

Oil and Gas Executive Rights – Drilling Down on Your Duty

“Over the past decade, the Texas Supreme Court has attempted to define and clarify exactly what duty is owed by an oil and gas executive right holder (the “executive”) to the non-participating interest holders who are along for the ride, collecting royalty payments but having little to no ability to control how they are generated. While the executive right holder does not owe a fiduciary duty to non-participating royalty interest (“NPRI”) holders (those royalty holders who do not share in bonus or rental payments and who also do not have the right to execute leases), it is clear that a certain level of consideration is required, and the failure to do so may be costly,” explains Ted R. Harrington in Carrington Coleman’s *Published*.

“The first substantial step the Texas Supreme Court took towards pinning a duty on executives came in 2011, in *Lesley v. Veterans Land Bd. of State*. The Court in this case dealt with an executive’s inaction, or refusal to lease, and stopped short of producing a bright-line test for holding executives accountable. Instead, it toed the line and put forth the idea that if the executive’s refusal to lease was “arbitrary or motivated by self-interest, the executive *may* have breached his duty.”

“Four years later, the Court in *KCM Fin. LLC v. Bradshaw* again examined the discretion an executive has concerning the right to lease. This time, the Court was faced with an executive’s affirmative action, leasing to a third party at a sub-market rate (the rental payments being received by the executive and NPRI holders in their respective proportions), in exchange for an above-market bonus payment (received only by the executive right holder). ”

Read the article.