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OPINION OF THE TEXAS SUPREME COURT (JANUARY 24, 2020)

IN THE SUPREME COURT OF TEXAS

CONOCOPHILLIPS COMPANY, RODOLFO C. RAMIREZ, individually and as Independent Administrator of The Estate of Ileana Ramirez, and El Milagro Minerals, Ltd.,

Petitioners,

v.

LEON OSCAR RAMIREZ, JR., individually, and JESUS M. DOMINGUEZ, as Guardian of The Estate of Minerva Clementina Ramirez, an Incapacitated Person,

Respondents.

No. 17-0822

On Petition for Review from the Court of Appeals for the Fourth District of Texas

Before: Nathan L. HECHT, Chief Justice.

CHIEF JUSTICE HECHT delivered the opinion of the Court.

The issue we decide in this case is whether a devise of "all . . . right, title and interest in and to Ranch 'Las Piedras'" refers only to a surface estate by that name as understood by the testatrix and beneficiaries at the time the will was made or also includes the mineral

estate. We conclude that only the surface estate was devised. We reverse the court of appeals' judgment and render judgment for petitioners.

I

Conveyances over 80 years provide the context for the parties' dispute. The factual background is lengthy and complex but in all material respects undisputed. To assist the reader's understanding, we will both describe and chart the transactions. A complete chart is included in an appendix. All fractions are undivided interests.

In 1941, Ildefonso Ramirez died, leaving to his children, Leon Juan and Felicidad, multiple tracts totaling 7,016 acres in Zapata County. Not all of the tracts were contiguous. Months later, Leon Juan and Felicidad partitioned the surface estate and severed the minerals, each taking 3,508 surface acres and an undivided 1/2 interest in the minerals under the entire 7,016 acres. As a result:

<table>
<tr><th colspan="3">Ildefonso Ramirez's 7,016 acres</th></tr>
<tr><td colspan="3">1941: Ildefonso's death</td></tr>
<tr><td></td><td colspan="2">1/2 Leon Juan & 1/2 Felicidad</td></tr>
<tr><td colspan="3">1941: Partition</td></tr>
<tr><td rowspan="2">Surface</td><td>3,508 acres</td><td>Leon Juan</td></tr>
<tr><td>3,508 acres</td><td>Felicidad</td></tr>
<tr><td>Minerals</td><td colspan="2">1/2 Felicidad
1/2 Leon Juan</td></tr>
</table>

Leon Juan died in 1966, survived by his wife, Leonor, and three children, Leon Oscar Sr., Ileana,

and Rodolfo. His will made identical dispositions of his limited surface estate and broader mineral estate but in separate paragraphs: 1/2 of each to his wife Leonor and the rest to his children in equal shares. After Leon Juan's death, ownership of the Zapata County property stood as follows:

<table>
<tr><td colspan="3">Ildefonso Ramirez's 7,016 acres</td></tr>
<tr><td colspan="3">1941: Partition</td></tr>
<tr><td>Surface</td><td>3,508 acres</td><td>3,508 acres</td></tr>
<tr><td>Minerals</td><td colspan="2">1/2 Felicidad
1/2 Leon Juan</td></tr>
<tr><td colspan="3">1966: Leon Juan's death</td></tr>
<tr><td colspan="3">Surface</td></tr>
<tr><td>3,508 acres</td><td colspan="2">1/2 Leonor
1/6 Leon Oscar Sr.
1/6 Ileana
1/6 Rodolfo</td></tr>
<tr><td>3,508 acres</td><td colspan="2">Felicidad</td></tr>
<tr><td colspan="3">Minerals</td></tr>
<tr><td colspan="3">1/2 Felicidad
1/4 Leonor
1/12 Leon Oscar Sr.
1/12 Ileana
1/12 Rodolfo</td></tr>
</table>

In 1975, Leonor and her children partitioned their interests in Leon Juan's surface estate. Their agreement states that the partition did "not . . . include oil, gas and other minerals which for the [time being] [were] to remain undivided". Leonor took an 800-acre tract of the surface estate known as "West El Milagro

Pasture", which also included land and improvements that the parties referred to as the "Headquarters Ranch". Rodolfo took a 400-acre tract referred to as "East El Milagro Pasture". Leon Oscar Sr. and Ileana jointly took a 1,058-acre tract that, in the words of the agreement, was "known as Las Piedras Pasture". Las Piedras was a separate tract not contiguous with the other property. Three years later, Leonor and Ileana swapped their surface tracts. Their exchange agreement recites that Leon Oscar Sr. and Ileana had earlier been "partitioned the surface to 1058 acres . . . known as 'Las Piedras Ranch'". Ileana agreed to convey to Leonor "all of her right, title and interest in and to the surface to . . . 1,058 acres of land . . . known as LAS PIEDRAS PASTURE". The agreement states that the "Deed of Exchange [did] not . . . include oil, gas and other minerals which [were] to remain undivided". Thus, after the exchange, Leonor owned an undivided 1/2 interest in the surface acreage known as Las Piedras Ranch—her son Leon Oscar Sr. owned the other 1/2 interest—and a 1/4 undivided mineral interest in the entire 7,016-acre family estate:

Ildefonso Ramirez's 7,016 acres	
1975: Partition	
Surface	
3,508 acres	
Las Piedras Ranch	1/2 Ileana 1/2 Leon Oscar Sr.
Hq Ranch & W El Milagro Pasture	Leonor
E El Milagro Pasture	Rodolfo

3,508 acres	Felicidad
Minerals	
1/2 Felicidad 1/4 Leonor 1/12 Leon Oscar Sr. 1/12 Ileana 1/12 Rodolfo	
1978: Exchange	
Surface	
3,508 acres	
Las Piedras Ranch	1/2 Leonor 1/2 Leon Oscar Sr.
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad
Minerals	
1/2 Felicidad 1/4 Leonor 1/12 Leon Oscar Sr. 1/12 Ileana 1/12 Rodolfo	

The family ownership interests had not changed when Leonor executed her will in 1987. She died the following year. She devised a life estate in "all of [her] right, title and interest in and to Ranch 'Las Piedras'" to her son Leon Oscar Sr. with the remainder to his living children in equal shares. Leonor devised the residuary of her estate equally to her three children, Leon Oscar Sr., Ileana, and Rodolfo. They believed at the time that Leonor had devised her

mineral interest in the entire 7,016 acres, including Las Piedras Ranch, to them in equal shares as part of her residuary estate. Leon Oscar Sr.'s children now contend that Leonor's residuary estate did not include the mineral interest in Las Piedras Ranch but that it passed to Leon Oscar Sr. as part of his life estate. The dispute is shown in this chart:

<table>
<tr><th colspan="2">Ildefonso Ramirez's 7,016 acres</th></tr>
<tr><td colspan="2">Surface</td></tr>
<tr><td>3,508 acres</td><td>3,508 acres</td></tr>
<tr><td>Las Piedras Ranch</td><td rowspan="3"></td></tr>
<tr><td>Hq Ranch & W El Milagro Pasture</td></tr>
<tr><td>E El Milagro Pasture</td></tr>
<tr><td>Minerals</td><td></td></tr>
<tr><th colspan="2">1988: Leonor's death – per petitioners</th></tr>
<tr><td colspan="2">Surface</td></tr>
<tr><td>Las Piedras Ranch</td><td>1/2 fee +
1/2 L/E Leon Oscar Sr.</td></tr>
<tr><td>Hq Ranch & W El Milagro Pasture</td><td>Ileana</td></tr>
<tr><td>E El Milagro Pasture</td><td>Rodolfo</td></tr>
<tr><td>3,508 acres</td><td>Felicidad</td></tr>
<tr><td colspan="2">Minerals</td></tr>
<tr><td colspan="2">1/2 Felicidad
1/6 Leon Oscar Sr.
1/6 Ileana
1/6 Rodolfo</td></tr>
</table>

1988: Leonor's death – per respondents	
Surface	
Las Piedras Ranch	1/2 fee + 1/2 L/E Leon Oscar Sr.
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad
Minerals	
Las Piedras Ranch	Rest of 7,016 Acres
1/2 Felicidad	1/2 Felicidad
1/12 fee + 1/4 L/E Leon Oscar Sr.	1/6 Leon Oscar Sr.
1/12 Ileana	1/6 Ileana
1/12 Rodolfo	1/6 Rodolfo

Over the years, mineral leases had been executed on various portions of the family estate, though the entire estate had never been subject to a single lease. After Leonor's death, her children signed several oil and gas leases on various portions of the family land. In 1990, the siblings, together with their aunt Felicidad, signed an extension of a 1983 lease to Enron Oil and Gas Company (EOG) of the minerals under Las Piedras Ranch. Consistent with their understanding of Leonor's will, the extension treated the siblings as equal fee owners of the minerals under the Ranch, just as they were equal fee owners of the minerals under the rest of the estate. The 1990 lease was later transferred to ConocoPhillips.

Until Leon Oscar Sr.'s death in 2006, his actions and those of his siblings, Ileana and Rodolfo, were

consistent with their understanding that Leonor's will had given them a fee interest in the minerals under the entire 7,016 acres, including Las Piedras Ranch, and inconsistent with a contrary view. His death terminated his life estate, which passed, in accordance with Leonor's will, to his three children: Leon Oscar Jr., Rosalinda, and Minerva. Leon Oscar Sr. left his estate to Leon Oscar Jr. and Rosalinda, who were named co-executors in his will. He left no property to his daughter, Minerva, who was incapacitated.

In 2010, Leon Oscar Jr., Rosalinda, and Minerva (through a guardian) brought this lawsuit against their uncle Rodolfo and his business, El Milagro Minerals, Ltd.; their aunt Ileana's estate; and ConocoPhillips and EOG. They asserted that their father's life estate under their grandmother's will included her interest in not only the surface of Las Piedras Ranch but also the minerals beneath it and that the mineral interest their father, aunt, and uncle received under the will's residuary provision did not include those under the Ranch. As remaindermen under the will, they claimed to own their father's life-estate interest in 1/2 of the surface of the Ranch and 1/4 of the minerals, and as his heirs, Leon Oscar Jr. and Rosalinda claimed to own his fee interest in the other 1/2 of the surface. The competing views are as follows:

Ildefonso Ramirez's 7,016 acres	
Surface	
3,508 acres	3,508 acres
Las Piedras Ranch	

Hq Ranch & W El Milagro Pasture	
E El Milagro Pasture	
Minerals	
2006: Leon Oscar Sr.'s – per petitioners	
Surface	
Las Piedras Ranch	5/12 Leon Oscar Jr. 5/12 Rosalinda 1/6 Minerva
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad
Minerals	
1/2 Felicidad 1/6 Ileana 1/6 Rodolfo 1/12 Leon Oscar Jr. 1/12 Rosalinda	
2006: Leon Oscar Sr.'s – per respondents	
Surface	
Las Piedras Ranch	5/12 Leon Oscar Jr. 5/12 Rosalinda 1/6 Minerva
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad

Minerals	
Las Piedras Ranch	Rest of 7,016 Acres
1/2 Felicidad	1/2 Felicidad
1/12 Ileana	1/6 Ileana
1/12 Rodolfo	1/6 Rodolfo
1/8 Leon Oscar Jr.	1/12 Leon Oscar Jr.
1/8 Rosalinda	1/12 Rosalinda
1/12 Minerva	

The children, who are respondents in this Court, sought declarations of the parties' ownership interests. They also claimed that the leases that their father, aunt, and uncle executed were not effective as to them and sought an accounting from EOG and Conoco Phillips. Rosalinda eventually dismissed her claims. Based on its rulings on several motions for summary judgment, and following a bench trial on attorney fees, the trial court signed a final judgment in favor of Leon Oscar Jr. and Minerva, awarding them each $3,764,489 in damages, $951,546 in prejudgment interest, a per diem of $283.63 for a span of about 80 days preceding the trial court's signing of the final judgment, and $1,125,000 in attorney fees—for a total judgment of almost $12 million against Conoco Phillips.[1] The court of appeals affirmed.[2] We granted ConocoPhillips' and Rodolfo's petitions for review.[3]

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[1] Respondents settled with EOG for $50,000 prior to the trial court's signing of a final judgment.

[2] 534 S.W.3d 490 (Tex. App.—San Antonio 2017). The court corrected a clerical error in the judgment awarding relief to respondent Minerva directly rather than through her guardian. *Id.* at 515.

[3] 62 Tex. Sup. Ct. J. 1310–1311 (June 28, 2019).

