights[21] of landowners; means the inherent right of an owner of oil or gas in a pool to his share of the production and reservoir energy and his right to obtain his just and equitable share of production and to be protected from wasteful practices by others in the pool.
>
> The Protection of Correlative Rights of landowners is provided for by the Province under the **Act** in that it places requirements on the operators to drill and produce a well within the target area of a pooled spacing unit.

The statutes and regulations surround the respect for correlative rights of landowners through spacing unit designations, reasonable set-back requirements and compensation methods. The proposed unitization agreement has met the pre-conditions with regard to the rights of interested parties represented by forty-two executed lease agreements with protective royalty clauses contained therein. The tribunal finds the interested parties correlative rights have been addressed and accounted for in this application for unitization.

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[20] Bory's v. Canadian Pacific Railway and Imperial Oil Limited [1953] 2 D.L.R. 65, (1952-53) 7 W.W.R. (N.S.) 546, 550 (J.C.P.C.)

[21] Oil, Gas and Salt Resources Act, document of explanation, page 4, authored by the Office of the Mining and Lands Commissioner, Queen's Printer for Ontario, printed in Ontario, Canada, 2000.

The tribunal finds that the executed leases and the proposed leases do not present any onerous terms or conditions foreign to the industry. However a challenge to any one of the documents is certainly possible, but not within the authority of this tribunal to adjudicate. It is the tribunal's opinion that the specimen documents presented are consistent with those executed and not demanding conditions and offering terms inconsistent with the ranges currently in the market.

The Respondent's counsel argued that the Leases are not registered as are other contracts. The tribunal as a matter of clarity agrees with the Counsel for the Applicant on the registry issue to the contrary. It has been the experience of this adjudicator that leases of current dates are almost always registered and it is a rare exception today if they are not found on title. There is a clear benefit for the parties to have leases executed and registered. In Gallagher *v.* Gallagher[22] the Court stated at page 770;

> When such a 'mineral lease' [profit a' prendre] has been granted and then protected by registration of a caveat, it cannot be defeated.

The tribunal takes direction from the decision and as a general housekeeping rule the tribunal within the Compulsory Order, as in the past, will call for registration on title which is accompanied by the ordered Petroleum and Natural Gas Lease/Grant in some cases and the ordered Unitization Agreement in all cases.

The Counsel for the respondents argued that the Lease document should be subject to the Unitization Agreement. The tribunal finds relative clauses or statements linking the Ordered Petroleum and Natural Gas Lease/Grant to the Unitization Agreement as unnecessary. In fact, and as practiced the reverse is true. Continuation of the Lease is found in the Habendum which in fact refers to continuing works. The Schedule "H" herein (Unitization Agreement) has opening clauses referencing the registered leases afore with all forty-seven landowners which bears out its corollary position to the individual leases. The Petroleum and Natural Gas Lease/Grant document is a cornerstone of the industry and considered to be *Contemporanea Expositio Est Optima Et Fortissima In Lege*[23].

The Applicant presented the unitization agreement specimen, suggesting it should be the same for all forty-seven lessors/landowners in the unit. The Unitization Agreement in this case draws the forty-seven lease interests into a unit for the purposes of drilling and operating a specific field containing hydrocarbons. It protects the collective interests of all landowners within the unit. and the all inclusive nature of the agreement is protection for the few without executed leases. This in effect is protection of the correlative rights of the landowner and advancing the Lease.

It is the tribunal's understanding that the Respondent's Counsel suggests that the compulsory unitization agreement be redrawn to reflect convincingly that the leases are a result of

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[22] (1962 - 63) 40 W.W.R. 35(Sask.)

[23] The Dictionary of Canadian Law, (Carswell, 1991) : [L.] the current meaning is the best and most compelling influence in law

the unitization order and the scope of the lease is governed through the Order. While the Order dictates compulsory pooling the tribunal finds a clear majority of landowners favour the joining of interests and unitization. The tribunal further finds that the Respondent's counsel suggestion is nothing short of rewriting the book on the governing documents of the oil and gas industry. Mr. Inwood, for the Applicant noted the extensive time honoured 140 year history of the wording and the documents specific. The tribunal further finds that an Order with wholesale changes for the ways and means of the industry is not within its mandate.

