

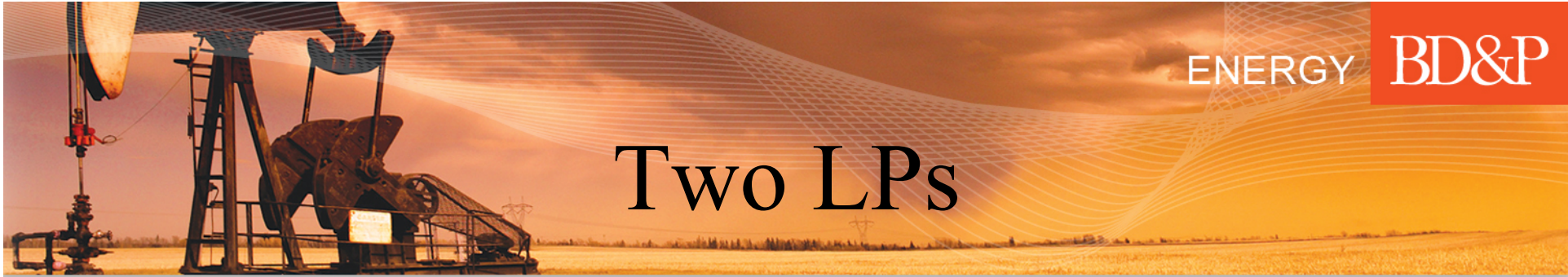
Limitation Periods & the Oil and Gas Industry

What is a Limitation Period?



Application

- Generally:
 - Any claim commenced on or after March 1, 1999
 - "claim" = statement of claim/originating notice



2

10

Which LP applies?

The period that expires first

When Does the Clock Start?

- **2 Year LP**

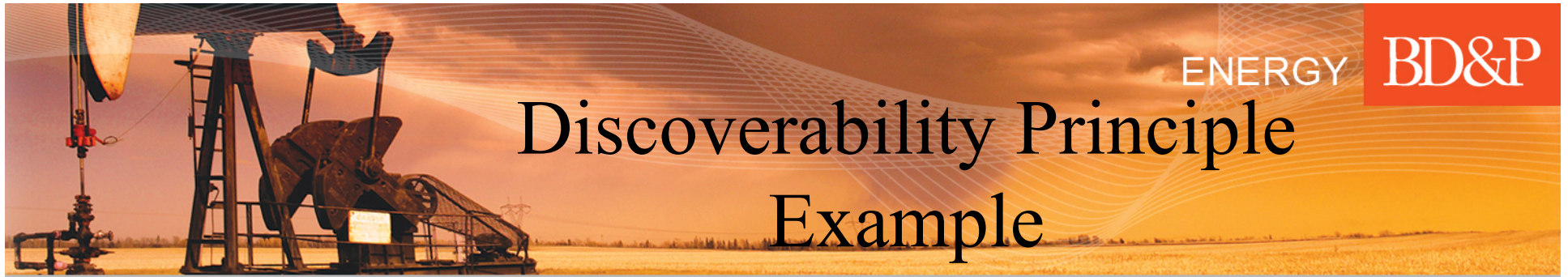
- From the date you knew, or ought to have known, of your claim
- Also known as:
 - the discoverability principle

- **10 Year LP**

- From the date your cause of action arises
- Also known as:
 - The ultimate period

Discoverability Principle

- Why?
 - To deal with situations where you discover you have suffered a loss long after the fact
- What?
 - Know, or ought to have known:
 - You suffered a loss/injury
 - The fault of the defendant
 - Warrants bringing a lawsuit



Facts

- you are Farmor in Farmout Agreement
- audit: paid 5% GOR
- should be 10%

Discoverability Date:

- Injury: underpayment
- Causation: Farmee who underpaid
- Warrants cause of action? yes

Discoverability Principle

- Important Points:
 - Direct knowledge not necessary
 - Constructive knowledge is enough
 - Sophisticated parties will be held to a higher standard:
 - Oil & Gas companies responsible for monitoring their contracts and identifying breaches



- **Claimants:** well-educated individuals, some business experience
- **Defendant:** sophisticated O&G company
- **Held:**

“A royalty interest holder is entitled to expect the royalty payor to honor its obligations. Absent clear information to show improper payment, royalty interest holders are not obligated to take positive steps aimed at ensuring that they are being correctly paid.”

