2020 Oil and Gas Case Law Update

Kirby, Mathews, & Walrath, PLLC

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NHAPL 1/2 Day Seminar

ARBITRATION

Apache Corp. v. Bryan C. Wagner

2018 Tex. App. Lexis 9766, 2018 WL 6215739 (Tex. App. – San Antonio 2017, pet. Denied April 24, 2020)

- Facts
  - Wagner purchased from Apache oil and gas related assets pursuant to a Purchase and Sale Agreement ("PSA")
  - Apache was later sued for environmental damage claims
  - Apache sought indemnification from Wagner under the terms of the PSA
  - Wagner disputed that they were subject to the arbitration clause in the PSA

Apache Corp. v. Bryan C. Wagner

2018 Tex. App. Lexis 9766, 2018 WL 6215739 (Tex. App. – San Antonio 2017, pet. Denied April 24, 2020)

- Analysis
  - Arbitration is a creature of contract between consenting parties, determined by the parties' intent as expressed in the agreement.
  - Whether claims are covered by an arbitration clause is determined according to a commonsense examination of the substance of the claims made.
  - There are 6 exceptions where arbitration with non-signatories may be required: incorporation by reference, assumption, agency, alter ego, equitable estoppel, and third-party beneficiary.

Trubenbach v. Energy Expl. I, LLC.

2020 Tex. App. LEXIS 2600 (Tex. App. – Dallas Mar. 27, 2020, n.p.h)

- Facts
  - Energy Exploration invested in joint ventures with TRU Exploration.
  - Each venture included a subscription agreement which contained an arbitration clause.
  - Energy later filed suit against TRU and its principals. TRU filed a motion to stay litigation and compel arbitration, which was denied.

Trubenbach v. Energy Expl. I, LLC.

2020 Tex. App. LEXIS 2600 (Tex. App. – Dallas Mar. 27, 2020, n.p.h)

- Analysis
  - The party seeking arbitration must establish the existence of a valid, enforceable arbitration agreement and that the claims at issue fall within the scope of the agreement.
  - Non-signatories are normally not bound to arbitration agreements between others. However, non-signatories may be allowed or required to arbitrate if rules of law or equity would apply the contract to them generally.

WEH-SLMP Invs., LLC v. Wrangler Energy LLC

2020 Tex. App. LEXIS 1808, 2020 WL 994697 (Tex. App. – Dallas Mar. 2, 2020, n.p.h.)

- Facts
  - Wrangler filed suit for breach of contract against WEH regarding the acquisition, sale, and profit sharing of mineral interests and mineral leaseholds.
  - WEH filed a demand for arbitration with the American Arbitration Association in accordance with the Federal Arbitration Act ("FAA").
  - The arbitrator awarded damages and attorneys' fees to WEH.
  - WEH sought confirmation of the award, but Wrangler moved to vacate arguing the arbitrator "exceeded his powers" by awarding attorneys' fees.
  - The trial court granted the motion to vacate the awards and attorneys' fees.

WEH-SLMP Invs., LLC v. Wrangler Energy LLC

2020 Tex. App. LEXIS 1808, 2020 WL 994697 (Tex. App. – Dallas Mar. 2, 2020, n.p.h.)

- Analysis
  - Arbitration awards made under the FAA must be confirmed unless vacated on certain limited grounds, "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."
  - Wrangler sought to vacate under "manifest disregard" claiming the arbitrator exceeded his powers.

ATTORNEY'S LIABILITY

Wulchin Land, L.L.C. v. Ellis

2020 Tex. App. LEXIS 2275 (Tex. App. – Corpus Christi Mar. 19, 2020, n.p.h.)

- Facts
  - Wulchin purchased land from the Schulz, who represented that they owned the entire surface, 50% of the mineral, and 100% of the executive rights.
  - Pioneer approached Wulchin to lease the mineral interests.
  - Wulchin retained the services of attorneys Schneider and Forehand to examine title of the property, who reaffirmed what was indicated by the Schulz.
  - Pioneer discovered there was a discrepancy in ownership and requested Wulchin investigate and resolve.
  - Wulchin retained new counsel who discovered they had ownership of only 25% of the mineral estate and 50% of the executive rights.

Wulchin Land, L.L.C. v. Ellis

2020 Tex. App. LEXIS 2275 (Tex. App. – Corpus Christi Mar. 19, 2020, n.p.h.)

- Analysis
  - The anti-fracturing rule prevents a plaintiff from converting professional negligence claims into other claims such as fraud, breach of contract, and breach of fiduciary duties.
  - If the gravamen of the complaint is that the attorney failed to exercise the normal degree of care, skill, or diligence, then the claim stems from negligence and the anti-fracturing rule applies.
  - The discovery rule does not apply to negligent misrepresentation and fraud because the information was available publicly. Wulchin had constructive notice by way of public record and the title defect would had been discoverable by due diligence.

Wulchin Land, L.L.C. v. Ellis

2020 Tex. App. LEXIS 2275 (Tex. App. – Corpus Christi Mar. 19, 2020, n.p.h.)

- Analysis (Cont.)
  - However, the discovery rule does apply to malpractice and the statute of limitations does not begin until the client discovers or should have discovered the facts establishing a cause of action.
  - Sartori, Schneider, and Forehand did not establish a date to begin the toll of the statute of limitations, therefore, it was improper for the trial court to grant summary judgment based on limitations.

