PRODUCTS LIABILITY ISSUES IN THE OIL PATCH

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State Bar of Texas
OIL AND GAS DISPUTES
January 28-29, 2016
Houston

CHAPTER 16

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Julia Palmer, formerly Julia Adams, is an active and respected member of the admiralty and energy bar. Her practice focuses on marine, energy and insurance issues.

For more than 30 years, Julia has handled marine and energy litigation, including collision cases, hurricane losses, onshore and offshore oil and gas claims, hydraulic fracturing cases, marine and energy products liability litigation, the defense of personal injury and death actions, contract and lien claims, dock and stevedore liabilities and subrogation litigation. Her expertise includes the handling of down hole losses, environmental claims, property damage, business interruption, vessel and dock operations and offshore and marine construction. Julia is often called upon to analyze insurance, indemnity and defense provisions in marine and drilling contracts, as well as complex issues arising under the Outer Continental Shelf Lands Act.

Julia counsels domestic and international clients on a wide variety of complex insurance coverage issues. She also works with clients to develop policy language. She regularly handles insurance coverage and bad faith litigation, as well as broker errors and omissions litigation.

Related Work Experience

- Briefing attorney to the Honorable Hugh Gibson, Judge, United States District Court, Southern District of Texas, Galveston Division (1982-1984)

Professional Activities, Memberships and Affiliations

- Fifth Circuit Bar Association
- Magistrate Judge Judicial Selection Panel for the Southern District of Texas (2011)
- Maritime Law Association of the United States, Proctor
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- International Seafarers Center, Executive Board President
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United States Court of Appeals, Tenth Circuit
United States Court of Appeals, Eleventh Circuit
United States District Court, Eastern District of Texas
United States District Court, Northern District of Texas
United States District Court, Southern District of Texas
United States District Court, Western District of Texas

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Brooke Sizer

Associate

Brooke Sizer joined Gray Reed & McGraw in 2012 as an associate in the Energy section. Brooke earned a B.A. in Political Science and Communications at Tulane University where she graduated with honors. She graduated with a J.D. from the University of Houston Law Center where she served as Editor in Chief of the *Houston Journal of International Law.*

Brooke has experience in both transactional and litigation oil and gas matters. Her practice covers all aspects of the oil and gas industry, with an emphasis on exploration and development of oil and gas. Brooke routinely advises clients on the acquisition, divestiture, exploration, development, production, marketing, and transportation of crude oil and natural gas.

Representative Experience

- Prepare original drilling title opinions, division order title opinions, and supplemental drilling and division order title opinions.
- Prepare mineral liens for both onshore and offshore properties.
- Review purchase and sale agreements, joint operating agreements, pooling and unitization agreements, deeds, assignments, and other agreements related to exploration and development.
- Research and advise clients on various issues associated with the exploration and development of oil and gas.
- Representation of oil and gas producers in disputes involving royalty payments, lease maintenance, oil field operations, natural gas contracts, post-production costs, pooling and unitization issues, operating agreements, and land and lease titles.

Professional Activities, Memberships & Affiliations

- Houston Young Lawyers Association
- Houston Bar Association
- Louisiana Bar Association
- Women's Energy Network
- Gray Reed Pro Bono Committee member

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I. Introduction

The recent uptick in oilfield products litigation is the direct result of increased production out of the shale plays over the last ten years. Since 2005, natural gas production has increased almost twice as fast as consumption.[1] With increased operations in the oil patch, litigation, and especially products liability litigation, has rapidly increased. While the industry is experiencing a significant downturn, litigation will likely continue for a while at the same pace as commercial solutions to issues become more challenging for operators and product manufacturers.

Typically, products liability cases involve product failures of the following: casing/collar, blowout preventers, valves and rental equipment; however, the potential sources of product failures are seemingly boundless. This paper will take you step-by-step through the various stages of an oil field products liability case, including possible causes of action that you should consider and the damages you may be able to recover. From the point of the initial failure and immediate aftermath of the incident, it is critical that all steps are thoroughly addressed in order to build a persuasive case to present to the fact finder.

II. First Steps

A. Investigation. It is imperative that as you begin a new investigation that you remember that the jury verdict will be based only on the evidence admitted in court and in the law as stated in the jury instructions and charge. This requires that the investigation from the start is meticulous and complete. The following is a list of recommended steps that your investigation should undertake:

i. Control accident scene.
ii. Place insurer on notice.

