

**Editor's note: 86 I.D. 374; Appealed -- aff'd, Civ.No. 79-K-1334 (D. Colo. Jan. 20, 1981), 506 F.Supp. 1204; aff'd, No. 81-1178 (10th Cir. Sept. 23, 1983), 717 F.2d 1323, cert. denied, 104 S.Ct. 2169; 466 U.S. 958 (April 30, 1984)**

JUNE OIL AND GAS, INC.

COOK OIL AND GAS, INC.

IBLA 79-4

Decided July 24, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting appellants' simultaneous oil and gas lease offers, C-26939 and C-27026.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where offers for the same parcel of land are filed by two corporations in a simultaneous oil and gas lease drawing, and where the directors of the first corporation having authority to file offers and execute leases are directors of the second with the same authority and the surrounding circumstances suggest that the corporations are interrelated, the drawing is inherently unfair and the offers are properly rejected as a prohibited multiple filing. Collusion or intent to deceive the Department need not be shown.

APPEARANCES: Philip G. Dufford, Esq., Welborn, Dufford, Cook and Brown, Denver, Colorado, for both appellants; Lyle K. Rising, Esq., Office of the Denver Regional Solicitor, Department of the Interior, for the Government.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

In June and July 1978, June Oil and Gas, Inc., and Cook Oil and Gas, Inc., submitted offers for the simultaneous oil and gas lease drawings held by the Colorado State Office, Bureau of Land Management (BLM). Specifically, both corporations submitted drawing entry cards for parcel No. CO-337 in the June drawing and for parcel No. CO-361 in the July drawing. June Oil and Gas, Inc., received first priority on parcel No. CO-337 and second priority on parcel No. CO-361. Cook Oil and Gas, Inc., received no priority on parcel No. CO-337 as its card was not drawn, but received first priority on parcel No. CO-361. After review of the qualifications file for each corporation, BLM concluded that the corporations were interrelated and thus had gained a greater probability of successfully obtaining a lease or an interest in a lease in the drawing when both submitted offers on the same parcels. Therefore BLM rejected the priority offers stating that a multiple filing in violation of 43 CFR 3112.5-2 had occurred and citing in support of the decision, Schermerhorn Oil Corp., 72 I.D. 486 (1965). Both corporations have appealed that decision and the cases were consolidated for review.

The relevant portion of 43 CFR 3112.5-2 states:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected.

Review of the corporate qualifications files maintained by the Colorado State Office for each corporation indicates that June Cook owns 100 percent of June Oil and Gas, Inc., and is chairman of the board of directors. Michael C. B. Cook owns 100 percent of Cook Oil and Gas, Inc., and is also chairman of the board of that corporation. At the time that the lease offers which are the subject of this appeal were made, the officers of each corporation were as follows:

	<u>June Oil and Gas, Inc.</u>	<u>Cook Oil and Gas, Inc.</u>	
President/Director	Michael C. B. Cook		June Cook Secretary/Treasurer/
Director	Adrianna van der Stok	Adrianna van der Stok	Vice President for
Land Administration	Madeline A. Meyer		Kati P. Ward

All of these directors, including the chairmen of the boards, and officers were authorized to sign on behalf of their corporations with respect to oil and gas leasing matters.

The Articles of Incorporation for each company state identical purposes, 1/ that the same incorporators, and designate initial registered offices with the same address. In fact, the Articles of Incorporation for each are identical except for the names of the initial directors and registered agent of each. The Articles of Incorporation were executed on the same day and filed with the State of Colorado on the same day. The two corporations continue to have the same address and, as noted in appellants' statement of reasons and brief, share business facilities and personnel for purposes of convenience.

Appellants argue that Schermerhorn Oil Corp., *supra*, is "irrelevant to the case at issue" because neither of the two corporations own stock in the other as did Schermerhorn and thus no unfair advantage was gained by both corporations having filed. In addition, appellants assert that a multiple filing does not occur when the cards are filled out by the same person if they were signed by different persons. Appellants further claim that the sharing of common facilities for business purposes does not constitute a multiple filing unless some

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1/ The third provision of both Articles of Incorporation reads in relevant part:

"(a) Purpose. The nature, object and purposes of the business to be transacted shall be as follows:

"(i) To acquire and obtain interests in oil and gas leases.

