Top Ten Energy Cases of 2018

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Fort Worth Association of Professional Landmen – February 28, 2019

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Carl M. Archer Trust No. Three, et al v. Ronald Ralph and Donnita Tregellas

Carl M. Archer Trust No. Three, et al v. Ronald Ralph and Donnita Tregellas

- *June 12, 2003* - *Cooks convey surface estate to Trustees / ROFR in mineral estate*
- *March 28, 2007* - *Cook-Farber conveys mineral estate to Tregellas*
- *March 30, 2007* - *Cook-Farber to Tregellas deed filed of record*
- *May 4, 2011* - *Trustees discover the conveyance*
- *May 5, 2011* - *Trustees file suit*

Carl M. Archer Trust No. Three, et al v. Ronald Ralph and Donnita Tregellas

"… the [discovery] rule defers accrual [of a cause of action] until the plaintiff knew or should have known of the facts giving rise to a cause of action."

S.V. v. R.V., 933 S.W.2d 1, 4 (Tex. 1996)

Carl M. Archer Trust No. Three, et al v. Ronald Ralph and Donnita Tregellas

"We apply the discovery rule when the nature of the injury is inherently undiscoverable and objectively verifiable."

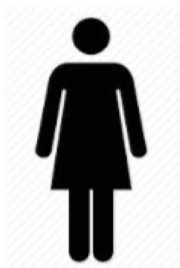
S.V. v. R.V., 933 S.W.2d 1, 6 (Tex. 1996)

Carl M. Archer Trust No. Three, et al v. Ronald Ralph and Donnita Tregellas

"We cannot conclude that a [ROFR] rightholder in the exercise of reasonable diligence would continually monitor public records for evidence of such an impairment."

Devon Energy Production Co. LP v. Apache Corporation

Devon Energy Production Co. LP v. Apache Corporation



1/3 to Apache

2/3 to Devon

Devon Energy Production Co. LP v. Apache Corporation

Winner of the "It's Not My Job" Award

Devon Energy Production Co. LP v. Apache Corporation

"… a cotenant has the right to extract minerals from common property without first obtaining the consent of his cotenants; however, he must account to them on the basis of the value of any minerals taken, less the necessary and reasonable costs of production."

Byrom v. Pendley, 717 S.W.2d 602, 605 (Tex. 1986)

Devon Energy Production Co. LP v. Apache Corporation

"The proceeds derived from the sale of oil or gas production from an oil or gas well located in this state must be paid to each payee by payor on or before 120 days after the end of the month of first sale of production from the well. After that time, payments must be made to each payee on a timely basis according to the frequency of payment specified in a lease or other written agreement between payee and payor."

Tex. Nat. Res. Code § 91.402(a)

Devon Energy Production Co. LP v. Apache Corporation

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Devon Energy Production Co. LP v. Apache Corporation

A "Payor" is "the party who undertakes to distribute oil and gas proceeds to the payee, whether as the purchaser of the production of oil or gas generating such proceeds or as the operator of the well from which such production was obtained or as lessee under the lease on which royalty is due."

Tex. Nat. Res. Code § 91.401(2)

Devon Energy Production Co. LP v. Apache Corporation

A “Payee” is “any person or persons legally entitled to payment from the proceeds derived from the sale of oil or gas from an oil or gas well located in this state.”

Tex. Nat. Res. Code § 91.401(1)

