

## TEXAS LAWYER

### \$1.2M Win for San Antonio Law Firm: Santoyo Wehmeyer Secures Unique Verdict

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#### What You Need to Know

- A West Texas jury awarded \$1.2 million damages in a first of its kind wind rights trespass lawsuit.
- The plaintiff, a wind energy private equity investor, was defending its rights to income from a wind turbine operator.
- Prior to jury trial for damages, a district court judge in 2022 recognized the plaintiff's ownership rights and the bad-faith trespass.

The San Antonio-based Santoyo Wehmeyer law firm claimed a first-of-its-kind wind energy rights trespass verdict for a Texas landowner.

A jury trial in the Hale County 64th District Court resulted in a \$1.2 million verdict for Ridge Renewables LLC, a private equity company that invests in Texas wind energy rights, according to Corey Wehmeyer, lead counsel for the plaintiff.

Wind turbine farms have become a large-scale commercial enterprise in many parts of Texas, but few opportunities have arisen in Texas courts to address legal disputes regarding the wind estate, Wehmeyer said.



Credit: TERRI CAGE/Adobe Stock

#### Dispute Over Wind Rights

In September 2020, Ridge Renewables bought all wind rights attached to a 256-acre tract in Hale County, which is located north of Lubbock. The plaintiff's predecessor in title had executed a wind lease with the defendant, Southwestern Public Service Co., Wehmeyer said.

Southwestern Public Service is a subsidiary of Xcel Energy, a \$39 billion company. Dusty Stockard of Stockard, Johnston, Brown, and 86th House District State Rep. John T. Smithee of the Underwood Law Firm represented the defendant.

Stockard did not respond to a request for comment.

The wind lease had a seven-year development term, but operations did not begin before the end of that term and the lease terminated in 2017. There was an attempt that year to amend the lease, purportedly extending the development term through August 2020, Wehmeyer said.

“Neither Southwestern Public Service nor its predecessors ever attempted to obtain an extension of the lease’s development term from Ridge or its predecessor, even though Southwestern and its predecessors had actual and constructive notice that the wind rights were severed from the surface estate,” Wehmeyer said.

In June 2019, two trespassing wind turbines began commercial operations, producing thousands of megawatts of electricity without paying remittances to Ridge Renewables, the amended complaint alleged.

### **Prior Findings**

On Dec. 30, 2020, Ridge Renewables filed suit, asserting trespass and trespass-to-try-title. It requested a declaratory judgment.

District Judge Danah Zirpoli presided and on March 23, 2022 granted plaintiff’s motion for partial summary judgment.

Zirpoli’s order included findings that Ridge Renewables alone owns the right to develop the wind rights and to receive revenues therefrom; the 2010 wind lease was void and had no force after August 2017; and Southwestern, in bad faith, trespassed and continues to do so.

The ruling set the stage for a jury trial on damages, which began May 8.

Following four days of testimony the 12-person jury returned its verdict May 11.

### **\$1.4 Million Verdict**

According to the verdict, Ridge Renewables was awarded \$1,049,634 in damages associated with the bad-faith trespass, \$115,848 in attorney fees, another \$100,000 in conditional attorney fees should the case be appealed, and more than \$204,000 in interest.

“The district court’s March 2022 summary judgment order is the first time any Texas court has confirmed under Texas law that wind rights are a severable property interest in the surface estate and that such rights can be subject to trespass,” Wehmeyer said.

Consequently, the jury’s award is a first for damages associated with severed wind rights, whether under a trespass claim or otherwise, he said.

“It is also the first ever bad faith trespass case involving a wind company,” Wehmeyer said. “The Hale County district court’s judgment will be incredibly important given the advent of utility-scale wind turbines in Texas.”

Trial counsel for the plaintiff also included attorneys Drew Simank and Renee Yanta were trial counsel. Santoyo Wehmeyer specializes in energy law.

Ridge Renewables’ experts were Angela Paslay of Applied Economics on damages, and Wehmeyer on attorney fees.

Southwestern’s expert was Robert Grace of Sustainable Energy Advantage.