IN THE SUPREME COURT OF TEXAS

NO. 05-1076

EXXON CORPORATION AND EXXON TEXAS, INC., PETITIONERS,

v.

EMERALD OIL & GAS COMPANY, L.C. AND LAURIE T. MIESCH, ET AL., RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

Argued February 13, 2007

JUSTICE WAINWRIGHT delivered the opinion of the Court.

JUSTICE O'NEILL did not participate in the decision.

In this oil and gas dispute, royalty owners and an oil and gas lessee sued a previous lessee for alleged wrongful conduct in the development and subsequent abandonment of two oil and gas tracts near Refugio, Texas. The plaintiffs allege statutory and common law waste, negligence per se, negligent misrepresentation, tortious interference, breach of lease, and fraud. The trial court directed a verdict in favor of the previous lessee on some claims, and the remaining claims went to verdict. The jury found in favor of the royalty owners and awarded $18.6 million in damages. The court of appeals reversed the directed verdict and affirmed the jury verdict. 180 S.W.3d 299. We

reverse and remand.[1] Today, we also issue our opinion in *Exxon Corp. v. Emerald Oil & Gas Co.*, the companion to this case. ___ S.W.3d ___ (Tex. 2009).

I. FACTUAL AND PROCEDURAL BACKGROUND

The royalty owners[2] own several thousand acres of land in Refugio, Texas (O'Connor Lease). As early as the 1950s, Humble Oil and Refining Company, a predecessor of Exxon Corporation and Exxon Texas, Inc. (collectively Exxon), began acquiring mineral leases from the royalty owners. Exxon derived its interest from four separate mineral leases. The leases included an atypical fifty-percent royalty obligation and stringent disclosure, development, and surrender clauses.[3] During the term of the agreement, Exxon drilled 121 wells and produced at least 15 million barrels of oil and more than 65 billion cubic feet of gas, resulting in the payment of more than $43 million in royalties.

In the early 1970s, Exxon attempted to renegotiate a lower royalty because profitability of the operations was declining. As early as 1987, the royalty owners requested that Exxon provide them information and documentation to support Exxon's position that the field was depleted and no longer profitable, as the royalty owners claimed was required by the Lease to discontinue operations. By 1990, the royalty owners knew Exxon intended to plug six active wells and demanded that Exxon abandon its plans to plug these wells. On August 30, 1990, they sent a letter advising Exxon "that

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[1] We received amicus briefs from the Texas Oil & Gas Association, The Texas Alliance of Energy Producers, the Texas Land and Mineral Owners' Association, Texas and Southwestern Cattle Raisers Association, and Jerry Patterson, Commissioner of the Texas General Land Office and Chairman of the School Land Board.

[2] The royalty owners (collectively referred to as Miesch) are Molly Miesch Allen, Brien O'Connor Dunn, Bridey Kathleen Dunn Greeson (individually and as trustee of Dunn-O'Connor Family Trust), Jack Miesch, Laurie T. Miesch, Michael Miesch, Morgan Frances Dunn O'Connor, Nancy O'Connor, T. Michael O'Connor, Janie Miesch Robertson, and Kelly Patricia Dunn Schaar.

[3] The four leases are not identical; however, the differences are not material to the analysis in this case.

in the event [Exxon] plug[s] and abandon[s] any wells which are producing or capable of producing minerals in paying quantities to [the royalty owners], Exxon will be sued under the terms of the lease and the common law, both for present breach of contract and anticipatory damages."

On September 12, 1990, the royalty owners demanded by letter that Exxon deliver "any and all information, data and documents pertaining or relating to the subject wells, including drilling, production, completion and re-completion data, well bore production or completion schematics or diagrams and flow line maps and surface facility diagrams or schematics." In the same letter, the royalty owners explained that "plugging and abandonment of the [six] referenced wells would commit waste and would be contrary to public policy and laws" and that the letter "shall also be considered as [a] formal demand not to plug the above referenced six wells." The royalty owners further informed Exxon that they had "located a group of oil and gas companies willing to accept the plugging obligation" and assignment of the O'Connor Lease.