II

"In construing a will, the court's focus is on the testatrix's intent",[4] which "must be ascertained from the language found within the four corners of the will", if possible,[5] and "determined as of the time the will is executed".[6] "[W]hen a term in a will 'is open to more than one construction,' a court can consider 'the circumstances existing when the will was executed.'"[7]

Leonor's bequest of a life estate to Leon Oscar Sr. capitalizes "Ranch 'Las Piedras'" and places the name in quotation marks, indicating that the term has a specific meaning to Leonor and her family.[8] That meaning is shown by the circumstances that existed when the will was executed. The 1975 partition agreement names the tracts covered and refers to a 1,058-acre tract as "Las Piedras Pasture", expressly stating that only the surface of the tracts was covered and "not . . . [the] oil, gas and other minerals which for the [time being] [were] to remain undivided".

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[4] *San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 639 (Tex. 2000) (citing *Huffman v. Huffman*, 339 S.W.2d 885, 888 (Tex. 1960)).

[5] *Id.* (citing *Shriner's Hosp. for Crippled Children of Tex. v. Stahl*, 610 S.W.2d 147, 151 (Tex. 1980)).

[6] *Henderson v. Parker*, 728 S.W.2d 768, 770 (Tex. 1987).

[7] *Hysaw v. Dawkins*, 483 S.W.3d 1, 8 (Tex. 2016) (quoting *Lang*, 35 S.W.3d at 639).

[8] *See Stagg v. Richardson*, No. 01-17-00543-CV, 2018 WL 1320834, at *2 (Tex. App.—Houston [1st Dist.] Mar. 15, 2018, no pet.) (mem. op.) ("The capitalization of the words, the enclosure of the phrase in quotation marks, and the use of brackets all indicate that the phrase 'Net Amount Due to Stagg' is terminology borrowed directly from [a document referenced in the mediated settlement agreement being construed].") (cleaned up).

Likewise, the 1978 exchange agreement recites that Leon Oscar Sr. and Ileana were "partitioned the surface to 1058 acres . . . known as 'Las Piedras Ranch'" and effects the conveyance from Ileana to Leonor of "all of her right, title, and interest in and to the surface to . . . 1,058 acres of land . . . known as LAS PIEDRAS PASTURE". The agreement elsewhere describes the tract as "Las Piedras Ranch", and like the partition agreement, makes clear that the "Deed of Exchange [did] not . . . include oil, gas and other minerals which . . . remain[ed] undivided". These documents clearly designate the 1,058-acre tract of land known as Las Piedras Ranch and Las Piedras Pasture as a surface estate only. Further, the history of conveyances since 1941 demonstrates the Ramirez family's intent that each member's mineral interest in the larger 7,016-acre tract remain undivided.

Respondents argue that the fact that Las Piedras Ranch was not contiguous with the rest of the estate shows that the family meant to treat the minerals separately as well as the surface. But when the family separated Leon Juan's surface estate into Las Piedras Ranch and two other parcels, they expressly declined to separate the minerals. This is strong evidence that the family intended that their ownership of all the estate minerals be joint. Respondents argue that the leasing of various portions of the minerals from time to time is inconsistent with joint ownership, but execution of the leases was always consistent with the family's understanding of joint ownership.

Had there been any doubt about the meaning of his mother's will, it surely was in Leon Oscar Sr.'s interest to raise it rather than share the mineral interest with his siblings and join with them and his

aunt in leasing the property. The evidence establishes that Leonor, who shared ownership of the Las Piedras Ranch surface with her son, gave him her interest in the surface for life, but gave her interest in the minerals in the 7,016-acre family estate equally to her three children, who already had equal interests.

[* * *]

Because all of respondents' claims are premised on an erroneous interpretation of Leonor's will, petitioners are entitled to judgment as a matter of law. We reverse the court of appeals' judgment and render judgment for petitioners.

/s/ Nathan L. Hecht
Chief Justice

Opinion delivered: January 24, 2020

<table>
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1/2 Leon Juan</td></tr>
<tr><td colspan="3">1966: Leon Juan's death</td></tr>
<tr><td colspan="3">Surface</td></tr>
<tr><td colspan="2">3,508 acres</td><td>3,508 acres</td></tr>
<tr><td colspan="2">1/2 Leonor</td><td rowspan="4">Felicidad</td></tr>
<tr><td colspan="2">1/6 Leon Oscar Sr.</td></tr>
<tr><td colspan="2">1/6 Ileana</td></tr>
<tr><td colspan="2">1/6 Rodolfo</td></tr>
<tr><td colspan="3">Minerals</td></tr>
<tr><td colspan="3">1/2 Felicidad
1/4 Leonor
1/12 Leon Oscar Sr.
1/12 Ileana
1/12 Rodolfo</td></tr>
<tr><td colspan="3">1975: Partition</td></tr>
<tr><td colspan="3">Surface</td></tr>
<tr><td colspan="2">Las Piedras Ranch</td><td>1/2 Ileana
1/2 Leon Oscar Sr.</td></tr>
<tr><td colspan="2">Hq Ranch & W El Milagro Pasture</td><td>Leonor</td></tr>
<tr><td colspan="2">E El Milagro Pasture</td><td>Rodolfo</td></tr>
</table>

3,508 acres	Felicidad
Minerals	
1/2 Felicidad 1/4 Leonor 1/12 Leon Oscar Sr. 1/12 Ileana 1/12 Rodolfo	
1978: Exchange	
Surface	
Las Piedras Ranch	1/2 Leonor 1/2 Leon Oscar Sr.
Hq Ranch & W El Milagro Pasture	Ileana
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Minerals	
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Surface	
Las Piedras Ranch	1/2 fee + 1/2 L/E Leon Oscar Sr.
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad

Minerals	
1/2 Felicidad 1/6 Leon Oscar Sr. 1/6 Ileana 1/6 Rodolfo	
2006: Leon Oscar Sr.'s death – per petitioners	
Surface	
Las Piedras Ranch	5/12 Leon Oscar Jr. 5/12Rosalinda 1/6 Minerva
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad
Minerals	
1/2 Felicidad 1/6 Ileana 1/6 Rodolfo 1/12 Leon Oscar Jr. 1/12 Rosalinda	
1988: Leonor's death – per respondents	
Surface	
Las Piedras Ranch	1/2 fee + 1/2 L/E Leon Oscar Sr.
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad

Minerals	
Las Piedras Ranch	Rest of 7,016 Acres
1/2 Felicidad	1/2 Felicidad
1/12 fee + 1/4 L/E Leon Oscar Sr.	1/6 Leon Oscar Sr.
1/12 Ileana	1/6 Ileana
1/12 Rodolfo	1/6 Rodolfo
2006: Leon Oscar Sr.'s death – per respondents	
Surface	
Las Piedras Ranch	5/12 Leon Oscar Jr. 5/12 Rosalinda 1/6 Minerva
Hq Ranch & W El Milagro Pasture	Ileana
E El Milagro Pasture	Rodolfo
3,508 acres	Felicidad
Minerals	
Las Piedras Ranch	Rest of 7,016 Acres
1/2 Felicidad	1/2 Felicidad
1/12 Ileana	1/6 Ileana
1/12 Rodolfo	1/6 Rodolfo
1/8 Leon Oscar Jr.	1/12 Leon Oscar Jr.
1/8 Rosalinda	1/12 Rosalinda
1/12 Minerva	

JUDGMENT OF THE TEXAS SUPREME COURT (JANUARY 24, 2020)

IN THE SUPREME COURT OF TEXAS

CONOCOPHILLIPS COMPANY, RODOLFO C. RAMIREZ, Individually and as Independent Administrator of The Estate of Ileana Ramirez, and El Milagro Minerals, Ltd.,

Petitioners,

v.

LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian of The Estate of Minerva Clementina Ramirez, an Incapacitated Person,

Respondents.

No. 17-0822

On Petition for Review from the Court of Appeals for the Fourth District of Texas

Before: Nathan L. HECHT, Chief Justice.

THE SUPREME COURT OF TEXAS, having heard this cause on petitions for review from the Court of Appeals for the Fourth District, and having considered the appellate record, briefs, and counsel's argument, concludes that the court of appeals' judgment should be reversed.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

1) The court of appeals' judgment is reversed;

2) Judgment is rendered that respondents take nothing; and

3) Petitioners shall recover, and respondents shall pay, the costs incurred in this Court.

Copies of this judgment and the Court's opinion are certified to the Court of Appeals for the Fourth District and to the District Court of Zapata County, Texas, for observance.

Opinion of the Court delivered by Chief Justice Hecht
January 24, 2020

ORDER OF THE TEXAS SUPREME COURT DENYING MOTION FOR REHEARING (MAY 29, 2020)

IN THE SUPREME COURT OF TEXAS

The Motions for Rehearing of the Following Causes Are Denied:

17-0822

CONOCOPHILLIPS COMPANY v. LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian of the Estate of Minerva Clementina Ramirez, an Incapacitated; from Zapata County; 4th Court of Appeals District (04-15-00487-CV, 534 SW3d 490, 06-07-17)

[. . .]

OPINION OF THE FOURTH COURT OF APPEALS (JUNE 7, 2017)

FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS

CONOCOPHILLIPS COMPANY, RODOLFO C. RAMIREZ, Individually and as Independent Administrator of The Estate of Ileana Ramirez, and El Milagro Minerals, Ltd.,

Appellants,

v.

LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian of The Estate of Minerva Clementina Ramirez, an Incapacitated Person,

Appellees.

No. 04-15-00487-CV

From the 49th Judicial District Court,
Zapata County, Texas, Trial Court No. 7,637
Honorable Jose A. Lopez, Judge Presiding

Before: Karen ANGELINI, Marialyn BARNARD, and Rebeca C. MARTINEZ, Justices.

AFFIRMED AS REFORMED

ConocoPhillips Company and Rodolfo C. Ramirez, Individually and as Independent Administrator of the

Estate of Ileana Ramirez, and El Milagro Minerals, Ltd. appeal the trial court's judgment declaring that appellees Leon Oscar Ramirez, Jr., individually, and Jesus M. Dominguez, as Guardian of the Estate of Minerva Clementina Ramirez, an Incapacitated Person, each own a 1/12 mineral interest in the Las Piedras Ranch, and that ConocoPhillips's three leases are not binding on their mineral interests because, as contingent remaindermen, they were required to sign the leases and did not. ConocoPhillips also challenges the amount of cotenancy accounting awarded and the award of attorneys' fees. Based on our analysis set forth below, we affirm the trial court's judgment in its entirety,[1] except for a reformation to correct a clerical error.

Background and Procedural History

This appeal arises out of a dispute over the ownership of a 1/4 interest in the mineral estate underlying a 1,058-acre tract of land known as "Las Piedras Ranch" in Zapata County, Texas. ConocoPhillips owns several leases on the land which have produced oil and gas since 1995. ConocoPhillips has been paying royalties on the production to the members of the Ramirez family who signed the leases in 1993 and 1997. Appellees Leon Oscar Ramirez, Jr. and his sister Minerva Clementina Ramirez, whose estate is represented by a guardian due to her incapacity, (collectively, "the Grandchildren") are not signatories on the leases and sued ConocoPhillips, as well as their uncle Rodolfo Ramirez and his company El

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[1] The appellees' "Motion to Take Judicial Notice" filed on October 25, 2016 is denied.

Milagro Minerals, Ltd., to recover damages for their share of production from Las Piedras Ranch.

The early part of the chain of title to the mineral estate in Las Piedras Ranch is undisputed. Leon Juan Ramirez and his sister Felicidad each inherited a 1/2 undivided interest (surface and minerals) in seven tracts of land totaling 7,016 acres located in Zapata County, Texas. In 1941, they partitioned the surface estate so each fully owned 3,508 surface acres, but they expressly reserved their 1/2 undivided interests in the mineral estate underlying the whole 7,016 acres. In the surface partition, Leon Juan received the land that includes the 1,058-acre Las Piedras Ranch. Leon Juan died in 1966 and his will devised half of his real property interests to his wife Leonor and half to their three children, Rodolfo, Ileana, and Leon Oscar, Sr. Therefore, Leonor inherited a 1/2 interest in the 3,508-acre surface estate, which includes Las Piedras Ranch, and a 1/4 undivided mineral interest (half of Leon Juan's undivided 1/2 mineral interest) in the entire 7,016 acres, which includes Las Piedras Ranch. The three children as a group inherited the same, with each owning a 1/6 interest in the 3,508-acre surface estate and a 1/12 undivided mineral interest in the whole. The three children, Rodolfo, Ileana, and Leon Oscar, Sr., are referred to by the parties as "the Older Generation."

