



BINDING CONTRACTS CREATED VIA EMAIL

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AN EMERGING PROBLEM

For contracts involving property – 3 big issues:

- Do the emails have all material terms?
- Is the contract ever “signed”?
- Can an independent landman bind the company?

ARE ALL MATERIAL TERMS PRESENT?

- *Dittman v. Cerone*, (Corpus Christi 2013)
 - Court finds 3 emails are sufficient to create a binding option contract for sale of land.
 - Emails had all material terms, therefore agreement to agree is enforceable.
- *2001 Trinity Fund v. Carrizo Oil & Gas* (Houston 2012)
 - Even though email said “we have an agreement in principle,” at least one material term was never resolved.

IS AN EMAIL A “SIGNATURE”?

- Uniform Electronic Transactions Act
 - Texas Bus. & Comm. Code Ch. 322
 - Did both parties intend to conduct business electronically?
 - For the “signature” – did the parties intend it to be a signature?
 - Look to the “context and surrounding circumstances”
- This is a question of fact for the jury
- Limited number of judicial opinions in Texas

IS AN EMAIL A “SIGNATURE”?

- *Nanda v. Huinker* (Corpus Christi 2015)
 - No signature at all on email – no “signed” writing.
- *Dittman v. Cerone*, (Corpus Christi 2015)
 - Signing of first name was enough.
- *Cunningham v. Zurich Am. Ins. Co.* (Fort Worth 2011)
 - Parties did not agree to do business by email.
 - Automatic signature block not a signature.
- *Parks v. Seybold* (Dallas 2015)
 - “Thank you, Clyde” was deemed to be a signature.
 - Court “expresses no opinion” on whether an automatic signature block is enough.
- *2001 Trinity Fund v. Carrizo Oil & Gas* (Houston 2012)
 - Parties did not agree to do business by email b/c the emails insisted on having executed documents.

OUTSIDE OF TEXAS

- 47 states have adopted the UETA
- Not many decisions – most have no analysis
 - *Cloud Corp.* – 7th Circuit 2002
 - Kentucky, Michigan, Illinois, Virginia, New York - email is a “signed writing”
- Ohio – email is a “signed writing”
- West Virginia – email is a “signed writing”

CAN LANDMAN BIND THE COMPANY?

- *PanAmerican Operating v. Maud Smith Estate* (El Paso 2013)
 - Landman exchanged emails with mineral owner, and mineral owner “accepted” an offer.
 - Court finds landman had enough “indicia of authority” to bind PanAmerican
 - PanAmerican email address, mailing address, phone #
 - PanAmerican and landman never disclosed lack of authority

THANK YOU



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