rights in the Stetson well, the well bore of the well, the production therefrom, and the personal property associated therewith. On the other hand, it appears that JKM intended to purchase all of Chisos' interest in the lease on which the well was located, insofar as it covered the entire spacing unit for the well, consisting of the w/2 of Section 2. Regardless of this apparent misunderstanding, the parties agreed on the form of an assignment (portions of which are quoted above), and signed, delivered, accepted, and recorded it. *Id.* at *1.

Unfortunately, however, the Stetson well was not the only well in the w/2 of Section 2 in which Chisos owned an interest. Chisos owned an interest in the HL2 well, also located in the w/2 of Section 2. *Id.*

The assignment quoted above was held to be ambiguous, and after the introduction of conflicting evidence concerning the correct interpretation of the assignment, the trial court ruled that it assigned not only Chisos' interest in the Stetson well, but all of Chisos' interest in the entire w/2 of Section 2, including the HL2 well. This ruling was based in part on the trial court's findings that (1) as a result of the negotiations between Chisos and JKM, Chisos had reason to know that JKM intended to purchase all of Chisos' interests in the entire w/2 of Section 2, and (2) JKM did not have reason to know that Chisos intended to limit the assignment to the well bore of the Stetson well. The court of appeals held that there was substantial evidence to support these findings, and affirmed the trial court. *Id.* at *3.

Sadly, Chisos' troubles did not end there. Both the Stetson and HL2 wells were subject to an operating agreement (the precise form of which is not mentioned in the court's opinion, although it is likely that it was some version of the AAPL Model Form Operating Agreement). *Id.* at *1. It appears that Chisos was the operator under the operating agreement. Shortly after the assignment to JKM was recorded, Chisos received a notice from the State of New Mexico which Chisos interpreted to mean that it must either plug the HL2 well or return it to production. Apparently believing that it still owned an interest in the HL2 well, Chisos subsequently began operations to restore the well to production. Upon becoming aware of such operations, and believing that it now owned Chisos' interest in the HL2 well, JKM notified Chisos that it was trespassing on JKM's well. Chisos then stopped work on the well. *Id.* at *2.

Chisos subsequently acquired an interest in the HL2 well from another interest owner, and once again began work to restore the well to production. JKM once again notified Chisos that it claimed an interest in the well. Chisos then sent JKM an election letter (late on a Friday afternoon) requiring JKM, within 48 hours, to contribute $170,000 to the operations or elect to be a non-consenting party under the provisions of the operating agreement pertaining to non-consent operations. Such notice was sent pursuant to a provision of the operating agreement which reduced the allowed response time to such a notice from 30 days to 48 hours when a "drilling/workover" rig was on the premises. JKM did not respond to the letter. The work performed by Chisos resulted in the HL2 well being restored to production. *Id.*

The trial court ruled that Chisos' failure to send JKM a 30-day notice of the operations was a bad faith breach of the operating agreement. As a result, the court ordered Chisos to furnish JKM an accounting of all costs associated with the operations and all revenues from the well resulting therefrom, and to give JKM a retroactive election of at least 30 days within which to elect to pay its share of the costs or elect to not participate under the non-consent provisions of the operating agreement. *Id.* at *5. The court of appeals held that there was substantial evidence to support the holding of bad faith breach, and that the trial court's equitable remedy was therefore appropriate. *Id.* at *7.

The decision of the court of appeals does not announce any new or novel legal principles. However, it is another good example of (1) the dangers of well bore assignments in particular, (2) the dangers of loose and imprecise language in conveyance documents in general, and (3) what trial lawyers can do to your document if you are not vigilant. The lessons to be learned are that precision and plain language are much to be preferred (if one means well bore only, it is probably a good idea to say so explicitly and often), and that it is perhaps a good idea to have legal counsel review a homemade conveyance document, particularly when it deals with something out of the ordinary, such as a well bore assignment.

