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Energy Industry Update

Drill on Through to the Other Side: No Trespass When Drilling Through Mineral Estate with Surface Use Agreement

Action Item: The Texas Supreme Court announced two critical points in *Lightning Oil Co. v. Anadarko E&P Onshore*: (1) unauthorized interference may be a trespass only when it impacts the mineral lessee’s ability to exercise its rights to explore, obtain, produce, and possess the leased minerals; and (2) the trespass injury must outweigh the interests of the industry as a whole and society in maximizing oil and gas.

On May 19, 2017, the Texas Supreme Court affirmed the appellate court’s holding that a surface owner can grant permission to a third-party to drill through a mineral lessee’s estate. The Court rejected Lightning Oil Co.’s (“Lightning”) claims that Anadarko E&P Onshore, LLC (“Anadarko”) trespassed on Lightning’s mineral estate by drilling through Lightning’s mineral estate to reach an adjacent lease.

Anadarko entered into an oil and gas lease that restricted use of a surface estate by requiring drilling from off-site locations when feasible. Anadarko planned to drill from surfaces of adjacent tracts to extract hydrocarbons through horizontal drilling from its lease. Briscoe Ranch owned the surface of the adjacent tract, and agreed that Anadarko could use the surface to extract

hydrocarbons. Lightning owned the minerals beneath the surface, and was not a party to the agreement between Briscoe Ranch and Anadarko. Lightning filed suit to stop Anadarko from drilling through its mineral estate to extract minerals from Anadarko’s lease.

The Court considered whether “a lessee’s rights in the mineral estate include the right to preclude a surface owner or an adjacent lessee’s activities that are not intended to capture the lessee’s minerals, but rather are intended only to traverse, or bore through, the formations in which the lessee’s minerals are located” constitutes a trespass.

The Court delineated the relationship between surface and mineral owners. The surface owner retains ownership and control of the subsurface material. The mineral owner owns a property interest in the oil and gas in the subsurface materials. The surface owner’s ownership and control of the subsurface material does not necessarily mean that the surface owner is entitled to make physical intrusions into formations where minerals are located and remove some of the minerals.

The Court surmised that an unauthorized interference with the place where the minerals are located constitutes a trespass as to the mineral estate only if the interference infringes on the mineral lessee's ability to exercise its rights to explore, obtain, produce, and possess the leased minerals. Although Lightning argued that Anadarko's proposed well sites would interfere with its rights, the Court found Lightning's argument speculative at best. Such speculation was insufficient to support injunctive relief.

Lightning further argued that Anadarko's drilling program would actually remove hydrocarbons from the mineral estate resulting in a trespass. The Court balanced the competing interests and found that the interests of the industry as a whole and society in maximizing oil and gas recovery outweighs the small amount of minerals lost to Anadarko's drilling operations. The Court concluded that the loss of minerals Lightning will suffer by a well being drilled through its mineral estate is not a sufficient injury to support a claim for trespass.

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