



BARNETT SHALE LEGAL UPDATE 2014

LEASES, DRILLING, PIPELINES, ROYALTIES, & NUISANCE CLAIMS

**City Club Fort Worth
June 12, 2014**

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WHITAKER CHALK

SWINDLE & SCHWARTZ PLLC

ATTORNEYS & COUNSELORS

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WHITAKER CHALK SWINDLE & SCHWARTZ PLLC

- Originated in 1978
- 30 Attorneys, including 3 of counsel and 1 contract attorney
- 24 staff, of which 3 are paralegals
- Commercial Litigation
- Fiduciary Litigation
- Intellectual Property (trademarks, copyrights, patents)
- Arbitration / Mediation
- Real Estate, Oil & Gas, Corporate
- Employment Law
- Estate Planning, Wills, Probate, Trusts, Asset Protection

MISSION STATEMENT: *To aggressively pursue and obtain the best results for our clients consistent with their stated goals.*



Robert G. WEST

- **Partner—Whitaker Chalk Swindle & Schwartz PLLC, Fort Worth, TX**
- **University of Texas School of Law, J.D., 1972**
- **Civil Practice / Transactional Attorney**
 - **Oil & Gas Law**
 - **Real Estate Law**
 - **Business & Corporate Law**
- **Past Chair of Tarrant County Bar Association Real Estate Section (3 terms) & member of TCBA Energy Section**
- **Moderator of Barnett Shale Seminars in 2004 & 2005, and speaker at Barnett Shale Symposiums in 2006, 2007 & 2009, and Expo in 2008**
- **Tarrant County Bar Assn; Secretary-Treasurer 2013-2014, VP 2014-2015**
- **Member of American Assn of Professional Landmen (AAPL) & Fort Worth Assn of Professional Landmen (FWAPL)**
- **Attorney for AAPL on corporate & ethics matters 1990-2004**
- **Instructor for TCU Petroleum Land Practices Program**
- **Commissioner, City of Fort Worth Zoning Commission**

TOPICS TO BE DISCUSSED:

- I. Introductory Comments**
- II. Leases & Surface Use Agreements**
- III. Drilling**
- IV. Pipelines & Condemnation**
- V. Royalties & Payment Disputes**
- VI. Claims for Nuisance**
- VII. Other Recent Developments**
- VIII. Final Comments**



I.

Introductory Comments



II. Leases & Surface Use Agreements

- Mostly “filling in holes”
- Low signing bonus;
Little flexibility on terms
- “No Perf” zones
- Applications for Rule 37 Permit



III. Drilling

- **Barnett Shale – 24 counties** (Jan 2013)
 - **17,361 gas wells producing**
 - **1,018 oil wells producing**
 - **7,693 permits** (all formations)
- **City of Fort Worth** (June 2014)
 - **1,876 producing wells**
 - **75 permitted**
 - **3 applications pending**
 - **92 abandoned permits**



IV. Pipelines & Condemnation





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Tips for Negotiating Pipeline Easement Agreements

This is not a complete list.





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1. Compensation

- Value of easement itself

+

**Damages to remaining
property**

- Use appraisers
- Extra for maintenance



1. Compensation (Continued)

- Highly negotiable; what the market will bear

TIP: Allocate compensation between easement itself (taxable) and damages to remainder (reduces tax basis and is not immediately taxable)





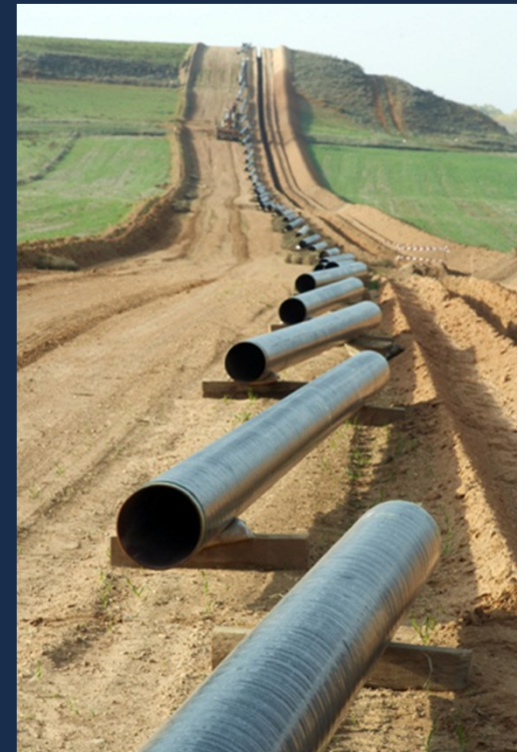
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2. Specify width of the pipeline easement(s)

Permanent or Temporary

3. Specify depth of pipe

4. Include specific legal description, **not a “blanket easement”**





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5. Specify any surface facilities

- Compressors?
- Meters?
- Signs?
- Gates?





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- 6. Specify substances to be transported & excluded**
- 7. Limit to a single pipeline with specified diameter**
- 8. Specify rights & restrictions on landowner's use of easement area**

Roads; Parking; Utilities; Horses

Condemnation

- A. Pipeline company is a “common carrier” or “utility” with power of eminent domain
- B. Pipeline company is usually a **separate entity** from the o&g leasing company
- C. Permission not required for initial survey (if non-invasive)





Condemnation (continued)

- D. Pipeline company determines route, but may be flexible in negotiations to avoid condemnation**
- E. City has no authority to determine route, except for consent to street crossings**
- F. Special Commissioners' hearing is only about valuation**



Condemnation (continued)

G. Pipeline companies prefer not to condemn, but will if needed

H. Attorneys fees are usually not recoverable by landowner

V. Royalties

- **Shut-in payments**
- **Division Orders**
- **Subordination,
Nondisturbance &
Attornment Agreements**
- **Suits over royalty**



VI. Claims for Private Nuisance

- *Crowder v. Chesapeake*

Jury verdict for \$20,000

(Friday, May 23, 2014)



Claims for Private Nuisance (continued)

- **Leases signed in 2007 to Paloma Barnett**
- **Operations started August 2010**
- **4 suits filed Nov. 2011 by same attorneys for separate owners**
- **Consolidated for pre-trial purposes only, but separate trials for damages**
- **First case to trial on April 10; owner lost**
- **Well had permit from city & waivers from some property owners**
- **Well was 328.8 feet from Crowder house**

VI. Claims for Private Nuisance (continued)

- **Claims for “private nuisance” -- noise, odors, truck traffic were abnormal and out of place in this area and “substantially interfered” with homeowners’ ability to use and enjoyment of their property.**
- **Claims for physical harm; emotional harm; trespass by substances; damages**

VI. Claims for Private Nuisance (continued)

- **Q1: Did CHK intentionally create a private nuisance?**
- **A: Yes**
- **Q2: Was CHK's conduct abnormal and out of place in the surroundings such as to constitute a private nuisance?**
- **A: Yes**

VI. Claims for Private Nuisance (continued)

- **Q3: Was the nuisance caused by CHK permanent or temporary?**
- **A: Temporary**
- **Q4: What sum of money, if paid now in cash, would fairly and reasonably compensate Crowders for the damages, if any, that were proximately caused by the nuisance conditions created by CHK?**
- **A: \$20,000**

VII. Other Recent Developments

- **Keystone XL Pipeline**
- **Seismic activity**
- **City ordinances (City of Denton)**
- **Legislation?**



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VIII.

Final Comments

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