MASSIVE MINERALS

2020 Mid–Year Texas Supreme Court Update

Presentation Overview

- **Recently Decided Cases**
  - ConocoPhillips v. Ramirez
  - Bush v. Lone Oak Club
  - Yowell v. Granite Operating Company
- **Recent Action**
  - Endeavor Energy Resources v. Energen Resources Corp.
  - Bluestone Natural Resources v. Randle
  - Chesapeake v. Bell
- **Cases to Watch**
  - Cimarex Energy v. Anadarko Petroleum
  - Strickhausen v. Petrohawk
  - WTX Fund v. Brown

Presentation Overview

- **Recently Decided Cases**
  - ConocoPhillips v. Ramirez
  - Bush v. Lone Oak Club
  - Yowell v. Granite Operating Company
- **Recent Action**
  - Endeavor Energy Resources v. Energen Resources Corp.
  - Bluestone Natural Resources v. Randle
  - Chesapeake v. Bell
- **Cases to Watch**
  - Cimarex Energy v. Anadarko Petroleum
  - Strickhausen v. Petrohawk
  - WTX Fund v. Brown

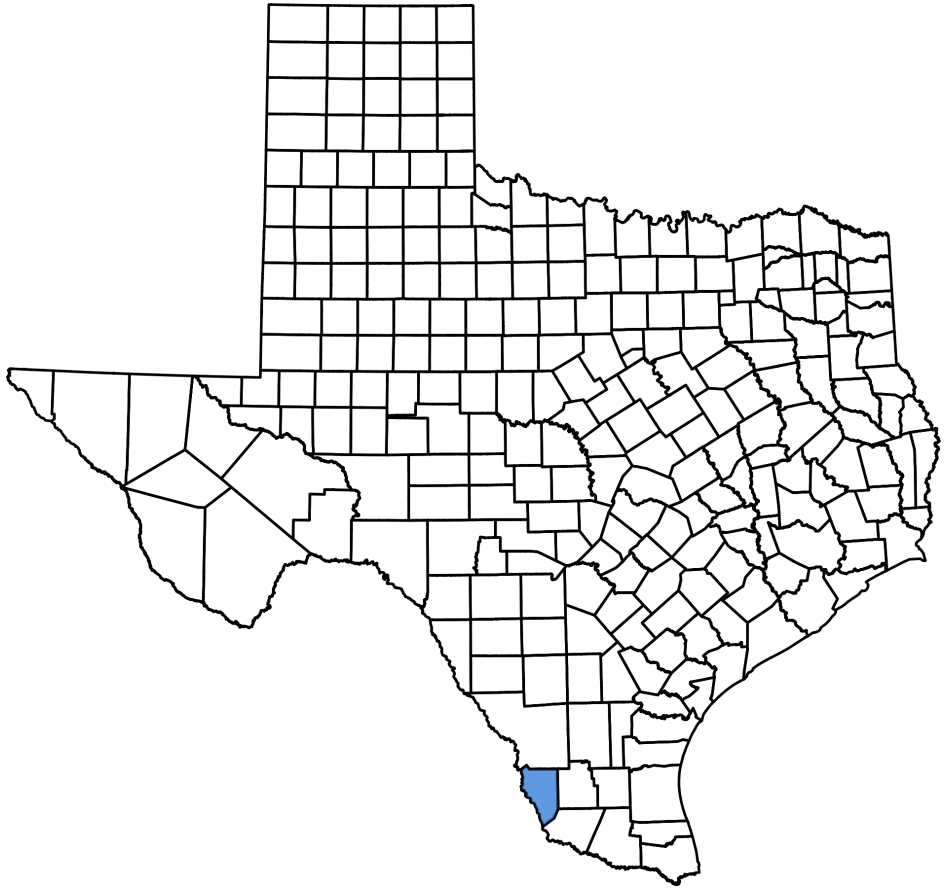
ConocoPhillips v. Ramirez,
599 S.W. 3d 296 (Tex. 2020)

- Opinion delivered: January 24, 2020
- Rehearing denied: May 29, 2020

- Issue: Did a will leaving "all right, title and interest" to a named piece of property ("Ranch Las Piedras") devise just the surface estate known by that name or both surface and underlying mineral estate?