[1] *See http://www.eia.gov/todayinenergy/detail.cfm?id=14591* (last accessed Nov. 9, 2015).

iii. Coordinate efforts of energy loss adjuster and experts.

iv. Contact seller/manufacture: You should do this as early as possible as they may want their representatives to witness removal. By allowing this you help ensure that no allegations regarding evidence spoliation may be made.

v. Document the removal of evidence/debris: Photographs and video documentation may be extremely helpful in preparing illustrations for the jury.

vi. Establish chain of custody of product.

vii. Document evidence of all cleanup, repair costs, lost time (for both insurance claim and litigation).

viii. Prepare list of all personnel on site and identity all essential witnesses.

ix. Gather all documents and invoices.

B. Testing. Once your investigation is complete, you will likely need to undertake testing of the materials in question that failed. These tests should be used to help rule out any other causes for the damage:

i. Retain metallurgical and other relevant experts.

ii. Establish a testing protocol.

iii. Protect against spoliation: In Texas, spoliation of evidence normally only supports an inference that the evidence is unfavorable and not an independent cause of action. *See Trevino v. Ortega*, 969 S.W.2d 950, 953 (Tex. 1998).

iv. Analyze test results.

v. Plan any additional testing that may be necessary or helpful.

Documenting the investigation and subsequent tests is vital. Otherwise, you may open the door to claims of the product being damaged prior to the accident and reasonable doubt as to who or what is truly responsible for the product failure.

III. The Lawsuit

A. Parties. One of the first inquiries you must determine is "who are the proper parties?" In products liability cases, the parties that are most typically held responsible are the (1) manufacturer of the product; (2) distributor of the product; and (3) seller or rental company of the product. Additionally you should consider joining contractor who operated the product or controlled the project that the product was used on and any inspector of the product who had the last chance to examine the product prior to failure. You will need to analyze the individual facts of your case to determine all of the correct parties. As part of your analysis of potential parties it is necessary to examine the relationship between all potential parties, including all contracts, master service agreements, indemnity agreements and purchase orders. It is further advisable to examine all available insurance policies, including any policy where your client may be an additional insured, either by virtue of contract or being named in the policy.

B. Causes of Action.

i. Breach of Contract

The elements of a breach of contract case are (1) the existence of a valid, enforceable contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result. *Smith Int'l, Inc. v. Egle Group, LLC.,* 490 F.3d 380, 387 (5th Cir. 2007). This cause of action is usually limited to the direct seller of the product.

It is essential that you are aware of all agreements between the buyer and seller, e.g., master service agreements, purchase orders, invoices and bids, and oral contracts. You must determine what agreements exist—both written and verbal—to confirm the nature of the agreement between the two parties. If the agreement is oral, you must identify the available witnesses to prove up the terms of the contract. You need to review all documents in detail to

make sure that there are no inadvertent waivers of warranties and determine what representations were made.

ii. Negligence

The elements of a negligence cause of action are as follows (1) defendant owed a legal duty to the plaintiff; (2) the defendant breached that duty; and (3) the breach was the proximate cause of the plaintiff's injury or property damages. Negligence is often defined in a jury charge as "the failure to use ordinary care, which is, failing to do that which a company or ordinary prudent person would have done under the same or similar circumstances or doing that which a company of ordinary prudence would not have done under the same or similar circumstances." The care taken by the supplier of a product in its preparation, manufacture, or sale is often the decisive question in a negligence action.

iii. Negligent Misrepresentation

The elements of a negligent misrepresentation claim are (1) the defendant provided information in the course of his business or in a transaction in which he has a pecuniary interest; (2) the defendant supplied false information; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; (4) the plaintiff justifiably relied on the information; and (5) the plaintiff suffered damages proximately caused by his reliance on the false information. Where there has been a documented misrepresentation regarding the product supplied, this cause of action should be carefully considered.

iv. Products Liability

"Products liability" is a generic phrase used to usually describe a manufacturer's liability to a person injured by a product, but may also be applied to a seller or supplier in certain circumstances. Under the Texas Civil Practice and Remedies Code, a "products liability action" means any action against a manufacturer or seller for recovery of damages arising out of

personal injury, death, or property damage allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories.[2] Section 82.003 covers the additional hurdles that the plaintiff must prove before a non-manufacturing seller can be held liable under the statute.[3] The most common types of products liability claims are for manufacturing defects, design defects, and marketing defects:

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[2] CIVIL PRACTICES AND REMEDIES CODE § 82.001: Definitions –

(1) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant.

