

## Corporate & Financial Weekly Digest

February 10, 2012 by Steven Shiffman

### **Incomplete and Unfinished Documents May Satisfy Statute of Frauds**

*Co-authored by Dean N. Razavi.*

The U.S. Court of Appeals for the Fifth Circuit recently held that documents referenced in an agreement may satisfy the statute of frauds even if those documents are not finalized. Preston Exploration Company entered into three agreements with Chesapeake Energy Corporation for the sale of certain oil and gas leases. The specific leases to be conveyed were not set forth in the body of the agreements, but rather were referenced in the agreements as being defined in the attached exhibits. Drafts of the exhibits were circulated with the draft agreements and, although it was clear that the exhibits were not finalized, the agreements were executed by Chesapeake without protest.

Chesapeake ultimately refused to close on the sale transaction, and Preston sued for specific performance. In response, Chesapeake argued that the agreements did not sufficiently identify the property as required by the statute of frauds because the exhibits listing the leases were never finalized. The trial court accepted Chesapeake's argument and Preston appealed.

Applying Texas law, the Fifth Circuit vacated the trial court's decision, holding that the general description of the property to be conveyed set forth in the agreements, along with the draft exhibits specifically identifying the leases, provided a sufficient basis for enforcing the agreements. In particular, the Court pointed out that the agreements reflected a clear meeting of the minds of the parties even though it was recognized "that there was still some title work to be done" with respect to the specific leases that would be conveyed. Moreover, the Court held that although the exhibits were not finalized, they contained sufficient information concerning the property to be conveyed to satisfy the statute of frauds.

*Preston Exploration Company, L.P. v. GSF, L.L.C.*, No. 10-20599 (5th Cir. Feb. 1, 2012)