ConocoPhillips v. Ramirez: FACTS

Ildefonso Ramirez's 7,016 acres



ConocoPhillips v. Ramirez: FACTS

- 1975 Partition Agreement:
  - Split Leon Juan's 3,508-acre surface estate
  - Stated that the partition did "not… include oil, gas and other minerals which for the [time being] [were] to remain undivided."
  - Result:
    - Leonor: 800-acre tract known as "West El Milagro Pasture" & including "Headquarters Ranch"
    - Rodolfo: 400-acre tract known as "East El Milagro Pasture"
    - Leon Oscar Sr. & Ileana: 1,058-acre tract known as "Las Piedras Pasture"

= 2,258 acres

ConocoPhillips v. Ramirez: FACTS

<table>
<tr><td colspan="6">Ildefonso Ramirez's 7,016 acres</td></tr>
<tr><td rowspan="2"></td><td colspan="4">Surface</td><td>Minerals</td></tr>
<tr><td colspan="3">3,508 acres</td><td>3,508 acres</td><td></td></tr>
<tr><td rowspan="2">1975: Partition</td><td>Las Piedras Ranch</td><td>HQ Ranch & W El Milagro Pasture</td><td>E El Milagro Pasture</td><td rowspan="2">Felicidad</td><td rowspan="2">1/2 Felicidad
1/4 Leonor
1/12 Leon Oscar Sr.
1/12 Ileana
1/12 Rodolfo</td></tr>
<tr><td>1/2 Ileana
1/2 Leon Oscar Sr.</td><td>Leonor</td><td>Rodolfo</td></tr>
</table>

ConocoPhillips v. Ramirez: FACTS

- 1978 Exchange Agreement:
  - Leonor & Ileana swapped interests
  - States that Leon Oscar Sr. & Ileana has earlier been "partitioned the surface to 1,058 acres… known as 'Las Piedras Ranch'"
  - Ileana agreed to convey "all of her right, title and interest in and to the surface to… 1,058 acres of land … known as LAS PIEDRAS PASTURE".
  - Stated the "Deed of Exchange [did] not include oil, gas and other minerals which [were] to remain undivided."

ConocoPhillips v. Ramirez: FACTS

<table>
<tr><td colspan="6">Ildefonso Ramirez's 7,016 acres</td></tr>
<tr><td rowspan="2"></td><td colspan="4">Surface</td><td>Minerals</td></tr>
<tr><td colspan="3">3,508 acres</td><td>3,508 acres</td><td></td></tr>
<tr><td rowspan="2">1978:
Exchange</td><td>Las Piedras Ranch</td><td>HQ Ranch & W El Milagro Pasture</td><td>E El Milagro Pasture</td><td rowspan="2">Felicidad</td><td rowspan="2">1/2 Felicidad
1/4 Leonor
1/12 Leon Oscar Sr.
1/12 Ileana
1/12 Rodolfo</td></tr>
<tr><td>1/2 Leonor
1/2 Leon Oscar Sr.</td><td>Ileana</td><td>Rodolfo</td></tr>
</table>

ConocoPhillips v. Ramirez: FACTS

- 1987 – Leonor executes will
- 1988 – Leonor dies
  - Devises a life estate in "all of [her] right, title and interest in and to Ranch 'Las Piedras'" to son, Leon Oscar Sr., remainder to his living children
    - BUT WHAT DOES THIS MEAN?
  - Residuary estate to children equally

- Leonor's children believed ALL minerals in residuary estate
- Leon Oscar Sr.'s children contend residuary estate did not include minerals to Las Piedras, rather, they're part of life estate