NORTH DAKOTA — OIL & GAS

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SEARCH FOR DORMANT MINERAL OWNER NOT REQUIRED IF ADDRESS IS OF RECORD

In two separate cases, the North Dakota Supreme Court held that a surface owner seeking to reclaim dormant minerals under North Dakota's dormant mineral act is not required to conduct a search for the dormant mineral owner if the address of the mineral interest owner is shown of record. *Sorenson v. Alinder*, 793 N.W.2d 797 (N.D. 2011); *Sorenson v. Felton*, 793 N.W.2d 799 (N.D. 2011). In *Felton*, Michael Sorenson (Sorenson) owned the surface estate of a tract of land in Mountrail County, North Dakota. Barbara J. Felton (Felton) owned mineral interests under the tract by virtue of an August 23, 1984, personal representative deed. *Felton*, 793 N.W.2d at 801. Prior to January 9, 2008, when she leased the mineral interests, Felton had not used the minerals or filed a notice of claim. *Id.* Likewise, in *Alinder*, Sorenson owned the surface estate of a different tract of land in Mountrail County, and Russell and Edna Alinder (Alinder) owned mineral interests under the tract through a mineral deed recorded in November 1953. *Alinder*, 793 N.W.2d at 798. Alinder had not used the minerals for more than 50 years. *Id.* Sorenson sought to reclaim, in separate proceedings, the mineral interests from both mineral owners, or their successors, pursuant to North Dakota's dormant mineral act. N.D. Cent. Code ch. 38-18.1 (Act).

The Act sets forth the procedure for a surface owner to succeed to abandoned mineral interests. *Felton*, 793 N.W.2d at 802. Under the Act, if unused for a period of 20 years immediately preceding the first publication of the notice required by N.D. Cent. Code § 38-18.1-06, a mineral interest is deemed abandoned, unless a proper statement of claim is recorded. *See* N.D. Cent.

Code § 38-18.1-02. However, to claim the abandoned minerals, the surface owner must comply with the notice provisions contained in N.D. Cent. Code § 38-18.1-06. *Felton*, 793 N.W.2d at 802 (quoting N.D. Cent. Code § 38-18.1-02 (2004). In addition, if the mineral owner files a statement of claim within 60 days of the first publication of the notice, then the mineral interests are not extinguished. N.D. Cent. Code § 38-18.1-05. Thus, the mineral owner has a second chance to protect otherwise unused mineral interests, and the notice provisions are seemingly directed to delivering notice to the mineral owner.

Under the Act, the surface owner must first give notice by publication of the lapse of the mineral interest. N.D. Cent. Code § 38-18.1-06(1); *Felton*, 793 N.W.2d at 802. Publication is to be made once each week for three weeks in an official newspaper of the county where the minerals are located. N.D. Cent. Code § 38-18.1-06(2). Sorenson complied with the publication requirement in each case. *Alinder*, 793 N.W.2d at 798; *Felton*, 793 N.W.2d at 802.

In addition, at the relevant times of the cases, the statutes required the surface owner to mail notice to the mineral owner within 10 days after the last publication was made "if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry." N.D. Cent. Code § 38-18.1-06(2); *Alinder*, 793 N.W.2d at 798; *Felton*, 793 N.W.2d at 802. A 2009 amendment to the statute now itemizes certain types of records that must be examined in order for the surface owner to show that it conducted a "reasonable inquiry;" however, those statutes were not in effect at the applicable times in the two cases. *See Felton*, 793 N.W.2d at 802; S.L. 2009, ch. 317, § 4. Indeed, based on the court's decision, it appears that these statutory amendments do not come into play when the mineral interest owner's address appears of record, as discussed herein. Felton argued that Sorenson was required to conduct a reasonable inquiry into the mineral owner's current address because the record address was more than 20 years old. *Felton*, 793 N.W.2d at 802. Alinder likewise argued that Sorenson's claim to the minerals failed because he failed to conduct a reasonable inquiry into the owner's current address. *Alinder*, 793 N.W.2d at 798. Sorenson had mailed the notice of lapse to the address of record in Buffalo, North Dakota, even though Russell Alinder died in 1980, and Edna Alinder died in 1999. *Id.*