Ownership of the surface estate of Las Piedras Ranch is not at issue in this case. It is important to note, however, that, during the 1970s, Leonor and her three children, *i.e.*, the Older Generation, engaged in a series of partitions and exchanges of the surface estate they co-owned, with each partition and exchange agreement containing an express reservation of their

undivided mineral interests in the whole 7,016 acres. In the 1975 Partition Agreement, Leonor and the Older Generation partitioned the 3,508-acre surface estate they inherited from Leon Juan into separate tracts of farm and ranch land using names such as "Headquarters Ranch," "East El Milagro Pasture, and "Las Piedras Pasture." As a result of the partition, Ileana and Leon Oscar, Sr. jointly and equally owned the full surface estate of the 1,058 acres "situated partly in the north one-half . . . of Porcion 21 and partly in Porcion 22, known as Las Piedras Pasture." In the 1978 Exchange Deed, Leonor exchanged her full interest in the surface estate of Headquarters Ranch for Ileana's 1/2 surface interest in the "1,058 acres of land . . . known as 'Las Piedras Ranch.'" Both Leonor and Ileana expressly reserved their undivided mineral interests. Thus, at the time Leonor executed her Will in 1987, she owned a 1/2 interest in the surface estate of Las Piedras Ranch (with the other 1/2 interest owned by her son Leon Oscar, Sr.), and an undivided 1/4 mineral interest in the whole 7,016 acres, which included Las Piedras Ranch. Each of the Older Generation's 1/12 undivided mineral interest in the whole similarly remained unchanged by the partition and exchange deeds.

The disputed portion of the chain of title to Leonor's 1/4 mineral interest in Las Piedras Ranch begins in 1990, when Leonor's Will was probated. In her Will, Leonor devised to her son Leon Oscar, Sr. "all of my right, title and interest in and to Ranch 'Las Piedras' out of Porciones 21 & 22 . . . during the term of his natural life." (emphasis added). Leonor's Will further provided that, upon Leon Oscar, Sr.'s death, "the title shall vest in his children then living

in equal shares." (emphasis added). Finally, Leonor's Will contained a residuary clause providing that the residue of her estate would pass in equal shares to her three children, Leon Oscar, Sr., Ileana, and Rodolfo (*i.e.*, the Older Generation). Leon Oscar, Sr.'s life estate terminated when he died in 2006. The current dispute concerns whether "the title" inherited by Leon Oscar, Sr.'s three children, Leon, Jr., Minerva, and Rosalinda (who are Leonor's grandchildren and are referred to collectively as "the Grandchildren")[2] was only to Leonor's 1/2 interest in the surface estate of Las Piedras Ranch, or also included Leonor's 1/4 mineral interest in Las Piedras Ranch.

In 2010, the Grandchildren filed suit against ConocoPhillips[3] and their uncle Rodolfo and his company El Milagro Minerals, Ltd., seeking the following declarations: (1) together the Grandchildren own a 1/4 mineral interest in Las Piedras Ranch pursuant to the chain of title; (2) the three oil and gas leases with ConocoPhillips that were signed by the Older Generation in 1993 and 1997 (the "Leases") are not binding on their collective 1/4 mineral interest because, as contingent remaindermen of their father's life estate at that time, their signatures on the leases were required; and (3) they are entitled to a cotenancy accounting and payment for their proportionate share

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[2] The third child, Rosalinda, originally participated in the lawsuit brought by her siblings but nonsuited her claims. Therefore, the term "Grandchildren" as used in this opinion refers only to Leon, Jr. and Minerva.

[3] The Grandchildren also sued EOG Resources, which was the original lessee on Las Piedras Ranch and from whom Conoco Phillips bought two of the leases in 1995. The Grandchildren ultimately settled with EOG.

of production by ConocoPhillips pursuant to the Leases. In addition to their request for declaratory judgment on the above matters, the Grandchildren pled a trespass to try title claim and a cotenancy accounting claim for their share of gas proceeds under the Texas Natural Resources Code, and pled for recovery of their attorney's fees under the Natural Resources Code. The Grandchildren also pled other claims for fraud and bad faith cotenancy, which were dismissed.

Multiple summary judgment motions were filed by all parties and ruled on by the trial court over the four-year course of the litigation. In relevant part, the trial court granted partial summary judgment in favor of the Grandchildren on their trespass to try title claim and held that the Leases are not binding as to their mineral interests. The trial court denied ConocoPhillips's motion for partial summary judgment on "will construction," and denied summary judgment on ConocoPhillips's affirmative defenses of limitations, ratification, and estoppel. Finally, the trial court granted the Grandchildren's summary judgment motions on cotenancy accounting and denied Conoco Phillips's competing motion. After summary judgment was granted in the Grandchildren's favor on their declaratory judgment, trespass to try title, and cotenancy accounting claims, the issue of attorney's fees was decided in a bench trial.

On May 11, 2015, the trial court signed its final judgment, which referred to and incorporated the prior summary judgment orders, and declared that (1) Leon Jr. and Minerva are each the "fee simple owner of 1/12 of the minerals underneath the 1058 acres of land . . . known as Las Piedras Ranch . . . more particularly described on the attached Exhibits 'A' and 'B,'"

and (2) the three oil and gas leases signed in 1993 and 1997 and owned by ConocoPhillips "are not binding and are ineffective against the above mentioned mineral interests." The judgment further declared that the Grandchildren are entitled to recover a cotenancy accounting from ConocoPhillips and awarded them approximately $3.7 million each for their share of production through October 2012. In addition, the Grandchildren were awarded approximately $950,000 in prejudgment interest and $1,125,000 in attorney's fees through the judgment date. The total amount of the judgment awarded against ConocoPhillips is approximately $11.7 million. ConocoPhillips appealed, as did Rodolfo Ramirez and El Milagro Minerals.

ConocoPhillips's Appeal

On appeal, ConocoPhillips raises the following issues asserting the trial court erred in: (1) granting partial summary judgment for the Grandchildren on their trespass to try title claim and denying Conoco Phillips's request for partial summary judgment on its "surface only-will construction" theory; (2) denying ConocoPhillips's motion for summary judgment on its affirmative defense of limitations, and granting Leon Jr.'s cross motion on limitations; (3) denying Conoco Phillips's motion for summary judgment on its affirmative defenses of ratification and estoppel; (4) granting summary judgment for the Grandchildren on their cotenancy accounting claim and denying Conoco Phillips's cross-motion; (5) awarding attorney's fees and basing the award on insufficient evidence to support the amount; and (6) making other miscellaneous errors in the judgment. We first address the question of who owns title to Leonor's 1/4 mineral interest in

Las Piedras Ranch, as all of the other issues are dependent on our resolution of the title issue.

Title to Leonor's 1/4 Mineral Interest in Las Piedras Ranch

In ConocoPhillips's view, "this is a will construction case" because title to the disputed 1/4 mineral interest turns on what Leonor meant by the name "Ranch Las Piedras" in her Will when she conveyed a life estate in "all of my right, title, and interest in and to Ranch Las Piedras" to her son Leon Oscar, Sr. Conoco Phillips bases its challenges to the Grandchildren's summary judgment on title, and to the denial of its summary judgment motion on "will construction," largely on this premise.

Grandchildren's Partial Summary Judgment Motions on Trespass to Try Title

With respect to the Grandchildren's summary judgment motions on their trespass to try title claim, ConocoPhillips argues the trial court erred in granting their motions because they failed to expressly move for summary judgment on "construction of Leonor's Will." *See* Tex. R. Civ. P. 166a(c) (motion for summary judgment must state the specific grounds); *see also McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 339 (Tex. 1993) (same).

We disagree with ConocoPhillips's premise that this is a "will construction case." At its heart, this is a title dispute in which the chain of title includes Leonor's Will, as well as Leon Juan's will, among the deeds and other documents in the chain. No party brought suit to contest or construe Leonor's Will. *See, e.g.*, *San Antonio Area Found. v. Lang*, 35 S.W.3d 636,

639 (Tex. 2000) (action to construe a will brought in probate court). The claim which the Grandchildren pled and specifically moved for summary judgment on was trespass to try title, which is the method for determining title to real property. *See* Tex. Prop. Code Ann. § 22.001(a) (West 2014); *see also Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004) (trespass to try title is typical method used to "clear problems in chains of title"). We have held that an action to resolve a dispute over title to real property is, in effect, a "trespass to try title action" regardless of the form the action takes and the type of relief sought. *Longoria v. Lasater*, 292 S.W.3d 156, 165 (Tex. App.—San Antonio 2009, pet. denied). To recover in a trespass to try title action, the plaintiff must recover on the strength of his or her own title, not a weakness in the opponent's title. *Id.* The plaintiff has the burden to prove its title to the disputed property and may do so by proving "a regular chain of conveyances from the sovereign." *Martin*, 133 S.W.3d at 265; *Longoria,* 292 S.W.3d at 165.

In support of their summary judgment motions, the Grandchildren submitted the abstract of the chain of title, a supplement to the abstract with copies of the title documents, plus other summary judgment evidence such as affidavits. It is axiomatic that, in examining the documents in the chain of title to determine whether the Grandchildren conclusively proved their right to title, the trial court necessarily read and interpreted the relevant language in each document in the chain, including Leonor's Will, according to the applicable rules of construction. *See Longoria*, 292 S.W.3d at 166 (trial court construes the deeds and other instruments in the chain of title according

to the rules of contract construction as a matter of law); *see also Netherton v. Cowan*, No. 04-1200627-CV, 2013 WL 4091773, at *3 (Tex. App.—San Antonio Aug. 14, 2013, no pet.) (mem. op.) (in construing a will, court must ascertain testator's intent from "four corners" of will, relying on the "plain, ordinary, and generally accepted meanings, unless the instrument itself shows such terms to have been used in a technical or a different sense"). It is not uncommon for a will to be one of the documents in the chain of title used to prove ownership in a trespass to try title action. It was not necessary for the Grandchildren to separately move for summary judgment on "construction" of Leonor's Will, or construction of any other document contained in the chain of title, in order to obtain summary judgment on their trespass to try title claim. We conclude that ConocoPhillips's argument that the Grandchildren were not entitled to summary judgment on their trespass to try title claim because they failed to expressly request construction of Leonor's Will is without merit.

Scope of Life Estate Conveyed by Leonor's Will–Did It Include the 1/4 Mineral Interest?

ConocoPhillips alternatively asserts on appeal that, by granting summary judgment for the Grandchildren on title, the trial court misconstrued the scope of the life estate granted by Leonor's Will. ConocoPhillips also argues the trial court erred in denying its partial summary judgment motion presenting its "surface only-will construction" ground. ConocoPhillips asserts that it conclusively established, based on surrounding circumstances at the time Leonor executed her Will, that Leonor intended the name "Ranch Las Piedras" to refer to the surface estate

only. The Grandchildren argue that ConocoPhillips failed to preserve its "surface only" argument because it did not timely present that specific argument to the trial court; they also argue the trial court did not rule on the merits of ConocoPhillips's motion. Based on the record before us,[4] it is apparent that the trial court considered the "surface only" argument made by ConocoPhillips and rejected it prior to entering the final judgment in this case. We will therefore consider ConocoPhillips's "surface only" argument on appeal.

Arguments of the Parties

The parties agree the plain language of the life estate devise in Leonor's Will is not ambiguous, but each side argues a different interpretation as a matter of law. The Grandchildren argue the life estate Leonor devised to Leon Oscar, Sr. included her 1/4 mineral interest in Las Piedras Ranch, while ConocoPhillips argues the life estate was limited to Leonor's 1/2 interest in the surface estate of Las Piedras Ranch. Both sides generally rely on the same summary judgment evidence, primarily the chain of title documents, plus affidavits and deposition excerpts supporting each side's competing interpretation of the scope of the life estate. On appeal, ConocoPhillips does not challenge any of the summary judgment evi-

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[4] In October 2014, the trial court held a hearing on Conoco Phillips's summary judgment motion presenting its "surface only-will construction" argument. Although there was some discussion about the court having already ruled on title to the 1/4 mineral interest, the court ultimately stated that it had no problem ruling on ConocoPhillips's motion "even if I've already ruled on it before." The court then proceeded to hear substantive arguments on the motion, and denied the motion in an order signed in December 2014.

dence submitted by the Grandchildren, other than their "assumed meaning" of Leonor's Will.

In its responses to the Grandchildren's summary judgment motions on title, ConocoPhillips argued that Leonor's Will did not provide a description of "Ranch Las Piedras," and that the Grandchildren had failed to present any summary judgment evidence establishing the meaning of the phrase. Therefore, ConocoPhillips asserted the Grandchildren did not conclusively establish their title to the disputed mineral interest, and were not entitled to summary judgment on their trespass to try title claim.

