

**Resource Center**

WINNING, LOSING, AND THE IN-BETWEEN

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The recent ruling from the Oklahoma Supreme Court in *The State ex rel. Commissioners of the Land Office v. Stephens & Johnson Operating Co.*, 2020 OK 84, carries a clear message: winning under the Oklahoma Surface Damages Act (“SDA”) often comes at a cost. The SDA provides the framework for assessing the amount to be paid by an oil and gas operator to a surface owner for surface damages caused by drilling activity:

1. The operator and surface owner may reach an agreement on the amount;
2. If no agreement is reached, the operator must file a petition in the district court where the land is located for determination of the amount by three, court-appointed appraisers; and
3. If either party disagrees with the appraisal, the challenging party may demand a jury trial to determine the amount.

The good news, if the disagreement reaches the trial stage, the SDA allows a winning party to recover its attorney’s fees and costs...sometimes.

A jury verdict that is favorable to the demanding party certainly justifies the demand, but it does not entitle the winner to recover its attorney’s fees and costs. Rather, the SDA only provides such a reward to winning parties who were not the ones demanding the trial. So, if you make the demand and win, you don’t recover your attorney’s fees and costs. If you make the demand and lose – you pay your own and the other party’s attorney’s fees and costs.

So, what do you do when you disagree with the appraiser’s award? Understanding the various outcomes allows for a well-informed decision. If you do make the demand and win, congratulations. And the fees and costs incurred to get that result? Well, consider that money well spent.

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