

Energy Symposium

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Texas Supreme Court Update

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An Active Docket

- Four opinions in last two years
- Two more on rehearing
- One case argued Wednesday
- Another case granted last Friday

Coastal Oil & Gas Corp.
v. Garza Energy Trust
268 S.W.3d 1 (Tex. 2008)

- Does hydraulic fracturing constitute trespass?
 - Lessors have standing to sue for trespass
 - Deferred question of whether fracturing is actionable trespass
 - Rule of capture prevents trespass damages based on drainage

- What damages recoverable on breach of implied covenant to protect against drainage?
 - Royalties lost due to failure to act as reasonably prudent operator

Wagner & Brown, Ltd. v. Sheppard

282 S.W.3d 419 (Tex. 2008)

- Does termination of a lease also terminate the related pooling unit?
 - Analysis is agreement specific
 - Here, pooling applied to lands, not leases
- What costs must expired lessor bear?
 - Reasonable and necessary unit expenses
 - Pre-termination drilling costs if equitable

Retamco Operating, Inc. v. Republic Drilling Co.

278 S.W.3d 333 (Tex. 2009)

- Does a transfer of Texas oil and gas interests trigger jurisdiction over a California corporation?
 - Purchase of real property interests created a continuing relationship with Texas
 - Transfer of Texas property from a Texas resident during a Texas-based suit allegedly to defraud a Texas resident

*Sonat Exploration Co. v.
Cudd Pressure Control, Inc.*

271 S.W.3d 228 (Tex. 2008)

- What law controls interpretation of oilfield services agreement?
 - Choice of law provision not applicable in context of lawsuit
 - Expectation of parties ultimately controlling
 - Louisiana law applies
- Takeaway lesson
 - Parties free to designate law to govern complex, multi-state agreements

Exxon Corp. v. Emerald Oil & Gas Co.

05-0729

- Original Opinion: March 27, 2009
 - Nat. Res. Code § 85.321 creates a private cause of action for
 - Waste
 - Improperly plugging wells
 - No standing for subsequent lessees

Exxon Corp. v. Emerald Oil & Gas Co.

05-1076

- Original Opinion: March 27, 2009
 - Actual knowledge of waste/improperly plugged wells triggered limitations period
 - Insufficient evidence that development clauses breached
 - Railroad Commission filings some evidence of intent to induce reliance

Exxon I & II: Rehearing

- Motions for Rehearing
 - Filed by both sides
 - Filed two months after opinion
- Court's Unique Response
 - Simultaneous grant and request for response
 - Compare with Rule 64.3: “A motion will not be granted unless a response has been filed or requested”
 - No argument set

Reasons for Rehearing?

- Amicus Filings
 - Texas Comptroller of Public Accounts
 - Commissioner of the Texas General Land Office
 - Also requested that Railroad Commission hold administrative hearings
 - Texas Oil and Gas Association
 - Texas and Southwestern Cattle Raisers Association
 - Professor Jacqueline Lang Weaver
 - Substantial attention in mainstream press (E.G., *Texas Monthly* article)

- Timing
 - Orders issued 2 days before overruling by operation of law

Tex. Citizens for a Safe Future & Clean Water v. R.R. Comm'n of Tex.

08-0497: Argued Apr. 14, 2010

- What must the Railroad Commission consider when evaluating the “public interest”?
 - Austin Court of Appeals: “Public interest” includes public safety issues
 - Commission’s focus on oil and gas development and resource conservation unduly narrow
 - Concurrences on denial of en banc rehearing
 - Pemberton: Statutory context influences meaning of “public interest”; nothing precludes consideration of public safety
 - Waldrop: No statutory basis for limiting “public interest” to bounds of Commission’s power to act

Tex. Citizens, cont.

- Issues presented on appeal
 - Is the “public interest” determination bounded by:
 - the scope of the statute, which deals with injection wells?
 - the scope of the Commission’s jurisdiction?
 - Is the Commission’s interpretation entitled to deference?
- Amicus Filers
 - Texas Oil & Gas Association
 - Texas Pipeline Association
 - Texas Water Conservation Association
 - Pinnergy, Ltd.

XTO Energy Inc. v. Smith Production Inc.

09-0270: Granted on Apr. 9, 2010

- Does the standard joint operating agreement allow a party to change its participation status during the notice period?
 - 14th Court of Appeals: Agreement does not provide for changes in election
 - Once a party gives notice, the notice period closes as to that party, and once all parties give notice, the notice period closes generally
 - Guzman dissent: Agreement provides a fixed 30-day notice period
 - Agreement is ambiguous as to changes in election

XTO Energy, cont.

- Issues presented on appeal
 - Does the standard joint operating agreement allow for a change in election within the 30-day notice period?
 - Alternatively, is the agreement's language ambiguous?
 - Should evidence of trade usage affect the ambiguity determination?
- Interpretation question presents issue of first impression

Tracking the Texas Supreme Court

- Court website: www.supreme.courts.state.tx.us
 - Calendar
 - Electronic briefs
 - Argument transcripts
- St. Mary's:
<http://www.stmarytx.edu/law/index.php?site=supremeCourtWebcasts>
 - Argument webcasts and podcasts
- Supreme Court of Texas Blog:
<http://www.scotxblog.com/>
 - Analysis of weekly orders and opinions