In moving for summary judgment on its argument that the life estate Leonor devised to Leon Oscar, Sr. was only in her 1/2 surface interest, ConocoPhillips asserted that because Leonor's Will did not define the name "Ranch Las Piedras," the trial court was required to look to "surrounding circumstances" to construe Leonor's intent with respect to the term's meaning. *See Lang*, 35 S.W.3d at 639 (when construing a will, if a term is open to more than one construction, court may consider extrinsic evidence outside the four corners of written will, such as surrounding circumstances at time of execution, to ascertain testator's intent). ConocoPhillips argued in its motion and argues on appeal that, at the time Leonor executed her Will in 1987, the family had a history of severing the surface from the mineral estate, and then partitioning and exchanging the various surface estates among themselves while leaving the undivided mineral interests in the whole 7,016 acres untouched. In support, ConocoPhillips attached the affidavit of its land title expert, Mr. Cummings, who stated that the chain of title documents showed the 7,016-acre surface

estate had been severed from the underlying mineral estate and then partitioned among the Ramirez family members. Cummings further stated that the Ramirez family had historically treated the severed mineral estate, including the mineral estate under Las Piedras Ranch, as an undivided interest belonging to the entire family. ConocoPhillips stresses that the Ramirez family, and Leonor herself, used express reservation clauses in the 1975 Partition and 1978 Exchange Deed to clarify that their undivided interests in the mineral estate underlying the whole acreage were not affected by the partition and exchange. ConocoPhillips highlights the absence of any inclusive reference to her mineral interest in Leonor's Will as showing that she did not intend the life estate to extend to her mineral interest. ConocoPhillips further relies on the fact that Leonor used the name "Ranch Las Piedras" when referring to the surface estate in the 1975 Partition and 1978 Exchange Deed, arguing that shows the name means only the surface estate. ConocoPhillips asserts that, based on these "surrounding circumstances," Leonor only intended to devise a life estate in the surface of Las Piedras Ranch to Leon Oscar, Sr. As a result, Leon Oscar, Sr.'s children (*i.e.*, the Grandchildren) did not inherit Leonor's 1/4 mineral interest in Las Piedras; rather, the 1/4 mineral interest passed under the residuary clause of Leonor's Will to her children (*i.e.*, the Older Generation).

The Grandchildren's argument in their summary judgment motion was that because Leonor's Will plainly conveyed a life estate in "all of my right, title and interest . . . in Ranch Las Piedras," their father Leon Oscar, Sr. received a life estate in Leonor's full

interest in Las Piedras Ranch, *i.e.*, her 1/2 surface interest and her 1/4 mineral interest. The Grandchildren reason that the meaning of the phrase "all my interest" is plain and clear, and there is no need to go outside the four corners of Leonor's Will to understand the scope of her devise. *See, e.g.*, *Lang*, 35 S.W.3d at 639 (term "real property" in will was not susceptible to more than one understanding, and thus did not require extrinsic evidence to understand). The Grandchildren stress that there was no express reservation of Leonor's 1/4 mineral interest from the life estate devise, and point out that Leonor knew how to make an express mineral reservation and had done so in the past. The Grandchildren rely on the general principle that, absent an express reservation, a conveyance of land includes both the surface and the underlying minerals. *See Sharp v. Fowler*, 151 Tex. 490, 252 S.W.2d 153, 154 (1952). In response to ConocoPhillips's assertion that the name "Ranch Las Piedras" is not defined in the Will and must be construed by looking to extrinsic evidence, the Grandchildren point out that "Ranch Las Piedras" was described by its physical location, "out of Porciones 21 & 22, and situated in Zapata County, Texas," in Leonor's Will. They also assert the name had an accepted meaning to Leonor. Therefore, the Grandchildren assert that, based on the plain language of the life estate devise in Leonor's Will, and the other documents in the chain of title, they inherited Leonor's 1/4 mineral interest in Las Piedras Ranch in equal shares, *i.e.*, 1/12 each, upon the death of their father Leon Oscar, Sr.

Analysis

As to whether the trial court misconstrued the scope of the life estate devise in Leonor's Will, we hold it did not. The meaning of the words "all of my right, title and interest in and to Ranch Las Piedras" can be ascertained according to their plain language within the four corners of the Will; therefore, the use of extrinsic evidence is inappropriate. *See Lang*, 35 S.W.3d at 639. Leonor's use of the word "all," with no qualifiers or reservations, is comprehensive by its nature and does not require explanation. Moreover, the general principle of conveyances is that absent an express reservation of a mineral interest, it is conveyed along with the surface; an inclusive reference to the mineral interest is not required. *See Sharp*, 252 S.W.2d at 154. We also disagree that the name "Ranch Las Piedras" is open to more than one reasonable construction. The Will identifies "Ranch Las Piedras" by its physical location as "out of Porciones 21 & 22, and situated in Zapata County, Texas." Use of a name to refer to the physical land on the surface does not mean the conveyance excludes the minerals beneath it. *Id.* ("To describe land is to outline its boundaries so that it may be located on the ground, and not to define the estate conveyed therein."). Extrinsic evidence may not be used to create doubt as to the meaning of the name when the words used in the Will are unambiguous. *See Lang*, 35 S.W.3d at 639; *see also Longoria*, 292 S.W.3d at 166 (mere disagreement about interpretation of deed does not make it ambiguous; an instrument is ambiguous only if, after application of the rules of construction, it is unclear which meaning is the correct one).

Having reviewed all the summary judgment evidence *de novo*, we conclude the Grandchildren conclusively established their record title to Leonor's 1/4 mineral interest in Las Piedras Ranch as a matter of law. *See* Tex. R. Civ. P. 166a; *see also Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005) (when both sides move for summary judgment on the same issue and the trial court grants one motion and denies the other motion, the appellate court reviews the summary judgment evidence presented by both sides and determines all questions presented); *see Hejl v. Wirth*, 161 Tex. 609, 343 S.W.2d 226, 226 (Tex. 1961) (plaintiff must recover on strength of his own title in a trespass to try title case); *see also Cross v. Thomas*, 264 S.W.2d 539, 542 (Tex. Civ. App.—Fort Worth 1953, writ ref'd n.r.e.) (whether a particular person owns record title is a question of law). Based on the plain language on the face of the documents in the chain of title, we hold the trial court properly granted summary judgment for the Grandchildren on their claim of title to the disputed 1/4 mineral interest in Las Piedras Ranch, and properly denied summary judgment for ConocoPhillips on the issue of title.[5]

ConocoPhillips's Affirmative Defenses

ConocoPhillips asserts the trial court erred in denying its motions for summary judgment on its

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[5] To the extent ConocoPhillips argues on appeal that the trial court abused its discretion in denying Conoco's motion to reconsider and reopen the December 6, 2012 summary judgment order, we hold there was no abuse of discretion. The trial court considered the same arguments when it denied ConocoPhillips's 2014 summary judgment on will construction.

affirmative defenses of limitations, ratification, and estoppel. A defendant moving for summary judgment on an affirmative defense must conclusively establish each element of the defense to prevail. Tex. R. Civ. P. 166a(b); *Long Distance Int'l, Inc. v. Telefonos de Mexico, S.A. de C.V.*, 49 S.W.3d 347, 350-51 (Tex. 2001).

Statute of Limitations

Cross-motions for summary judgment on limitations were filed, and the trial court denied Conoco Phillips's motion and granted Leon, Jr.'s motion. Therefore, we review the motions, responses, and all summary judgment evidence de novo, determine all questions presented, and render the appropriate judgment if the trial court erred. *Valence*, 164 S.W.3d at 661. To be entitled to summary judgment on the affirmative defense of limitations, a defendant must prove as a matter of law: (1) the date on which the limitations period commenced, *i.e.*, when the cause of action accrued, and (2) that the plaintiff filed its petition outside the applicable limitations period. *In re Estate of Denman*, 362 S.W.3d 134, 144 (Tex. App.—San Antonio 2011, no pet.).

The Grandchildren filed their lawsuit on November 19, 2010. In its second amended answer, ConocoPhillips pled, in relevant part, that Leon, Jr.'s claims[6] are

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[6] ConocoPhillips agrees that limitations does not apply against Minerva because she is an incapacitated person. However, Rodolfo Ramirez and El Milagro Minerals, Ltd. still assert a limitations bar against Minerva. Under the applicable statutes, the limitations period does not run against an incapacitated person. *See* Tex. Civ. Prac. & Rem. Code Ann. § 16.001(b), 16.022(b) (West Supp. 2016 & 2002). We therefore reject the limitations argument made by Rodolfo Ramirez and El Milagro Minerals, Ltd. as to Minerva Ramirez.

barred by the applicable statutes of limitation, citing to the two-year and four-year limitations periods set forth in sections 16.003(a) and 16.004(a), and to the residual four-year limitations period in section 16.051 of the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code Ann. §§ 16.003(a), 16.004(a), 16.051 (West Supp. 2016 & 2002 & 2015). In its "Second Amended Motion for Summary Judgment as to All Claims of Plaintiffs Leon O. Ramirez, Jr. and Rosalinda Ramirez Eckhardt," ConocoPhillips asserted that "all of Leon, Jr.'s claims" are barred by limitations. Leon, Jr. argues on appeal that ConocoPhillips failed to specifically move for summary judgment on limitations against his trespass to try title and cotenancy accounting claims. We disagree. ConocoPhillips's summary judgment motion asserted a limitations bar against all claims brought by Leon, Jr. In addition, in its motion ConocoPhillips specifically asserted that limitations bars Leon, Jr.'s claim for a declaratory judgment that "(1) he owns a 1/12 undivided interest in the mineral estate" underlying Ranch Las Piedras, and that (2) the three Leases are "'ineffective' as to the undivided [mineral] interest he claims to own." In addition, ConocoPhillips asserted that Leon, Jr.'s "suit for an accounting as an unleased cotenant is time barred" under the four-year statute of limitations in section 16.004. *Id.* § 16.004(a)(3) (debt).

In its summary judgment motion, as it does on appeal, ConocoPhillips characterized Leon, Jr.'s title claim asserting ownership of the disputed mineral interest as "an action to construe a will," and argued the claim was barred because the four-year statute of limitations for a will-construction suit began running in 1990 when Leonor's Will was probated. *See Estate*

of Denman, 362 S.W.3d at 144 (holding that residual four-year limitations period of Texas Civil Practice and Remedies Code section 16.051 applies to declaratory judgment action to construe a will); *see also In re Estate of Florence*, 307 S.W.3d 887, 890 (Tex. App.—Fort Worth 2010, no pet.) (same). This argument fails because we have rejected ConocoPhillips's argument that Leon, Jr.'s suit to establish title was actually a suit to construe Leonor's Will.

The success of ConocoPhillips's limitations defense depends upon the accrual date for Leon, Jr.'s claims, which is a question of law. *Estate of Denman*, 362 S.W.3d at 144 (determination of the date on which a cause of action accrues is a question of law for the court). A cause of action generally accrues, and limitations begins to run, when facts come into existence that authorize a party to seek a judicial remedy. *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 221 (Tex. 2003). This rule generally prevails regardless of when the claimant learns of his injury. *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 351 (Tex. 1990). A cause of action under the Declaratory Judgment Act does not accrue until there is an actual controversy between the parties. *Estate of Denman*, 362 S.W.3d at 144.

ConocoPhillips's argument is that Leon, Jr.'s claims accrued in 1990 when the Older Generation (including his father Leon Oscar, Sr. as the life tenant) took the "overt acts" of signing oil and gas leases on Las Piedras Ranch, thereby creating an actual controversy with the Grandchildren, who were contingent remaindermen of their father's life estate. *See Murphy v. Honeycutt*, 199 S.W.2d 298, 298-99 (Tex. Civ. App.—Texarkana 1946, writ ref'd) (remain-

dermen's cause of action for construction of will accrued when the life tenant executed a deed conveying the property covered by the will). The Older Generation also signed additional leases covering Las Piedras Ranch in 1993 and 1997 (*i.e.*, the Leases). Memoranda of the leases were filed in the county's public records, but not the leases themselves. The Older Generation also began receiving royalty payments from the production on the leases. ConocoPhillips asserts that Leon, Jr. therefore had either actual or constructive notice of the leases and royalty payments on production, *i.e.*, the facts giving rise to his claim, in 1990 at the earliest, and certainly no later than 1997;[7] therefore, his 2010 lawsuit was barred by limitations.

ConocoPhillips also asserts that neither the discovery rule nor fraudulent concealment applied to toll the limitations period because the drilling activities were continuous, open, and obvious, and the Leases, well permits, and production reports were matters of public record and therefore easily discoverable. *See HECI Exploration Co. v. Neel*, 982 S.W.2d 881, 886 (Tex. 1998) (discovery rule); *see also Natural Gas Pipeline Co. of Am. v. Pool*, 124 S.W.3d 188, 198 (Tex. 2003) (failure to know status of leases did not suspend limitations); *BP America Prod. Co. v. Marshall*,

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[7] On appeal, ConocoPhillips also argues the Older Generation's signing of a stipulation of interest in 1997, in which they claimed to own Leonor's 1/4 mineral interest in Las Piedras Ranch, placed Leon, Jr. on notice of his claims. However, this was not included as a ground for summary judgment in ConocoPhillips's motion. A party cannot raise new reasons why a summary judgment should have been granted for the first time on appeal. Tex. R. Civ. P. 166a(c); *Garcia v. Garza*, 311 S.W.3d 28, 44 (Tex. App.—San Antonio 2010, pet. denied).

