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## **Case Law Update**

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## CASE LAW UPDATE

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## **I. OPTION TO LEASE**

### **North Shore Energy L.L.C. v. Harkins, 501 S.W.3d 598 (Tex. 2016) LEASE OPTION**

Landowners granted North Shore Energy an exclusive option to lease any 1,210.824 acres out of a described 1,673.69 acres tract. North Shore then drafted an agreement under which for a specific consideration it could select multiple tracts of land to lease. In describing the optioned land, the agreement excluded a 400-acre tract that had been leased to the Hamman Oil & Refining Co. This lease had terminated by the time the landowners and North Shore entered into the option agreement. A few months later North Shore exercised its option, which included 170 acres in the tract that had been leased to the Hamman oil company. North Shore leased the tract, where it drilled a producing well. Several months after the well began to produce, another oil and gas company – Dynamic Production – determined that North Shore did not have the right to lease the land on which its well was located; contacted the landowners, and offered to lease the Hamman tract. Since Dynamic was offering a larger bonus and royalty than North Shore, the landowners leased the tract in controversy to Dynamic. The trial court granted summary judgment for North Shore, apparently relying on North Shore’s argument that it had the right to lease 1,210.824 acres out of the larger tract ruling. The trial judge ruled that Dynamic’s lease on the Hamman tract should be removed and ordered the landowners to lease the acreage to North Shore.

The court of appeals held that the option agreement was ambiguous; reversed the trial court’s judgment and remanded the case for further proceedings.

Texas Supreme Court: North Shore argues that the agreement gave it the right to lease any 1,210.8224 acres out of the described 1,673.69-acre tract. However, the express language of the agreement between the landowners and North Shore clearly excludes the 400 acres originally subject to the Hamman lease. Because the option agreement unambiguously excluded the 400-acre Hamman lease tract/, the landowners are not liable for breach of contract and Dynamic cannot be liable for tortious interference for leasing the 400-acre tract.

## **II THE OIL AND GAS LEASE**

### **A. TORT CLAIMS**

#### **ExxonMobil Corp. v. Lazy R Ranch, LP, 2017 WL739424 (Tex. 2017)**

In 2009 defendant oil and gas company, which had conducted oil and gas operations on the Lazy R. Ranch for almost 60 years was sued by the ranch, which claimed contamination of four areas and sought injunctive relief ordering defendant to remediate the contaminated conditions. Defendant moved for summary judgment on several grounds, including the statute of limitations. The trial court granted defendant’s motion

for summary judgment. The court of appeals reversed and remanded the case, and defendant appealed to the Texas Supreme Court..

Texas Supreme Court: The evidence establishes that contamination of two of the four sites occurred more than four years before suit was filed and that operations had not been conducted on these tracts for over a decade. Soil contamination from oil spills is unquestionably objectively verifiable and is not inherently undiscoverable. Defendant was entitled to summary judgement on the two abandoned sites, but not with respect to the other two sites still in use.:

## **B. DRILLING**

**Talisman Energy USA v. Matrix Petroleum USA**, 2016 WL 7379254 (Tex.App. – San Antonio 2016)

Two lessees that owned undivided interests in a lease covering a 5,300-acre ranch entered into an operating agreement. A dispute arose between the parties when the defendant commenced drilling three new wells on the property without consulting the plaintiff and without putting up the drilling costs for competitive bidding. Plaintiff then sought a temporary injunction against further drilling by the defendant and an order to provide the plaintiff with certain data and information. The trial judge granted the temporary injunction and ordered the defendant to furnish the plaintiff with certain data and information, defendant appealed.

San Antonio Court of Appeals affirmed. The evidence supports the claim that defendant failed to confer with plaintiff about the wells and violated the parties' agreement by exceeding the market rate for tools and equipment by as much as 60%. With respect to.. Plaintiff claim for a permanent injunction, the evidence indicates that defendant's drilling caused waste, and that its accounting and metering errors led to losses that cannot be calculated.

**Gemini Insurance Co. v. Drilling Risk Management**, 2016 WL 3625666 (Tex.App. – San Antonio 2016)

Plaintiff is an oilfield drilling contractor that was hired under a turnkey contract to drill a well to a depth of almost 14,000 feet. Because of unexpected pressure zones, it had two underground blowouts that required it to reset and replace its casing and liner. The company had insurance under a policy covering "well out of control" events, such as blowouts and re-drilling efforts necessary to restore the well to its pre-blow out condition. The plaintiff sought recovery under its insurance policy, and the insurance company determined that each blowout was a separate occurrence, and a \$250,000 deductible was assessed on each claim. The insurance company refused to reimburse the plaintiff for other expenses, such as new casing, associated with the blowouts. Plaintiff then filed suit

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