Initially, Exxon refused to provide any information, claiming that the information was proprietary. Later, Exxon claimed the information was too difficult to locate and retrieve. Then, Exxon agreed to provide the royalty owners a "reading room" containing the requested information subject to a confidentiality agreement. The reading room included a large quantity of information, but it did not contain any interpretive data or the complete well logs. Exxon ultimately concluded that it could no longer profitably afford the O'Connor Lease unless the royalty owners agreed to reduce the royalty obligation. When negotiations to lower the royalty obligation failed, starting in 1989, Exxon began plugging and abandoning the wells. As required by law, after Exxon plugged each of the wells, it filed a plugging report with the Texas Railroad Commission. 7 Tex. Reg. 3991

(1982) (16 Tex. Admin. Code § 3.14(b)(1)), *amended by* 23 Tex. Reg. 9303 (1998) (current version at 16 Tex. Admin. Code § 3.14(b)(1)).[4] By letter dated August 16, 1991, Exxon notified the royalty owners that it had completed its plugging operations.

In 1993, after Exxon's lease terminated, the royalty owners entered into a lease agreement with Pace West Production, Ltd. (Pace), later known as Emerald Oil & Gas Co., L.P. (Emerald)[5], for one-third of the acreage in the O'Connor Lease. In deciding whether to lease the land, Emerald reviewed Exxon's public filings related to the field, including the oil well plugging reports (W-3 forms) that Exxon filed with the Railroad Commission. The filings indicated that Exxon properly plugged the wells. However, Emerald encountered problems upon trying to reenter the plugged wells, including wellbores plugged with cut casing[6] and other "junk,"[7] wellbores containing environmental contaminants, and plugs in locations other than those listed on the reports. Emerald sent the royalty owners a written status report on June 8, 1994, explaining that it "encountered junk

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[4] Title 16 section 3.14 of the Texas Administrative Code requires well operators to file plugging reports, or W-3 forms, with the Railroad Commission within thirty days after each well is plugged. 16 Tex. Admin. Code § 3.14. Section 3.14 mandates that an operator disclose the specific methods used to plug the wells and sign an oath verifying that the statements in the report are true. *Id.*

[5] The evidence indicates that Emerald was formerly known as Pace West Production, Ltd. A May 25, 1993 "Agreement for Waivers" between Emerald and the royalty owners states that Emerald was "formerly known as Pace West Production, L.C., and also formerly known as Pace West Production, Ltd." An undated "Memorandum of Amended Oil and Gas Lease and Financing Statement" also states that Emerald was formerly known as Pace West. Additionally, Glenn Warren Lynch, a representative from Emerald, testified that Emerald "was formerly known as Pace West." T. Michael O'Connor, one of the royalty owners, explained that Emerald was operating under another name, Pace West, when it made an initial offer to reopen some of the wells in the O'Connor Lease.

[6] Exxon does not dispute that it plugged the wells using non-standard plugging procedures. It admits to cutting the well casing and leaving it in the wellbore. This material may delay completion of the well and increase reentry expenses. *Tarrant County Water Control & Imp. Dist. No. One v. Fullwood*, 963 S.W.2d 60, 67 (Tex. 1998).

[7] The term "junk" is a term of art used in the oil and gas industry to refer to "non-drillable material such as steel or iron, in [a] well bore." *Id.*

in hole" and that Exxon had cut the casing in some wells. On January 24, 1995, Emerald met with the royalty owners and explained more about the extent of the damage to the wells due to Exxon's plugging techniques.

In January 1995, Emerald obtained Exxon's internal well records on the O'Connor Lease from Quintana, Exxon's partner on the adjoining tract, also leased by Exxon. Exxon's internal records differed substantially from the Railroad Commission filings regarding its plugging of the wells in the O'Connor Lease. Concluding that Exxon intentionally sabotaged the field, Emerald sued Exxon in July 1996, claiming (1) breach of a duty to plug the wells properly, (2) breach of a duty to avoid committing waste, (3) negligence per se in violating several sections of the Natural Resources Code and Commission Regulations, (4) tortious interference with economic opportunity, (5) negligent misrepresentation, and (6) fraud. In August and September 1996, the royalty owners intervened and alleged similar claims. In October 1999, the royalty owners amended their petitions, adding claims for breach of contract for Exxon's failure to comply with development clauses in the lease.