Ildefonso Ramirez's 7,016 acres						
	Surface				Minerals	
	3,508 acres			3,508 acres		
	Las Piedras Ranch	HQ Ranch & W El Milagro Pasture	E El Milagro Pasture			
1988: Leonor's death – per petitioners	1/2 fee + 1/2 LE Leon Oscar Sr.	Ileana	Rodolfo	Felicidad	1/2 Felicidad 1/6 Leon Oscar Sr. 1/6 Ileana 1/6 Rodolfo	
1988: Leonor's death – per respondents					Las Piedras Ranch	Rest of 7,016 acres
	1/2 fee + 1/2 LE Leon Oscar Sr.	Ileana	Rodolfo	Felicidad	1/2 Felicidad 1/12 fee + 1/4 LE Leon Oscar Sr. 1/12 Ileana 1/12 Rodolfo	1/2 Felicidad 1/6 Leon Oscar Sr. 1/6 Ileana 1/6 Rodolfo

ConocoPhillips v. Ramirez: FACTS

- O&G Leases executed on various portions of estate
  - All 7,016 acres never subject to single lease
- 1990 Lease Extension
  - Leonor's children signed extension of a 1983 lease to Enron (EOG) of minerals under Las Piedras Ranch.
  - Treated siblings as equal fee owners of minerals under Las Piedras Ranch
    - Remaindermen did NOT join in execution of lease
  - Later transferred to ConocoPhillips
- 2006 – Leon Oscar Sr. dies
  - LE terminates. Remaindermen: Leon Oscar Jr., Rosalinda, & Minerva
  - Fee interest devised to Leon Oscar Jr. & Rosalinda

Ildefonso Ramirez's 7,016 acres						
	Surface				Minerals	
	3,508 acres			3,508 acres		
	Las Piedras Ranch	HQ Ranch & W El Milagro Pasture	E El Milagro Pasture			
2006: Leon Oscar Sr.'s death – per petitioners	5/12 Leon Oscar Jr. 5/12 Rosalinda 1/6 Minerva	Ileana	Rodolfo	Felicidad	1/2 Felicidad 1/6 Ileana 1/6 Rodolfo 1/12 Leon Oscar Jr. 1/12 Rosalinda	
2006: Leon Oscar Sr.'s death – per respondents					Las Piedras Ranch	Rest of 7,016 acres
	5/12 Leon Oscar Jr. 5/12 Rosalinda 1/6 Minerva	Ileana	Rodolfo	Felicidad	1/2 Felicidad 1/12 Ileana 1/12 Rodolfo 1/8 Leon Oscar Jr. 1/8 Rosalinda 1/12 Minerva	1/2 Felicidad 1/6 Ileana 1/6 Rodolfo 1/12 Leon Oscar Jr. 1/12 Rosalinda

ConocoPhillips v. Ramirez: Holding

- Texas Supreme Court Holding: Leonors will devising "all of [her] right, title, and interest, in and to Ranch 'Las Piedras,'" conveyed only the surface interest in the Ranch, not the mineral interest; thus, the ConocoPhillips lease is valid.

ConocoPhillips v. Ramirez: Analysis

Focused on testatrix's intent as ascertained from language found within 4 corners of the will

- In will, Ranch "Las Piedras" capitalized & in quotations indicating term has specific meaning to Leonor & family
  - Previous 1975 Partition Agreement
    - First document to name tracts
    - Refers to 1,058-acre surface only tract as "Las Piedras Ranch"
    - Minerals excluded from partition
  - 1978 Exchange Agreement
    - States Leon Oscar Sr. & Ileana were "partitioned the surface to 1058 acres… known as 'Las Piedras Ranch'"
    - States conveyance from Ileana to Leonor of "all of her right, title, and interest in and to the surface to… 1,058 acres of land… known as LAS PIEDRAS PASTURE"
  - Thus under this language, surface to 1,058 acres = Las Piedras