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories.

(3) "Seller" means a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof.

(4) "Manufacturer" means a person who is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part thereof and who places the product or any component part thereof in the stream of commerce.

[3] CIVIL PRACTICES AND REMEDIES CODE § 82.003: (a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

(1) that the seller participated in the design of the product;

(2) that the seller altered or modified the product and the claimant's harm resulted from that alteration or modification;

(3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;

(4) that:

(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;

(B) the warning or instruction was inadequate; and

(C) the claimant's harm resulted from the inadequacy of the warning or instruction;

(5) that:

(A) the seller made an express factual representation about an aspect of the product;

(B) the representation was incorrect;

(C) the claimant relied on the representation in obtaining or using the product; and

(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

(6) that:

(A) the seller actually knew of a defect to the product at the time the seller supplied the product; and

(B) the claimant's harm resulted from the defect; or

(7) that the manufacturer of the product is:

(A) insolvent; or

a) Manufacturing Defect

A manufacturing defect exists if the product, or any component thereof, deviated, in its construction or quality, from its specifications or planned output in a manner that rendered it unreasonably dangerous; that is, dangerous to an extent beyond that that which would be contemplated by the ordinary user of the product, having ordinary knowledge common to the community as to the product's characteristics.

b) Design Defect

A design defect is a condition of the product that renders it unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use. For a design defect to exist, there must have been a safer alternative design.

c) Marketing Defect

A marketing defect with respect to the product means there was a failure to give adequate warnings of the product's dangers that were known, or by the application of reasonably developed human skill and foresight should have been known, or failure to give adequate instruction to avoid such dangers, which failure rendered the product unreasonably dangers as marketed. "Adequate warnings and instructions" mean warnings and instructions given in a form that could reasonably be expected to catch the attention of a reasonably prudent person in the circumstances of the product's use; and, when the product is marketed solely to professionals experienced in using the product, the content of the warnings and instruction must be

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(B) not subject to the jurisdiction of the court.

(b) This section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

(c) If after service on a nonresident manufacturer through the secretary of state in the manner prescribed by Subchapter C, Chapter 17, the manufacturer fails to answer or otherwise make an appearance in the time required by law, it is conclusively presumed for the purposes of Subsection (a)(7)(B) that the manufacturer is not subject to the jurisdiction of the court unless the seller is able to secure personal jurisdiction over the manufacturer in the action.

comprehensible to a reasonable professional in using the product and must convey a fair indication of the nature and extent of the danger and how to avoid it from the mindset of a reasonably prudent professional. *Pavildes v. Galveston Yacht Basin, Inc.,* 727 F.2d 330, 338-339 (5th Cir. 1984) (applying Texas law).

v. Other Causes of Action

Other potential causes of action include the Deceptive Trade Practices Act ("DTPA"), breach of warranty, and common law fraud:

a) Deceptive Trade Practices Act ("DTPA")

A Texas DTPA[4] claim gives a stark advantage to the plaintiff. If the plaintiff proves one legitimate measure of the damages, the burden is on the defendant to prove an alternative lower damages amount. However, a successful claim under the DTPA for damages to an oil or gas well is rare because it requires a consumer, as defined by the statute. A consumer under the DTPA is defined as "an individual, partnership, corporation…," but excludes consumers that have assets of $25 million or more, or are controlled by a corporation or entity with assets of $25 million or more.

b) Breach of Warranty

A breach of warranty claim, includes an implied warranty of merchantability, an implied warranty of fitness for a particular purpose and an implied warranty of good and workmanlike performance. An implied warranty of merchantability[5] is a representation of the quality of suitability of a produce that is imposed by law under the Texas Business and Commerce Code, in view of all facts and circumstances attending the transaction, including the nature of the property, terms of the agreement, and trade usages. *American Tobacco Co., Inc. v. Grinnell,* 951

[4] *See* TEX. BUS. & COM CODE § 17.41-63.

[5] *See* TEX. BUS. & COM CODE § 2.314.