The Counsel for the Respondent has serious concerns that the wordage is so inappropriate as to render the contracts void within the industry. Challenges of this sort are certainly not within the authority of this tribunal to adjudicate. The tribunal is of the opinion that the Unitization Agreement is *Contemporanea Expositio Fortissima In Lege*.

While the Province of Ontario recognizes the right of a hydrocarbon explorer to capture and make economic gain from the substances, the rights of the landowners are protected by the required agreements. The Lease agreements executed with the clear majority and those subject to compulsory orders contain a clause allowing unitization of the area as follows;

> 9. ...Unitization
> (d) The lessee is hereby given the right and power at any time and from time to time during and after the primary term to pool the said lands, or any portion thereof, or any zone or formation underlying the said lands or any portion thereof, or any of the leased substances therein, in a Unit Agreement for the unitized developments or operation thereof with any other lands, or any zone or formation underlying such other lands or any portion thereof, together with the said lands or any zone or formation thereof, or any of the leased substances therein, if such becomes necessary or desirable in the opinion of the Lessee. The Lessee shall thereafter give written notice to the lessor stating that the said lands are being or have been unitized.

The unitization clause contains the required elements and the tribunal recognizes the rights of the Lessee to unitize those under executed leases and ordering a Compulsory Unitization is reduced to a formality.

The Applicant noted in the application [Exh. 1] that they believed hydrocarbons in paying quantities can be produced from the Trenton formation at this location, providing economic benefits for all interests. They contend that unitization; supports Provincial policies, ensures a well trained and capable infrastructure is created/sustained to meet safety and environmental concerns, it generates tax revenues and provides income for a largely rural community.

The tribunal takes its resolve in these discussions favouring unitization from Ballem's book[24] at page 179;

> From an operational point of view it makes good engineering and economic sense to operate a field as an entity without regard to any artificial distinction, created by the ownership subdivisions.

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[24] Ibidem

and at page 185;

> ...Once a lease is included in a unit by the lessor executing the unit agreement, and all operations anywhere within the unit have the effect of continuing the lease in force [25] Moreover, the entire lease and not just the unitized zone will continue. This is the only result that is consistent with the wording of the lease and it has also received judicial sanction in *Voyager Petroleum Ltd. v Vanguard Petroleum Ltd.*[26] It is not surprising that unitization has grown increasingly popular with each passing year. It has become almost the rule with respect to gas fields and is normally completed before production commences. The trend to unitize oil fields is steadily growing.
>
> It is impossible to say anything against the principle of unitization. It undoubtedly receives better operating procedures, enhances recovery, and implements good conservation practices, all at a reduced cost. It is not surprising, therefore, to find that unitization is encouraged by public conservation bodies. In the purely private area of contract between the lessor and lessee, different factors may come into play. Under current industry practice the lessor is expected to execute a unit agreement without any additional consideration, the benefits described above evidently being regarded as sufficient incentive.

The tribunal finds substance in Ballem's comments, with support for unitization and the Order which will prevail over conditions.

The tribunal found the evidence to be of assistance in reaching the findings in that the lands circumscribed by the unit boundaries offers a good opportunity for further efficient exploration and production from the pool, as well as protecting landowners rights. The alternative is not considered a favourable solution in that it raises the likelihood that the resources would be abandoned entirely.

The Unitization Agreement draws a larger group of landowners (Lessors) together to form the unit and empower the licenced operator (Lessee) of the unit to proceed with drilling exploration and production. The ultimate result being the sharing of the net gains from the operation of the well(s). The tribunal finds the terms of the document agreeable to the majority and with no real deviations from the industry norms and sufficient to safeguard all the parties interests in the unit.

The unitization will allow for further application to the Ministry of Natural Resources for licenced approval to drill in the unit. The Applicant has chosen to satisfy all requirements leading up to placing a well head on production at the outset. While applications to this tribunal in the past have specific drilling/production capacity history, this application is relying on previous finds in the area (now dormant) and the Applicant's knowledge of the Trenton formations.