ConocoPhillips v. Ramirez: Analysis

Looked at history of treatment of mineral estate

- Since 1941, conveyances left mineral interest in 7,016 acres undivided
- When Las Piedras Ranch & other parcels partitioned, minerals specifically not partitioned
- Execution of mineral leases always consistent with family's understanding of joint ownership of full mineral estate
  - Even though never single lease covering 7,016 acres
- Had there been any doubt in understanding Leonor's will, it would have been in Leon Oscar Sr.'s interest to raise the issue rather than share the mineral interest with his siblings

Discussed how holding in line with ownership prior to Leonor's death

- Leonor shared ownership of Las Piedras surface estate with only Leon Oscar Sr.
- Leonor shared ownership of mineral estate with all of her children who had equal shares

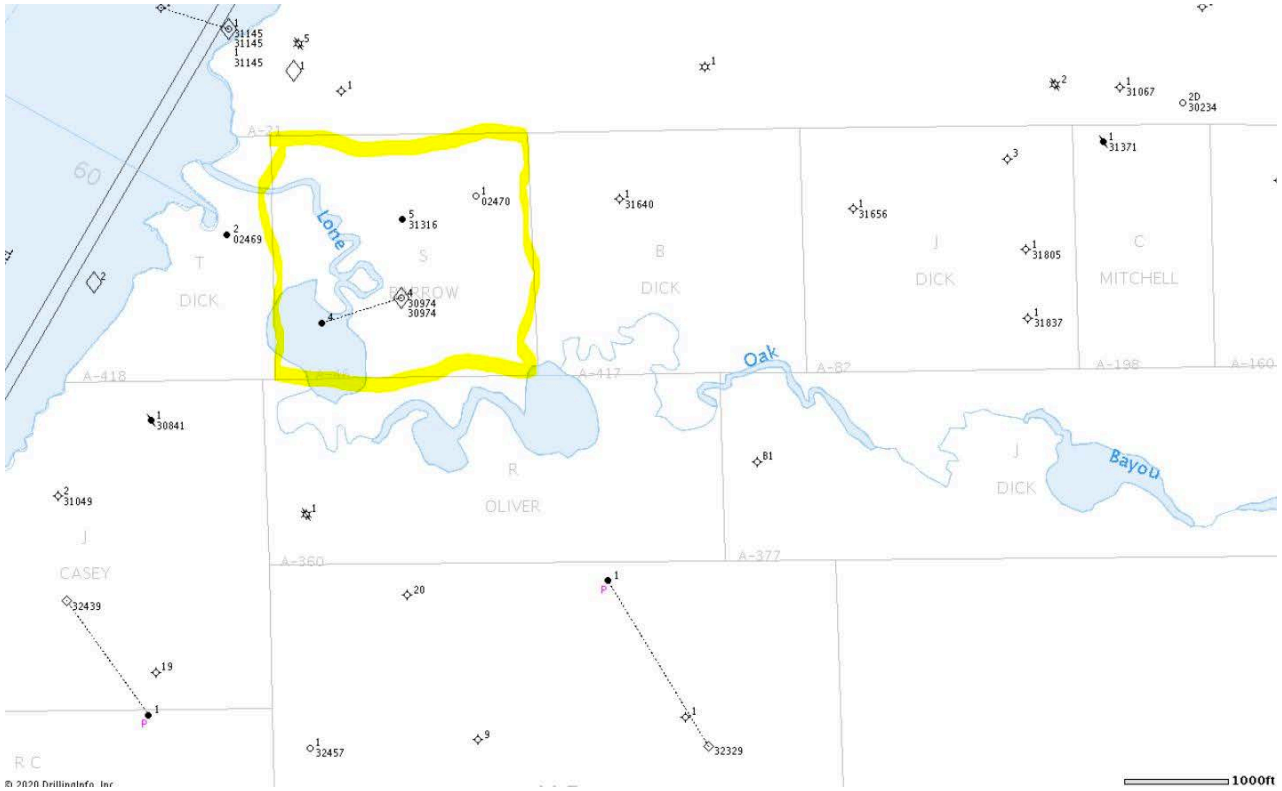
Bush v. Lone Oak Club,
No. 18–0264 (Tex. Apr. 24, 2020)

- Opinion delivered: April 24, 2020

- Issue: Who owns the bed of a bayou within tidewater limits?