The North Dakota Supreme Court rejected these arguments, reversing the district court in both cases, holding that N.D. Cent. Code § 38-18.1-06(2) requires a reasonable inquiry be made only when the mineral owner's address does not appear of record. *Alinder*, 793 N.W.2d at 799; *Felton*, 793 N.W.2d at 802-03. The court found the words "shown of record" and "determined upon reasonable inquiry" to "relate to separate and alternative considerations for how a surface owner is to obtain the mineral owner's address for mailing the notice." *Felton*, 793 N.W.2d at 803 (citing N.D. Cent. Code § 38-18.1-06(2) (2004).

Felton argued that the court's interpretation could lead to absurd results in a case where the surface owner has actual knowledge of a more recent address for the mineral owner, but instead sends the notice to the record title address as required by the statute. *Id.* However, the court indicated that this set of facts was not before it, and it refused to issue an advisory opinion. *Id.* In addition, the court noted that the Legislature had an "array of options from which it could specify how locating an address for mailing notice was to be accomplished. The separation of government functions and powers prohibits us from grading the legislative choice as good, better or best." *Id.* Finally, finding the statutory language unambiguous, the court refused to consult the legislative history of the dormant mineral statutes, which Felton claimed showed that the Legislature intended a reasonable inquiry be conducted in every case. *Id.* at 803-04.

Absent from both decisions is any reference to its 1999 decision in *Spring Creek Ranch, LLC v. Svenberg*, 595 N.W.2d 323 (N.D. 1999). There, the supreme court held that, because reasonable minds could draw more than one conclusion from the facts as to whether a reasonable inquiry was made to find current addresses for the mineral owners, the trial court erred in granting summary judgment on the issue. *Id.* at 329. The court noted that the only addresses of record for the mineral owners were for Los Angeles County, California, and Sedgewock County, Kansas, respectively—no street addresses appeared. *Id.* at 327. Thus, in *Spring Creek*, it appears that the court was never required to address the issue ultimately addressed in *Felton* and *Alinder*, because there was not a full address of record. Presumably, that logic still applies and, in order to constitute an "address" of record, a complete street address is required. It is unclear whether a post office box address is sufficient.

Overall, the court's interpretation of the statute clearly puts the burden on the mineral owner to protect its interests and maintain a current address of record. Indeed, the court, in *Felton*, pointed out that Felton would have received notice had she kept her record address current. *Felton*, 793 N.W.2d at 803. The decisions also ease the burden on a surface owner attempting to reclaim potentially dormant minerals. If the legislature determines that its intent was, or is, to require a reasonable inquiry into the current address of the mineral owner in every case, it now bears the burden of amending the law accordingly.

Editor's Note: The author's firm represented the defendants, Ken Alinder *et al.*, in the *Alinder* case.

COURT LIMITS RIGHT-TO-CURE PROVISION, ADDRESSES FAILURE OF LEASE CONSIDERATION

In January and February 2008, Irish Oil and Gas, Inc. (Irish Oil) entered into oil and gas leases with Gerald C. Riemer (Riemer) and other family members (collectively the Riemers) covering a common tract of land. *Irish Oil and Gas, Inc. v. Riemer*, 794 N.W.2d 715, 716 (N.D. 2011). A side letter agreement accompanied the leases, providing that Irish Oil would pay $160.00 per net mineral acre for a paid-up lease with a five-year primary term and a 1/6 royalty. *Id.* The letter agreement also provided:

> Within 60 days upon receipt of the signed lease, and subject to approval of title, with right of payment extension of 30 additional days, in the event of title curative issues, from expiration of original 60 days, you will receive a check in the amount of $10,640.00. On January 15, 2009 you will receive the balance of bonus consideration in the amount of $10,640.00.

Id.

Riemer later testified that he spoke with Irish Oil's landman on March 24, 2008, inquiring why the first payment had not ar-