"(ii) To develop oil and gas leases.

"(iii) To acquire and engage in other businesses. To acquire (for cash or in exchange for its assets or securities or otherwise) operate, dispose of and otherwise deal and engage in any lawful business or activity for which corporations may be organized under the laws of Colorado."

agreement exists that the participants will mutually benefit from each other's offer. <sup>2/</sup>

We would agree with appellants' argument that Schermerhorn Oil Corp., *supra*, is distinguishable, though only in part, because the two corporations are independently owned. However, we do not agree that the Schermerhorn decision is irrelevant to the cases at issue. In that case, one corporation, Schermerhorn, held a 29 percent stock interest in a second, Kenwood. The Deputy Solicitor ruled that when both corporations filed a lease offer for the same parcel of land, Schermerhorn had 1-1/4 chances of success because of its ownership of Kenwood stock. Thus the drawing in which they participated was inherently unfair whether or not there had been collusion or intent to deceive the Department and the Schermerhorn lease offer was properly rejected. Appellants correctly argue that this is not the situation we have before us now.

However, in Schermerhorn Oil Corp., *supra*, rejection of the Kenwood offer was upheld as well because of the additional finding

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<sup>2/</sup> Appellants cite D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), as support for this proposition. However, Pack does not involve the sharing of common facilities for business purposes but rather the use of a filing service by an oil and gas lease applicant. The Board held that where an applicant files a lease offer through a leasing service under an arrangement where the applicant uses the leasing service's address and avails himself of other services, but no enforceable agreement is entered into which would require the applicant, if successful, to transfer any interest in the lease to the leasing service, then the service is not a party in interest.

that all of the officers of Schermerhorn with authority to execute offers and leases were also officers of Kenwood with the same authority. Similar circumstances are present in the cases now at issue. Here June Cook, the sole stockholder and chairman of the board of June Oil and Gas, Inc., is a director and officer of Cook Oil and Gas, Inc. Similarly, Michael C. B. Cook, the sole stockholder and chairman of the board of Cook Oil and Gas, Inc., is a director and officer of June Oil and Gas, Inc. In addition, the two corporations have a common secretary-treasurer/director. The sole office held by different persons for each corporation is that of Vice President for Land Administration. As previously noted, all directors and officers of each corporation may execute oil and gas offers and leases on behalf of their corporations. Consequently, as in Schermerhorn Oil Corp., supra, director/officers common to both corporations may file lease offers for the same land on behalf of both corporations.

The directors of a corporation are its governing body. They generally exercise all powers vested in the corporation and are responsible for the management of ordinary corporate affairs as well as the management, control, and use of corporate property. 19 C.J.S. Corporations § 742 (1940). In Panra Corp., 27 IBLA 220 (1976), the Board quoted the following statement concerning the duties of corporate directors and officers from Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213 (Alaska 1965):

A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest, the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his fiduciary capacity for the use and benefit of the corporation. [Citations omitted.]

398 P.2d at 215. The Board has previously held that when a director or officer of a corporation individually files a lease offer for the same land as the corporation itself files, a prohibited multiple filing occurs because the individual filing constitutes the taking of a corporate business opportunity for personal profit. Such action is a breach of the director's or officer's fiduciary duty to the corporation and thus the profit accruing to that individual must be held for the corporation's benefit. As a result, the corporation will have had two chances to obtain the oil and gas lease. William R. Boehm, 36 IBLA 346 (1978); William R. Boehm, 34 IBLA 216 (1978); Graybill Terminals Co., 33 IBLA 243 (1978); Panra Corp., *supra*. See McKay v. Wahlenmaier, 226 F.2d 35, 44-46 (D.C. Cir. 1955). We find this principle also applicable to the present cases as it defines the relationship between June Oil and Gas, Inc., and Cook Oil and Gas Inc., and identifies the problem which occurs when both file lease offers. In most instances, directors with fiduciary obligations to two competing corporations cannot reasonably protect and promote

identical interests in a single business opportunity for the two corporations at the same time. When a business opportunity, such as filing for an oil and gas lease, arises which is equally appropriate for either corporation, the directors cannot take the opportunity for one of the corporations without breaching their duty to the other unless the corporations are in fact not competing and the action is beneficial to both regardless in whose name the action is taken. Therefore, in most instances, if directors decide to file offers on behalf of both corporations, they also will breach their fiduciary duty to each because the second filing lessens the chance of success of the first offeror as between two competing offerors. Such dual filings could only be justified if they were beneficial to both corporations; that is, if they increased each corporation's chance at successfully obtaining an interest in the sought-after lease. 3/