Prior to trial, the trial court granted Exxon's motion for summary judgment and severed Emerald's claims for breach of a duty to plug the wells properly, breach of a duty to avoid committing waste, and negligence per se, reasoning that Exxon owed no duty to Emerald as a subsequent lessee. Emerald appealed the trial court's summary judgment ruling and severance order. The court of appeals reversed and remanded the claims to the trial court. *Emerald Oil & Gas, L.C. v. Exxon Corp.*, 228 S.W.3d 166 (Tex. App.—Corpus Christi 2005), *rev'd* ____ S.W.3d ____ (Tex. 2009). Exxon appealed that judgment to this Court in cause number 05-0729.

At trial, Exxon obtained a directed verdict on Emerald's remaining claims and all of the royalty owners' claims except common law and statutory waste and breach of lease. The jury found in favor of the royalty owners on the causes of action for waste and breach of lease, awarding $5 million in actual damages for waste, $10 million in punitive damages for waste, and $3.6 million in damages for breach of lease. The trial court rendered judgment in accordance with the verdict. All parties appealed. The court of appeals affirmed the judgment in favor of the royalty owners, reversed the directed verdict against Emerald, and remanded Emerald's claims for a new trial. 180 S.W.3d 299. We granted Exxon's petition for review.

II. LAW AND ANALYSIS

A. Statute of Limitations: Statutory and Common Law Waste, Negligence Per Se, Negligent Misrepresentation, and Tortious Interference

The parties agree that a two-year statute of limitations applies to their claims for statutory and common law waste, negligence per se, negligent misrepresentation, and tortious interference.[8] TEX. CIV. PRAC. & REM. CODE § 16.003(a). However, Emerald and the royalty owners argue that Exxon's conduct tolled the statute of limitations or delayed accrual of their claims. At trial, the jury found that the royalty owners discovered, or should have discovered in the exercise of reasonable diligence, the waste committed by Exxon on January 24, 1995, the date that Emerald's representatives met with the royalty owners and informed them, in the words of the court of appeals, "about the full extent of damage to the wells and the numerous discrepancies" in Exxon's plugging reports. 180 S.W.3d

[8] This discussion pertains only to the royalty owners' claims for statutory and common law waste and negligence per se. Emerald's similar claims were severed at the trial court and are the subject of the opinion issued in the companion case, *Exxon v. Emerald Oil & Gas Co., L.C.* ___ S.W.3d ___ (Tex. 2009).

at 316. The court of appeals determined that the statute of limitations tolled until that date and affirmed the judgment on that issue. *Id.* at 316–17. Exxon argues that the court of appeals improperly tolled the two-year statute of limitations until Emerald and the royalty owners discovered the full extent of the damage, instead of the date Exxon completed plugging the wells.[9] Emerald and the royalty owners do not dispute that, unless accrual of the cause of action is deferred or the statute of limitations tolled, the two-year statute of limitations bars all of their claims except fraud, which has a four-year statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE § 16.004.

Although Emerald and the royalty owners argue that the statute of limitations on their claims has tolled under the doctrine of fraudulent concealment, or that the accrual of their claims have been deferred because of the discovery rule, we do not reach these issues because Emerald and the royalty owners had actual knowledge of violations of the lease agreement and their injuries by June 8, 1994 at the latest. Specifically, the royalty owners advised Exxon in writing in September 1990 that plugging the wells would commit waste in violation of the law. In June 1994, Emerald advised the royalty owners that it discovered that Exxon placed cut casing and junk in one or more wells. Therefore, by September 1990, the royalty owners had actual knowledge of the facts underlying their breach of lease and waste claims, and by June 1994, both Emerald and the royalty owners had actual knowledge of the facts underlying their negligence and tortious interference claims.