CONTRACT

Chalker Energy Partners III, LLC v. Le Norman Operating LLC

595 S.W.3d 668 (Tex. 2020) 2020 Tex. LEXIS 161, 2020 WL 976930 (Tex. February 28, 2020)

- Facts
  - Chalker represented clients in a sale for oil and gas properties worth several million dollars.
  - The confidentiality agreement included a "No Obligation" clause which stated: "unless and until a definitive agreement has been executed and delivered, no contract or agreement … shall be deemed to exist."
  - The Sellers subsequently sold to another party whose offer Le Norman was unable to match.
  - Le Norman sued for breach of contract, alleging that the Sellers breached an agreement reached via email.

Chalker Energy Partners III, LLC v. Le Norman Operating LLC

595 S.W.3d 668 (Tex. 2020) 2020 Tex. LEXIS 161, 2020 WL 976930 (Tex. February 28, 2020)

- Analysis
  - Email is an accepted way of doing business, but parties can protect themselves with stipulations such as the No Obligation clause in the confidentiality agreement here.
  - In *WTG Gas Processing v. Conoco Philips*, 309 S.W.3d 635, 637, the parties' prior agreement that no obligations would arise absent an executed and delivered PSA precluded a fact issue on contract formation. The parties did not execute a PSA, no contract was formed as a matter of law.
  - Here, both parties agreed that a definitive agreement was a condition precedent to contract formation.
  - The emails in this case were closer to a preliminary agreement than a definitive agreement and indicated that the parties intended to execute a more formal document, such as a PSA, and as such there was no definitive agreement reached between the parties.

Copano Energy, LLC v. Bujnoch

593 S.W.3d 721, 723, 2020 Tex. LEXIS 49, 63 Tex. Sup. J. 348, 2020 WL 499765 (Tex. January 31, 2020)

- Facts
  - Copano had an existing 30 foot easement for a 24 inch pipeline with the plaintiff landowners and approached them to acquire a second easement.
  - In December there were a series of email exchanges regarding the particulars, but no agreement was formed.
  - In January, the parties' attorneys communicated for the first time and Copano offered $70 per foot of pipeline installed. Plaintiff's attorney responded, "in reliance of this representation we accept your offer."

Copano Energy, LLC v. Bujnoch

593 S.W.3d 721, 723, 2020 Tex. LEXIS 49, 63 Tex. Sup. J. 348, 2020 WL 499765 (Tex. January 31, 2020)

- Analysis
  - Because an easement is a real estate interest, a contract for the sale of an easement is subject to the statute of frauds, which requires that a contract for sale of real estate be in writing, and signed by the person charged with the promise or agreement, or someone authorized by him.
  - Here, the January emails between the parties do not satisfy the statute of frauds. While they do contain an offer and acceptance, they do not refer to what is being offered and accepted and are missing essential elements of the agreement.

Copano Energy, LLC v. Bujnoch

593 S.W.3d 721 (Tex. 2020)

- Analysis (cont'd)
  - A writing that contemplates a future contract does not satisfy requirements of the statute of frauds. The writings must evidence the agreement so that the contract can be ascertained from the writing.
  - The Court determined that there is nothing to tie together the terms within the December emails and the agreement within the January emails. The alleged contract by the Landowners was unenforceable under the statute of frauds, and the trial court was correct in granting summary judgment to Copano for breach of contract.

Cudd Pressure Control, Inc. v. Exco Res., Inc.

2020 Tex. App. LEXIS 3613, 2020 WL 1536245 (Tex. App. Mar. 31, 2020, n.p.h.)

- Facts
  - Cudd provided various oil field services to Exco, pursuant to a Master Service and Supply Agreement entered into by both parties.
  - In October 2011, they entered into a Work Order for hydraulic fracturing in East Texas and Northern Louisiana that incorporated the Master Agreement.
  - Cudd sued Exco for breach of contract, promissory estoppel, and mutual mistake and sought reimbursement for the costs for fluid-ends replacement.
  - The Court ruled that Cudd was not entitled to any costs above $57,364.00 because no reconciliation reports were ever provided, and awarded Exco damages, attorney's fees, and interest.

Cudd Pressure Control, Inc. v. Exco Res., Inc.

2020 Tex. App. LEXIS 3613, 2020 WL 1536245 (Tex. App. Mar. 31, 2020, n.p.h.)

- Analysis
  - If a contract is written so that it has a definite meaning, it not ambiguous. Parol evidence is not allowed to create an ambiguity in a contract. If the language in a contract can have two or more reasonable interpretations, it is ambiguous.
  - Cudd, relying on *Sage Street Associates v. Northdale Construction Co*, 863 S.W.2d 438 (Tex. 1983), asserted it did not need to plead ambiguity at trial, and argued on appeal ambiguity because Article 19 does not state it is the sole or exclusive method to recover the cost of fluid ends.
  - The Court found *Sage Street* not applicable and states a court may conclude ambiguity in absence of a pleading, not that it is unnecessary to plead at the Court level in order to raise the issue on appeal.

Cudd Pressure Control, Inc. v. Exco Res., Inc.