Discoverability Principle

Sum:

2 year LP starts to run when the claimant knew, or ought to have known:

- (1) Suffered a loss/injury
- (2) Injury caused by the defendant
- (3) Warrants a lawsuit

10 Year/Ultimate LP

- Why?
 - It limits how long you have to start a lawsuit
 - Unfair to have threat of litigation hang over you indefinitely
- What?
 - Starts to run from the day your cause of action arises

Suspending a LP

- Disability/Minors
- Discoverability
- Acknowledgement
- Fraud
- Waiver/Estoppel
- Agreement

Disability/Minors

- Section 5:
 - during any time the claimant “is a person under disability” or a minor
 - does not apply to claimant corporations

Discoverability

- Section 3:
 - Until the claimant knew, or ought to have known, of his or her claim (discoverability principle)
 - Only applies to the 2 year period



ENERGY

BD&P

Acknowledgement

=

Recognition

In writing

Signed by person liable

Or

Part payment by debtor

Acknowledgement Example

"the question of outstanding rent can be settled in a separate account"

"keep a check on the totals and amounts I owe you, and we will have account now and then"



- Section 4:
 - During any period the defendant fraudulently conceals the fact you have suffered a loss/injury that warrants a remedy
 - LP will not start to run until you discover the fraud, or ought to have discovered the fraud

Waiver/Estoppel

- Parties can agree not to enforce a LP
 - Make sure:
 - Waiving party has knowledge
 - Take particular care with unsophisticated parties
- Settlement negotiations:
 - Don't generally = waiver

Waiver/Estoppel

Brusco v. Inter-City Truck Lines Inc.

- Responsibility to unsophisticated/
unrepresented
- Beyond the normal process of negotiations
= waiver/estoppel

Agreement

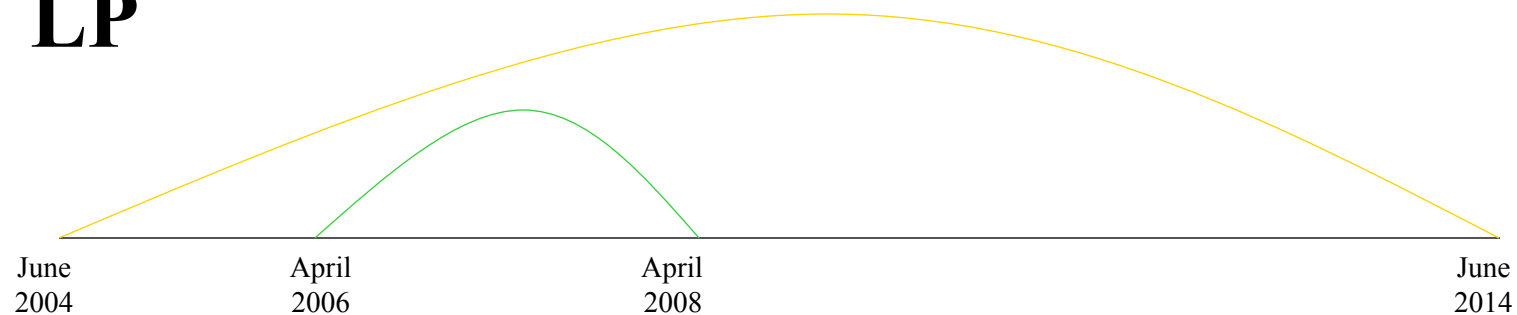
- Express agreement not to enforce LP
 - Extension: yes
 - Shorten: no
- Avoid LP though creative drafting:
 - Tolling agreement
 - Indemnity scheme