The royalty owners argue that they did not appreciate the significance of the statements in

[9] Emerald argues that Exxon failed to preserve its argument that the tortious interference claims are time-barred. In its motion for directed verdict at trial, Exxon stated that "all of the claims asserted by the Plaintiffs . . . are barred by the applicable statutes of limitations." Exxon made the same argument before the court of appeals and raises the issue in this Court. Exxon preserved this issue for our review.

the letter they wrote to Exxon in 1990 and the letter Emerald sent to them in 1994. However, the 1990 letter threatened Exxon with a lawsuit for waste and violation of the law if it plugged the wells, and in the 1994 letter, Emerald told the royalty owners that Exxon cut casing and dumped junk in the wells that were plugged. Both the court of appeals and the jury concluded that Emerald and the royalty owners did not have actual knowledge of their claims until January 1995. The legal significance of the undisputed facts cannot be ignored. *See City of Keller v. Wilson*, 168 S.W.3d 802, 814–17 (Tex. 2005) (explaining that courts conducting a no-evidence review cannot ignore evidence that has one logical conclusion). The letters unequivocally and conclusively establish that the royalty owners and Emerald knew or suspected there was damage to their interests in the O'Connor Lease in 1990 and 1994.

Causes of action accrue when claimants are on notice of their injury and have the opportunity to seek a judicial remedy. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 221 (Tex. 2003). The claims have a two-year statute of limitations. Irrespective of whether fraudulent concealment or the discovery rule tolls any portion of an applicable limitations period, actual knowledge of the injury triggers the accrual of the cause of action. The limitations period on the royalty owners' breach of lease and waste claims began to run September 1990 and ended September 1992, and the limitations period on Emerald's and the royalty owners' negligence and tortious interference claims began to run June 1994 and ended June 1996, when the royalty owners had actual knowledge of their claims. Thus, Emerald's claims brought in July 1996 and the royalty owners' claims brought in September 1996 are time-barred. *See* TEX. CIV. PRAC. & REM. CODE § 16.003(a).

B. Breach of Lease

The leases' development clauses require Exxon to "prosecute diligently a continuous drilling and development program until [the tracts are] fully developed for oil and gas." The royalty owners claim that Exxon failed to develop two productive zones in violation of the development clauses. The court of appeals upheld the jury's verdict, holding that the testimony of the royalty owners' expert, George Hite, was some evidence that the leases were capable of producing in paying quantities until 1999 and that Exxon did not drill and complete wells in two productive zones, H12 and FS75.[10] 180 S.W.3d at 334–35. Exxon contends no evidence supports the jury's finding that Exxon failed to comply with the development clauses in the oil and gas agreement.[11]

Before we address Exxon's legal sufficiency argument, we must first determine the scope of Exxon's development obligations under the leases. "An oil and gas lease is a contract, and its terms are interpreted as such." *Tittizer v. Union Gas Corp.*, 171 S.W.3d 857, 860 (Tex. 2005); *accord Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005) (interpreting an oil and gas lease using contract principles). "In construing an unambiguous oil and gas lease, . . . we seek to enforce the intention of the parties as it is expressed in the lease." *Tittizer*, 171 S.W.3d at 860. The development clauses state that the tracts are deemed "fully developed" when "at least one (1) well has been drilled and completed in each horizon or stratum capable of producing [oil or gas] in paying quantities" for a specified number of acres. This is a common definition of "fully developed" in an

[10] The royalty owners and their expert (Hite) used "horizon," "stratum," and "zone" interchangeably.

[11] The jury also found that Exxon fraudulently concealed its breach and that the royalty owners did not know, and could not have known with due diligence, that Exxon fraudulently concealed its failure to fully develop until February 1999 when Exxon produced previously requested documents during discovery. For the reasons that follow, we need not reach the royalty owners' fraudulent concealment claim.

oil and gas lease. 5 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW § 671.4, at 136.1 (3d ed. 2008). The parties' primary dispute is the meaning of "drill" and "complete" in the development clause of the lease agreement.