342 S.W.3d 59, 69-70 (Tex. 2011) (plaintiffs' alleged ignorance of what they owned did not toll limitations).

Here, the relevant issue is whether Leon, Jr.'s claims accrued during his father's life tenancy, while Leon, Jr. was a contingent remainderman, or did not accrue until his father's death in 2006, when Leon, Jr.'s contingent interest vested and he had the right to possession. A well-established line of authority holds that, "[t]he statutes of limitation as to an interest in land, which one owns as a remainderman, subject to a life estate in another, do not begin to run in favor of one in possession until the death of the life tenant." *Estate of McWhorter v. Wooten*, 622 S.W.2d 844, 846 (Tex. 1981) (internal citations omitted) (suit for trespass to try title); *Garza v. Cavazos*, 148 Tex. 138, 221 S.W.2d 549, 553 (1949) (suit for trespass to try title); *Evans v. Graves*, 166 S.W.2d 955, 958 (Tex. Civ. App.—Dallas 1942, writ ref'd w.o.m.) (holding that remainderman was not compelled to bring her suit for trespass to try title until her right of possession accrued upon the life tenant's death, even though she might have been able to bring suit as a contingent remainderman to quiet title during the life estate). According to the terms of Leonor's Will, Leon, Jr.'s remainder interest was contingent on him surviving the life tenant, *i.e.*, his father. *See Guilliams v. Koonsman*, 154 Tex. 401, 279 S.W.2d 579, 582 (1955) (explaining the difference between a contingent and a vested remainder); *see also Enserch Exploration, Inc. v. Wimmer*, 718 S.W.2d 308, 310 (Tex. App.—Amarillo 1986, writ ref'd n.r.e.) (citing the "well-established rule" that a "life tenant is entitled to exclusive possession and control of the property comprising the life estate and the remaindermen are

not entitled to possession thereof until the life estate terminates"). Thus, we disagree with ConocoPhillips that Leon, Jr.'s claims accrued in 1990 when the first leases on Las Piedras Ranch were signed (or when the Leases were signed in 1993 and 1997) because those events occurred prior to the death of Leon Oscar, Sr., and thus prior to the vesting of Leon, Jr.'s interest in 1/12 of the mineral estate of Las Piedras Ranch. *See Estate of McWhorter*, 622 S.W.2d at 846; *Garza*, 221 S.W.2d at 553; *Evans*, 166 S.W.2d at 958. We hold that the limitations period for Leon, Jr.'s claims did not start running until the date of Leon Oscar, Sr.'s death on November 27, 2006, when Leon, Jr.'s remainder interest vested and became a possessory interest; therefore, his lawsuit was timely filed within the applicable limitations periods. The trial court did not err in denying ConocoPhillips's motion for summary judgment on limitations and in granting Leon, Jr.'s motion on limitations.

Ratification and Estoppel

ConocoPhillips argues the trial court also erred in denying its motion for summary judgment on the affirmative defenses of ratification and estoppel. ConocoPhillips asserts that Leon, Jr. signed ratifications of the 1993 Leases and took other actions seeking to benefit from the Leases which equitably estop him from asserting the Leases are invalid as to his mineral interest.

As to ratification, ConocoPhillips moved for summary judgment on the basis of two ratifications of the 1993 Leases purportedly signed by Leon, Jr. (the

"Ratifications").[8] However, there is undisputed summary judgment evidence that Leon Oscar, Sr.'s signature, not Leon, Jr.'s, appears on the Ratifications. In his affidavit attached to his summary judgment motion on title, Leon, Jr. swore that he did not sign the two Ratifications that pertain to the 1993 Leases; his father signed them. Leon, Jr. stated that his father's signature was very unique and distinctive, and in no way resembled his own signature, and he provided documents with the known signature of each for comparison. The admitted signature of Leon, Jr. that appears on the April 26, 1990 ratification of the 1990 Enron lease is very obviously not the same signature that appears on the two Ratifications dated January 27, 1994 and February 10, 1994 pertaining to the 1993 Leases. Those signatures match the known signature of Leon Oscar, Sr. Moreover, the typed name under the signature lines on the Ratifications states "Leon O. Ramirez, Jr. (Lessor) (aka Leon O. Ramirez)." Leon, Jr. further testified that he did not give his father authority to sign for him, and ConocoPhillips presented no summary judgment evidence refuting that statement. The record is thus conclusive that Leon, Jr. did not sign the Ratifications of the 1993 Leases himself and did not authorize his father Leon, Sr. to sign for him.

ConocoPhillips also argues that Leon, Jr. further ratified the Leases when he signed division orders pertaining to the payment of royalties to Leon Oscar, Sr.'s estate after his death. However, the record

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[8] ConocoPhillips's summary judgment motion also referred to Leon, Jr.'s April 26, 1990 ratification, which he admitted signing. However, because it pertained to the 1990 lease with Enron/EOG, that lease is not at issue in this case.

shows that Leon, Jr. clearly signed the division orders in his capacity as co-executor of Leon Oscar, Sr.'s estate, not in his individual capacity as he sued in the instant case. Further, under the chain of title, Leon Oscar, Sr. owned a fee simple interest in the minerals underneath Las Piedras Ranch which he inherited from his father Leon Juan, that was separate and distinct from the mineral interest owned by Leonor. Therefore, Leon Oscar, Sr. was also receiving royalties as a lessor of his other undivided mineral interest in Las Piedras Ranch, separate from the life estate he received from Leonor. Accordingly, we hold the trial court did not err in denying ConocoPhillips's motion for summary judgment on ratification.

As to estoppel, ConocoPhillips argues that the Grandchildren were equitably estopped to deny the validity of the Leases because they had taken contrary positions in the past ratifying the validity of the Leases and seeking their benefits. *See Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex. 2000) (quasi-estoppel precludes a party from "asserting, to another's disadvantage, a right inconsistent with a position previously taken"). In its summary judgment motion, ConocoPhillips relied on the Grandchildren's "Offer in Compromise" with the IRS seeking to reduce the estate tax liability from their father's estate based on his improper retention of all the royalties under the Leases, and their action in making a claim against their father's estate for their share of royalties from Las Piedras production, characterizing these actions as a recognition of the Leases' validity. *See Sun Operating L.P. v. Oatman*, 911 S.W.2d 749, 756 (Tex. App.—San Antonio 1995, writ denied) (acceptance of royalties with knowledge that they were in

payment of royalty from mineral deed constituted ratification lease). ConocoPhillips asserts these actions by the Grandchildren amounted to a ratification of the effectiveness of the Leases as to the disputed 1/4 mineral interest in Las Piedras Ranch, and estopped them from taking a contrary position in this lawsuit.

The Grandchildren point out that ConocoPhillips's arguments are based on the false premise that the IRS claim and their claim against their father's estate were for "royalty payments," and thus depended on the Leases being valid, when the true nature of the claims was for their share of unpaid gas proceeds based on repudiation of the Leases. The record supports the Grandchildren's characterization of these claims. The Offer in Compromise submitted to the IRS sought to reduce the value of Leon Oscar, Sr.'s estate by an indebtedness amount consisting of the Grandchildren's unpaid share of gas proceeds, not royalties, as unleased cotenants. As ConocoPhillips quotes in its reply brief, "Plaintiffs told the IRS that Leon Oscar was 'not entitled to any portion of the gas proceeds relating to the life estate mineral interest in the Wells' and that Leon Oscar 'received gas proceeds in excess of his royalty fractional interest.'" The Grandchildren's claim against their father's estate is similarly based on an indebtedness he owed to them as contingent remaindermen of the life estate in the minerals, and does not constitute a ratification of the Leases as to the Grandchildren's mineral interests. The Grandchildren point out that they have never denied that the Leases were and are effective and binding on the Older Generation's mineral interests, and that the Older Generation was and is entitled to receive royalties from those Leases in the proportion of their correct

ownership interests. We hold the trial court did not err in denying ConocoPhillips's summary judgment motion on the affirmative defense of estoppel.

Cotenancy Accounting of Production and Recovery of Unpaid Oil and Gas Proceeds

Right to Receive Cotenancy Accounting and Share of Proceeds

In their Fourth Amended Petition, the Grandchildren pled that, by producing minerals from Las Piedras Ranch, ConocoPhillips was "guilty of waste of the life estate corpus" and failing to account for oil and gas production to them as unleased cotenants and contingent remaindermen.[9] The Grandchildren sought an equitable accounting of such production and recovery of unpaid gas proceeds under Chapter 91 of the Texas Natural Resources Code. Tex. Nat. Res. Code Ann. § 91.404 (West 2011). The trial court held in its final judgment that the Leases "are not binding and are ineffective against" the Grandchildren's mineral interests in Las Piedras Ranch. *See MCZ, Inc. v. Smith*, 707 S.W.2d 672, 679 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.) (a life tenant who is the grantor on an oil and gas lease can only convey what he owns to the lessee, and may not bind the contingent remaindermen's interest without their joinder). As a result of the status of the Grandchildren as non-signing contingent remaindermen, they were unleased cotenants in the wells drilled on Las Piedras Ranch, and the trial court held they are entitled to a cotenancy accounting for their share of

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[9] The Grandchildren did not seek a cotenancy accounting from Rodolfo Ramirez or El Milagro Minerals, Ltd.

production from ConocoPhillips. *See Cox v. Davison*, 397 S.W.2d 200, 201 (Tex. 1965) (a cotenant who produces minerals from commonly owned property without having secured the consent of its cotenants is accountable to them for "the value of the minerals taken less the necessary and reasonable cost of producing and marketing the same"); *Prize Energy Resources, L.P. v. Cliff Hoskins, Inc.*, 345 S.W.3d 537, 564 (Tex. App.—San Antonio 2011, no pet.) (citing the long established rule in Texas that a cotenant has the right to extract minerals from common property without first obtaining consent from his cotenants, but must account to them on the basis of the value of the minerals taken, less the necessary and reasonable costs of production and marketing); *see also* Tex. Nat. Res. Code Ann. §§ 91.402-.403 (West 2011) (lessee's duty to pay oil and gas proceeds within certain time period). To the extent that ConocoPhillips challenges the trial court's holding that the Leases are not binding on the Grandchildren's mineral interests[10] and that they are entitled to a cotenancy accounting of production and recovery of their share of proceeds, we overrule the challenge. *See MCZ*, 707 S.W.2d at 680 (lease, not joined in by remaindermen, was ineffective to authorize drilling in derogation of the remaindermen's rights); *id.* at 676 (operator of well became the producing cotenant to the non-signing remaindermen's interest, and its production triggered its duty under Texas law to account to the remainder interests for the minerals produced, less proportionate reasonable costs).

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[10] It is undisputed that the Grandchildren did not sign the Leases.

Calculation of Cotenancy Accounting

With respect to calculation of the accounting, the record reflects that, at a pretrial conference in October 2012, ConocoPhillips agreed to submit a cotenancy accounting for Well Nos. 3 through 11[11] in accordance with industry standards "from the beginning of production until present day." ConocoPhillips's expert in oil and gas accounting, Rodney Sowards, prepared three "net profits" accountings based on the entire drilling enterprise on the Ramirez leases and ending in October 2012. Each of Sowards's accountings had a different start date and total net profit amount —$32,083,039 for the period beginning in August 1990, the date of first production; $8,531,326 for the period beginning in November 2006, the date of Leon Oscar, Sr.'s death and the vesting of the remainder interests; and $2,503,717 for the period beginning in November 2008, two years before the Grandchildren filed their lawsuit. The Grandchildren filed a motion for summary judgment on cotenancy accounting which was based on Sowards's accounting but included adjustments to his calculations of revenue and deductible costs. The Grandchildren's motion relied on Sowards's 416-page accounting, plus the previously filed documents in the chain of title, documents detailing the fractional interests, production amounts and costs, and an affidavit by their expert,

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11 Eleven wells total were drilled on the Ramirez leases. Three were drilled by EOG before Conoco purchased the leases in 1995. Of those first three wells, Well No. 1 was drilled under the 1983 lease which is not at issue in this case, Well No. 2 was a dry hole drilled under the 1990 lease, and Well No. 3 was a producing well at the time ConocoPhillips acquired the leases from EOG in January 1995.

Luciano A. Rodriguez, an oil and gas attorney, detailing adjustments they characterized as "necessary as a matter of law" to correct errors in ConocoPhillips's accounting. After considering ConocoPhillips's objections and response, the trial court granted the Grandchildren's summary judgment motion and made all the requested adjustments.