***Bush v. Lone Oak Club*: Facts**

- Lone Oak Club owns ~ 160 acres in Chambers County
  - Includes land under Lone Oak Bayou
- Public likes to fish & hunt in Bayou
- Club says while in Bayou, public is fine, State land
  - But when you set foot on or cause shotgun pellets to contact Bayou's bed, trespass



***Bush v. Lone Oak Club*: Facts**

- 1872 – Patented to Sophronia Barrow who purchased from the Governor of Texas
  - Patent describes, crosses, and includes Lone Oak Bayou
  - Barrow paid for 160 acres of land
    - Adds to 160 acres only if a portion of the Bayou's bed is included
- 2002 – Lone Oak Club acquired Barrow Survey
  - Regular chain of title

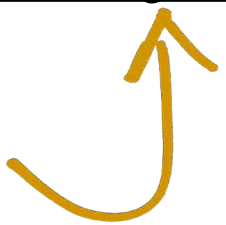
***Bush v. Lone Oak Club*: Facts**

- 2008 – Evicted hunter asks for General Land Office ("GLO") opinion
  - "Extent of State ownership in Lone Oak Bayou and the attendant waterways and their beds adjacent to and flowing through" the Club's property
- March 2009 – GLO visited & noticed Bayou was "tidally influenced"
  - Issued letter stating tidally influenced = State/Private ownership boundary is line of mean high water

Bush v. Lone Oak Club: Water Law

- Until January 1840 – Grants under Mexican Civil Law
  - State/Private boundary determined by higher high tide line
- January 1840 & Beyond – Grants under English Common Law
  - State/Private boundary determined by mean high tide line

Barrow Survey = 1872



- BUT when navigable stream that adjoins the sea, State owns all riverbed in trust for the public. *State v. Bradford*, 50 S.W.2d 1065, 1070 (Tex. 1932).
- Legislature can convey public land under streams and sea so long as conveyance meets certain requirements. *Id.* at 1076; Coastal Indus. Water Auth. V. ork, 532 S.W.2d 949, 951 (Tex. 1976).

***Bush v. Lone Oak Club*: Water Law**

Barrow Survey = 1872

- 1837 Navigable Stream Statute
  - Any stream navigable if it maintains average width of 30’ or more from mouth up, measured bank to bank
  - Prohibited surveys of land to be sold by State from crossing navigable streams
    - Surveys must front, but not include, bed of navigable stream
      - Obviously, this didn’t happen

- 1929 Small Bill
  - Legislature confirms grants when:
    - 1. Patents or awards
    - 2. Granted at least 10 years before enactment
    - 3. Lying across or partially across
    - 4. Watercourses or navigable streams

Lone Oak Club claims this applies to them

BUT does “navigable stream” exist only above tide line?
What about below the tide line?

***Bush v. Lone Oak Club*: Holding**

- The Small Bill applies to lands within tidewater limits, whether above or below the tide line, granting ownership of the beds of navigable streams within a landowner's land grant when the buyer paid for the land within the bed at the time of the grant although it would typically have been deemed State property under the Navigable Stream Statute.

