

Lights, Noise, Vibrations - Nuisance?

The Barnett Shale natural gas exploitation coupled with dramatically increased oil and gas prices has created lots of new activity in the Fort Worth Basin. Drilling and completion rigs, fracing and re-fracing rigs, well-site equipment, compression stations on and off well-sites, pipeline construction and operation, excess gas flares, salt water storage, trucking, and disposal, gas processing installations, around-the-clock operations with brilliant lighting, attendant noise, and equipment movement, installation, and operations have introduced elevated levels of interference and invasion with our everyday activities - publicly and privately.

When an interference with or an invasion of another's private interests in personal or real property occurs it may constitute what Texas law calls a nuisance. A nuisance can be either private or public. A public nuisance involves an unreasonable interference, as determined by an appropriate Texas court, with a right enjoyed by all members of the general public.¹ But many of the disputes that arise out of this increased oil and gas activity in the Fort Worth Basin are private nuisances.

A private nuisance starts with a person who has a private interest in land - a property owner or lawful occupier or easement holder - someone with a lawfully-recognized right or interest in the land in question. The complained of interference or invasion must be found by an appropriate Texas court to be (1) negligent, or (2) intentional or unreasonable, or (3) abnormal and out of place in its surroundings. It takes one of these three kinds of conduct - negligent or intentional or abnormal - for a nuisance to be found by a Texas court. This kind of interference or invasion must also substantially interfere with the complainant's private use and enjoyment of the property in question and must cause injury to the complainant.

There are many reported private nuisance cases by Texas courts. Each case has unique facts. Texas judges and juries in private nuisance cases are called upon to decide whether the conduct in question constitutes a private nuisance and, if so, what money damages or other relief (including potential damages for sickness, annoyance, discomfort, or other substantial bodily harm)² is appropriate under the facts and the applicable law. The questions to be decided by either the judge or the jury, if the dispute is not subject to alternative dispute resolution methods, include factual disputes regarding (1) the nature of the claimed interference or invasion, (2) the impact on the property, (3) the time periods in which the offending conduct has occurred (to determine whether the nuisance is permanent or temporary) and (4) amount of damages to be assessed.

One court defined "nuisance" to a jury in the following manner: "You are instructed that by the term 'nuisance' as used in this charge is meant any condition, brought about by one party in the use of his property, so unusual and excessive that it necessarily causes injury or damage or

¹See *Bily v. Omni Equities, Inc.*, 731 S.W.2d 606, 611 (Tex.App. - Houston [14th] 1987, writ ref'd n.r.e.).

²See *Vestal v. Gulf Oil Corp.*, 235 s.w.2d 440 (Tex.1951).

harm or inconvenience to another party in the use and enjoyment of his property, substantially, materially and unreasonably interfering with the latter's comfort and proper use and enjoyment of his property, taking into consideration the nature and use of the property of both parties and the character of community in which they are situated, and which condition would be substantially offensive, discomfoting and annoying to persons of ordinary sensibilities, tastes and habits living in the locality where the premises are situated."³ Another Texas court, several years later, gave a much simpler definition to a jury: "A nuisance is a condition that substantially interferes with the use and enjoyment of land causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it."⁴

As inconveniences occur because of the increased oil and gas activity in the Fort Worth Basin, new questions regarding the long-standing Texas law of nuisance will occur. Already a number of lawsuits have been filed in the Fort Worth Basin claiming nuisance from oil and gas operations of various kinds. Consult your lawyer for counsel and guidance regarding possible nuisance situations you or your company may face.

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³*Columbian Carbon Co. v. Tholen*, 199 S.W.2d 825, 826-27 (Tex.App. - Galveston 1947, writ ref'd).

⁴*Beere v. Durren*, 985 S.W.2d 2243, 245 (Tex.App. - Beaumont 1999, pet. denied).