The leases do not define "drill" or "complete." "It is a well recognized canon of construction that technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless there is evidence that the words were used in a different sense." *Barrett v. Ferrell*, 550 S.W.2d 138, 142 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.). In oil and gas parlance, "drill" refers to the "[a]ct of boring a hole through which oil and/or gas may be produced if encountered in commercial quantities." 8 HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW: MANUAL OF OIL AND GAS TERMS at 281–82 (3d ed. 2008). A "completed well" refers to "a well *capable* of producing oil or gas." *Id.* at 171 (emphasis added). The "completion of a well" can also refer to "those processes necessary *before production occurs* [such as] perforating the casing and washing out the drilling mud." *Id.* at 174 (emphasis added). Certainly, the parties can define the operator's duty under the contract differently. For example,

> [c]ompensation for drilling an oil or gas well may be made contingent upon the discovery of oil or gas in paying quantities, but a contract will not be so construed in the absence of a clear expression or implication of such intent by the contract . . . . The courts in construing contracts for the drilling of wells are not disposed to imply warranties as to production.

Barrett, 550 S.W.2d at 142 (citing W.L. SUMMERS, THE LAW OF OIL AND GAS § 687 (perm. ed. 1938)). These definitions show that for a well to be considered "drilled and completed" as contemplated by the development clauses, a hole must be dug in the ground, and if oil or gas is encountered, the casing must be perforated or otherwise prepared for production. The definition of

a completed well in the treatises is also the one recognized by this Court. *Barrett*, 550 S.W.2d at 142 (citing *Cannon v. Wingard*, 355 S.W.2d 776, 780 (Tex. Civ. App.—Dallas 1962, writ ref'd n.r.e.)). A "well need not be a producing well to be completed;" it only needs to be capable of producing oil or gas. *Id.*

The royalty owners concede that Exxon complied with the spacing requirements and drilled the requisite number of wells per acre. The royalty owners, however, confuse Exxon's contractual obligation to fully develop the tract ("drill" and "complete" at least one well), per the terms of the lease, with an obligation to exploit the tracts fully. Under the royalty owners' interpretation, Exxon must produce and extract all the reserves in each zone capable of production in paying quantities. This obligation appears nowhere in the language of the development clauses. Exxon's development obligations only require it to drill a requisite number of wells per acre, and if oil or gas is encountered, Exxon must prepare the well for production in paying quantities. In the oil patch, mutual incentive of owners and operators to make a profit drives the operator, having sunk costs, to produce in paying quantities.

Having ascertained the scope of Exxon's development obligations, we now turn to the sufficiency of the evidence offered to support the breach of lease claim. Because Exxon is attacking the legal sufficiency of the evidence supporting an adverse finding on an issue for which it did not have the burden of proof, Exxon must show that no evidence supports the jury's adverse finding. *See Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983). Evidence is legally sufficient if it "would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller*,

168 S.W.3d at 827. We "credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not." *Id.* at 827.

Exxon argues that Hite's testimony that Exxon failed to develop the leases is conclusory and, therefore, insufficient to support the jury's verdict. "Opinion testimony that is conclusory or speculative is not relevant evidence, because it does not tend to make the existence of a material fact 'more probable or less probable.'" *Coastal Trans. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232–33 (Tex. 2004) (quoting TEX. R. EVID. 401). Such conclusory evidence cannot support a judgment. *Id.* at 232.

Hite testified that "fully developed" means there are a "sufficient number of wells in it to get the reserves." And when asked whether Exxon completed "in the FS75 and the H12, in every well, that Exxon had good probability of producing oil and gas in those two zones," he answered "[n]o, they didn't." However, when asked whether "drilling the H12 and completing it in two wells complete[d] that zone in the wells on this tract that would penetrate that zone in paying quantities," he answered "[i]f your question is, did the two wells fully develop the lease, the answer is no." Asked whether the wells Emerald completed in FS75 were "completed in a fully-developed manner," he answered "[n]o, it was not." The evidence does not support his assertion. Hite's charts of the production from the wells in the O'Connor Lease were admitted at trial. The charts show that Exxon drilled at least one well in each zone and produced 3,651,850 cubic feet of gas and 78,746 barrels of oil in zone FS75 and 1,728,728 cubic feet of gas and 3,933 barrels of oil in zone H12. The royalty owners concede facts establishing that Exxon drilled at least one well in FS75 and at least one well

in H12 and both wells produced in paying quantities. The attempt to characterize these facts differently does not change the evidence.

