
Background

- The coal operators typically paid landowners $50 an acre (60 acres) for the right to strip mine coal. This represents the value of the land that was left useless when they were done.
- To obtain Garland's promises of remediation, the Peevyhouse waived the right to receive $3,000 cash upon executing the lease. This amount equals $50 per acre and represents the amount coal operators customarily paid landowners for any surface damages caused by the mining.
- Because they wanted the land restored to usable condition after the mining, Peevyhouse agreed to forego the upfront payment of $3,000 ($50 per acre for 60 acres) in exchange for Garland's promise to do remedial work. Willie said that it was not right to take money for land and allow work to be done on it that would make the land worthless in the future. Peevyhouse received a $2,000 advance royalty on coal extraction.
- From Garland's perspective, the exchange appeared economically rational. It saved a $3,000 immediate cash outlay, enabled prompt creek diversion, and obtained rights to mine the Peevyhouse land.
- Garland extracted minimal coal. Peevyhouse only received an additional $500 royalty payment when they were done.
- Willie now believes Garland agreed to the remedial work just to obtain the right to divert the creek and that it mined the land only to recoup the advanced royalty. He thinks Garland never intended to perform the remedial work.
- Within days, Garland diverted a bothersome creek onto the Peevyhouse land so that it could continue mining elsewhere, unimpeded by water flow. Its diversion from the mining site was essential to avoid interference with ongoing mining operations. Even before execution of the Peevyhouse lease, Garland began pumping water from the creek onto the Peevyhouses' land. Garland began blasting for the diversion immediately after the lease was signed.
- The Peevyhouse land, while quite small in relation to the total acreage and quantity of coal Garland expected to mine, was key to a profitable mining operation. The targeted vein cut through the Peevyhouses' back twenty-acre parcel and a small portion of their forty-acre parcel. By leasing the Peevyhouses' sixty acres, Garland could move its mining operation efficiently from northwest to southeast.
- Compared to other properties mined, the Peevyhouses were left with the most damage from the least actual mining: the pit, highwall, and diversionary channel are mostly on their land.
- Eventually Garland mined a small portion of the leased Peevyhouse land, but left the property earlier than expected, claiming the coal ran too deep. Heavy spring rains saturated the low-lying worksite, making it dangerously unstable. Garland made little effort to complete the promised remedial work.
Garland's likely profits earned from the sale of coal removed from the Peevyhouse land ranged from $25,000 to $34,500. This figure does not include other economic benefits Garland derived from the lease, such as creek diversion.

A bulldozer spent one day knocking off sharp peaks from the highwall and constructing a makeshift dirt fill to prevent the diverted creek from running into the pit, causing further damage. Settlement efforts failed.

Willie then offered to accept $500 so he could hire a bulldozer and level the ground himself. Garland refused. Willie then told Burl that the price of settlement would increase $500 each time he returned to Garland's Stigler office about the matter. Six fruitless visits later brought the settlement demand to $3,000. Finally, Garland presented a check for $3,000 conditioned on the Peevyhouses signing a release.

P consults tort attorney McConnell. Garland agrees to pay $3,000 in exchange for all potential liability from future flooding. McConnell tells P not to sign and to sue Garland for reclamation costs. Specific performance never requested.

At trial P requests $25,000 in clean up costs. Garland argues that the land is worthless and all they should be held to is diminution in the value of the land, $3,000. Garland argues that all reasonable work could be done for $300. Any other work would add little value to the land.

The plaintiffs' case focused almost exclusively on proving cost as the only possible damage measure and presented no alternative evidence to contest defendant's low figures on diminution in value. This deliberate strategy choice guided McConnell in carefully limiting the evidence presented. The court deemed irrelevant, and possibly prejudicial, the amount of royalties paid to the Peevyhouses. The record reflects neither that the Peevyhouses received $2500 in royalties nor that they gave up the $3000 customarily paid to cover surface damages in exchange for Garland's promise of remedial work.

Judge instructs jury to find for P and determine damages. Instructions left question of damages open. The jury deliberated briefly before returning a verdict for $5000. Considering Garland's potential liability, defense counsel viewed the low sum as a victory. As such, Garland's subsequent litigation moves were precautionary, guarding against the downside risk that the plaintiff might prevail on appeal. Both sides filed motions for new trial, which, after argument and briefs, were overruled in December 1960.

P appeals and attempts to get the appeals court to accept a cost basis for damages.