In its final judgment, the trial court stated that its award of the cotenancy accounting and payment was made under equitable and common law principles, as well as under the Texas Natural Resources Code. The trial court explained that, based on its prior summary judgment order dismissing the bad faith cotenancy claim against ConocoPhillips, the company was "entitled to deduct production and marketing costs" in calculating the cotenancy accounting. It also found that the cotenancy accounting provided by ConocoPhillips only went to the end of October 2012, and that ConocoPhillips had failed to supplement its accounting as agreed. Based on those findings, the trial court ordered that Leon, Jr. and Minerva each recover from ConocoPhillips the sum of $3,764,489 as the amount due at the end of October 2012, together with prejudgment interest of $951,546 computed from November 27, 2006 until March 20, 2015, plus a per diem of $283.63 from March 20, 2015 until the date of the judgment, *i.e.*, May 11, 2015.

On appeal, ConocoPhillips raises several challenges to the trial court's calculation of the amount of the cotenancy accounting and payment awarded to the Grandchildren. ConocoPhillips argues the trial court erred in granting the Grandchildren's summary judgment motion and making their requested adjustments to the "net profits" cotenancy accounting that Sowards

prepared on behalf of ConocoPhillips. ConocoPhillips also argues the affidavit by attorney Luciano A. Rodriguez which was attached to the Grandchildren's summary judgment motion should have been struck on the basis that he was unqualified to testify about Sowards's cotenancy accounting. We begin with the issue of whether Rodriguez's affidavit was competent summary judgment evidence on the accounting issue.

Affidavit of Luciano Rodriguez

In the trial court, ConocoPhillips moved to strike Luciano Rodriguez's affidavit because he had "no professional accounting experience and no experience in oil and gas accounting;" therefore, he was unqualified to testify about errors in Sowards's cotenancy accounting. The motion to strike was denied. On appeal, ConocoPhillips argues Rodriguez's affidavit should have been stricken for that reason (*i.e.*, not qualified), and because "an expert may not testify to pure questions of law." The second basis was not raised in the trial court, and may not be raised for the first time on appeal. *See* Tex. R. App. P. 33.1(a).

Turning to Rodriguez's qualifications to testify about the cotenancy accounting, Rodriguez recited in his affidavit that he has been licensed as an attorney since 1975, and has thirty-nine years' experience representing oil and gas companies and mineral owners in "oil and gas title examination, transactions, mediation, arbitration and litigation." His legal services have included examining title to determine ownership issues pertaining to mineral interests, leases and production, negotiating, drafting and applying lease terms, and mediating disputes regarding oil and gas properties. After discussing the title issue with regard

to the Grandchildren's mineral interests, Rodriguez states he was asked to opine on "whether the royalty burden in the cotenancy accounting prepared by ConocoPhillips is correct."

Rodriguez concluded that the royalty burden charged to the Grandchildren was incorrect based on oil and gas cotenancy law and his review of the Grandchildren's summary judgment motions on title and the supporting evidence, the affidavit of ConocoPhillips's title expert Allen D. Cummings, two division order title opinions, several royalty deeds filed of record, and ConocoPhillips's own calculations of interests for each well. Rodriguez explained that, based on his review of the title documents, there are two types of royalties applicable to the Las Piedras Ranch, and he explained the legal difference between the two—a "basic royalty interest," which arises out of the subject leases and does not burden the unleased cotenants' share, and a "non-participating royalty interest," which arises out of a conveyance in the chain of title and does burden the cotenants' share. *See Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996); *see also Hamilton v. Morris Res., Ltd.*, 225 S.W.3d 336, 344 (Tex. App.—San Antonio 2007, pet. denied). Rodriguez concluded that Sowards's cotenancy accounting improperly charged *all* the royalties ConocoPhillips paid under the Leases, including the basic royalties which do not bind the Grandchildren's share, against the production. Rodriguez also concluded there were three conveyances of non-participating royalties by the Grandchildren's predecessors in the chain of title that properly burden the Grandchildren's share. Accordingly, Rodriguez opined that, based on "simple arithmetic," the royalty

burden on the Grandchildren's share for each of Well Nos. 3 through 11 should be adjusted by deleting the basic royalties paid by ConocoPhillips under the Leases and applying only the non-participating royalties against the Grandchildren's share of production.

We conclude the trial court did not abuse its discretion in overruling ConocoPhillips's objection to Rodriguez's affidavit. *Gharda USA, Inc. v. Control Sols., Inc.*, 464 S.W.3d 338, 347 (Tex. 2015); *Chavez v. Davila*, 143 S.W.3d 151, 154 (Tex. App.—San Antonio 2004, pet. denied). Rodriguez was qualified as an expert in oil and gas law based on his experience as detailed in his affidavit, and his opinion was based on his knowledge of such legal principles as applied to the pleadings and summary judgment evidence, the chain of title documents, and Conoco Phillips's own calculations of interest for each of the wells produced during discovery. *See* Tex. R. Evid. 702, 703. As the Grandchildren state, Rodriguez was not hired to prepare his own accounting, but rather to review the royalty deeds in the title documents and summarize the non-participating royalties applicable to the Grandchildren's share of production. Rodriguez testified that his calculations of the proper royalty burden were based on "a simple arithmetic calculation based on the applicable conveyances and reservations of royalty chargeable to Plaintiffs as ConocoPhillips did in calculations which [it] produced in this case pursuant to discovery requests." We conclude it was not necessary, in order for Rodriguez's opinion to be reliable, that Rodriguez be a certified public accountant or oil and gas accountant, and for him to perform the simple calculation to correct Sowards's royalty calcu-

lation by only including the royalty interests chargeable to the Grandchildren's interests based on oil and gas law and the title documents.

Adjustments Made to ConocoPhillips's Cotenancy Accounting

The parties agree that the basic formula for computation of the cotenancy accounting is the proportionate market value of the minerals taken less the proportionate necessary and reasonable costs of producing and marketing the minerals. *Wagner & Brown, Ltd. v. Sheppard*, 282 S.W.3d 419, 426 (Tex. 2008); *Prize Energy*, 345 S.W.3d at 564. ConocoPhillips argues the trial court erred, however, by making the following adjustments to Sowards's "net profits" cotenancy accounting: (i) starting the accounting on ConocoPhillips's acquisition date in January 1995 before the Grandchildren's remainder interests vested and became possessory interests; (ii) failing to allow ConocoPhillips to deduct its acquisition costs for Well Nos. 2 and 3 when the accounting was adjusted to begin in January 1995; (iii) failing to allow ConocoPhillips to claim the full 22.50% royalty payments made to other lessors under the Leases as costs chargeable to the Grandchildren's share of production; and (iv) failing to allow ConocoPhillips to deduct its "allocable cost of capital" in the accounting calculation.

With respect to the start date of the cotenancy accounting, ConocoPhillips argues the trial court erred in running the accounting from its January 1995 acquisition of the Leases rather than from November 2006, when Leon Oscar, Sr. died and the Grandchildren's remainder mineral interests became possessory

interests. ConocoPhillips relies on caselaw stating that contingent remaindermen do not have a possessory interest in property until the termination of the life estate, and argues the Grandchildren were therefore not entitled to a share of the net profits as cotenants until they had a present right to possession. *See Enserch Exploration*, 718 S.W.2d at 310 (life tenant is entitled to exclusive possession and control over the life estate property during his lifetime). However, ConocoPhillips's argument overlooks the point that the Leases were never effective as to the Grandchildren's contingent remainder mineral interests because the Grandchildren did not execute the Leases. It is the non-binding nature of the Leases that requires the Grandchildren to be treated as unleased cotenants from 1995 forward. *See Cox*, 397 S.W.2d at 201; *see also MCZ*, 707 S.W.2d at 679. We conclude the proper start date for the accounting is January 1995.

Second, ConocoPhillips argues that, when the trial court adjusted the accounting to begin in 1995, it should have allowed ConocoPhillips to deduct its costs for acquiring from EOG the already-producing Well No. 3 and the geological field information EOG developed by drilling the dry-hole Well No. 2. None of Sowards's three accountings began in 1995, and therefore he had not included those acquisition costs in the accountings presented to the trial court. To the extent ConocoPhillips is asserting it is entitled to deduct its acquisition costs from the 1995 EOG transaction, it failed to present the figures detailing such acquisition costs to the trial court in its response opposing the Grandchildren's summary judgment motion or at the hearing; therefore, the argument is waived. *See* Tex. R. App. P. 33.1(a). To the extent that

ConocoPhillips is arguing that it is entitled to deduct the costs incurred by EOG in drilling Well Nos. 2 and 3 from the Grandchildren's share of production, we disagree. Just as ConocoPhillips is not burdened by the revenue earned by EOG from Well No. 3 before 1995, it similarly is not entitled to deduct costs incurred by EOG in drilling Well Nos. 2 and 3 before 1995. In his affidavit, Rodriguez noted that Well Nos. 2 and 3 were drilled by EOG prior to ConocoPhillips's acquisition of the Leases, and therefore EOG, not ConocoPhillips, received the revenues or other benefits from those wells and bore the expenses for those wells prior to 1995. Further, we note that EOG separately settled with the Grandchildren before the conclusion of the case. We conclude the trial court did not err in disallowing these costs in the cotenancy accounting it adopted.

Third, ConocoPhillips argues the trial court erred by eliminating the 22.50% royalty payments paid by ConocoPhillips to other lessors under the Leases, which should have been deducted as costs against the production. In support, ConocoPhillips asserts that in a "net profits" accounting, the industry standard COPAS permit deduction of royalties from the gross proceeds. However, that industry standard deduction is premised on the existence of a valid lease whose terms include the royalty. Rodriguez's affidavit explains why charging the basic royalty interest under the Leases against the Grandchildren's unleased-cotenants' interest is improper—because the Leases do not bind the Grandchildren's mineral interests. Only the non-participating royalties paid by ConocoPhillips to the other lessors properly bind the Grandchildren's share of production. Because the 22.50% royalty calculation

encompassed the basic royalties owed under the Leases, it was properly excluded.

Fourth, ConocoPhillips argues the trial court erred in disallowing interest as part of its "monthly weighted average cost of capital" as a deduction in Sowards's accounting. In its brief, ConocoPhillips acknowledges the Texas Supreme Court's 1965 holding in *Cox v. Davison* that interest may not be deducted from revenues in a cotenancy accounting, but argues the opinion is wrong because "[i]nterest on capital is a cost of developing the field." *See Cox*, 397 S.W.2d at 203. As an intermediate appellate court, we are bound to follow the rule in *Cox* until such time as it may be overturned.

Based on the above analysis, we conclude the trial court did not err in making the adjustments to ConocoPhillips's cotenancy accounting.

Attorneys' Fees Award

As noted, *supra*, after all the substantive claims were disposed of by summary judgment, the trial court held a bench trial on attorneys' fees. The final judgment awards attorneys' fees against ConocoPhillips in the amount of $1,125,000 each to Leon, Jr. and Minerva "for the attorneys' fees incurred by [them] as a result of the work of [their] lawyers in [the trial court], the work of [their] attorneys in original proceedings in the Court of Appeals and the Supreme Court and the work of [their] attorneys in interlocutory appeal in the Court of Appeals." In addition, the trial court entered lengthy and detailed findings of fact and conclusions of law in support of its attorneys' fees award.

On appeal, ConocoPhillips argues the trial court erred in awarding any attorneys' fees to the Grandchildren because they are not recoverable on a trespass to try title claim. As to the amount of attorneys' fees awarded, ConocoPhillips argues (i) the evidence is insufficient to support the amount, (ii) the trial court abused its discretion in applying a 3x multiplier to offset the contingent fee agreement, and (iii) the trial court abused its discretion by disregarding the testimony of ConocoPhillips's expert on attorneys' fees. We begin with the issue of the Grandchildren's right to recover their attorneys' fees.

Right to Recover Attorneys' Fees

With respect to the right to recover attorneys' fees, ConocoPhillips argues that a trespass to try title claim does not support an award of attorneys' fees and "cannot be bootstrapped under the guise of the Declaratory Judgments Act." *See Martin*, 133 S.W.3d at 267. However, the Grandchildren also prevailed on their claim to recover oil and gas production proceeds under Chapter 91 of the Texas Natural Resources Code, for which attorneys' fees are recoverable. *See* Tex. Nat. Res. Code Ann. § 91.406 (West 2011). We have previously addressed this precise issue in a case in which a trespass to try title claim was brought along with a Natural Resources Code claim to recover the unpaid share of oil and gas proceeds. As here, the plaintiffs prevailed on both claims and we held that attorneys' fees were recoverable under Natural Resources Code section 91.406. *See Prize Energy*, 345 S.W.3d at 570-71. Accordingly, we overrule ConocoPhillips's challenge to the Grandchildren's right to recover attorneys' fees.