S.W.2d 420, 435 (Tex. 1997) (quoting *Donelson v. Fairmont Foods Co.,* 252 S.W.2d 796, 799 (Tex. Civ. App.—Waco 1952, writ ref'd n.r.e.)) To recover damages for breach of an implied warranty of merchantability, a plaintiff must prove that at the time the goods left the control of the manufacturer or seller, a defect existed that rendered the goods unfit for the ordinary purpose for which they are used. *See Plas–Tex, Inc. v. United States Steel Corp.,* 772 S.W.2d 442, 444 (Tex. 1989). It is noted that a seller will likely only be held liable for that portion of the consequential damages caused by the breach of implied warranty and the buyer may not recover consequential damages to the extent that the buyer's negligence or fault was a concurring proximate cause of such damages. *Signal Oil & Gas Co. v. Universal Oil Products*, 572 S.W.2d 320, 329 (Tex. 1978).

A warranty of fitness for a particular purpose[6] is implied when the seller, at the time of contracting, has (1) reason to know the particular purpose for which goods are required and (2) that buyer is relying on seller's skill or judgment to select or furnish suitable goods. Unless excluded or modified, an implied warranty of fitness for a particular purpose warrants that the goods shall be fit for such purpose. *Lester v. Logan*, 893 S.W.2d 570, 575 (Tex. App. 1994) writ denied, 907 S.W.2d 452 (Tex. 1995). The implied warranty of good and workmanlike performance is an acknowledgement by common law that work should be performed to a certain standard. The implied warranty of good workmanship serves as a "gap-filler" or "default warranty"; it applies unless and until the parties express a contrary intention. *Centex Homes v. Buecher*, 95 S.W.3d 266, 273 (Tex. 2002).

vi. Common Law Fraud

The elements of a common law fraud claim in Texas are (1) the defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was

[6] *See* TEX. BUS. & COM CODE § 2.315.

false; (4) when the defendant made the representation the defendant knew it was false or made the representation recklessly and without knowledge of its truth; (5) the defendant made the representation with the intent that the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused the plaintiff injury. *Shandong Yinguang Chem. Indus. Joint Stock Co. v. Potter,* 607 F.3d 1029, 1032–33 (5th Cir. 2010). In addition to those elements, fraud claims are subject to Federal Rule of Civil Procedure 9(b)'s heightened pleading requirements. *See id.* at 1032. Rule 9(b) requires that fraud pleadings "state with particularity the circumstances constituting the fraud." FED. R. CIV. P. 9(b). This means that, as a general rule, "the who, what, when, where, and how [must] be laid out" in the fraud pleadings to satisfy Rule 9(b)'s requirements. *Id.*

IV. Damages

A. Damages in General.

Several damage measures apply in Texas for negligent harm to, or destruction of, an oil and gas well. The four most common measures are (1) the reasonable cash value of a well, less any salvage value; (2) the reasonably and necessary cost of repairing the well back to working order; (3) lost production or delay of production damages;[7] and (4) business damages that are a direct result of the damaged or destroyed well. It is important to note that if you object to the jury's charge regarding damages, you must also indicate the appropriate measure of damages. *Texas Power & Light Co. v. Barnhill*, 639 S.W.2d 331, 334-35 (Tex. App.—Texarkana 1982, writ ref'd n.r.e.).

The threshold question for a jury is whether the damage to the well is so severe that it cannot be replaced or if the well is replaceable. *See Dowell, Inc. v. Cichowski*, 540 S.W.2d 342,

[7] But *see Atex Pipe & Supply, Inc. v. Sesco Prod. Co.*, 736 S.W.2d 914, 917 (Tex. App.-Tyler 1987, writ denied), holding this to an improper measure in a negligence case.

350 (Tex. Civ. App.—San Antonio 1976, no writ.). If the cost of reproducing the well exceeds the value of the well, or if the well cannot be replaced, the proper measure of damages is the difference in the reasonable cash market value of the well, as equipped, immediately before and immediately after the damage occurred. *Id.* In order to prove the reasonable cash market value of the well, you will likely need to engage an expert to forecast the reasonable cash value of the oil and/or gas reserves based on an existing oil and/or gas reserves report. Notably, as part of most companies AFE process a valuation of the well is typically made to justify the expenditure.