2020 Tex. App. LEXIS 3613, 2020 WL 1536245 (Tex. App. Mar. 31, 2020, n.p.h.)

- Analysis
  - The Court agrees with the trial court that the live pleading only contained an affirmative defense to a prior claim that was disposed of on summary judgment and did not contain an affirmative defense of offset for the claim before it. The Court finds no abuse of discretion on this issue.
  - The trial court concluded "Cudd is not able to claim or offset additional amounts as a matter of law because no reconciliation reports were ever provided, regardless of whether the affirmative defense of offset had been adequately pled." The Court found that the language in the Work Order required Cudd to provide reports at Exco's option of either quarterly or monthly.
  - The Court affirmed the trial court judgment on all issues.

McGehee v. Endeavor Acquisitions, LLC

2020 Tex. App. LEXIS 361, 2020 WL 2060329 (tex. App. Apr. 29, 2020, n.p.h.)

- Facts
  - Endeavor solicited the purchase of property from Steward and McGehee ("Plaintiffs") for $185,000.
  - The Plaintiffs crossed out the price on the PSAs, replacing it with $200,000, but did not correct "seller" to "sellers" and then returned the signed documents.
  - The Sellers filed suit to remove cloud from title and invalidate the PSA and warranty deeds.

McGehee v. Endeavor Acquisitions, LLC

2020 Tex. App. LEXIS 361, 2020 WL 2060329 (tex. App. Apr. 29, 2020, n.p.h.)

- Analysis
  - A contract is established when proven by a preponderance of evidence that an offer was accepted, accompanied by consideration. The Statute of Frauds requires the contract be in writing for the sale of real estate. However, a contract does not need to be signed to be executed unless explicitly required by both parties.
  - Endeavor manifested assent to the counteroffer by tendering the $200,000.00 payment price. The Sellers manifested their assent by solely changing the price in the PSA without alteration to any of the other terms in the PSA. Thus, the Court found that a valid contract had been formed.

DEED CONSTRUCTION

Piranha Partners v. Neuhoff

596 S.W.3d 740 (Tex. 2020)

- Facts
  - Through a series of purchases and sales Neuhoff owned a 3.75% ORI, which it later sold to Piranha at auction.
  - At the time of the auction, only one well ("Puryear B #1-28 well") had been completed on the lease.
  - Although Piranha had purchased the overriding royalty interest, the operator continued making payments to Neuhoff.
  - Neuhoff filed suit arguing they only sold the ORI to Puryear B #1-28, whereas Piranha argued Neuhoff sold the ORI to all the property.

Piranha Partners v. Neuhoff

596 S.W.3d 740 (Tex. 2020)

- Exhibit "A":

Lands and Associated Well(s): Puryear #1-28
Wheeler County, Texas
NW/4, Section 28, Block A-3, HG&N Ry Co. Survey

Oil and Gas Lease(s)/Farmout Agreement(s):

Oil & Gas Lease(s)
Lessor: [the Puryears]
Lessee: Marie Lister
Recorded: Volume 297, Page 818

Piranha Partners v. Neuhoff

596 S.W.3d 740 (Tex. 2020)

- Analysis
  - The Court must look at the intentions of both parties within the four corners, that is, what is specified within the writing of the document itself.
  - Different interpretations alone do not make for ambiguity, it is only ambiguous when both parties' interpretations can be reasonably drawn from the documents.
  - The Court found Exhibit A to be ambiguous because it failed to identify whether the well, land, or lease defined the scope of the overriding royalty assigned, thus making either parties' interpretations reasonable.
  - By reading Exhibit A in harmony with the other provisions, the Lands and Associated Well(s) section simply identified the only well in existence at the time and did not limit the overriding royalty to that single well.

ConocoPhillips Co. v. Ramirez

599 S.W.3d 296 (Tex. 2020)

- Facts
  - The matriarch of the Ramirez family owned all the surface and a ¼ mineral interest in the Ranch "Las Piedras". When she passed, she left her son a life estate and his children the remainder.
  - The son signed an oil and gas lease covering the ranch, that was eventually acquired by ConocoPhillips.
  - The son died and was survived by his three children (the plaintiffs), who received their remainder interests in the ranch.

ConocoPhillips Co. v. Ramirez

599 S.W.3d 296 (Tex. 2020)

- Analysis
  - The Court sought to find the intention of the testatrix at the time of construction by looking to the four corners of the will.
  - In the will "Ranch 'Las Piedras'" was capitalized and placed in quotations indicating that the name had a specific meaning to the family.
  - The Court held that the grandchildren's interpretation of the will was erroneous and that the judgment for accounting and payment was to be reversed.

EASEMENTS

Atmos Energy Corp. v. Paul

598 S.W.3d 431 (Tex. App. – Fort Worth, 2020, no pet.)

- Facts
  - In 1960, a blanket easement was granted which Atmos would later own. Under this easement a pipeline was run along the southern border of the property.
  - In 2017, the current owner of the property (Paul), denied Atmos access to the property to lay an additional pipeline. This new pipeline would run diagonally across the property.

Atmos Energy Corp. v. Paul

598 S.W.3d 431 (Tex. App. – Fort Worth, 2020, no pet.)

- Analysis
  - An easement is a nonpossessory interest that gives the holder use of the property for a particular purpose. The holder's rights are limited to what is expressed and the party cannot exceed the rights expressed in the easement. The dominant party cannot exceed the bounds of the easement.
  - The Court looked at the true intentions of the parties as expressed in the easement to determine the scope of the conveyed interest, reading it as a whole with all parts weighed evenly.
  - An easement over an entire servient tract is a blanket easement, which are often used for long route utility lines, such as pipelines and electrical lines.
  - The Court determined that the Easement Agreement was unambiguous and a blanket easement allowing for multiple pipelines to be constructed. Paul was not entitled to summary judgment; the case was reversed and remanded.