Amount of Attorneys' Fees Awarded

As to the amount of attorneys' fees awarded, the trial court entered twenty pages of very detailed findings of fact and conclusions of law in support of its award of attorneys' fees against ConocoPhillips. The court detailed the entire history of the litigation, explaining that it was a unique case made more complex by ConocoPhillips's tactics and attempted appeals and original mandamus proceedings to the court of appeals as well as the Supreme Court during the litigation. The trial court further stated that it applied the 3x multiplier as an attempt to make the Grandchildren whole given their contingency fee arrangement with their sole trial attorney, Alberto Alarcon, who was pitted against multiple attorneys for ConocoPhillips. The trial court noted that the Grandchildren's trial attorney and appellate attorney kept detailed time records and filed motions efficiently, in contrast to ConocoPhillips's team of eight attorneys who over-filed motions, motions to reconsider, attempted appeals, etc. The trial court further found that the two plaintiffs' attorneys properly segregated their time, to the extent feasible. The trial court expressly stated on page 4 of its findings of fact that, "the Court finds that it was necessary for Plaintiffs' recovery to establish ownership of the minerals in question . . . [and] that it is not necessary, if not impossible, to segregate time and labor invested pursuing the claims under the Texas Natural Resources Code § 91.401 thru [sic] 91.409 from the time and

labor invested in pursuing equitable and common law accounting claims and trespass-to-try-title claims."[12]

We conclude that the record contains legally and factually sufficient evidence to support the trial court's monetary award as reasonable and necessary. *See* Tex. Nat. Res. Code Ann. § 91.406 (authorizing the award of "reasonable" attorneys' fees); *see also Prize Energy*, 345 S.W.3d at 571 (award of attorneys' fees of $900,000 was reasonable in action by mineral interest purchaser to recover unpaid oil and gas proceeds under the statute, where attorneys' fees expert testified that issues were relatively complex and required sophisticated oil and gas attorneys, multiple hearings were held, and plaintiffs had to expend considerable effort defeating numerous defenses and counterclaims). As to the application of the 3x multiplier, the trial court had discretion to apply the multiplier in an attempt to make the Grandchildren whole in view of their contingent fee agreement with their trial attorney during the four-year-plus litigation of the case.

Finally, as to ConocoPhillips's complaint that the trial court disregarded its expert's testimony about attorneys' fees, the trial court was the fact finder in the bench trial and the sole judge of the credibility of the witnesses and weight of the evidence. *Lemus v. Aguilar*, 491 S.W.3d 51, 59 (Tex. App.—San Antonio 2016, no pet.). The court was therefore entitled to take into consideration its knowledge of all the facts and surrounding circumstances of the litigation in

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[12] On appeal, ConocoPhillips does not separately complain about a lack of segregation, only the sufficiency of the evidence to support the monetary award.

evaluating the testimony on what constituted a reasonable amount of attorneys' fees. *Id.* Based on the record before us, we conclude the trial court did not abuse its discretion in awarding attorneys' fees of $1,125,000 each to Leon, Jr. and Minerva. *See Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998).

Pre-Judgment Interest and Other Errors in the Judgment

In connection with the cotenancy accounting amount, the judgment awarded each of the Grandchildren the sum of $951,546 as prejudgment interest from the date of Leon Oscar, Sr.'s death on November 27, 2006 until March 20, 2015, plus a $283.63 per diem from March 20, 2015 until May 11, 2015, the date of the judgment. Section 91.402 of the Natural Resources Code designates the time periods by which payments of oil and gas proceeds must be made, and section 91.403 specifically mandates the application of interest to untimely payments. *See* Tex. Nat. Res. Code Ann. §§ 91.402(a), 91.403(a). ConocoPhillips argues the trial court erred in assessing interest under the Natural Resources Code because the case involved a legitimate title dispute. *See* Tex. Nat. Res. Code Ann. § 91.402(b) (permitting payments to be withheld without incurring interest when there is a legitimate title dispute). As to the legitimacy of ConocoPhillips's assertions of a title dispute, the trial court made an express finding that, "the Court finds that there was no legitimate title dispute in this case." In addition, upon review of the chain of title documents, we have concluded there was no ambiguity in Leonor's Will with respect to the Grandchildren's contingent remainder mineral interest and that title to the collective 1/4 mineral interest vested in them

when their father died in November 2006. We conclude the trial court did not err in applying interest to the unpaid gas proceeds owed to the Grandchildren, as stated in the judgment.

In addition, ConocoPhillips briefly asserts there are other errors in the final judgment that require correction. ConocoPhillips complains that a legal description and map of Las Piedras Ranch are attached as Exhibits A and B to the judgment, asserting they were not attached to the Grandchildren's summary judgment motion on title. ConocoPhillips's complaint is without merit. The judgment refers to multiple public record sources for the description of Las Piedras Ranch, including the two Exhibits A and B which were attached to a Partial Release of Oil and Gas Lease executed by Conoco, Inc., predecessor to ConocoPhillips, and filed in the public records of Zapata County.

ConocoPhillips further complains of language in the judgment stating that, "to the extent the oil and gas leases and the stipulation of interest above mentioned constitute a cloud on the title to said mineral interests of Minerva Clementina Ramirez and Leon Oscar Ramirez, Jr. such cloud is hereby ordered removed." ConocoPhillips also complains that the judgment declares that Minerva and Leon, Jr. are each "fee simple" owners of 1/12 of the minerals underneath Las Piedras Ranch. Neither statement is improper. The statements fall within the scope of the Grandchildren's request for declaratory relief that they each fully own a 1/12 mineral interest in Las Piedras Ranch and that their 1/12 each mineral interest is not burdened by the Leases.

Finally, ConocoPhillips asserts the judgment improperly requires it to prepare a future accounting for the Grandchildren because they did not plead or move for such relief, and because "a court should not decree future contractual performance by requiring a party to perform a continuous series of acts . . . over which the court exercises its supervision." *See Cytogenix, Inc. v. Waldroff*, 213 S.W.3d 479, 487 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). Specifically, the challenged portion of the judgment orders ConocoPhillips[13] to provide Leon, Jr. and Minerva "a cotenancy accounting, and corresponding payments [to them] after November 1, 2012 for the total production [from Las Piedras Ranch]," and further states that such accounting should be made on the "basis of the value of the minerals produced, plus interest provided by law, less cost of production and marketing of the minerals." In making its complaint about the future accounting requirement, ConocoPhillips ignores the prior statement in the judgment that, "[t]he Court finds that the cotenancy accounting provided by ConocoPhillips Company was only up to the end of October 2012 and was not supplemented as agreed by ConocoPhillips Company." Therefore, it is clear that the court was merely ordering the supplemental cotenancy accounting from November 2012 forward that ConocoPhillips had previously agreed to provide but failed to do. ConocoPhillips also argues that the

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[13] ConocoPhillips also complains that the requirement for an additional cotenancy accounting is improper because it has now sold the Leases. The judgment provides for that situation, however, because it requires any "successors and assigns" of ConocoPhillips to provide the additional cotenancy accounting to which the Grandchildren are entitled.

judgment's statement that it "shall not constitute a bar under any theories of res judicata, collateral estoppel or other legal theories" is improper because a court may not dictate the preclusion consequences of its own judgment. ConocoPhillips represents that the trial court was improperly attempting to define the res judicata effect of its own judgement. However, read in context and not in isolation, that language in the judgment only pertains to the supplemental cotenancy accounting, and not to the judgment as a whole as suggested by ConocoPhillips. The actual statement by the trial court was that "the accuracy and correctness of said accounting after November 1, 2012 are not the subject of adjudication in this case and are not adjudicated in this case and this judgment shall not constitute a bar under any theories of res judicata, collateral estoppel or other legal theories to a future adjudication of the accuracy or correctness of the accounting of production from the subject lands."

With respect to ConocoPhillips's last two complaints about the judgment, as to the judgment's award of relief directly to Minerva Ramirez, instead of to the guardian acting on her behalf, the judgment will be reformed to correct that clerical error. Last, ConocoPhillips challenges the judgment's award of all the Grandchildren's costs against it. As to the costs incurred against EOG before settlement, ConocoPhillips does not identify any costs that were incurred by the Grandchildren only with regard to EOG. As to costs incurred on Rosalinda's behalf, they were also incurred on the Grandchildren's behalf. By failing to set forth the specific costs it seeks to avoid, ConocoPhillips has waived this issue.

Conclusion

Based on the foregoing analysis, we overrule ConocoPhillips's issues on appeal. The judgment will be reformed to correct the clerical error in which it awards relief directly to Minerva Clementina Ramirez, instead of to her guardian Jesus M. Dominguez, as Guardian of the Estate of Minerva Clementina Ramirez, an Incapacitated Person.

Appeal by Rodolfo Ramirez and El Milagro Minerals, Ltd.

Rodolfo Ramirez and El Milagro Minerals, Ltd. (collectively referred to as "Rodolfo") filed a separate notice of appeal, challenging the final judgment on many of the same bases as ConocoPhillips.[14] Rodolfo's position in the lawsuit is aligned with ConocoPhillips. He makes the same argument that Leonor's Will only devised a life estate in her 1/2 interest in the surface estate of Las Piedras Ranch to Leon Oscar, Sr. and therefore Leonor's 1/4 mineral interest passed under the residuary clause of her Will to her children, Rodolfo, Ileana, and Leon Oscar, Sr. in equal shares, *i.e.*, 1/12 mineral interest each. Specifically, on appeal Rodolfo asserts the trial court erred in: (1) denying his motion for summary judgment on the affirmative defenses of limitations, release, ratification and estoppel; (2) denying his motion for partial summary judgment based on will construction/title; and (3) granting the Grandchildren's partial summary judgment motion on trespass to try title and declaring

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[14] The Grandchildren dismissed all their claims against Rodolfo Ramirez and El Milagro Minerals, Ltd., except for their trespass to try title claim.

they collectively own the disputed 1/4 mineral interest in Las Piedras Ranch and declaring the leases ineffective as to those mineral interests.[15] The arguments in Rodolfo's brief are substantially the same as ConocoPhillips's arguments. Having examined those issues in depth, *supra*, we similarly reject them as to Rodolfo.

The only separate issue raised by Rodolfo on appeal is the trial court's denial of his summary judgment motion on the affirmative defense of release based on a settlement agreement Leon, Jr. entered into with Rodolfo in an October 2007 lawsuit. In that 2007 lawsuit, Leon, Jr., acting in his capacity as co-executor of Leon Oscar, Sr.'s estate as well as individually, sued Rodolfo and his wife Elia seeking to set aside a quitclaim deed allegedly executed by Leon Oscar, Sr. in which he quitclaimed all his interest in "his lands in Zapata County" to Rodolfo. The case settled with one of the settlement terms including rescission of the quitclaim deed by Rodolfo. Rodolfo moved for summary judgment in this case based on an argument that, by executing the 2007 settlement agreement, Leon, Jr. had released all claims against Rodolfo pertaining to Leon Oscar, Sr.'s property interests. Our review of the settlement agreement shows that its scope does not cover the claims brought by Leon, Jr. in this lawsuit. The settlement agreement only releases claims that "grow out of the subject of the Lawsuit," defined as the suit challenging the quitclaim deed. In order to release a

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[15] In their cross-appellant's brief, Rodolfo Ramirez and El Milagro refer to the mineral interest granted to the Grandchildren as a "1/2" undivided interest, rather than a 1/12 undivided mineral interest as stated in the Final Judgment.

claim, the release document must mention the specific claim to be released. *See Victoria Bank & Trust Co. v. Brady*, 811 S.W.2d 931, 938 (Tex. 1991) (any claims not clearly within the subject matter of the release are not discharged). We therefore conclude the trial court properly denied summary judgment on the release defense raised by Rodolfo.

Conclusion

Based on the foregoing analysis, we overrule the issues raised by ConocoPhillips and Rodolfo Ramirez and El Milagro Minerals, Ltd., and affirm the trial court's judgment in its entirety, except for the reformation necessary to correct the judgment's award of relief directly to Minerva Clementina Ramirez individually, rather than to Jesus M. Dominguez, in his capacity as Guardian of the Estate of Minerva Clementina Ramirez, an Incapacitated Person.

/s/ Rebeca C. Martinez
Justice

JUDGMENT OF THE FOURTH COURT OF APPEALS (JUNE 7, 2017)

FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS

CONOCOPHILLIPS COMPANY, RODOLFO C. RAMIREZ, Individually and as Independent Administrator of The Estate of Ileana Ramirez, and El Milagro Minerals, Ltd.,

Appellants,

v.

LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian of The Estate of Minerva Clementina Ramirez, an Incapacitated Person,

Appellees.

No. 04-15-00487-CV

From the 49th Judicial District Court,
Zapata County, Texas, Trial Court No. 7,637
Honorable Jose A. Lopez, Judge Presiding

Before: Karen ANGELINI, Marialyn BARNARD, and Rebeca C. MARTINEZ, Justices.

In accordance with this court's opinion of this date, the trial court's judgment is REFORMED to correct

its award of relief directly to Minerva Clementina Ramirez individually, rather than to Jesus M. Dominguez, in his capacity as Guardian of the Estate of Minerva Clementina Ramirez, an Incapacitated Person. The judgment is otherwise AFFIRMED AS REFORMED.