Hite's subsequent testimony indicates that he too conflated "complete" with "produce" or "exploit." He argues that Exxon violated the development clauses because Exxon did not produce more extensively, or exhaust the production, from the wells in zones H12 and FS75. His testimony sidesteps the precedent question of whether Exxon drilled and completed the requisite number of wells per acre and, instead, focuses on whether zones FS75 and H12 would have supported further production in paying quantities. He testified that zones H12 and FS75 had remaining reserve potential and that Exxon had information indicating they "could be developed further." Evidence that further development potential existed when Exxon abandoned the leasehold in 1991 is no evidence that Exxon failed to comply with the parties' agreement embodied in the development clause. And evidence that Exxon did not fully exploit the reserves in FS75 and H12 is no evidence that Exxon did not "drill and complete" the requisite number of wells for zones FS75 and H12. The evidence conclusively proves that, as required by the contract, Exxon completed at least one well capable of producing in paying quantities in each zone. *See City of Keller*, 168 S.W.3d at 814–15. Therefore, we reverse the court of appeals' judgment and render judgment in favor of Exxon on the breach of lease claim.[12]

[12] Because we conclude no evidence supports the royalty owners' underlying breach of lease claim, we need not reach the issue of whether the claim is time-barred or whether the doctrine of fraudulent concealment tolls the statute of limitations. *See Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 352 n.1 (Tex. 1990) (holding that the doctrine of fraudulent concealment estops a defendant who conceals the existence of a cause of action from asserting the statute of limitations as an affirmative defense).

C. Fraud

Unlike most of Emerald and the royalty owners' other claims, which have a two-year statute of limitations, the statute of limitations for fraud is four years. TEX. CIV. PRAC. & REM. CODE § 16.004(a)(4). The statute of limitations for fraud begins to run from the time the party knew of the misrepresentation. *Little v. Smith*, 943 S.W.2d 414, 420 (Tex. 1997). The briefing on this issue does not identify when Emerald and the royalty owners learned of the allegedly false plugging reports. Emerald does acknowledge that "the first place subsequent operators turn is those very filings at the Railroad Commission when deciding whether redevelopment can be economically undertaken." It would seem that the royalty owners learned of the asserted misrepresentations in the June 1994 letter from Emerald. The letter states that Emerald encountered "junk" in the wells on the O'Connor Lease as early as August 1993. Thus, Emerald may have learned about the misrepresentations on or around that date. Based on either of these dates, the fraud claims filed by Emerald and the royalty owners were timely, and therefore, we reach the merits of the fraud claim.[13]

The court of appeals reversed the trial court's directed verdict on the fraud claim, holding that the jury should have been allowed to consider whether the evidence was sufficient to establish fraud. It asserted that the evidence did not conclusively disprove the intent-to-induce reliance element of the fraud claim. In reviewing a trial court's directed verdict, we examine the evidence in the light most favorable to the person suffering an adverse judgment and decide whether there is any evidence of probative value to raise an issue of material fact on the question presented. *Henderson v.*

[13] Nothing in this opinion precludes Exxon from claiming on remand that Emerald and the royalty owners learned of misrepresentations earlier.

Travelers Ins. Co., 544 S.W.2d 649, 650 (Tex. 1976). We do not hold that public filings, such as Railroad Commission reports, alone satisfy the intent-to-induce reliance element of fraud. We conclude there was some evidence presented at trial tending to show that Exxon knew, at the time it filed the plugging reports, of an especial likelihood that the royalty owners and the identified future operators would rely on the inaccurate plugging reports. We, therefore, agree with the court of appeals on this issue.

A plaintiff seeking to prevail on a fraud claim must prove that (1) the defendant made a material misrepresentation; (2) the defendant knew the representation was false or made the representation recklessly without any knowledge of its truth; (3) the defendant made the representation with the intent that the other party would act on that representation or intended to induce the party's reliance on the representation; and (4) the plaintiff suffered an injury by actively and justifiably relying on that representation. *See De Santis v. Wackenhut Corp.*, 793 S.W.2d 670, 688 (Tex. 1990); *Trenholm v. Ratcliff*, 646 S.W.2d 927, 930 (Tex. 1983).