Devon Energy Production Co. LP v. Apache Corporation

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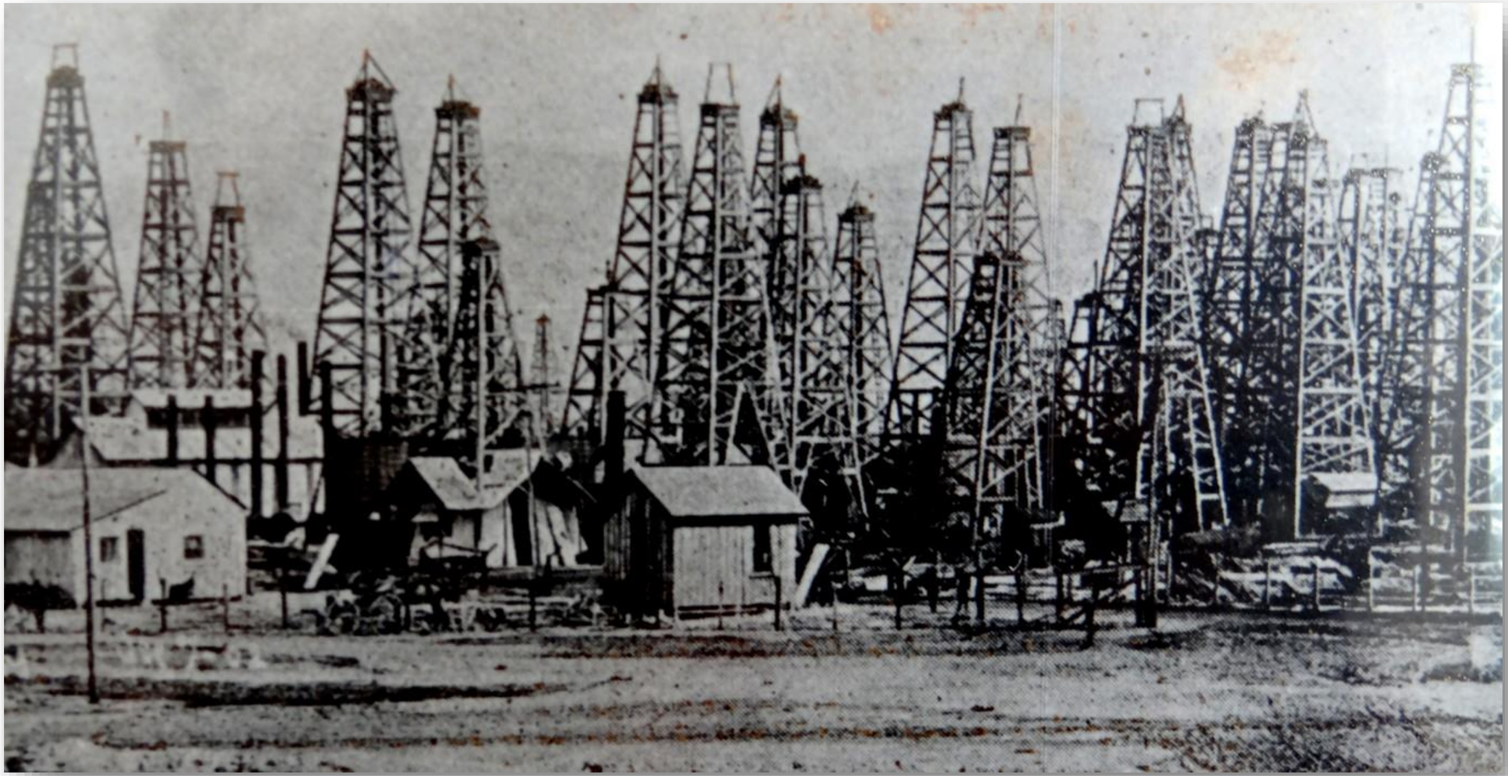
Devon Energy Production Co. LP v. Apache Corporation

What about NPRI's?

Murphy Exploration & Production Company—USA v. Shirley Adams, et al



Murphy Exploration & Production Company—USA v. Shirley Adams, et al

"… in the event a well is completed as a producer of oil and/or gas on land adjacent and contiguous to the leased premises, and within 467 feet of the premises covered by this lease, that Lessee herein is obligated to, within 120 days after the completion date of the well or wells on adjacent acreage, as follows:

Murphy Exploration & Production Company—USA v. Shirley Adams, et al

"… to commence drilling operations on the leased acreage and thereafter continue the drilling of such off-set well or wells with due diligence to a depth adequate to test the same formation from which the well or wells are producing from (sic) on the adjacent acreage…"

Murphy Exploration & Production Company—USA v. Shirley Adams, et al

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Murphy Exploration & Production Company—USA v. Shirley Adams, et al

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Murphy Exploration & Production Company—USA v. Shirley Adams, et al

"Both the implied covenant to protect against drainage and express lease provisions serving a similar purpose arose in the context of vertical wells, which are designed to 'drain an entire reservoir' of minerals that have 'seeped out' and sit 'on top of shale.' "

Murphy Exploration & Production Company—USA v. Shirley Adams, et al

"… commentators have recognized that 'horizontal drilling does not involve shared reservoirs in the same sense' as vertical drilling because, although 'the same strata of shale may underlie two separate tracts, little or no drainage will occur between the two tracts.' "

Murphy Exploration & Production Company—USA v. Shirley Adams, et al

"In light of this context, the court of appeals' holding that Murphy could prevail only by affirmatively demonstrating that the Herbst well was protecting against drainage, despite the absence of a significant possibility that drainage was in fact occurring, is simply not logical."

Murphy Exploration & Production Company—USA v. Shirley Adams, et al

"… if the parties had intended the offset well to protect against drainage, the provision would presumably have included requirements regarding the direction and placement of the perforated portions of the horizontal wellbore."