Southwestern Elec. Power Co. v. Lynch

595 S.W.3d 678 (Tex. 2020)

- Facts
  - Southwestern (SWEPCO) acquired an easement from its predecessor to construct a transmission line and allowed the right of ingress and egress.
  - The plaintiffs were landowners who purchased some of the land encumbered by the easement.
  - On appeal, SWEPCO argued that the Court incorrectly interpreted the easements and that they were express general easements, and that the Court should not have allowed in the extrinsic evidence.

Southwestern Elec. Power Co. v. Lynch

595 S.W.3d 678 (Tex. 2020)

- Analysis
  - When construing terms of an easement, the rules of contract interpretation should be used to look at the express terms the easement .
  - The plain language grants SWEPCO: (1) a right-of-way on the Landowners' properties on which SWEPCO may construct a transmission line along a particular course; and (2) the right of ingress and regress over the Landowners' properties adjacent to the right-of-way for the purpose of constructing, removing, reconstructing, and maintaining the transmission line.

Southwestern Elec. Power Co. v. Lynch

595 S.W.3d 678 (Tex. 2020)

- Analysis (cont'd)
  - The trial court relied on *Houston Pipe Line Co. v. Dwyer*, 374 S.W.2d 662, 666 (Tex. 1964) to limit the easement to 30 feet. However, the Court finds this case closer to *Knox v. Pioneer Natural Gas Co.*, 321 S.W.2d 596 (Tex. App.—El Paso 1959, writ ref'd n.r.e.), and authorized the grantee the right to construct, maintain, repair, and improve a utility line and granted right of ingress and egress as necessary to access the right-of-way.
  - The Court found that the Court of Appeals erred in fixing the width of the easement. SWEPCO acquired general easements over the Landowners' properties, with authorized activities and rights granted to SWEPCO for specific purposes relating to a transmission line. There are no fixed widths for the easements, nor were they required to be fixed.

IMPLIED COVENANTS

Seeligson v. Devon Energy Prod. Co., L.P.

804 F. App'x 304 (5th Cir. 2020) and Civil Action No. 3:16-CV-00082-K, 2020 U.S. Dist. LEXIS 23166, 2020 WL 636224 (N.D. Tex. Feb. 11, 2020)

- Facts
  - Royalty owners alleged that the Devon Energy Production Company, L.P. ("DEPCO) deliberately underpaid and improperly underpaid royalties that was owed to Plaintiffs for gas that was processed through the Bridgeport Gas Processing Plant ("Bridgeport Plant").
  - All of the sales occurred under one common contract called the Gas Purchasing and Processing Agreement ("GPPA"). Under the GPPA, DGS paid DEPCO 82.5% of the prices they received from the sale of residue gas and NGLs and deducted a 17.5% processing fee.

Seeligson v. Devon Energy Prod. Co., L.P.

804 F. App'x 304 (5th Cir. 2020) and Civil Action No. 3:16-CV-00082-K, 2020 U.S. Dist. LEXIS 23166, 2020 WL 636224 (N.D. Tex. Feb. 11, 2020)

- Analysis
  - In determining whether a breach can be found on a class-wide basis, a plaintiff would have to show the rate a reasonably prudent operator ("RPO") would have received on the class wide basis.
  - The Court determined that since the gas is sold and bought under one contract, the Plaintiffs would not have to show proof of other sales to determine what the RPO rate would be; the RPO rate is subject to generalized proof and can be used as to the class as a whole.
  - The Court found that the 17.5% rate was systematically applied to all the leases without regards to the location or the differences between various lease provisions. Since the 17.5% rate applied to all of the class members, the Plaintiffs could provide generalized common evidence that this rate was just an artificial use to lower the price of gas sales.
  - The Plaintiffs were able to show what rate a reasonably prudent operator would have received on a class wide basis; thus, the Court found that a breach could be determined class wide. Therefore, the Court determined that the Plaintiffs reached the burden in showing that class certification was appropriate.

JOINT OPERATING AGREEMENT

In re EXCO Servs.

No. 18-30167, 2020 Bankr. LEXIS 1097, 2020 WL 1951582 (Bankr. S.D. Tex. Apr. 22, 2020)

- Facts
  - In 2013, EXCO acquired interests in oil and gas assets from Chesapeake Exploration. Subsequently, EXCO entered into two separate agreements to sell production from the wells.
  - The oil agreement required that Chesapeake Energy Marketing ("CEMI") purchase the oil produced from the wells assigned to EXCO for a term of one year. Afterwards, the oil agreement renewed annually for twelve years, however CEMI had the right of first refusal (ROFR) to purchase the oil.
  - In 2016, EXCO and Admiral (various holding companies) entered into two joint operating agreements ("JOAs"), which included wells EXCO received from Chesapeake. Also in 2016, EXCO formed Raider Marketing ("Raider") to serve as a marketing affiliate.
  - The marketing agreement provides a 3% marketing fee for Raider's service. EXCO contended that Admiral should share its proportionate burden of the marketing fee; but Admiral contended that the marketing agreement with Raider breached their JOAs.