Bush v. Lone Oak Club: Analysis

- Small Bill enacted to cure Navigable Stream Statute title defects
  - Thus, "navigable stream" in each Bill must have same definition
  - Under Mexican Civil Law, when Navigable Stream Statute passed, "navigable stream" encompassed portions above AND below tide line
  - Because Small Bill validated surveys invalidated by Navigable Stream Statute, it must also cover beds of "navigable streams" below tide line
- Adoption of Common Law in 1840 doesn't change analysis
  - Under Common Law, bed is State owned
  - But when adopting Common Law, didn't adopt rules in conflict with current law & Navigable Stream Statute was current law
- Legislature could grant land State held in public trust to private owners, which it did in the Small Bill

- Remanded to determine whether Bayou is a "navigable stream" or "watercourse"

Yowell v. Granite Operating Company, No. 18–0841 (Tex. May 15, 2020)

- Opinion delivered: May 15, 2020

- Issue: Does an overriding royalty interest in a lease and all future leases violate the rules against perpetuities ("RAP"), and if it does violate RAP, must the Court reform the instrument in a way to validate the interest to the fullest extent consistent with the creator's intent under Tex. Prop. Code Sec. 5.043?

Yowell v. Granite Operating Company: Facts

- 1986 – Lease taken by Aikman Oil Corporation
- Assigned to Haber & reserved 2.25% ORRI
  - Anti-washout provision covered any extension, renewal, or new lease executed by Haber or successors
- Now:
  - Yowells own ORRI
  - Upland Resources Inc. owns leasehold interest

Yowell v. Granite Operating Company: Facts

- May 2007 – Amarillo Production Company executed top lease
- August 2007 – Amarillo sues Upland claiming bottom lease terminated
  - Settlement agreement:
    - 1. Terminated Upland's 1986 Lease
    - 2. Initiated Amarillo's 2007 Lease
    - 3. Assigned Amarillo's new leasehold interest to Upland
    - 4. Reserved ORRI in 2007 Lease for both Amarillo & Peyton Group (Upland's owner)
      - Subject to proportionate reduction if Yowells successfully attached ORRI to 2007 Lease
- Now: Granite owns leasehold interest & stopped paying Yowells
  - Says 2007 Lease invalidated 1986 Lease so no ORRI

Yowell v. Granite Operating Company: Holding

- An attempt to reserve an ORRI in a "future lease" violated RAP and Tex. Prop. Code Sec. 5.043 applies to corporate conveyances without a 4-year statute of limitations requiring the court to consider reform the ORRI to where it does not violate RAP, if possible.

Yowell v. Granite Operating Company: Analysis

- RAP: No property interest is valid unless it must vest, if at all, within 21 years after death of some life or lives in being at the time of the conveyance
  - If grant could violate RAP when executed, interest conveyed is void
    - But if two possible constructions, not void because assume grantor intended legal conveyance
  - O&G Lease creates fee simple determinable in mineral estate which does not violate RAP
- Property interest?
  - Granite & Yowells' predecessors didn't own mineral estate at time they contracted to reserve ORRI under future leases, so could they create property interest in future leasehold?
    - Yowells still have a property interest under 2007 Lease that could be subject to RAP
    - ORRIs are property interests & retain characterization in lease renewal or new lease between same parties

Yowell v. Granite Operating Company: Analysis

- Did property interest vest at time of creation?
  - No. Vests upon happening of condition or event.
    - 1. 1986 Lease must terminate;
    - 2. Lessor grants new lease covering all/part of same MI; and
    - 3. New lease obtained by successor of Haber (lessee at ORRI reservation)
- Must the interest vest, if at all, within 21 years after life in being?
  - No. 3 contingencies may not occur within RAP timeframe.
- Thus, the ORRI in future leases violates RAP.