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3/ The seventh provision of the Articles of Incorporation of each corporation appears to broadly relieve the corporations of the effect of interested or of common directors or officers in any corporate transaction. It reads in part:

"SEVENTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the corporation, and the same are in furtherance of and not in limitation or exclusion of the powers conferred by law.

"No contract or other transaction of the corporation with any other persons, firms or corporation, or in which this corporation is interested, shall be affected or invalidated by (a) the fact that any one or more of the directors or officers of this corporation is interested in or is a director or officer of such other firm or corporation; \* \* \*."

The Board submits that closely-held corporations cannot unilaterally act to relieve themselves of obligations under Federal oil and gas leasing laws. In this instance, it would be particularly self-serving, given the other common characteristics, for the corporations to attempt to claim on the basis of such a provision that the director's interests cannot be considered with respect to the multiple filings issue.

The drawing entry cards at issue in these cases were signed on behalf of each corporation by the one officer who is neither a director nor common to both corporations. <sup>4/</sup> We hold that this fact does not change the result in this instance given the interlocking management responsibilities of the directors and the other common characteristics outlined at the beginning of this opinion. June Oil and Gas, Inc., and Cook Oil and Gas, Inc., are so interrelated by virtue of their common director/officers and these other factors that it is difficult to define where the interests of each of the corporations begin and where they end. We would note further that appellants also apparently view themselves as having the same interests since they are represented by the same counsel in this case and one brief was submitted on behalf of both corporations. Where all of the circumstances so strongly suggest such common interests as to have made the drawing inherently unfair, collusion or intent to deceive the Department need not be shown. BLM has properly rejected their offers as a prohibited multiple filing.

Appellants suggest that it would be a rule without a purpose to prohibit the conduct of two corporations where the sole owners of each of the corporations could have filed on exactly the same parcels in the same manner in their individual capacities as husband and wife.

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<sup>4/</sup> The fact that the cards were apparently filled out by the same person is significant as evidence of joint operations and awareness of the two corporations that both were filing on the same parcels of land.

Appellants are correct in their contention that a husband and wife may individually file for the same parcel of land in a simultaneous drawing without running afoul of either the sole party in interest requirement or the multiple filing prohibition. See generally, Solicitor's Opinion, M-36416 (Feb. 27, 1957); Solicitor's Opinion, M-36418, 64 I.D. 51 (1957). This argument, however, is not apropos to appellants' situation.

June and Michael Cook, each the sole owner of one of the corporations, are not citizens of the United States, but of the Netherlands (June) and Great Britain (Michael). Under the statute and regulations, aliens may not acquire or hold any direct or indirect interest in leases, except through ownership or control of stock in corporations holding oil and gas leases, provided that the laws of the alien's country do not deny similar privileges to citizens of the United States. See 30 U.S.C. § 181 (1976); 43 CFR 3102.2-1(a). Thus, in actual fact, neither June Cook nor Michael Cook could have filed for an oil and gas lease in their own name. It is only through the ownership of stock in a corporation that either can hold any interest in an oil and gas lease.

Moreover, the rule prohibiting multiple filings would be without substantial efficacy if two corporations as closely identified as June Oil and Gas, Inc., and Cook Oil and Gas, Inc., were allowed to file mutually beneficial lease offers simply because they were

controlled by husband and wife. The issue in this case is not the marriage relationship of the controlling shareholders; rather, it is the nature of the two corporations themselves. Having availed themselves of the benefits attendant to the corporate structure, the owners cannot simultaneously request that their actions be treated as if no corporation actually existed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joan B. Thompson  
Administrative Judge