In re EXCO Servs.

No. 18-30167, 2020 Bankr. LEXIS 1097, 2020 WL 1951582 (Bankr. S.D. Tex. Apr. 22, 2020)

- Analysis
  - Both parties contended that the provisions of Article XVI of the JOAs controlled over the general form provision of Articles I-XV of the JOAs. Article XVI.Y of the JOAs governed marketing, and is subject to EXCO's obligations under the existing marketing agreement. Thus, EXCO's marketing rights with respect to Admiral's share of production was subject to EXCO's oil and gas agreements with CEMI.
  - The Court concluded from the oil agreement that EXCO operated the wells and delivered its oil production to CEMI, and in return CEMI marketed and sold the oil to third parties, then paid EXCO. The subsections of Section 6 make it clear that the parties contended that CEMI would handle, market, and sell the oil production. However, Section 6.d does permit EXCO to solicit higher offers for the oil during the ROFR term, and if EXCO obtained a higher offer, CEMI can use its ROFR.
  - The Court held that the JOAs do not allow EXCO to charge Admiral a marketing fee as to oil, but only if EXCO can obtained a higher price than CEMI during the ROFR term and CEMI either paid that price or released the production to EXCO to sell somewhere else. However, since discovery was still needed on these issues, the Court denied both parties' motion for summary judgement.

MIDSTREAM AND TRANSPORTATION

Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P

593 S.W.3d 732 (Tex. 2020)

- Facts
  - In 2011, Enterprise approached Energy Transfer Partners (ETP) about converting the pipeline the Old Ocean pipeline into one that could transport oil south from Cushing, Oklahoma, to Houston, Texas.
  - The parties agreed to explore the possibilities of the venture in three written agreements. In the agreements, they reiterated their intent that neither party be bound to proceed until both company's board of directors had approved of the execution of a formal contract.
  - ETP sued on the basis that ETP and Enterprise entered into written agreements to market and pursue a pipeline, and that Enterprise breached that statutory duty of loyalty when they pursue the Wrangler project with Enbridge.

Energy Transfer Partners, L.P. v. Enter. Prods. Partners, L.P

593 S.W.3d 732 (Tex. 2020)

- Analysis
  - The Court looked at Section 152.051(b) of the Texas Business Organizations Code (TBOC) to determine whether a partnership was formed. They looked at the intent, the use of the name and five other factors.
  - The Court held that ETP has done neither. ETP has not showed any evidence that Enterprise specifically disavowed the agreement to have both boards of directors approve the final contract, or that Enterprise acted inconsistently with that requirement.
  - The Court affirmed the Court of Appeals on that parties can conclusively negate the formation of a partnership under Chapter 152 of the TBOC through contractual conditions precedent.

MINERAL DEFINITION

Murray v. BEJ Minerals, LLC

464 P.3d 80 (Mont. 2020) and 924 F.3d 1070 (9th Cir. 2019)

- Facts
  - George Severson began leasing his farm and land to the Murrays in 1983, and from that point on, he periodically transferred portions of his interest in the property to his sons (the "Seversons"), and sold the remaining interest to the Murrays.
  - In 2005, the Seversons severed the surface estate of the property from the mineral estate and sold their remaining surface interest to the Murrays. The agreement required that the parties execute a mineral deed, which apportion one-third of the mineral rights to Robert Severson, one-third to Jerry Severson, and one-third to the Murrays.
  - The Murrays found and excavated several valuable dinosaur fossils on the property. Both parties agree that these discoveries are extremely rare and highly valuable.
  - In 2013, BEJ claimed an ownership interest of the fossils based on their stake in the mineral estate. The Murrays, as the sole owner of the surface estate, sought a declaratory judgement, arguing that the fossils found on the property are owned solely by the Murrays. BEJ then filed a counterclaim, requesting a declaratory judgement, claiming that the fossils are "minerals" and part of the mineral estate.

Murray v. BEJ Minerals, LLC

464 P.3d 80 (Mont. 2020) and 924 F.3d 1070 (9th Cir. 2019)

- Analysis
  - The Court adopted the rule that the end goal when examining a general mineral reservation is to interpret the term "minerals" according to its "ordinary and natural meaning" unless the parties manifest a different intention in the transacting document.
  - The Court held that the best method for determining whether a substance fits within the ordinary and natural meaning of "mineral" is to use contextual cues, like " an analysis of the term as used in the instrument; whether the material's mineral content makes it rare and valuable; and the material's relation to, and the effect of removal on, the surface."
  - The Court first examined the term "minerals" and the language surrounding the term in the mineral deed. The Court specifically looked at the language "oil, gas, hydrocarbons, and minerals in, on and under, and that may be produced from the [property]" with the right of "mining, drilling, exploring, operating, and developing said lands for oil, gas, hydrocarbons, and minerals."
  - The Court concluded that they would interpret the deed language with the maxim of *expression unius est exclusion alterius*, which means the expression of one thing implies exclusion of another. Since "fossils" are not included in the expression above, it cannot be implied in the general grant of all other minerals.
  - Next, the Court concluded that fossils are not rare and valuable under this definition because fossils values do not depend on their mineral composition.
  - The Court also concluded that fossils have a close relationship with the surface because soil erosion and other natural events can cause them to be exposed to the surface. The Court also held that when excavating the fossils, it impacts the land; thus, fossils are not minerals because they are so closely related to the land.
  - Under Montana law, the dinosaur fossils do not constitute as "minerals" for the purpose of a mineral reservation. Minerals in the context of a mineral reservation involves resources such as hard compounds, oil, gas, which are mined as a raw material to be further processed, refined, and used for economic use.