The tribunal finds that information on oil and gas in the area gleaned from evidence and this tribunal's exposure to other applications indicates that hydrocarbon finds can be complex in size and shape, following no set patterns. In the past vertical drilling in this area produced small finds

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[25] Esso Resources Canada Limited v. Pacific Cassiar Ltd. (1984) 22 Alta. L.R. (2d) 175 (Alta. Q.B.).

[26] [1982]

expected to be from fissures and crevices, however with the drilling methods of today (horizontal or directional) the exploitation of these various columns can be expected to capture sufficient hydrocarbon substances for a viable operation. In the alternative, cancellation of exploratory drilling leads to no production and no economic benefits to anyone, lessor or lessee.

The hearing produced much discussion concerning the location of the well head. The tribunal is satisfied the Applicant will receive direction from the proper authority in this regard and follow the rules and regulations of environmental laws. The Leases either entered into voluntarily or through compulsory order have generic requirements for the Lessee to adhere to, as well as conditions specific to individual cases on the matter of using surface lands. The tribunal is satisfied the Applicant is aware of their contract obligations with each lessor/landowner.

Counsel for the Respondent (present) argued that it is impossible for this tribunal, within the confines of this proceedings, to provide for the orderly drilling in the area in question. This tribunal finds it is not their mandate to establish the exact location for drilling. Its jurisdiction is to establish a spacing unit or join the interests of a larger area for the purpose of creating a surface area consistent with the evidence and information on the whereabouts of a hydrocarbon field in the subsurface.

The direction of this application is governed by the O. Reg. 245/97, amended by O. Reg. 22/00 in its subsections 14 &15, in the prescribed format. The tribunal recognizes that the Applicant followed the format generally in filing their application for Unitization.

Counsel for the Applicant and the witness, Mr. Inwood, both considered this application to be in support of the Provincial Policy Statement[27]. The policy statement at page 7 states;

Provincial Policy Statement

2. **Resources**

2.2 Mineral Resources: Mineral Aggregates, Minerals, Petroleum Resources

2.2.1 Mineral resources (mineral aggregates, minerals and petroleum resources) will be protected for long term use.

2.2.2 Minerals and Petroleum Resources:

2.2.2.1 Mineral mining operations and petroleum resource operations will be protected from activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact.

2.2.2.2 In areas adjacent to or in known mineral deposits or known petroleum resources, and in areas of mineral potential, development which would preclude or hinder the establishment of new operations or access to the resources will only be permitted if,
a) resource use would not be feasible; or
b) the proposed land uses or development serves a greater long term interest, and

[27] **Order-In-Council 764/96** (May 8, 1996)

c) issues of public health, public safety and environmental impact are addressed.

2.2.2.3 Rehabilitation to accommodate subsequent land uses will be required after extraction and other related activities have ceased. Progressive rehabilitation will be undertaken where feasible.

2.2.2.4 Extraction of minerals and petroleum resources is permitted in prime agricultural areas provided that the site is rehabilitated.

The tribunal finds the spirit of the policy is not being compromised by this application and the unitization of the area supports the "greater long term public interests".

Order Provisos

Pursuant to clause 8(1)(b) and the reference in clause 8(2) of the **Act** as to its prevailing features the addition of tracts numbered 7&8 conforms with the current lay-out of spacing units in the area and is certainly not a deviation from the design, so much so that the tribunal would deem it necessary to question the Applicant on the boundaries proposed. The landowners in the tract 8 area are clearly in agreement with pooling and unitization as a result of the executed leases and their acknowledgments of the unitization application. The subject of tract 7 is not a concern of the tribunal as to whether it is clearly under lease or not, under this proposal it is not to be included in the boundaries of the Unit area. Tract #8 will be participating while tract #7 will not be participating. The tribunal finds the spacing units follow the breadth of the regulations laid down and it is in order to include them in the unit boundaries.

The Order will join all the interests with Talisman Energy Inc. including those of the Respondents. The Respondents; Industrial Boiler Specialties Limited, Peter & Maria Lusetti, 916481 Ontario Inc. & 957464 Ontario Inc. and Edward A. & Dianne L. Bartel will be deemed to have entered into a Petroleum and Natural Gas Lease/Grant, the terms of which will be found in the draft lease document forming part of the Order. Talisman will be directed to pay the initial consideration fees and the rental fees as shown in the Lease.

