

5 Developments to Watch for in Texas Oil and Gas Law in 2019

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January 14, 2019 – 2018 was a wild year for oil and gas prices, steadily increasing throughout the first three-quarters of the year, and then dramatically crashing. Additionally, the Texas Supreme Court handed down some substantial oil and gas cases in 2018 that clarified (or arguably changed) doctrine in the state. Both of these developments will have a substantial impact on oil and gas law in Texas in 2019. Below, I have put together five developments I expect oil and gas companies will see in their litigation docket this year.

1. Arguing Context in Contract Interpretation. Perhaps the most discussed Texas Supreme Court oil and gas case of 2018 was *Murphy Exploration & Production Co.-USA v. Adams*, 560 S.W.3d 105 (Tex. 2018). The Court split 5–4 in a decision about a lessee’s obligation to drill an offset well under some leases. But this decision could have implications far beyond the offset well context, as the majority opinion focused heavily on the “context” and “circumstances” in which the parties executed the leases at issue. In particular, the Court fixated on the fact that the leases “were drafted with horizontal shale drilling in mind” and needed to be read accordingly. In 2019, look for litigants to focus less on the plain language of leases and oil and gas contracts and more on the context in which those agreements were made.
2. More Federal Class Actions. Since *Yzaguirre v. KCS Resources, Inc.*, 53 S.W.3d 368 (Tex. 2001), Texas state courts have been hostile territory for plaintiffs seeking class certification in oil and gas litigation. But there may be a new opening for this kind of litigation from an unlikely source: the Fifth Circuit Court of Appeals. In *Seeligson v. Devon Energy Production Co., L.P.*, 17-10320, 2018 WL 5045671 (5th Cir. Oct. 16, 2018), the famously conservative Fifth Circuit upheld nearly all aspects of a district court’s class certification ruling against Devon in a dispute about the lessee’s duty to market. Devon has filed a motion for rehearing en banc, but if the holding stands, expect more class action plaintiffs to try and find a way into federal court.
3. Increased Lease Termination Claims. By Christmas Eve in 2018, WTI was selling near \$42 a barrel, a dramatic decrease from its \$76 high only months earlier. And in West Texas in particular, operating and marketing costs increased as E&P companies strained the region’s labor force and infrastructure through ramped-up drilling activity. With costs up and oil prices down, it may prove to be the case that many wells ceased producing in paying quantities. And with land prices skyrocketing in the Permian, there is a large pool of landowners looking to get out of older, less-favorable leases by claiming termination. In 2017, the Texas Supreme Court provided much-needed guidance for production-in-paying-quantities cases in *BP America Production Co. v. Laddex, Ltd.*, 513 S.W.3d 476 (Tex. 2017) and *BP America Production Co. v. Red Deer Resources, LLC*, 526 S.W.3d 389 (Tex. 2017). Practitioners should brush up on those cases.

4. Continued Proration Unit Litigation. The Texas Supreme Court issued two rulings on the same day involving proration units and retained acreage causes: *Endeavor Energy Resources, L.P. v. Discovery Operating, Inc.*, 554 S.W.3d 586 (Tex. 2018) and *XOG Operating, LLC v. Chesapeake Exploration Ltd. Partnership*, 554 S.W.3d 607 (Tex. 2018). But the Court hewed closely to the precise lease language at issue in each case and declined to provide oil and gas companies any kind of overarching framework for analyzing these kinds of clauses in the future. Considering the number of leases that include these clauses and the Court’s narrow decision, look for more of this litigation in 2019.

 5. Hyder Revisited. The Texas Supreme Court this year will have a chance to revisit its 5–4 decision on post-production deduction costs—*Chesapeake Exploration, L.L.C. v. Hyder*, 483 S.W.3d 870 (Tex. 2016)—in *Burlington Resources Oil & Gas Co. LP v. Texas Crude Energy, LLC*. There has been a relative dearth of opinions analyzing *Hyder* since the Court issued it in 2016, and it may be that appellate courts are waiting on the Supreme Court to provide additional guidance. If the Court delivers another win for lessors, expect additional litigation statewide on these costs.
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[Chris Hogan](#) focuses his litigation practice on resolving complicated disputes for corporate and individual clients, including those in the energy industry. Chris has substantial experience in federal court, state court, and arbitration proceedings. He has been honored to represent as lead counsel major energy companies such as BHP Billiton, Marathon Oil, BP, and Carrizo Oil & Gas. These clients rely on Chris for his thoughtful approach to cases and extraordinary work ethic.