If the well can be reproduced by drilling another one, the proper measure of damages is the lesser of (1) the cash market value[8] of the old well, or (2) the cost of replacing the well with a new similarly equipped well, less any salvage value of the old well. *See Atex Pipe & Supply, Inc. v. Sesco Prod. Co.*, 736 S.W.2d 914, 917 (Tex. App.—Tyler 1987, writ denied). You may also be able to recover any reasonable costs associated in trying to save the well. *Dowell, Inc.* at 351-52; *see also Dresser Ind. Inc. v. Page Petroleum, Inc.,* 853 S.W.2d 505, 511-12 (Tex. 1993). To be successful in obtaining damages for repairs of an oil or gas well, evidence must be presented to justify that (1) the costs of the repairs were reasonable, and (2) the repairs were necessary. *See Baker Hughes Oilfield Operations, Inc. v. Hennig Prod. Co. Inc.*, 164 S.W.3d 438, 446 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

B. Notable Cases.

The following is a collection of notable cases addressing the proper measure of damages in oil field products liability cases:

i. *Basic Energy v. D-S-B Properties*, 2011 WL 6187113 (Tex. App – Tyler Nov. 23, 2011).

[8] "Market value" means the amount that would be paid in cash by a willing buyer who desired to buy, but is noted required to buy, to a willing seller who desires to sell, but is under no necessity of sell. PATTERN JURY CHARGE 83.3 PROPERTY DAMAGE—MARKET VALUE BEFORE AND AFTER OCCURRENCE.

This case arose when a productive well was taken off line to repair a tubing leak. During testing, a tool became stuck inside the tubing. When the tool was freed, several joints of tubing broke free and fell down the well bore. Although some of the lost tubing was retrieved, the well was irreparably damaged, preventing the drilling of a new well and the loss of the lease. Bench trial awarded $1,911,957 in damages to the operator. This damages award was the lower value of (1) the cash market value of the old well and (2) the cost of reproducing the old well with a new well, less salvage value. In *Basic Energy*, the damaged well was unusually productive and experts testified it was located in an area where a new well could not be successfully located.

ii. *Cressman Tubular Products Corp. v. Kurt Wiseman Oil & Gas*, 322 S.W.3d 453 (Tex. App.—Houston [14th Dist] 2010).

This case arose from a failed fracture stimulation, due to defective tubing string and couplings. The operator went through several rounds of repairs and ultimately a second fracture stimulation. A jury verdict for the operator owner assigned percentage faults of 99% to the manufacturer defendant and 1% to the distributor defendant. The manufacturer defendant went into bankruptcy after the case concluded, and the issue on appeal was whether the damages were subject to apportionment. Because breach of implied warranty is a tort claim, the proportionate responsibility statute applies. The jury found damages under the breach of contract claim were $5,481 and under the breach of express and implied warranty claims the damages were $548,187. Plaintiff was only entitled to recover 1% of the $548,187 judgment from the distributor.

iii. *Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505 (Tex. 1993).

This case arose when test equipment became stuck in the bore of an uncompleted well. The testing company brought in another company to "fish out" the equipment, but this caused irreparable damage when the fishing company lost several thousand feet of wireline and drill

pipe down the hole. Ultimately, the well was abandoned and a replacement well was drilled. The drilling company then filed suit against the testing company and the fishing company. The jury found the drilling company (plaintiff) 50% negligent, the fishing company 40% negligent, and the testing company 10% negligent. The appellate court upheld the verdict against the testing company, but reversed as to the fishing company due to a release in its contract with the drilling company which operated to bar the drilling company's recovery. The Texas Supreme Court reversed, finding that the fishing company's release was not valid, and reinstated the initial verdict. The jury found a market value of $836,000 for the well before the accident. The jury additionally found that the value for reasonable remedial work on the well was $366,000, and the reasonable cost of drilling a replacement well was $494,112. The fishing company attempted to limit the measure of damages to the cost of the replacement well, but the jury found that there was a reasonable attempt to save the well and those costs should be included in the total cost of drilling a replacement well. Thus, the cost of a replacement well and the necessary remedial work was $860,112.00. Because the market value of the original well ($836,000) was the lesser value of the two measures, the trial court correctly rendered judgment against the fishing company in the amount of the market value of the original well.

iv. *Atex Pipe and Supply, Inc. v. Sesco Production Co.*, 736 S.W.2d 914 (Tex. App.—Tyler 1987).