OIL AND GAS LEASES

Devon Energy Prod. Co., L.P. v. Sheppard

No. 13-19-00036-CV, 2020 Tex. App. LEXIS 4742, 2020 WL 3478680 (Tex. App. June 25, 2020) and 2020 Tex. App. LEXIS 8378, 2020 WL 6164467 (Tex. App. Corpus Christi October 22, 2020)

- Facts
  - In 2007, Sheppard and Crain (collectively, "Sheppard") leased mineral interests to Devon Energy Production Co., et al. ("Devon"). The leases contained royalty provisions that provided royalty on gas to be free and based only on gross proceeds.
  - Sheppard sued alleging that Devon was selling the oil and gas produced under the leases with an $18.00 per barrel "reduction" on the sales price attributable to "gathering and handling, including rail car transportation." They also claimed that Devon breached the leases because they failed to add the $18.00 per barrel "reduction" amount to the royalty that is calculated pursuant to the "shall be added" provision in paragraph 3(c).

Devon Energy Prod. Co., L.P. v. Sheppard

No. 13-19-00036-CV, 2020 Tex. App. LEXIS 4742, 2020 WL 3478680 (Tex. App. June 25, 2020) and 2020 Tex. App. LEXIS 8378, 2020 WL 6164467 (Tex. App. Corpus Christi October 22, 2020)

- Analysis
  - The Court determined that if they were to agree with Devon, it would render paragraph 3(c) meaningless or superfluous. Instead, the Court concluded that the "royalty is paid as a fraction of the value of the oil and gas produced from the leases" and the value increases when the minerals are processed, fractionated, transported, and then finally put on the open market to standardized prices. Thus, the Court held that the leases provided a "proceeds-plus" royalty, with the point of valuation at the market center.
  - The Court concluded that Devon was required to add the first two categories to the gross proceeds to calculate Sheppard's royalties because fixed deductions was a charge or reduction as stated in 3(c) of the leases. However, if the fixed deduction in the leases did not specify the purpose for the reductions, then Devon was not required to add the amounts to their gross proceeds to calculate the royalties.
  - The Court of Appeals reversed the trial court's judgement on issues pertaining to adjustment of fixed amount without stated purpose, adjustment for unit fuel/lease fuel, and adjustment for production retained or lost by third parties. The rest of the issues were affirmed.

Mayo Found. For Med. Educ. & Research v. BP Am. Prod. Co.

447 F. Supp. 3d 522 (N.D. Tex. 2020)

- Facts
  - Alpar Resources, Inc. ("Alpar"), entered into a hydrocarbon exploration and production agreement with Barbara Lips ("Lips") in 1994.
  - In 2019, BP American Productions ("BP"), who was the current lessee, finalized a purchase and sale agreement with Latigo Petroleum, LLC ("Latigo"), which included Section 157. However, BP offered Courson the preferential right to purchase its lease interest in Section 157. Mayo opposed the assignment of Section 157 to Courson and they exercised their right to withhold consent under the Third Amendment.

Mayo Found. For Med. Educ. & Research v. BP Am. Prod. Co.

447 F. Supp. 3d 522 (N.D. Tex. 2020)

- Analysis
  - Texas courts have long recognized that plaintiffs must prove two key elements to be granted a preliminary injunction: (1) substantial likelihood of success on the merits and (2) substantially likely to suffer irreparable harm if the injunction was not granted.
  - The Court concluded that Mayo would most likely prove that the consent-to-assign paragraph was valid but would not be able to prove that its refusal to consent to assign Section 157 to Courson was reasonable. Both factors are required to meet the first element, which only one was met in this case.
  - The Court denied Mayo's request for a preliminary injunction because they are not likely to succeed on the merits and not likely to suffer irreparable harm in the absence of a preliminary injunction.

OVERRIDING ROYALTY INTERESTS AND ROYALTY INTERESTS

Yowell v. Granite Operating Co.

No. 18-0841, 2020 Tex. LEXIS 425, 2020 WL 2502141 (May 15, 2020)

- Facts
  - In 1986, Aikman Oil Corp.("Aikman") obtained an oil and gas lease covering a section of land in Wheeler County, Texas ("1986 Lease"). Aikman subsequently assigned its interest to Jay Haber, but reserved a 2.25% ORRI, and including an anti-washout provision.
  - In May 2007, Amarillo Production Co. ("Amarillo") executed a top lease ("2007 Lease") with the same mineral owner and covering the same property as the 1986 Lease. Subsequently, Amarillo sued Upland, alleging that Upland's 1986 Lease terminated due to lack of production and that the 2007 Lease was in effect.
  - The Yowells sued Granite to reinstate payment of their ORRI, seeking a judicial declaration of ownership and recovery of payments owed.

Yowell v. Granite Operating Co.