The lease documents will be deemed effective on Tuesday the 1st. day of March, 2001 in advance of the Compulsory Unitization Agreement deemed effective the same day.

The duration of the lease shall be for a period of approximately two and one-half years from March 1st, 2001 through Tuesday the 2nd. day of September, 2003. It is notable that the lease habendum clause protects the Lessee from termination of the leases if drilling and production are underway at the close of the term and this continuation is duplicated in the Unitization Agreement. The tribunal in determining the term recognizes the loss of a drilling season since this process began.

The tribunal finds, based on the argument brought forward by the Respondent and their counsel, that the term duration may predominate, subscribed at ten years or five years. It may have been the Respondent's expectations, referenced by the past expired lease, that production previously was expected but did not materialize to extend the lease and provide additional royalty remuneration. Nevertheless a shorter duration term will place the onus on the operator to get on with

it in terms of exploration and production which may satisfy the Respondent's (Mr. Lusetti) expectations as a landowner. It is not expected that the term assigned will be onerous for the Applicant because other Petroleum and Natural Gas Lease/Grants are within the same time frame.

For those Respondents not in attendance to voice their concerns, the tribunal can only wonder as to what they may have been, notably as little as a hand written letter would have been accepted.

The Office of the Mining and Lands Commissioner has adopted a format for orders which takes direction from its predecessor the Ontario Energy Board in these matters. The deemed Petroleum and Natural Gas Lease/Grant's for the five landowners will be affixed respectively as Schedule "C" to each of their Compulsory Unitization Orders. This is considered by the tribunal to be a precursor to the provisions set down under the Unitization Agreement.

Pursuant to clause 15(4)(b) of O. Reg. 245/97, amended to O. Reg. 22/00, the tribunal is compelled to establish the unitization area boundaries within the Order. This is seen as a major component of the typical unitization application, whereby the tribunal addresses which lands are to be included in the inscribed area and in some cases which lands are to be excluded from the area. The unit description is made in reference to the known geographical formations, correlative rights and evidence submitted and is attached as Schedule "E" to the Order..

The tribunal finds the spacing units defined by the proposed unitization are consistent with the Mersea 3-4-IV, Spacing Order 2000-125 (January 2, 2000) set by the Ministry of Natural Resources - Petroleum Resources Centre. The spacing units are ascribed as Numbers 1, 4, 5 and 8 being the regulation size of twenty-five acres each..

The tribunal finds no new evidence was presented that opposes or alters the boundaries proposed by the Applicant. The boundaries as proposed and affixed as Schedule "E" to this Order will be adopted as the bounds of the Wigle Pool Unit 12.

Talisman Energy Inc. is the Lessee named for 100 per cent of the leases (90% voluntary executed and 10% ordered herein) within the proposed unit. The corporation upon applying for appointment as the Initial Unit Area Operator, and in accordance with clause 15(4)(g) of O. Reg. 245/97, amended to O. Reg. 22/00, is required to satisfy the tribunal in terms of working interests in the field or pool. Talisman Energy Inc. is the sole working interest within the proposed unit. The company is a publically traded on the TSE and well known to regulators in the Province of Ontario through extensive oil and gas exploration and production. No evidence was submitted that opposed the appointment on the grounds of unsuitability. The tribunal finds that the appointment of Talisman Energy Inc. as the initial unit operator is in order.

The Applicant has requested this Compulsory Unitization Order take effect on the 1st day of March, 2001 which best corresponds with their accounting activities. The forty-seven lease agreements are all deemed to be executed prior to this date. Respectfully, the issue here is not whether the Respondents are satisfied but whether the date appears reasonable from an operational

and accounting point of view. The tribunal takes its lead from the Applicant and their suggested date, as they are ultimately responsible for adherence to terms and conditions, including the paying of rentals and royalties. The tribunal finds that March 1st, 2001 will be the effective date of this Order.

