





Jury in Tiny County Awards Giant Damages Against Landmen in Bizarre Case

Texas Supreme Court asked to rehear case with serious implications for landmen and private equity investors

A little-known case from a rural county could have broad implications for landmen and private equity investors in Texas' energy industry. The defendants, two landmen who packaged leases and sold them to Devon Energy in 2012 for \$35 million, became liable to four investors in 2015 — for \$90 million! Our firm helped to remove all but \$20 million of this liability in the first appeal to the Eastland Court of Appeals. The case is now pending before the Texas Supreme Court, and our firm has helped to file a motion to rehear that court's initial refusal to take the case following the first appeal.¹

Anyone involved in the oil and gas industry — landwork specifically — should take notice of this case. It illustrates the dangers of having juries award money damages in complex business cases — especially when turned loose with lengthy jury charges that enable them to award multiple damages for the same underlying harm.



by/ JAMES HOLMES

¹ See *Stephens et al. v. Three Finger Black Shale Partnership et al.*, Case No. 19-0870, in the Texas Supreme Court.

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In the trial leading to the *Stephens* case, a Texas jury in tiny Fisher County (population 3,800) found the defendants personally liable after a bizarre three-week trial that culminated in a 70-page jury verdict with 230 distinct questions. The jury spent an average of just 1.3 minutes answering each subquestion in this protracted case. Many problems arose from the case's complex facts — and especially from the numerous verdict questions, which the jury spent little time answering.

The underlying facts arose from a routine deal for landmen in Texas oil and gas patches. Here, two landmen, using passive-investor money, assembled 44,000 acres of oil and gas leases in Fisher County. The labor by landmen Kerwin Stephens and Chester Carroll ensured that good title and development rights existed in hundreds of leases. They then sold those leases to Devon Energy for \$35 million. Profits abounded.

Many passive investors, including the four who decided to sue Stephens and Carroll, made substantial profits. Some of these passive investors put in \$600,000 and received back \$2.4 million, and others put in \$125,000 and received back \$1.1 million — all in under a year. Yet, after a confusing three-week trial, the jury concluded the landmen defendants should pay \$90 million in damages to the four investors on a transaction in which each landman's company had made only \$5 million in profits.

Making matters worse, the jury concluded that the landmen should be personally liable for these outrageous damages.

The case became very complicated by the fact that a key witness and dealmaker named Tommy Taylor, who had failed to invest his full obligation in the deal, died in an airplane crash just before the trial. Once this key dealmaker died, all guns turned on my client, the landman Stephens, and his colleague Carroll. The four investors blamed Stephens and Carroll for Taylor's wrongdoings — even though they also got shortchanged on their own profits by Taylor's failure to invest his full obligation.

The trial focused on a unique theory that Stephens, an investor in and landman for the deal, was acting as an "attorney" and "fiduciary" rather than acting solely through his land services companies. Thus, the case creates a template for passive investors to turn landmen and dealmakers into "attorneys," "partners," "trustees" and "fiduciaries" in oil and gas deals and other private equity opportunities. It also creates a template for investors to use elaborate "conspiracy" claims to make co-defendants fully liable for each other's actions. These templates are dangerous; they weaponize passive investors with legal claims to use, or to threaten to use, against the very dealmakers who involve the investors in a successful deal.

This case made Stephens and Carroll liable for money damages that do not logically relate to their specific wrongful conduct. Here, the two landmen are allegedly responsible

for an attorney's breach of duty to his clients. But these two landmen are paying money damages resulting from an entirely different subject matter — namely, Taylor's failure to invest his full obligation. Adding insult to injury, Taylor's failure to invest fully, according to the investors' trial testimony, hurt not only the investors, but also landmen Stephens and Carroll.

Even if my clients are liable, I cannot understand how Texas law or justice is served by holding Stephens and Carroll — without whom there would have been no deal — personally liable for many, many millions more than their assets. These two rural Texans are now liable for tens of millions above what each man's company made on the deal.

The outcome of this case could have broad implications for landmen, private equity investors and dealmakers across the Texas energy industry. Not surprisingly, many business-minded attorneys and I hope the Texas Supreme Court will rehear the case. Regardless, in the future I will advocate for legislation to prevent or at least deter these kinds of cases from wrecking oil and gas deals in Texas. ▲

ABOUT THE AUTHOR

James Holmes is an attorney specializing in the oil and gas industry. He also serves emerging and middle-market companies with entity formation, contractual arrangements, secured transactions, and market consulting, with special focus on upstream and midstream oil and gas transactions. An active investor in the industry, he manages a company that purchases and markets crude oil. Holmes has been named to the list of Texas Super Lawyers since 2004, and he is a sought-after speaker at business and legal seminars. He earned his bachelor's degree from Trinity University in San Antonio and his Juris Doctor from the University of Texas School of Law in Austin. Following law school, he worked as a briefing attorney for the Texas Supreme Court.