No. 18-0841, 2020 Tex. LEXIS 425, 2020 WL 2502141 (May 15, 2020)

- Analysis
  - The Court noted that for the Rule Against Perpetuities (the "Rule") to be implicated, the Yowells' reservation of an ORRI in new leases must first be determined to be an interest in real property.The Court found it was an interest in real property.
  - The Court held that at the time the ORRI was reserved, it provided no immediate, fixed right of present or future enjoyment as to future leases because those leases were not yet in existence. Consequently, the Court held that Yowells' ORRI in future leases did not vest at the time of its creation but was instead an executory interest.
  - The Court held that the language used in Texas Property Code §5.043 "is an instruction to courts on how to remedy a violation of the Rule, not a cause of action that would be subject to a statute of limitations." Accordingly, the Court rejected the argument that §5.043 did not apply to the Yowells' ORRI due to the running of the applicable statute of limitations because "the Yowells' ORRI [was] a real property interest, and [the Yowells sought] a judicial declaration of ownership of that interest in the 2007 Lease" rather than a cause of action subject to a statute of limitations

Jones Energy, Inc. v. Pima Oil & Gas, LLC

601 S.W.3d 400 (Tex. App. 2020)

- Facts
  - In 1980, Grace Hill executed an oil and gas lease with Moody Energy Company ("Moody"), which covered Section 117 in Hemphill County, Texas. In 1991, Hill executed an oil and gas lease with John Wright, which covered the southwest quarter of Section 117. Spring acquired its interest in Section 117 by an assignment that was recorded in 1998.
  - In 2011, the Gracie 117-1H horizontal well was completed in the Granite Wash formation in the west half of Section 117. Pima claimed they were entitled to an ORRI in the Gracie 117-1H well.

Jones Energy, Inc. v. Pima Oil & Gas, LLC

601 S.W.3d 400 (Tex. App. 2020)

- Analysis
  - The Court concluded that the language in paragraph 7 of the assignment intended that in the event of a conflict between two documents, the retainer agreement would control.
  - According to paragraph 7 in the assignment, Pima's right to the ORRI excluded zones that were being produced by already existing wells. Thus, Jones did not breach the assignment by not paying Pima the ORRI due.
  - The Court reversed the judgement of the trial court, holding that the ORRI granted to Pima by the assignment excluded production from the Gracie 117-1H well.

POOLED UNIT

Samson Expl., LLC v. T.W. Moak & Moak Mortg. & Inv. Co.

No. 09-18-00463-CV, 2020 Tex. App. LEXIS 443, 2020 WL 238538 (Tex. App. Jan. 16, 2020)

- Facts
  - Samson Exploration, LLC ("Samson"), Bold Minerals ("Bold"), and Lucas Petroleum Group, Inc. ("Lucas"), executed and recorded a unit designation that pooled and combined certain leases and lands for "the production, storage, processing, and marketing of gas and all hydrocarbons and gaseous substance."
  - Moak sued Lucas and Bold, alleging that they were record owners of mineral and leasehold interests that entitled them "to participate in production of oil, gas, and other minerals therefrom or from lands pooled therewith, or proceeds from the sale thereof."

Samson Expl., LLC v. T.W. Moak & Moak Mortg. & Inv. Co.

No. 09-18-00463-CV, 2020 Tex. App. LEXIS 443, 2020 WL 238538 (Tex. App. Jan. 16, 2020)

- Analysis
  - The Court concluded that since there were no minerals produced from the subject properties and Moak had no contractual relationship with either defendants, Moak did not prove they were entitled to their accounting claim.
  - The Court affirmed the trial court's ruling in favor of Samson and Bold on Moak's accounting claim but reversed their decision on awarding equitable damages against Samson. The Court also affirmed the decision that Moak take nothing from Bold.

SLANDER OF TITLE

Quintanilla v. West

No. 04-16-00533-CV, 2020 Tex. App. LEXIS 332, 2020 WL 214757 (Tex. App. Jan. 15, 2020)

- Facts
  - Oscar Quintanilla and Andrew West entered into a trading agreement in 2014, in which Quintanilla provided the capital that West used for trading. In the agreement, both parties agreed to share the profits or losses equally from the trading account.
  - Quintanilla filed a financing statement and memorandum in the real property records in McMullen County, Texas.
  - However, West contended that he satisfied his debt to Quintanilla through two additional agreements. West also claimed that when he was in the process of selling mineral interests, the sale was terminated by the buyer because of Quintanilla's filings in the real property records.

Quintanilla v. West

No. 04-16-00533-CV, 2020 Tex. App. LEXIS 332, 2020 WL 214757 (Tex. App. Jan. 15, 2020)

- Analysis
  - The Court concluded that West had met his burden in providing clear and specific evidence; Quintanilla's liens caused special damages to West's interest in land because of the loss of the ORRI sale with the third-party group.
  - The Court affirmed their prior decision that Quintanilla met his initial burden in pricing that the TCPA applied to West's slander of title claim. The Court concluded that West established by clear and specific evidence a prima facie case for each essential element of his slander of title and fraudulent lien claims.