Yowell v. Granite Operating Company: Analysis

- Tex. Prop. Code Sec. 5.043 requires courts to reform property interests violating RAP when possible
  - Does it apply to corporate conveyances?
    - Yes.
  - Is there a 4-year statute of limitations?
    - No
- BUT parties disagree as to whether, and if so, how, Yowells' interest in new leases can be reformed to reflect creator's intent within limits of RAP.
  - Remanded

Presentation Overview

- **Recently Decided Cases**
  - ConocoPhillips v. Ramirez
  - Bush v. Lone Oak Club
  - Yowell v. Granite Operating Company
- **Recent Action**
  - Endeavor Energy Resources v. Energen Resources Corp.
  - Bluestone Natural Resources v. Randle
  - Chesapeake v. Bell
- **Cases to Watch**
  - Cimarex Energy v. Anadarko Petroleum
  - Strickhausen v. Petrohawk
  - WTX Fund v. Brown

Endeavor Energy Resources v. Energen Resources Corp.,
563 S.W.3d 449 (Tex. Ct. App. — Eastland, 2018)

- Petition granted: June 4, 2020

- Issue: Does the continuous development clause mean that lessee can bank unused days between all wells drilled or just unused days from the period immediately proceeding drilling the well?

Endeavor v. Energen

- Continuous Development Clause ("CDC"):
  - "Lessee shall have the right to accumulate unused days in any 150-day term during the continuous development program in order to extend the next allowed 150-day term between the completion of one well and the drilling of a subsequent well"
- Court of Appeals holding:
  - The CDC limits the availability of unused days in construction term to extend only through the next development term available for construction of a new well.

Bluestone Natural Resources v. Randle,
No. 02–18–00271–CV (Tex. Ct. App. — Fort Worth, 2019)

- Petition granted: May 29, 2020

- Issue: Does the lessor or lessee of the lease pay post-production costs under the specific lease provisions?

Bluestone Natural Resources v. Randle

- Lease provision:
  - Royalties on gas would be "the market value at the well of one-eighth of the gas so sold or used…"
  - Exhibit A adds that "Lessee agrees that all royalties accruing under this lease (including those paid in kind) shall be without deduction, directly or indirectly, for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and otherwise making the oil, gas and other products hereunder ready for sale or use. Lessee agrees to compute and pay royalties on the gross value received, including any reimbursements for severance taxes and production related costs."

Bluestone Natural Resources v. Randle

- Court of Appeals Holding:
  - Bluestone could not deduct post-production costs
  - The no-deduction clause in the exhibit modified and superseded the royalty clause.
  - "Gross value received" means proceeds prior to deducting post-production costs.
  - Bluestone had to pay royalties on plant fuel and compressor fuel because the clause "Lessee shall have free from royalty or other payment the use of… gas… produced from said land in all operations which Lessee may conduct hereunder… and the royalty… shall be computed after any so used" only applies to gas used on the leased premises.

Bell v. Chesapeake, No. 04–18–00129–CV (Tex. Ct. App. — San Antonio, 2019)

- Petition denied: June 4, 2020
  - Goes back to trial court for trial on the merits

- Issue: What compensatory royalties must be paid to the lessor under the offset well clause in the lease when the offset well is a horizontal well not drilled parallel to the lease line, but rather where only a portion of the wells' horizontal wellbore was within the minimum distance from the lease line to trigger the offset well obligation?

Bell v. Chesapeake

- Compensatory Royalty
  - In lieu of Drilling an offset well required hereunder or releasing acreage as provided above, then Lessee shall pay to Lessor as a Compensatory Royalty an amount equal to the Royalty Share of Gross Proceeds of production from the Adjacent Well ....
- Court of Appeals holding:
  - The lease language clearly states that Chesapeake must pay based on the gross proceeds of production from the adjacent well regardless of whether that well thereafter runs parallel or perpendicular to, or toward or away from, the leased premises. The compensatory royalty is not paid on just the take points within the minimum distance from the lease line specified in the lease.