The tribunal is required under subsection 15(4)(I) of the O. Reg. 245/97, amended to O. Reg. 22/00 to provide, "a statement as to the duration of the Order". Much like the duration of the lease involving lands which are under production and so as not to contradict the habendum clauses of the Petroleum and Natural Gas Lease/Grant in effect, it is reasonable that the Order for Compulsory Unitization continue so long as the leased substances are being produced from the Wigle Pool Unit 12. Further, in keeping with previous decisions rendered, the drafting used elsewhere in the industry, preserving the context of the Leases and attempting, in effect, to lessen the vagueness of the term, the tribunal finds that it will order the duration of this Order for Compulsory Unitization so long as there are substances produced from the well(s). This does not supercede the Lease proviso that there is to be no stopping of production, once attained, for unforseen circumstances of longer than 90 days.

Based on the information provided at the hearing and in material submissions the tribunal finds it will follow a previous format adopted by the Office of the Mining and Lands Commissioner and its predecessor, in these matters, the Ontario Energy Board. The proposed Unitization Agreement - Wigle Pool Unit 12 will be affixed as a Schedule "H" to the Compulsory Unitization Order. The Unit Operation Agreement will be a joint and several agreement between a collective of Lessors (forty-seven) and the single Lessee (Talisman Energy Inc.).

The tribunal has received and reviewed a pre-hearing draft of the Unitization Agreement submitted with the application [Exh. 1., "D" and attached to this Order as Schedule "H"]. The tribunal finds that it will order the relationship between the lessor(s) and lessee be governed by the agreement and comments further in this regard, in response to submissions surrounding the draft.

In the recitals of the agreement, there is a reference to "the Mortgagee OF THE THIRD PART". The tribunal has determined that this provision will not be changed as drafted however, the mortgagees were not named to be provided with notice of these proceedings and insofar as may be named in the Unitization Agreement, they cannot be bound by its provisions.

In conclusion, it is the intention of this tribunal to empower the operator, Talisman Energy Inc., with the flexibility to manage the Wigle Pool Unit 12 without having to reapply to the tribunal each time it wishes to redraw its boundaries, based on new findings.

The Initial Unit Operator, Talisman Energy Inc., is deemed appointed which determines that with respect to management decisions involving production and marketing, Talisman is allowed to manage the operations of this Unit.

Clause 8(1)(b) of the **Act**, under which this Order for Compulsory Unitization is made, provides that the tribunal is charged with determining whether a unit will be created and setting out various conditions which governs the unit creation. In keeping with the direction of Government

today through its regulations, the tribunal finds that it would not be prudent to micro-manage each aspect of the changes to the unit area, and so has provided for the Operator to manage those matters in accordance with the Order for Compulsory Unitization.

The tribunal is further charged with regulating the joining of the interests in the field or pool, which this tribunal takes to mean that it has ongoing legislative responsibility with respect to what has been Ordered. The tribunal finds that it is unnecessary to include a dispute resolution provision within the Unitization Agreement, nor in its Order. In an operation sense under clause 8(1)(b) of the **Act,** the tribunal retains responsibility for the Wigle Pool Unit 12, and in this regard, parties are free to apply to the tribunal for further direction in those instances when such a need should arise. The tribunal is equipped with alternative dispute resolution processes which could be accessed by the parties on a formal or an informal basis, not to mention that where absolutely necessary, the matter can be set down for a hearing to determine issues in the future as they are identified. However, the parties are encouraged to attempt, at first instance, to resolve disputes as they are identified; either on their own or with the assistance of tribunal staff.

Costs

The tribunal finds that there will be no costs payable by any party with regard to the processing of this application and its Order..

Conclusions

For the foregoing reasons, the application will be granted. Effectively the spacing units have been altered to include tracts #7 and #8, a Petroleum and Natural Gas Lease/Grant has been ordered for the five remaining Respondents and a compulsory order is issued for all forty-seven lease/landowners to enter into a Unitization Agreement.

Appendices:

"A" Spacing Units

"B" Unleased Landowners *(name/address/metes and bounds)*

"C" Lease Agreement

"D" Unitized Landowners *(names/addresses)*

"E" Unit Boundaries - Legal Description

"F" Map

"G" Allocation Schedules

"H" Unitization Agreement