Emerald and the royalty owners[14] claim that Exxon committed fraud by misrepresenting material information in its plugging reports to the Railroad Commission with the intent that known lessees and lessors of such mineral interest would rely on the information in the future. The royalty owners and Emerald claim, as a result of their reliance, that they are entitled to "the lost wells and minerals, the additional cost of re-completing the improperly plugged wells and the increased risk

[14] Because the royalty owners only conditionally challenged the directed verdict at the court of appeals, and the court of appeals upheld the judgment in their favor, the royalty owners do not address the fraud claim in detail before this Court.

in loss of producing zones and wells." The court of appeals held that evidence that Exxon knew that unidentified, subsequent lessees and operators might rely on Railroad Commission filings to make business decisions was sufficient to satisfy the intent-to-induce reliance element of fraud. 180 S.W.3d at 337. Exxon argues that the court of appeals' decision is erroneous for two reasons. First, Exxon argues there is no evidence that future operators would rely on the plugging reports because the reports' only purpose is to allow the state to protect against pollution. Second, Exxon argues that Emerald's approach reduces the intent-to-induce reliance element of fraud to mere foreseeability, counter to the Court's analysis in *Ernst & Young*. 51 S.W.3d 573, 580 (Tex. 2001).

"Proper plugging is the responsibility of the operator of the well." 7 Tex. Reg. 3991 (1982) (16 Tex. Admin. Code § 3.14(c)(1)), *amended by* 23 Tex. Reg. 9304 (1998) (current version at 16 Tex. Admin. Code § 3.14(c)(1)). The Railroad Commission mandates:

> Non-drillable material that would hamper or prevent re-entry of a well shall not be placed in any wellbore during plugging operations . . . . Pipe and unretrievable junk shall not be cemented in the hole during plugging operations without prior approval by the district director.

7 Tex. Reg. 3991 (1982) (16 Tex. Admin. Code § 3.14(c)(9)), *amended by* 23 Tex. Reg. 9305 (1998) (current version at 16 Tex. Admin. Code § 3.14(d)(10)). Exxon argues that this section and similar plugging requirements are not intended to benefit future operators, but only to protect the environment. Thus, Exxon argues, no evidence supports Emerald's argument that there was an especial likelihood that Exxon knew future operators would rely on the reports because that is not the reports' purpose.

Although the Railroad Commission explained that it revised section 3.14 "to protect fresh water in the state from pollution," the plugging reports are not limited to this purpose. The Commission states that one of the objectives of the plugging regulations is to prevent plugging of wells that hinder or prevent reentering wells, which could be desired by the same or subsequent owners or operators. 7 Tex. Reg. at 3989. To police this regulation, the Commission requires that the plugging reports, or W-3s, be verified under oath, be filed within thirty days after the plugging is completed, and disclose the methods used to plug a well. *Id.* at 3991. Thus, the purpose of requiring operators to file plugging reports with the Commission is to ensure that operators follow a plugging procedure that not only prevents pollution, but also allows reentry into the wells for commercial purposes.

However, the mere fact that royalty owners and subsequent lessees might or should rely on statements in Exxon's plugging reports alone is not sufficient to establish an intent to induce reliance, as the court of appeals and Emerald argue. *Ernst & Young*, 51 S.W.3d at 580. In *Ernst & Young*, we considered the proof necessary to establish the intent-to-induce reliance element of a fraud claim. Although we declined to decide whether to adopt the reason-to-expect standard outlined in section 531 of the Restatement (Second) of Torts, we concluded that this standard is consistent with Texas fraud jurisprudence. *Id.* Section 531 provides:

> One who makes a fraudulent misrepresentation is subject to liability to the persons or class of persons whom he intends or has reason to expect to act or to refrain from action in reliance upon the misrepresentation for pecuniary loss suffered by them through their justifiable reliance in the type of transaction in which he intends or has reason to expect their conduct to be influenced.

