

OIL AND GAS LAW SHORTS

Sept. 13, 2012

Texas Supreme Court

JOA/Exculpatory Clause/"all such operations" vs. "its activities": Plaintiff brought suit seeking to establish plaintiff as operator and for exclusive possession of wellbores. Defendant countered for conversion based upon plaintiff's failure to obtain production in paying quantities. The assignors of the parties had executed a joint operating agreement that relieved the operator of liability for its activities except for gross negligence or willful misconduct. The case was tried to a jury and the jury was instructed on gross negligence and willful misconduct. The court of appeals ruled that gross negligence and willful misconduct were inapplicable to the whole of the JOA...the standard limits claims that the operator failed to act as a reasonably prudent operator but not claims for the operator's breach of the JOA. The Supreme Court however, stated that the language here was taken from the 1989 Model Form JOA which was revised in 1989. The revision brought the entirety of the JOA within the gross negligence and willful misconduct standard... it applies to the operations of the operator as well as the activities of the operator. Wendell Reeder v. Wood County Energy, LLC; etal., 8/31/12
[opinion](#)

14th Court of Appeals

Inverse Condemnation/Ordinance Restricting Drilling: City enacted an ordinance that restricted drilling operations for property within the city limits and within its extraterritorial jurisdiction. Plaintiffs, owners of mineral interests that are affected by the ordinance, brought suit seeking damages based upon an inverse condemnation argument. The trial court found that a taking had occurred and awarded damages. City appealed arguing that 1) the city had taken the mineral interests by adverse possession, 2) the plaintiffs failed to show that a taking occurred and 3) plaintiffs failed to show compensable damages. The 14th Court of Appeals decided the case on the second argument and made no determination on 1 & 3. The Court applied a three prong test..."Three nonexclusive factors have been highlighted as important in striking this balance: (1) the character of the governmental action; (2) the extent to which the regulation has interfered with reasonable and distinct investment-backed expectations; and (3) the economic impact of the regulation on the claimant." Under 1, the Court cited the importance of protecting the water supply. Under 2, the Court determined that the plaintiffs invested no or nominal funds and therefore, had no expectation of investment backed expectations; and under 3) the Court found that plaintiff did show economic impact. However, the Court ruled that 1 & 2 weighed in favor of the city..."With substantial government interests at stake and minimal-to-no investment-backed expectations, justice and fairness do not require compensation in this case. See Penn Central, 438 U.S. at 123-24." The City of Houston, Texas v. Trails Enterprises, Inc. d/b/a Wilson Oil Company, etal. 8/9/2012
[opinion](#)