Appeals court considers measure of damages, cost of completion or diminution in market value. Garland argues that damages should be limited to increase in value of the land from reclamation ($300). Excessive cost of reclamation would be an economic waste. It would represent a damage penalty for breach of contract, liquidated damages.

Oklahoma SC affirms on liability, but reduces award to $300. Harm to plaintiff’s expectation interest could be determined by the fair market value of the breach.

"the measure of damages in an action by lessor against lessee for damages for breach of contract is ordinarily the reasonable cost of performance of the work; however, where the contract provision which was breached was merely incidental to the main purpose in view, and where the economic
benefit which would result to lessor by full performance of the work is grossly disproportionate to the cost of performance, the damages which lessor may recover are limited to the diminution in value resulting to the premises because of the non-performance”

- “The special provisions of the lease contract pertaining to remedial work were incidental to the main object involved.”
- “It should be noted that the rule as stated does not interfere with the property owner's right to 'do what he will with his own' ...or his right, if he chooses, to contract for 'improvements' which will actually have the effect of reducing his property's value. Where such result is in fact contemplated by the parties, and is a main or principal purpose of those contracting, it would seem that the measure of damages for breach would ordinarily be the cost of performance.”

- McConnell petitions twice for rehearing. Final petition argues that diminution in value was incorrect because it did not take into account reduction in value of personal acreage that was not leased.
- McConnell appeals to US SC. Certiorari denied

Legal Post Script

- Oklahoma SC decided case in March 1963.
- 1964 bribery scandal discovered on Oklahoma SC. At least two judges that voted with Peevyhouse majority implicated. The other was an abstention.
- State dominated by Democratic Party with little oversight
- Law firm defending Garland had funneled brides to justices
- No evidence of a specific bribe on Peevyhouse

Changes in State and Federal Reclamation Laws

Peevyhouse is symbolically important. Classical contract doctrine supports the view that parties can achieve any lawful purpose through private bargain. Peevyhouse belies the point. It casts serious doubt whether the legal system can relegate to "freedom of contract" the protection of property owners’ interests in aesthetics and the long-term utility of land after stripmining. Public law has since intervened, with the federal and state governments attempting to protect the public welfare and minimize damage to the environment. While early legislation did not effectively assure satisfaction of statutory reclamation requirements, the situation has greatly improved since Congress adopted the Surface Mining Control and Reclamation Act of 1977.

Oklahoma adopted its first reclamation statute five years after the Peevyhouse decision. The Open Cut Land Reclamation Act of 1967 ("1967 Act") required operators to obtain a mining permit and post a bond equal to the lesser of $50 per acre or the assessed value of the land to be mined. Because the bonding requirement was set at an amount far below the probable reclamation costs, operators frequently would simply forfeit the bond instead of performing the
work.

Post Script
- Peevyhouses still live on the farm. Land is still a mess
- Floods neighboring farms. Neighbor’s son and horse drowned in one of the ditches.
- Garland is bankrupt.
- State and federal reclamation acts passed. Firms must post bonds to cover cost of reclamation

Epilogue
Willie and Lucille Peevyhouse still live on the land located outside Stigler. The land they leased to Garland has changed little from when the mining stopped more than thirty-five years ago. The rough, rocky surface on the highwall and spoil banks is sparsely vegetated. About half of the leased acreage remains unusable. The diversion of Cedar Creek caused long-term harm. It eroded the makeshift fills and now flows into the abandoned mining pit instead of the diversionary channel. It carved a new path flowing out of the southeast portion of the pit. The renegade creek washed out a bridge on the property southwest of the Peevyhouses owned by Lucille's parents. The dry diversionary channel is overgrown with weeds. Because the unmined area south of the pit often floods after heavy rains, it lies fallow and overgrown with scrub. Their adult son has begun clearing the area so the fertile land can again be used. Deep water-filled pits line the surrounding area. They can present serious safety hazards. Weeds grow at the edges, deceiving the unsuspecting traveler. State mining officials have corrected some especially dangerous pits close to high traffic areas. Nevertheless, tragedies and near misses still occur. In 1974, Charles Wheat, age fourteen, mistook a pit adjoining the Peevyhouse property for a small water hole. He and his horse drowned. The Peevyhouses' granddaughter and a friend barely escaped a similar fate in 1986. The Peevyhouses worry, not only for the safety of others, but also about their risk of liability