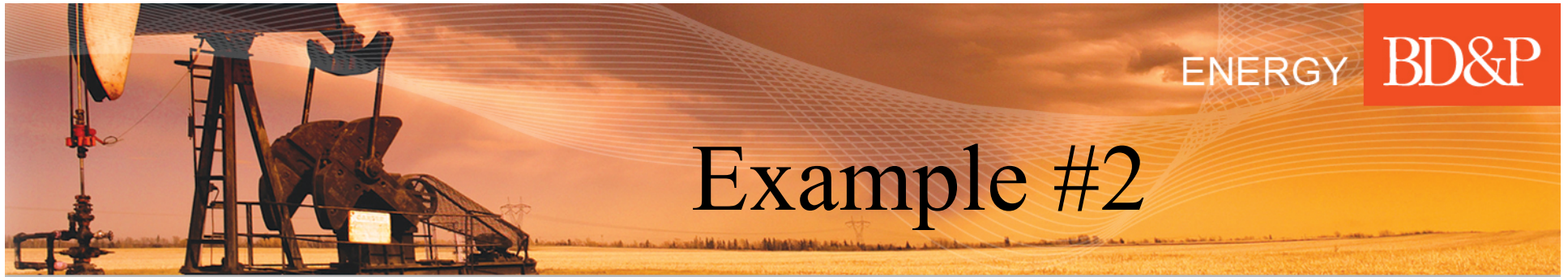
Example #1

Facts

- Lessee made certain discretionary income deductions in June of 2004 (date of alleged loss/injury)
- identified in Lessor's April 2006 audit and disputed

