

# SAN ANTONIO BUSINESS JOURNAL

## SA law firm wins Eagle Ford royalty dispute in Texas Supreme Court



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Attorneys with San Antonio-based energy law firm Santoyo Moore Wehmeyer P.C. won an Eagle Ford Shale royalty dispute in the Texas Supreme Court, setting case law for interpreting fixed and floating royalties in deeds.

Texas Supreme Court justices delivered an opinion on June 29 in *U.S. Shale Energy v. Laborde*, a case originating in Karnes County.

Justices sided 6 to 3 with U.S. Shale Energy II LLC and three members of the Roush family, awarding them 10 percent of royalties on eight oil wells drilled by EOG Resources Inc. (NYSE: EOG) on two leases southeast of Gillett. Under the ruling, U.S. Shale Energy and the Roush family are expected to receive more than \$700,000 in royalties and attorneys fees in a case that provides legal guidelines and clarifications on how to interpret royalties and deeds in dozens of similar cases.

“This is an important case that will give further guidance to oil and gas title examiners, trial judges and litigators in interpreting and giving effect to deeds,” said Corey Wehmeyer, the lead attorney representing U.S. Shale Energy.

At the heart of the case was a 1951 deed in which the buyers and their heirs were granted half of the oil, natural gas and mineral royalties for a rural property off County Road 274. However, language in a second clause states that the buyers and their heirs were entitled to a 16th of any production.

### Case background

The deed’s language was not at issue until 2014 when EOG Resources drilled eight oil wells on the property – seven oil wells on its Lake Unit lease and another on its Emerson Unit lease. Over their lifetime, the Lake Unit wells have produced more than 1 million barrels of oil while the Emerson Unit well has produced more than 300,000 barrels, production figures from the

Railroad Commission of Texas show.

Under its leases, EOG Resources kept 80 percent of the royalties, while the remaining 20 percent was supposed to be divided among Kyle-based Laborde Properties LP, Houston-based Laborde Management LLC, San Antonio-based U.S. Shale Energy and three Roush family members.

Laborde argued that the production clause limited U.S. Shale Energy and three Roush family members to a fixed 16th of that 20 percent in royalties. U.S. Shale Energy and the Roush family members argued that the main clause entitled them to half, citing a legal concept known as floating royalties in which their share remains at the same rate and gets bigger or smaller depending on the percentage that an oil company awards to royalty owners.

After Laborde notified EOG Resources of its disagreement, the Houston-based oil company suspended payments pending resolution of the dispute and starting putting the royalties into a special account. U.S. Shale Energy sued Laborde in April 2015. Judge Russell Wilson with the State 218th District Court sided with U.S. Shale Energy in October 2015, and the Fourth Court of Appeals in San Antonio sided with Laborde in October 2016.

### Legal opinions

The case landed before the Texas Supreme Court in March 2017 and was argued in February 2018. Four months later, Justice Debra Lehrmann wrote in the majority opinion that the deed was written in the 1950s, when it was an industry practice for oil companies to pay landowners an eighth of royalties. Although half of one-eighth would be one 16th, Lehrmann wrote that oil companies now pay higher royalties and that the deed’s sentence structure supports the floating royalties argument made by U.S. Shale Energy and the Roush family.

“Because the second clause simply describes the effect of the first, the percentage of production will necessarily change based upon the royalty in effect at any given time,” Lehrmann wrote.

Lawyers in the San Antonio and Austin offices of Strasburger & Price LLP represented the Laborde Properties and Laborde Management. While lead attorney Andrew Kerr could not immediately be reached for comment, he stated in his oral arguments that the court had a duty to harmonize all parts of the deed.

“Even if different parts of the deed appear contradictory or inconsistent, the court must strive to harmonize all of the parts, constrain the instrument to give effect to all of its provisions,” Kerr said.

That argument resonated with Justice Jeffrey Boyd, who wrote the dissenting opinion in the case. Boyd wrote that the Texas Supreme Court took a holistic approach in a previous case – rejecting mechanical rules of construction.

“The court creates a conflict by attributing meaning to the first clause that its language cannot support,” Boyd wrote.