RESTATEMENT (SECOND) OF TORTS § 531 (1977). Like the defendants in *Ernst & Young*, Exxon argues that this approach reduces the intent-to-induce element to a foreseeability standard. We rejected that argument in *Ernst & Young*, holding that section 531's "reason-to-expect standard requires more than mere foreseeability; the claimant's reliance must be 'especially likely' and justifiable, and the transaction sued upon must be the type the defendant contemplated." *Ernst & Young*, 51 S.W.3d at 580. Evidence that reliance on false public information as part of a general industry practice is insufficient, as a matter of law, to prove an intent to induce reliance. *Id.* at 581–82. Even an obvious risk that a misrepresentation might be repeated to a third party is not sufficient to satisfy the reason-to-expect standard. A plaintiff must show that "[t]he maker of the misrepresentation [has] information that would lead a reasonable man to conclude that there is an especial likelihood that it will reach those persons and will influence their conduct." RESTATEMENT (SECOND) OF TORTS § 531 cmt. d (1977). The standard is not met if a plaintiff merely foresees that some party may rely on statements made in a public filing. In order to prove intent-to-induce reliance under this standard, the party must show an especial likelihood that the party who made the misstatement knew the claimant would rely on the information in the type of transaction the defendant contemplated. *See Ernst & Young*, 51 S.W.3d at 580.

Therefore, if the evidence shows that Exxon made material misrepresentations in its plugging reports to the Railroad Commission, and Exxon knew that lessors and operators in the future may rely on the filings, such evidence would fail as a matter of law under the *Ernst & Young* standard. *Id.* at 581–82. Such a holding would open the cause of action to any person who subsequently relied on any public filings—including stocks and bonds, security interests, real property deeds, and tax

filings—with few limits in sight. The intent-to-induce reliance element of fraud is a focused inquiry, more akin to a rifle shot than a shotgun blast. Intent-to-induce reliance is not satisfied by evidence that a misrepresentation may be read in the future by some unknown member of the public or of a specific industry.

Here, however, there is some evidence that Exxon knew of an especial likelihood that Emerald specifically would rely on the plugging reports in a transaction being considered at the time it filed the plugging reports. In 1989, Exxon concluded that it could no longer profitably operate the leases unless Exxon's royalty could be renegotiated. The negotiations failed, and Exxon plugged the wells in the O'Connor Lease between 1989 until 1991. In their letter of September 12, 1990, the royalty owners stated, "[W]e have located a group of oil and gas companies that are willing to accept the plugging obligations and an Assignment of the above referenced [six] wells [and certain acreage around each well]." They also offered their consent to assign all of Exxon's right, title, and interest in the leases to several companies and indicated their interest in future oil and gas operations in the Lease.

In 1989, Emerald expressed that it was "most anxious to proceed" with production in the O'Connor Lease and offered to purchase Exxon's interest. Emerald renewed its offer in January 1990. By letter of July 23, 1990, Exxon advised each of the royalty owners that Pace had expressed an interest in the Lease. On May 25, 1993, Emerald acquired the interest to develop the Lease.

Exxon knew the royalty owners had a continuing interest in further developing the O'Connor Lease, received offers from the putative subsequent lessee to purchase Exxon's interest in the Lease, and knew the transaction proposed by Miesch and Emerald was the continued production of oil and

gas in the Lease. Thus, legally sufficient evidence in the record supports the claim that Exxon had information that would lead a reasonable person to conclude there was an especial likelihood these plaintiffs would rely on Exxon's inaccurate filings with the Railroad Commission at the time it filed them. Accordingly, the trial court's grant of directed verdict on the fraud claim on this basis was in error.[15]

III. CONCLUSION

We hold the statutory and common law waste, negligence per se, negligent misrepresentation, and tortious interference claims are time-barred and reverse and render judgment in Exxon's favor with respect to those claims. We also hold no evidence supports the breach of lease claims and reverse and render judgment in Exxon's favor with respect to those claims. Finally, we affirm the court of appeals' judgment, for different reasons, reversing the trial court's directed verdict with respect to the fraud claim, and remand that claim to the trial court for further proceedings.

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Dale Wainwright
Justice

OPINION DELIVERED: March 27, 2009

[15] Emerald and the royalty owners claim that they are entitled to all of their damages, including lost wells and minerals, due to the alleged fraud. Because this issue was not presented to this Court, we need not address it in this opinion. However, we note that the "measure of damages in a fraud case is the actual amount of the plaintiff's loss that directly and proximately results from the defendant's fraudulent conduct." *Tilton v. Marshall*, 925 S.W.2d 672, 680 (Tex. 1996).