LP

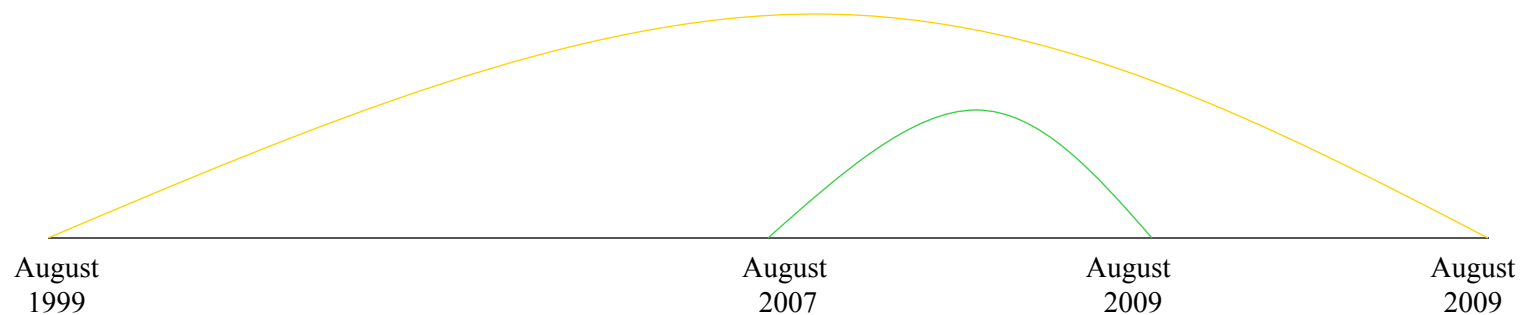




Facts

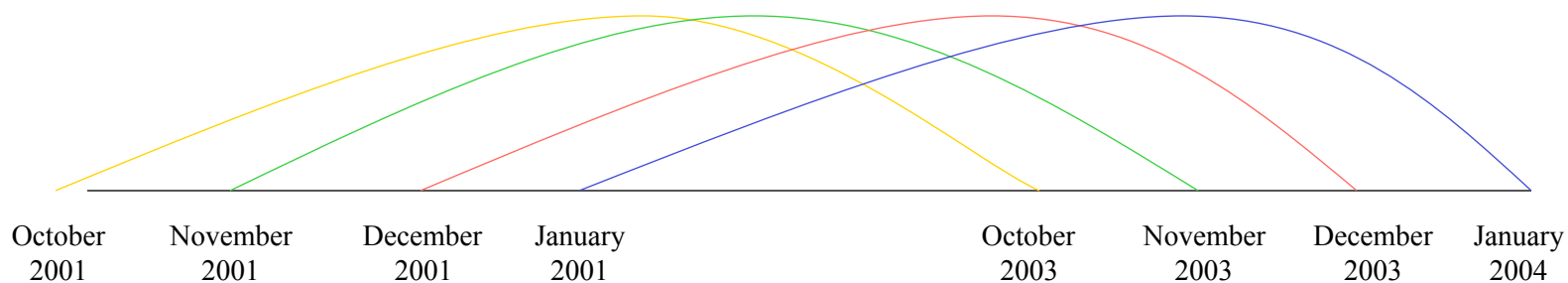
- GOR owner underpaid royalties (August 1999 to January 2007)
- GOR owner discovers underpayments August 2007
- Refused payment of balance

LP



Series of failures to pay

- Each failure to pay = separate action
 - i.e., every month of non-payment = new action
 - October 2001 - October 2003
 - November 2001 – November 2003
 - December 2001 – December 2003
 - January 2002 – January 2004

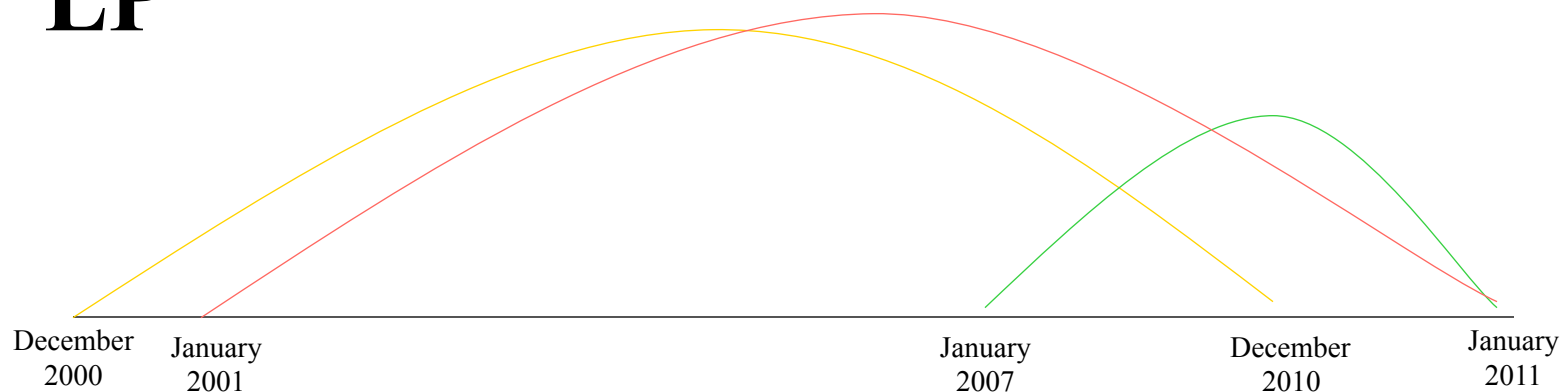


Example #3

Facts

- Industry Agreement: 2 year LP now 4 years
- December 2000: acquire 50% interest in royalty
- Royalties never paid
- January 2007: discover non-payments

LP



5 Key Takeaways

1. Always err on the side of caution:
 - assume the 2 year LP applies
2. O&G Co.'s held to higher due diligence standard
3. Dealing w/ unsophisticated party?
 - take the time to ensure individual knows rights and what he/she is waiving
4. Establish mechanisms to monitor contracts
5. When in doubt: consult legal counsel



Questions?

Sonya A. Morgan

403.260.0322

sam@bdplaw.com