US Shale Energy II, LLC v. Laborde Properties, L.P.

US Shale Energy II, LLC v. Laborde Properties, L.P.

"There is reserved and excepted from this conveyance unto the grantors herein, their heirs and assigns, an undivided one-half (1/2) interest in and to the Oil Royalty, Gas Royalty and Royalty in other Minerals in and under or that may be produced or mined from the above described premises, the same being equal to one-sixteenth (1/16) of the production.

US Shale Energy II, LLC v. Laborde Properties, L.P.

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ConocoPhillips v. Koopman

ConocoPhillips v. Koopman

- In 1996, Strieber sold 120 acres to Koopman and reserved a 15-year one-half NPRI which could be extended "as long thereafter as there is production in commercial quantities."
- Strieber executed a lease in 2007.
- Strieber sold a portion of the NPRI to Burlington (to incentivize it to drill before the end of the 15 year term).

ConocoPhillips v. Koopman

- The NPRI was slated to terminate as of December 2011, and although actual production did not occur until February 2012, Burlington sent a letter to Koopman which identified a well location and included "shut-in royalty payments" to ensure all parties' interests were maintained.
- Koopman sued.

ConocoPhillips v. Koopman

- Burlington argued that Koopman's future interest in the reserved NPRI violated the rule against perpetuities, because the reservation contained the words "as long thereafter". It argued that all interests should remain as they were.
- Texas Supreme Court found that, strictly speaking, the Koopman interest violated the Rule.

ConocoPhillips v. Koopman

ConocoPhillips v. Koopman

- Although a technical violation of the Rule, the Koopman's interest did not violate the spirit and purpose of the Rule.
- The court strictly adheres to the rules of construction that courts should construe instruments equally open to two interpretations as valid rather than void, and that the Legislature requires courts to reform an interest that violates this Rule to effect the ascertainable general intent of the creator of the interest; and
- Modern scholarship supports construing the Rule based on its purpose and intent and avoiding its application when, like in the present case, doing so would not serve the Rule's purpose.

ConocoPhillips v. Koopman

- In the context of a NPRI reservation—where a defeasible term interest is created by reservation, leaving an executory interest that is certain to vest in an ascertainable grantee, the Rule does not invalidate the grantee's future interest.

ConocoPhillips v. Koopman

- No violation of the Rule, the case was still remanded for trial on the issue of whether the savings clause perpetuated the NPRI.
- The savings clause had three requirements that were satisfied: (1) there was a lease on the premises; (2) the lease was maintained in force and effect by payment of "shut-in royalties or any other similar payments made . . . in lieu of actual production"; and (3) there was a well "capable of producing oil, gas, or other minerals in paying or commercial quantities," but which is shut in "for lack of market or any other reason."
- The court affirmed the appellate court's holding that "or any other similar payments made" was ambiguous as a matter of law.
- There were unresolved fact issues as to whether Burlington's payment of "shut-in" royalties (later couched as a delay rental payment on appeal) extended the term NPRI.

TRO-X v Anadarko

TRO-X v Anadarko

- TRO-X executed leases that it later transferred, reserving an option to back-in for 5% of the working interest if the wells drilled by the transferee reached project payout.
- The reservation contained an "anti-washout" provision indicating that the back-in option would "extend to and be binding upon any renewal(s), extension(s), or top lease(s) taken within one (1) year of termination of the underlying interest."

TRO-X v Anadarko

- Anadarko acquired the leases subject to TRO-X option.
- Because of offset well obligations, which Anadarko failed to satisfy by drilling an offset well, Anadarko surrendered acreage to the lessor, but then executed new leases on the surrendered acreage on substantially the same terms as those contained in TRO-X's original leases.
- TRO-X inquired about its back-in option. Anadarko maintained that it did not apply to the new leases. TRO-X brought suit for breach of contract and trespass to try title.

TRO-X v Anadarko

- To prevail under the language contained in its anti-washout provision, TRO-X had to show the new leases were top leases.
- The court sided with Anadarko. The new leases were not top leases, so the back-in was not revived in the new leases.

TRO-X v Anadarko

- The new leases were not contingent upon the expiration of the prior leases.
- A new lease need not contain specific language showing that the parties intended for the new lease's execution to terminate the prior lease in order for the new lease (between the parties to an existing lease) to terminate the prior lease.
- "an existing lease between the parties as to an interest terminates when the parties enter into a new lease covering that interest *unless* the new lease objectively demonstrates that both parties intended for the new lease not to terminate the prior lease between them."

TRO-X v Anadarko

- How should have TRO-X drafted the anti-washout provision?
- Changing the phrase to: "<u>any</u> and all leases covering the same lands or a portion thereof"
- By adding the words "replacement" or "new"?

