

## SCOTX Hands Down Decision on Mineral Executive's Obligations to Non-Executives

Energy Law, Litigation, Mineral Leases / May 20, 2019 / Thomas G. Ciarlone Jr.

Last month, the Texas Supreme Court issued a decision that addresses the vexing situation in which the owner of the executive rights also owns the surface, but none (or virtually none) of the minerals. What is the duty of the executive rights holder in this situation?

We previously blogged about this case, *Texas Outfitters v. Nicholson*, when it was decided by the San Antonio Court of Appeals in 2017. Here's a quick recap from our prior post:

Texas Outfitters, the surface owner and also the owner of the executive right, operated a hunting business on the subject property. To keep the surface estate pristine, Texas Outfitters refused to exercise the executive right to lease, and, in response, the mineral owners sued for breach of fiduciary duty. The San Antonio Court of Appeals held that this claim was meritorious because, by declining to lease, Texas Outfitters was angling to get for itself “unfettered use of the surface for its hunting operation,” and “the ability to sell its land at a large profit free of any oil and gas lease.”

The Supreme Court of Texas has now affirmed the Fourth Court of Appeals. [The opinion is available here.](#)

SCOTX reiterated the general rule that executive rights holders like Texas Outfitters must act with the “utmost good faith and fair dealing” when evaluating whether to sign a lease. Writing for the Court, Justice Lehrmann explained, however, that the specific contours of the duty are “difficult to determine,” “imprecise,” and “unsusceptible to a bright line rule.” As such, the Court more or less confined its holding to the specific facts before it:

[W]hile we cannot and do not say that an executive primarily interested in the surface necessarily breaches his duty by engaging in conduct that benefits the surface but not the mineral estate, we conclude that legally sufficient evidence supports the trial court’s finding that Texas Outfitters did so in this case.

The decision in *Texas Outfitters* is largely unsatisfying, inasmuch as it offers no new guidance on when executive rights owners will cross the line from permissibly acting in their own interests to improperly engaging in self-dealing at the non-executive's expense.

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