

**PRESENTED AT**

42<sup>nd</sup> Annual Ernest E. Smith  
Oil, Gas and Mineral Law Institute

April 15, 2016  
Houston, Texas

**CASE LAW UPDATE**

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**CASE LAW UPDATE<sup>1</sup>**  
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<sup>1</sup> The update includes cases that have not yet become final or released for publication. As in prior updates, the facts of several cases have been greatly oversimplified to highlight the principal issue of interest to oil and gas practitioners.

## **I. RAILROAD COMMISSION REGULATIONS**

**Railroad Commission of Texas v. Gulf Energy Exploration**, 2016 WL 263771 (Tex. 2016)

In January 2008 the RRC issued orders requiring American Coastal Enterprises (ACE) to plug abandoned inactive wells in the Gulf of Mexico. ACE lacked the assets to do the plugging and declared bankruptcy. The RRC awarded a service contract to plug eight of the inactive wells. Approximately one year earlier Gulf Energy Exploration Corp. had acquired a lease that included eight of the inactive wells and wished to take over re-working operations of some of the wells. Representatives of ACE, Gulf Energy, the RRC and the Attorney General met and orally agreed that the Commission would delay plugging four of the remaining wells and that Gulf would post a bond and apply to the RRC to take over operations of four of the wells. The parties then entered into a written agreement that Gulf would take over operations of four of the wells and the other four would be plugged as planned. However, between the time of the oral agreement of the various parties and the written agreement, one of the four wells Gulf Energy was to operate was plugged. Gulf Energy obtained legislative consent to sue the RRC and brought suit against the RRC for breach of contract and negligence.

The case was submitted to a jury. The RRC objected to the trial judge's ruling that a binding oral contract had been entered into during the parties' meeting and so in instructing the jury failed to include a question on contract formation, i.e., whether a contract had already in fact been orally entered into when the well in controversy was plugged. The Commission also objected to the trial court's failure to ask the jury whether the RRC acted in good faith in plugging the well. The jury ruled in favor of Gulf Energy, which was awarded \$ 2.5 million, the maximum permitted by the legislative consent to the litigation. The RRC appealed. The Corpus Christi Court of Appeals affirmed, 2014 WL 3107507 (Tex.App.—Corpus Christi 2014), and the RRC appealed to the Texas Supreme Court.

Texas Supreme Court: Reversed and remanded for a new trial. Texas Natural Resources Code Section 89.001 et seq. protect a state agency regulating natural resources if the agency acts in good faith. The evidence does not conclusively establish the Commission's good faith in plugging the wrong well. On the one hand, a jury could reasonably infer that the Commission's representative could reasonably have assumed that the plugging boat was at one of the four wells that were to be plugged; but on the other hand the evidence could reasonably be interpreted to show that there was a clear discrepancy between the well to be plugged and the well that was improperly plugged. Hence, there is a fact issue of the RRC's good faith in plugging the wrong well and the good-faith issue should have been submitted to the jury.

With respect to the contract, the RRC argues that a fact issue exists as to whether a contract was entered into at the meeting of the parties, or when a formal written document was signed; and the judge should have submitted this issue to the jury. Evidence submitted at the trial, including testimony of persons present at the meeting,

email exchanges after the meeting and drafts of several versions of the parties' agreement that were circulated after the meeting raise a valid issue as to whether the parties reached a binding agreement at their meeting. Hence the trial court erred in ruling as that an oral contract had been entered into prior to the formal written agreement. This issue—like the issue of the RRC's good faith in plugging the well—should have been submitted to the jury.

## II. TORT CLAIMS

### A. NUISANCE

**Titan Operating, LLC v. Marsden**, 2015 WL 5727573 (Tex.App.—Fort Worth 2015)

In 1997 plaintiffs purchased a house located on the northwest side of a 6.2 acre tract, which was in a quiet, rural residential area. In 2004 they executed an oil and gas lease that provided that “no well [could] be drilled within two hundred (200) feet within any residence or barn ....” without lessors' consent. An addendum stipulated that

[The lessors] and [lessee] agree that no drilling or other activities will be conducted on the surface [of the lessors' property] and that no roads, pipelines, tanks, heaters, separators, injection wells or other surface equipment will be placed on [the lessors' property] without the prior written consent of [the lessors]. But [lessee] shall have the right to prospect, drill, and produce oil and gas from beneath the surface of [the leased premises] by operations on adjoining or nearby lands through the drilling, operations, and maintaining of directional wells located on the surface of such adjoining or nearby lands

A further provision gave the lessee the right of access over the leased premises in order to reach drilling and related operations on adjacent land.

The defendant oil and gas company also held a lease on land immediately north of plaintiffs' land, and the initial drill site of the defendant oil and gas company was only 176 feet north of plaintiff's house and the well itself only about 300 feet from their house. Five more wells were drilled on the property north of plaintiff's property. According to plaintiffs, the result of the extensive drilling was constant 24-hour-a-day noise which precluded enjoyment of their house and made sleeping virtually impossible. Moreover, even after the drilling ceased, large, loud trucks continued to come to the drill sites both at day and night.

Plaintiffs brought suit for nuisance, seeking damages based on interference with their enjoyment and use of their property and diminution in value of their property. Defendant oil and gas company responded with a general denial and sought a summary judgment based on quasi-estoppel. The case went to the jury, which found that the defendant oil and gas company had deliberately created a private nuisance and that plaintiffs were not estopped from complaining about the nuisance. The trial judge rejected defendant's

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First appeared as part of the conference materials for the  
42<sup>nd</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session  
"Case Law Update"