Dimock Operating v. Sutherland

Dimock Operating v. Sutherland

- Dimock entered into a Seismic Exploration and Farmout Agreement (SEFA), where Dimock (farmor) farmed out 15 sections in Hardeman County to Sutherland (farmee).
- The parties agreed that upon "project payout," Sutherland would assign well operations and a 51% working interest back to Dimock, and the remaining 49% would be assigned to various charities* (*not a typo).
- "Project payout" was the point at which revenues equaled two times Sutherland's capital costs.
- A dispute subsequently arose as to whether Sutherland reached payout.

Dimock Operating v. Sutherland

- Crux of the dispute: were cost incurred by Sutherland to undertake seismic operations “capital costs” for which it was entitled to be reimbursed before “project payout” occurred.
- SEFA expressly defined Sutherland’s capital cost as “cost[s] incurred by Farmee [Sutherland] for land and seismic for the Hamrick Area 3D Shoot (defined in Exhibit B), a fifty thousand dollar ($50,000) prospect fee, and cost for drilling, testing, completing, and equipping, the Initial Earning Well.”

Dimock Operating v. Sutherland

- “land and seismic costs” were not ambiguous merely because the terms had no contractual definitions.
- Nor were “deposit” and “prospect fee” ambiguous within the agreement.
- The court disagreed that the placement of the comma after the word “equipping” made the definition of “capital costs” ambiguous.
- Sutherland wins on this point. Seismic is included within definition of capital costs.

Dimock Operating v. Sutherland

- Was Sutherland obligated to propose the seismic operations to the non-operators under the JOA executed on the same day as the SEFA?
- The JOA was probably effective, but the SEFA indicated that it controlled over the JOA, and gave Sutherland disrection as to the timing of the seismic activities.

Dimock Operating v. Sutherland

- What about FRAUD?
- Sutherland negotiated for seismic costs to be included in the calculation of “capital costs” by representing that seismic was necessary before drilling the initial well.
- Sutherland drilled the initial well without first conducting any seismic activity.
- Summary judgment on fraud claims was improper, and that claim was remanded for further proceedings.

Endeavor v. Discovery Operating

Endeavor v. Discovery Operating

- Endeavor acquired oil and gas leases covering a 640-acre section and the north half of an adjoining section to the south. Endeavor drilled 4 wells on the leases before the expiration of their primary terms.
- The Leases identified the acreage that could be retained by referencing Railroad Commission's regulatory concepts of proration units and allowables:
    - "[The] lease shall automatically terminate . . . save and except those lands and depths located within a governmental proration unit assigned to a well . . . [containing] the number of acres required to comply with the applicable rules and regulations of the Railroad Commission of Texas for obtaining the maximum producing allowable for the particular well."

Endeavor v. Discovery Operating

- Spraberry field rules allotted 80 acres to a proration unit with an additional 80 acres of “tolerance acreage” at the operator’s election.
- In its P-15’s and plats filed with the Commission Endeavor assigned 81 acres to each well.
- Discovery obtained leases covering lands over which Endeavor’s lease had terminated. A dispute arose as to whether Discovery’s leases for undeveloped, un-retained acreage were valid.

Endeavor v. Discovery Operating

- Endeavor alleged that the top-leased acreage was included in the 80-acre units as "tolerance acreage."
- Not so, said the court. "Assigned" referred to the lessee's assignment of acreage through its regulatory filings.
- The top-leased acreage was not held by the Endeavor lease due to the express language of the clause.
- Having "assigned" 80 acres, Endeavor retained "exactly what it bargained for: approximately 80 acres per well."

Endeavor v. Discovery Operating

Endeavor v. Discovery Operating

- Dicta Alert: The court also indicated the operator must verify that additional acreage included in proration units is actually necessary or required to achieve the maximum allowable…" or it may "open itself up to claims that it is not acting in good faith in purporting to retain a substantially greater amount of acreage."

XOG Operating v. Chesapeake

XOG Operating v. Chesapeake

- A provision in a term assignment by XOG Operating to Chesapeake stated that Chesapeake would keep the leased acreage within the proration or pooled unit of each drilled well.
- However, the assignment contractually defined "proration unit" to include the boundaries of a proration unit "then established or prescribed by field rules."
- The Commission's field rules for the Allison–Britt Field applied. A "prescribed" proration unit under the applicable rules was 320 acres per well.