Presentation Overview

- **Recently Decided Cases**
  - ConocoPhillips v. Ramirez
  - Bush v. Lone Oak Club
  - Yowell v. Granite Operating Company
- **Recent Action**
  - Endeavor Energy Resources v. Energen Resources Corp.
  - Bluestone Natural Resources v. Randle
  - Chesapeake v. Bell
- **Cases to Watch**
  - Cimarex Energy v. Anadarko Petroleum
  - Strickhausen v. Petrohawk
  - WTX Fund v. Brown

Cimarex Energy v. Anadarko Petroleum,
574 S.W.3d 73 (Tex. Ct. App. — El Paso, 2018)

- Issue: Do operations by a lessee co-tenant hold leases taken by a non-participating co-tenant into the secondary term?

Cimarex Energy v. Anadarko Petroleum

- Quick Facts:
  - Cimarex leased 1/6 MI, Anadarko leased 5/6 MI
  - Anadarko refused Cimarex's request to participate in wells on the leases under JOA
  - Anadarko paid Cimarex on share of net profits. Cimarex paid royalty owner.
  - At end of PT on Cimarex lease, Anadarko stopped paying saying lease expired
  - Cimarex claimed lease held by Anadarko's wells
- Court of Appeals holding:
  - No, the lease taken by Cimarex, the non-participating co-tenant, required Cimarex to cause production in order to extend the primary term of its lease; thus, production from a co-tenant did not count even though Cimarex paid royalties to the lessor on its share of co-tenant's production.
  - The fact that Cimarex tried to participate didn't matter as Anadarko had no duty to Cimarex.

Strickhausen v. Petrohawk,
No. 04–18–00636 (Tex. Ct. App. — San Antonio, 2019)

- Issue: Did lessor ratify a pooled unit not authorized by her lease, or is lessor estopped from contesting the validity of the pooled unit, on the basis of her acceptance of royalty checks calculated based on her unit interest of production?

- A/K/A BPX Operating v. Strickhausen

Strickhausen v. Petrohawk

- Quick Facts:
  - Lease prohibited pooling without Strickhausen's express written consent
  - Lease also said if Lessee requires Lessor to execute any document, Lessee agrees Lesssor's execution of such agreement(s) shall not constate waiver, acceptance, ratification, revivor or adoption of Lease or waiver of any claim for breach of obligation unless document clearly states this is the purpose
  - Without consent, DPU filed
  - Landman sent Strickhausen letter requesting ratification of DPU
  - Her attorney contacted landman about letter
  - Well drilled & Strickhausen sent royalty check
  - Attorney contacted landman again rejecting a settlement offer
  - Strickhausen deposited check

Strickhausen v. Petrohawk

- Court of Appeals Holding:
  - Reversed trial court's summary judgment decision that lessor did ratify a pooled unit by accepting royalty checks and remanded the case to the trial court.
  - Found there were fact issues as to whether she intended to ratify the pooled unit because she had previously challenged the pooled unit before accepting royalty checks.
  - The court did not decide whether she was estopped from contesting the unit's validity because the trial court's order narrowed the controlling question of law solely as to the issue of ratification, so there was no jurisdiction to separately address estoppel.

WTX Fund v. Brown,
525 S.W.3d (Tex. Ct. App. — El Paso, 2020)

- Issue: Did the granting & intention clauses reserve a royalty interest in whole or in part?

WTX Fund v. Brown

- Granting clause:
  - Conveyed "the leasing rights, bonuses and delay rentals…"
- Intention clause:
  - Expressed the intention to convey executive rights, "7/8 leasing rights or working interest," and "all bonuses, delay rentals, oil payments and all other rights and benefits."
- "Shall-Not-Affect Clause"
  - This conveyance shall not affect any interest … in the future to the non-participating 1/8 royalty in and under said land, and the grantors shall have no right to any bonuses, delay rentals, oil payments or other benefits under any oil, gas and mineral leases which have been made or which may hereafter be made by grantee…
- Court of Appeals Holding:
  - Based on the intentions clause specifying that it was a conveyance of the "7/8 leasing rights or working interest…" together with the later reference in the "shall-not-affect" clause to a "1/8 non-participatory royalty rights," the grantors intended to reserve a 1/8 floating royalty interest.

QUESTIONS?