This case arose when the tubing in the subject well collapsed, causing an effective plugging of the well. The jury found that the pipe was not merchantable, and this was the proximate cause of damages. Nonetheless, the verdict was reversed on appeal. Plaintiff attempted to receive damages based on loss of production because it is a production company, but the court found that it is the nature of the loss and not the nature of the plaintiff's business

that is relevant. The proper measure is the cost of repair, replacement, or the market value, whichever is least.

v. *Dowell v. Cichowski*, 540 S.W.2d 342 (Tex. Civ. App.—San Antonio 1976).

The case arose from an unsuccessful squeeze job, during which squeeze or packing tools became stuck in the well. Remedial repairs were made to remove the tool. Afterwards, unsuccessful efforts were made to complete the well, but it was ultimately abandoned. The proper measure of damages was held to be the cost of drilling a new well, less the salvage from the old well. The jury found that the market value of the well was the same as the cost of drilling and completing the new well. The plaintiff is also entitled to recover the reasonable costs of remedial repairs.

vi. *Halliburton v. Millican*, 171 F.2d 426 (5th Cir. 1949).

This case involved a squeeze cementing job that allegedly ruined the well. The jury awarded the value of the well, less the salvage value. The Fifth Circuit held that this was the proper measure of damages; however, the plaintiff could only recover 2/3rds of this value as it only owned a 2/3rds interest. The verdict was reversed because the issue of whether there was a valid work order/release was not submitted to the jury.

vii. *Shasta Oil Co. v. Halliburton Oil Well Cementing Co.*, 10 S.W.2d 597 (Tex. Civ. App.—Amarillo 1928).

This case arose when the plaintiff alleged that the defendant was negligent in failing to properly cement an oil well. A new oil well would not be of more value than the damaged well because the sands for 200 feet around the well were damaged. The well was repaired such that it produced 15 b/d, but the plaintiff claimed that if cemented properly, it would have produced 47.5 b/d. The plaintiff sought damages of $39,000 based on the difference in the well's productivity. Repair efforts were valued at $4,720.62, and a new well was valued at $5,000 (changed to

$8,000 in a trial amendment). However, the jury was not convinced and found that the cost of a new well was $6,750, but that there was no negligence. The damage was an unavoidable accident. The appellate court agreed that the proper measure of damages was the cost of the new well less salvage value, not the difference in production value. It reversed the judgment, however, because the judge improperly instructed the jury to award damages to the defendant.

viii. *American Glycerin Co. v. Kenridge Oil Co.*, 295 S.W. 633 (Tex. App.—Eastland 1927).

This case arose from an explosion, when a nitroglycerin shell was dropped at a high rate of speed, causing friction that sparked an explosion. The jury found that American Glycerin was negligent, and this negligence was the proximate cause of damages. The jury awarded the cash market value of the well immediately prior to the explosion. The judgment was reversed on appeal because the unavoidable accident defense should have been submitted to the jury. The proper measure of damages is the lowest of: the cost to repair the well, replace the well, or the market value of the well before the accident. There was a fact issue for the jury on remand as to whether the well could be redrilled, and if so, whether the cost would exceed the market value. If the cost exceeded the market value or if the well could not be redrilled, the proper measure of damages is the market value prior to the explosion

V. Jury Charge

Preparation of the jury charge should not be an afterthought when preparing for trial. Drafting a clear and coherent jury charge will likely be one of the most difficult parts of the trial. Strategically you should prepare your charge early in the case and evaluation how well you evidence matched the requirements of the potential or plead causes of action. As most courts will require you to limit the jury submission, this will force you to evaluate your best causes of action and prepare you to develop evidence to support. This will also assist in early valuation of

the case so that you may properly advise your client as to the realistic value and best settlement strategy.

VI. Conclusion

A successful products liability case is a meticulous process and requires attention to every detail. From the point of the initial incident, preservation of evidence is key. You must be aware of the numerous potential causes of actions and defenses and prepare your case with them in mind from the beginning. Damages in the oil field do not follow standard property damage models and must be fully understood to ensure that your case fully addresses the aspects of all potential damage measures. By focusing on the jury charge from the beginning you can make sure that you are well equipped to develop and provide to the jury the necessary evidence to respond to all of the questions that they will be tasked with answering.