SLAPP AND ANTI-SLAPP

Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC

591 S.W.3d 127 (Tex. 2019)

- Facts
  - Lona Hills Ranch, LLC ("Ranch"), and Creative Oil & Gas, LLC ("Lessee"), entered an oil and gas lease. Creative Oil & Gas Operating, LLC ("Operator"), was the operator of the only producing well on the lease.
  - The Ranch sued the Operator for trespass and trespass to try title, claiming that the lease had terminated due to the cessation of production.
  - The Ranch filed a TCPA motion to dismiss the counterclaims, claiming that their statements about the lease were an exercise of their right to free speech and right to petition. The motion was denied by the trial court.
  - The Court of Appeals held that the counterclaims of the Lessee and the Operator failed and should have been dismissed. The Operator was not a party to the lease and could not assert a breach of contract, and the Lessee failed to identify a provision of the lease that was violated.
  - The Lessee's claim did not fall under the TPCA since it was not "factually predicated" on the Ranch's right to petition. The Ranch had contractually agreed to limit its right to petition under the notice and cure provision of the lease.

Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC

591 S.W.3d 127 (Tex. 2019)

- Analysis
  - The Court concluded that the Ranch's communications to third parties which the counterclaims were based on did not involve matters of public concerns under the TCPA.
  - The TPCA define matter of public concern to include an issue that relates to "environmental, economic, community well-being", "the government", or "a good, product or service in the marketplace." Section 27.001(7)(E) does not include every kind of good, service, or product but only those in the marketplace.
  - The Court also found the phrase matter of public concern to mean matters of political, social, or other concern to the community" and not purely private matters. Thus, the Ranch's communications to third parties are not covered under the TPCA because the counterclaims are based on private business communications with third party purchasers of a particular well.
  - The counterclaims also alleged that the Ranch breached Section 11 of the lease, which was that parties must give written notice of any alleged breach and an opportunity to cure prior litigations, by initiating litigation in the Railroad Commission and with this case.
  - The Court concluded that the filings by the Ranch in this suit and in the administrative proceeding in the Railroad commission were an exercise of the right to petition define by the TPCA. However, the Court held that the Operator was not a party to the lease and did not present clear and convincing evidence as how they benefited from the lease, so they could not recover damages from the breach.
  - The counterclaims that related to the Ranch's communications with third parties were not covered by the TPCA, so the Court of Appeals' judgement was reversed. The Court of Appeals' judgement dismissing the counterclaim for the right to petition was affirmed.

Quintanilla v. West

No. 04-16-00533-CV, 2020 Tex. App. LEXIS 332, 2020 WL 214757 (Tex. App. Jan. 15, 2020)

- See Slide above under Slander of Title

Segundo Navarro Drilling, Ltd. v. San Roman Ranch Mineral Partners, Ltd.

No. 04-19-00484-CV, 2020 Tex. App. LEXIS 6634, 2020 WL 4808716 (Tex. App. Aug. 19, 2020) and No. 04-19-00484-CV, 2020 Tex. App. LEXIS 4642, 2020 WL 3441434 (Tex. App. June 24, 2020)

- Facts
  - San Ramon ("Ramon") owned mineral rights in the Eagle Ford Shale in Webb County, Texas. In 2008, they signed three oil and gas leases with Segundo Navarro Drilling, Ltd. ("SNDL"), to develop those minerals.
  - Lewis Petro Properties, Inc. ("LPP") operated the wells on the land that were under the leases. The leases contained provisions which allowed SNDL to conduct seismic "shoots," or surveys, on the leased land, which are necessary to develop the minerals in the Eagle Ford Shale formation. The leases provided that SNDL provide Ramon with a copy of any seismic data that was obtained from 3D seismic surveys SNDL conducted on the leased land. It was also agreed that SNDL would not sell such seismic data without Ramon's consent.
  - Once the leases were executed, LPP contracted with Global Geophysical Services, Inc. ("Global"), to conduct seismic shoots in an area called Hawk Field, which included a portion of Ramon's lease.
  - After Global finished with the shoots, it licensed the seismic data to LPP and to unidentified third parties. However, Global did not obtain permission from Ramon to conduct any shoots on any portion of Hawk Field.
  - Roman learned about Global conducting seismic shoots over their land and selling the data from those shoots, and they requested a copy of the data from SNDL. Roman then requested the data from Global, who offered to license the data to Roman for $20,000 per acre. Global informed Roman that they had obtained permission from SNDL to conduct and market the data.

Segundo Navarro Drilling, Ltd. v. San Roman Ranch Mineral Partners, Ltd.

No. 04-19-00484-CV, 2020 Tex. App. LEXIS 6634, 2020 WL 4808716 (Tex. App. Aug. 19, 2020) and No. 04-19-00484-CV, 2020 Tex. App. LEXIS 4642, 2020 WL 3441434 (Tex. App. June 24, 2020)

- Analysis
  - The TPCA motion relied on the right of association, so the Appellants were required to show by a preponderance of evidence that Roman's legal action was based on, related to, or was in response to a "communication between individuals who join together to collectively express, promote, pursue, or defend common interests."
  - The Appellants contended that the trial court erred by concluding that "common interests" cannot include private interests. However, the Court disagreed relying on *Kawcak v. Antero Resources Corp.,* 582 S.W.3d 566 (Tex. App.—Fort Worth 2019, pet. denied).
  - In *Kawcak*, the Court concluded that "common" should relate to a group or community because that definition fits within the stated purpose of the TCPA.
  - The Appellants had also not shown how their right to "participate in government" is helped by defining the word "common" to include their private business interests.
  - The Legislature also amended the TCPA to plainly state that the " exercise of the right of association means to join together collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern."
  - The Court came with the same conclusion to deny the TCPA motion.