XOG Operating v. Chesapeake

- Chesapeake filed its Form P-15 for each well and assigned proration units totaling 800 acres for its wells.
- XOG Operating sued Chesapeake after Chesapeake refused to release or reassign any acreage to XOG. Each side moved for summary judgment. XOG argued that the disputed acreage was not retained by Chesapeake pursuant to the term assignment's retained acreage provision because Chesapeake failed to "assign" that acreage to a proration unit in its P-15 filings.
- Chesapeake argued that it retained 320 acre units as "prescribed by field rules."

XOG Operating v. Chesapeake

- The court acknowledged that although retained acreage provisions are based on regulatory filings and rules, they are fundamentally contractual in nature and parties to said clauses are presumed to know the law and to have stated their agreement in light of it.
- The court held that acreage "included within the proration unit for each well … prescribed by filed rules" referred to acreage set by the field rules, not acreage "assigned" by the operator.

XOG Operating v. Chesapeake

- At the time, the field rules defined a “prescribed” proration unit as 320 acres for the Allison–Britt Field.   Therefore, under the retained acreage provision’s language, Chesapeake retained 1,920 acres for its 5 wells drilled, and not only 800 acres.
- The court distinguished *Endeavor* from this case in that the field rules in *Endeavor* referred to assignments by operators claiming acreage.
- The field rules in this case referred to “assigned” acreage as well, but unlike the rules in Endeavor, the rules here also “prescribed” proration units.

XOG Operating v. Chesapeake

- Takeaways from Endeavor and XOG:
  - Be meticulous about the retained acreage clause!
  - Know precisely the field rules if you intend to rely upon them for retained acreage purposes.
  - Don’t file P-15’s without putting some thought into the amount assigned.
  - Be mindful of assigning too much acreage to a unit.

Dorfman v. JP Morgan Chase

Dorfman v. JP Morgan Chase

- History:
  - In 1929, the Moravitses conveyed mineral interests in Karnes County to McMullen.
  - McMullen conveyed the executive right to McMullen Oil & Royalty Company but retained the royalties.
  - McMullen's royalty interest passed to his wife when he died and then to the Langille Trust.

Dorfman v. JP Morgan Chase

- History:
  - The Moravits sons sued to cancel the 1929 deed. McMullen Oil disclaimed any interest in the tract.
  - A 1944 judgment (not recorded until 1991) canceled the 1929 deed.
  - The interests of McMullen Oil and the Langille Trust ended up in the Red Crest Trust, JP Morgan as trustee.

Dorfman v. JP Morgan Chase

- History:
  - In 2010, Orca approached JP Morgan to lease the tract in question and other tracts that might have already been leased.
  - The Orca landman mentioned to JP Morgan that "there seems to be a problem with the title" but as far as JP Morgan was concerned, "nothing in [their] records [showed] that the Red Crest Trust did not own that acreage."
  - JP Morgan leased to Orca, and refused to execute a quitclaim demanded by the Moravits successors.

Dorfman v. JP Morgan Chase

- The Moravits successors won on their trespass to try title, to quiet title, and declaratory judgment claims.
- They also made several tort claims…and lost on all of them.

Dorfman v. JP Morgan Chase

- **Slander of title** requires evidence that:

  (1) the plaintiff possesses an interest in the property slandered,

  (2) the defendant published a false statement about title to the property,

  (3) the statement was published with legal malice, and

  (4) the publication caused the loss of a specific sale.

Dorfman v. JP Morgan Chase

- Elements 1 and 2 were established, but the court concluded that element 3—legal malice—was not present. JP Morgan and Orca had a reasonable belief that Red Crest Trust's title was good.
- Although they were aware that there might be "a problem with the title," there was no evidence that they acted deliberately without belief that JP Morgan had a reasonable claim to title. Item 4 failed as well.
- The Moravits successors also could not establish that they lost a specific sale.

Dorfman v. JP Morgan Chase

- The **negligence** claims turned in large part on whether JP Morgan and Orca owed any duty to the plaintiffs.
- Because they had a reasonable basis for their claim to title, they owed no duty to the plaintiffs to not cloud their title or to quitclaim their possible interests.

Dorfman v. JP Morgan Chase

- **<u>Tortious interference</u>** with property rights requires interference with one's property rights without just cause or legal excuse. JP Morgan and Orca had "just cause" because they had a reasonable belief that JP Morgan's title was good.
- Interference with existing contractual relationships requires a willful and intentional act of interference with an existing contract. Again, because JP Morgan and Orca believed the Red Crest Trust had good title, they could not have willfully and intentionally interfered with an existing contract.
- Interference with prospective contractual relationships requires an independently tortious act to prevent a relationship from occurring. Because the Moravits successors' other tort claims failed, there was no independently tortious act.

Thank you!

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