

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**CONNIE JEAN SMITH, individually and  
on behalf of all others similarly situated**

**PLAINTIFF**

**VS.**

**4:14-CV-00435-BRW**

**SEECO, INC. n/k/a SWN Production  
(Arkansas), LLC, et al.**

**DEFENDANTS**

**ORDER**

Pending is Defendants’ Motion for Partial Summary Judgment (Doc. No. 89). Plaintiff has responded and Defendants have replied.<sup>1</sup> As set out below Defendants’ Motion is GRANTED.

**I. BACKGROUND**

Plaintiff’s gas lease with SEECO allows SEECO “to deduct all reasonable gathering, transportation, treatment, compression, processing, and marketing costs that are **incurred** by [SEECO] in connection with the sale of such gas.”<sup>2</sup> It is undisputed that SEECO’s affiliate, DeSoto, gathers and compresses the gas extracted from Plaintiff’s well. It is also undisputed that SEECO settles with DeSoto for the gathering and compression services through intercompany transfer rather than by writing a check or handing over cash. Plaintiff asserts that SEECO does not “incur” costs for DeSoto’s gathering and compression services because no money ever changes hands. Defendants request summary judgment arguing that the amounts SEECO owes DeSoto for gathering and compression services related to gas produced from SEECO’s wells in

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<sup>1</sup> Doc. Nos. 104, 105.

<sup>2</sup> Doc. No. 1 (emphasis added).

which Plaintiff has a royalty interest are costs that SEECO incurred in connection with the sale of Plaintiff's gas.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided on purely legal grounds.<sup>3</sup> The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

The inquiry performed is the threshold inquiry of determining whether there is the need for a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.<sup>4</sup>

The Court of Appeals for the Eighth Circuit has cautioned that summary judgment is an extreme remedy that should be granted only when the movant has established a right to the judgment beyond controversy.<sup>5</sup> Nevertheless, summary judgment promotes judicial economy by preventing trial when no genuine issue of fact remains.<sup>6</sup> A court must view the facts in the light most favorable to the party opposing the motion.<sup>7</sup> The Eighth Circuit has also set out the burden of the parties in connection with a summary judgment motion:

[T]he burden on the party moving for summary judgment is only to demonstrate, *i.e.*, "[to point] out to the District Court," that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, his burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts,

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<sup>3</sup>*Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56.

<sup>4</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

<sup>5</sup>*Inland Oil & Transport Co. v. United States*, 600 F.2d 725, 727 (8th Cir. 1979).

<sup>6</sup>*Id.* at 728.

<sup>7</sup>*Id.* at 727-28.

showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.<sup>8</sup>

Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment.<sup>9</sup>

### III. DISCUSSION

Plaintiff's lease with SEECO does not define "incurred." In construing an unambiguous contract, I "must consider the sense and meaning of the words used by the parties as they are taken and understood in their plain and ordinary meaning."<sup>10</sup> "To 'incur,' one must 'suffer or bring on oneself (a liability or expense).'"<sup>11</sup> The Generally Applicable Accounting Principles (GAAP) defines an "incurred cost" as "a cost arising from cash paid out or an obligation to pay for an acquired asset or service . . . ."<sup>12</sup>

SEECO uses the accrual method of accounting and recognizes "costs when a liability has been incurred."<sup>13</sup> DeSoto bills SEECO monthly.<sup>14</sup> After SEECO receives a monthly invoice, it has 10 days to review the invoice for error.<sup>15</sup> SEECO "recognizes that it has incurred a liability to DeSoto upon receipt of the Shipper Invoice and independent recalculation" of the rates

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<sup>8</sup>*Counts v. MK-Ferguson Co.*, 862 F.2d 1338, 1339 (8th Cir. 1988) (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F.2d 268, 273-74 (8th Cir. 1988) (citations omitted)).

<sup>9</sup>*Anderson*, 477 U.S. at 248.

<sup>10</sup> *Coleman v. Regions Bank*, 216 S.W.3d 569, 574 (Ark. 2005).

<sup>11</sup> *Hall v. U.S.*, 132 S. Ct. 1882, 1887 (2012) (citing Black's Law Dictionary 836 (9th ed. 2009)).

<sup>12</sup> Doc. No. 90-17 (citing Financial Accounting Standards Board, ASC Glossary).

<sup>13</sup> Doc. No. 90-17.

<sup>14</sup> Doc. Nos. 90-2, 90-10.

<sup>15</sup> Doc. No. 90-10.

DeSoto bills SEECO.<sup>16</sup> Accordingly, SEECO “incurred” costs no later than 10 days after it received the monthly invoices by DeSoto because that is when it became liable to pay for DeSoto’s services.<sup>17</sup>

### CONCLUSION

Regardless of whether SEECO made payment by check, cash, intercompany transfer, or never at all, SEECO incurred costs under the meaning of the lease. Whether those debts were reasonable, and therefore deductible, remains in dispute. Accordingly, Defendants’ Motion for Partial Summary Judgment is GRANTED.

IT IS SO ORDERED this 17th day of November, 2015.

/s/ Billy Roy Wilson  
UNITED STATES DISTRICT JUDGE

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<sup>16</sup> Doc. Nos. 90-17, 90-18.

<sup>17</sup> Plaintiff argues that SEECO does not receive the invoices, its parent company does. This is irrelevant – SEECO can authorize whomever it wishes to receive invoices in its behalf.