It is ORDERED that appellees Leon Oscar Ramirez, Jr., Individually, and Jesus M. Dominguez, as Guardian of the Estate of Minerva Clementina Ramirez, an Incapacitated Person, recover their costs of appeal from appellants ConocoPhillips Company, Rodolfo C. Ramirez, Individually and as Independent Executor of the Estate of Ileana Ramirez, Deceased, and El Milagro Minerals, Ltd.

SIGNED June 7, 2017.

/s/ Rebeca C. Martinez
Justice

ORDER OF THE FOURTH COURT OF APPEALS DENYING MOTION FOR REHEARING (AUGUST 29, 2017)

FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS

CONOCOPHILLIPS COMPANY,

Appellants,

v.

LEON OSCAR RAMIREZ, JR., Individually,
and JESUS M. DOMINGUEZ,
as Guardian of Minerva Clementina Ramirez,
an Incapacitated Person, Individually,

Appellees.

No. 04-15-00487-CV

From the 49th Judicial District Court,
Zapata County, Texas, Trial Court No. 7,637
Honorable Jose A. Lopez, Judge Presiding

Before: Karen ANGELINI, Marialyn BARNARD,
and Rebeca C. MARTINEZ, Justices.

The panel has considered the appellants' Rodolfo C. Ramirez and El Milagro Minerals, LTD.'s motion for rehearing, and the motion is DENIED.

/s/ Rebeca C. Martinez
Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 29th day of August, 2017.

/s/ Luz Estrada
Chief Deputy Clerk

ORDER OF THE FOURTH COURT OF APPEALS DENYING APPELLANTS MOTION FOR REHEARING (SEPTEMBER 15, 2017)

FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS

CONOCOPHILLIPS COMPANY,

Appellants,

v.

LEON OSCAR RAMIREZ, JR., Individually,
and JESUS M. DOMINGUEZ,
as Guardian of Minerva Clementina Ramirez,
an Incapacitated Person, Individually,

Appellees.

No. 04-15-00487-CV

From the 49th Judicial District Court,
Zapata County, Texas, Trial Court No. 7,637
Honorable Jose A. Lopez, Judge Presiding

Before: Karen ANGELINI, Rebeca C. MARTINEZ,
and Marialyn BARNARD Justices.

PER CURIAM

The panel has considered the Motion for Rehearing filed by Appellant ConocoPhillips Company, and the motion is DENIED.

It is so ORDERED on September 15, 2017.

ATTESTED TO:

/s/ Keith E. Hottle
Clerk of Court

ORDER OF THE FOURTH COURT OF APPEALS DENYING APPELLANTS MOTION FOR REHEARING EN BANC (SEPTEMBER 14, 2017)

FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS

CONOCOPHILLIPS COMPANY, RODOLFO C. RAMIREZ, Individually and as Independent Administrator of the Estate of Ileana Ramirez, and El Milagro Minerals, Ltd.,

Appellants,

v.

LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian of Minerva Clementina Ramirez, an Incapacitated Person,

Appellees.

No. 04-15-00487-CV

From the 49th Judicial District Court,
Zapata County, Texas, Trial Court No. 7,637
Honorable Jose A. Lopez, Judge Presiding

Before: Sandee Bryan MARION, Chief Justice., Karen ANGELINI, Marialyn BARNARD, Rebeca C. MARTINEZ, Patricia O. ALVAREZ, Luz Elena D. CHAPA[1], Irene RIOS Justices.

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[1] Not participating.

PER CURIAM

The Court has considered the Motion for Reconsideration En Banc filed by Appellant ConocoPhillips Company, and the motion is DENIED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 14th day of September, 2017.

/s/ Keith E. Hottle
Clerk of Court

FINAL JUDGMENT OF THE 49TH JUDICIAL DISTRICT COURT OF ZAPATA COUNTY, TEXAS (MAY 11, 2015)

IN THE DISTRICT COURT OF
ZAPATA COUNTY, TEXAS
49TH JUDICIAL DISTRICT

LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian for MINERVA CLEMENTINA RAMIREZ, an Incapacitated Person, Individually,

Plaintiffs,

v.

CONOCOPHILLIPS COMPANY, EOG RESOURCES, INC., EL MILAGRO MINERALS, LTD., AND RODOLFO C. RAMIREZ, Individually and as Independent Executor of THE ESTATE OF ILEANA RAMIREZ, DECEASED.

Defendants.

Cause No. 7,637

Before: The Hon. Jose A. LOPEZ, Judge.

On the 24th day of January 2012 the Court held a hearing on *Minerva Clementina Ramirez' Amended Motion for Partial Summary Judgment* (filed on December 14, 2011) and on *Leon Oscar Ramirez Jr.'s Amended Motion for Partial Summary judgment*

(filed on December 27, 2011). The Court considered those motions, the responses thereto, special exceptions and objections, filed before the summary judgment hearing of January 24, 2012. The Court overruled all special exceptions and objections and the Court hereby orders that the special exceptions and objections are overruled. The Court granted the above mentioned amended motions for partial summary judgment ordering and decreeing, and the Court hereby orders and decrees, that Leon Oscar Ramirez, Jr. is the fee simple owner of 1/12 of the minerals and Minerva Clementina Ramirez is the fee simple owner of 1/12 of the minerals underneath the 1058 acres of land situated in Zapata County, Texas and known as Las Piedras Ranch located on Porciones 21 and 22, and more particularly described on the attached Exhibits "A" and "B" which are made part hereof an incorporated herein by reference. Those lands are also described in: 1) Stipulation of Interest Ownership of the Mineral Estate, dated July 6, 1997, and recorded as instrument no. 108972 in Volume 576, Pages 685-686 of the Real Property Records of Zapata County, Texas; 2) Oil and Gas Lease dated July 1, 1993, between Palmyra Minerals, Ltd, et al. as ("Lessors") and Enron Oil & Gas Company ("Lessee"), Memorandum (Amended) of which is recorded as instruments no. 99910 and 99909, in Volume 509, Pages 638-642, and Volume 509, Pages 633-637, respectively, in the Real Property Records of Zapata County, Texas; 3) Oil & Gas Lease dated July 1, 1993, between Palmyra Minerals, Ltd, et al. ("Lessors") and Enron Oil & Gas Company ("Lessee"), Memorandum (Amended) of which is recorded as instrument no. 99911, in Volume 509, Pages 643-647, in the Real Property Records of Zapata County, Texas; and, 4) Oil & Gas Lease dated

October 24, 1997, between Palmyra Minerals, Ltd, et al. ("Lessors") and Conoco, Inc. ("Lessee"), Memorandum of which is recorded as instrument no. 113451, in Volume 596, Pages 535-538, in the Real Property Records of Zapata County, Texas. In granting the above mentioned amended motions for summary judgment the Court also ordered and decreed, and hereby orders and decrees, that the oil and gas leases above mentioned are not binding and are ineffective against the above mentioned mineral interests of Minerva Clementina Ramirez and Leon Oscar Ramirez, Jr. In granting the above mentioned amended motions for summary judgment the Court also ordered and decreed, and hereby orders and decrees, that to the extent the oil and gas leases and the stipulation of interest above mentioned constitute a cloud on the title to said mineral interests of Minerva Clementina Ramirez and Leon Oscar Ramirez, Jr. such cloud is hereby ordered removed.

The Court also held a hearing on *Plaintiffs' Motion for Partial Summary Judgment* (*On Cotenancy Accounting, Made, Adopted and Admitted by Conoco Phillips*) (filed on May 27, 2014). On December 2, 2014, after considering special exceptions, objections and response to that motion, the Court granted the motion and hereby orders that the motion is granted.

Regarding the cotenancy accounting, the Court also held a hearing on ConocoPhillips Company's motion for partial summary judgment on the subject of alleged bad faith cotenancy, the subject of which was part of *ConocoPhillips Company's Motion for Partial Summary judgment on Will Construction, Estoppel, Ratification and Alleged Bad Faith Cotenancy*

(filed on June 9, 2014). Regarding the cotenancy accounting, the Court also held a hearing on Rodolfo C. Ramirez', in his various capacities, and El Milagro Minerals, Ltd.'s motion for partial summary judgment on the alleged bad faith Cotenancy, the subject of which was part of *Rodolfo C. Ramirez .individually and as the Independent Executor of the Estate of Ileana Ramirez and EI Milagro Minerals, Ltd.'s Motion for Partial Summary Judgment on Will Construction, Estoppel, Ratification, and Alleged Bad Faith Cotenancy* (filed on September 5, 2014), although Plaintiffs were not demanding an accounting from Rodolfo Ramirez in any of his various capacities, El Milagro Minerals, Ltd. or the Estate of Ileana Ramirez, as cotenants. On December 2, 2014, after considering all special exceptions, objections and responses to said motions, the Court granted both motions for partial summary judgment but only to the extent of the subject of bad faith cotenancy. It is, therefore, ordered that ConocoPhillips Company is entitled to deduct production and marketing costs.

The Court finds that the cotenancy accounting provided by ConocoPhillips Company was only up to the end of October 2012 and was not supplemented as agreed by ConocoPhillips Company. Therefore, the Court orders, adjudges and decrees that Minerva Clementina Ramirez have and recover of and from ConocoPhillips Company the sum of Three Million Seven Hundred Sixty Four Thousand Four Hundred Eighty Nine and 00/100 Dollars ($3,764,489.00) as the amount due Minerva Clementina Ramirez as of the end of October 2012, together with prejudgment interest of $951,546.00, which was computed from November 27, 2006 until March 20, 2015, plus a per

diem of $283.63 from March 20, 2015 until the date of this judgment. It is further ordered that Minerva Clementina Ramirez have and recover of and from ConocoPhillips Company attorneys' fees in the amount of $1,125,000.00, for the attorneys' fees incurred by her as a result of the work of her lawyers in this Court, the work of her attorneys in original proceedings in the Court of Appeals and the Supreme Court and the work of her attorneys in interlocutory appeal in the Court of Appeals.

It is further adjudged and decreed that ConocoPhillips, its successors and assigns are ordered to provide a cotenancy accounting, and corresponding payments to Minerva Clementina Ramirez after November 1, 2012, for the total production from the lands described in Exhibits A and B. It is further ordered that the accounting hereby ordered shall be made on the basis of the value of the minerals produced, plus interest provided by law, less cost of production and marketing of the minerals. It is further ordered that the accuracy and correctness of said accounting after November 1, 2012 are not the subject of adjudication in this case and are not adjudicated in this case and this judgment shall not constitute a bar under any theories of res judicata, collateral estoppel or other legal theories to a future adjudication of the accuracy or correctness of the accounting of production from the subject lands.

The Court finds that the cotenancy accounting provided by ConocoPhillips Company was only up to the end of October 2012. Therefore the Court orders, adjudges and decrees that Leon Oscar Ramirez, Jr. have and recover of and from ConocoPhillips Company the sum of Three Million Seven Hundred Sixty Four

Thousand Four Hundred Eighty Nine and 00/100 ($3,764,489.00) as the amount due Leon Oscar Ramirez, Jr. as of the end of October 2012, together with pre-judgment interest of $951,546.00, which was computed from November 27, 2006 until March 20, 2015, plus a per diem of $283.63 from March 20, 2015 until the date of this judgment. It is further ordered that Leon Oscar Ramirez, Jr. have and recover of and from ConocoPhillips Company attorneys' fees in the amount of $1,125,000.00, for the attorneys' fees incurred by him as a result of the work of his lawyers in this Court, the work of his attorneys in original proceedings in the Court of Appeals and the Supreme Court and the work of his attorneys in interlocutory appeal in the Court of Appeals.

It is further adjudged and decreed that ConocoPhillips, its successors and assigns are ordered to provide a cotenancy accounting, and corresponding payments to Leon Oscar Ramirez, Jr. after November 1, 2012, for the total production from the lands described in the attached Exhibits A and B. It is further ordered that the accounting hereby ordered shall be made on the basis of the value of the minerals produced, plus interest provided by law, less cost of production and marketing of the minerals. It is further ordered that the accuracy and correctness of said accounting after November 1, 2012 are not the subject of adjudication in this case and are not adjudicated in this case and this judgment shall not constitute a bar under any theories of res judicata, collateral estoppel or other legal theories to a future adjudication of the accuracy or correctness of the accounting of production from the subject lands.

This judgment disposes of Minerva Clementina Ramirez' and Leon Oscar Ramirez, Jr.'s claims for trespass-to-try title claims and accounting, under equitable principles, the common law and the Texas Natural Resources Code §§ 91.401 thru 91.408, with the exception of the correctness and accuracy of future accountings after November 1, 2012.

The Court finds that all claims, disputes and differences between Plaintiffs Leon Oscar Ramirez, Jr., Rosalinda Ramirez Eckhardt, and Minerva Clementina Ramirez, by and through her Legal Guardian, Jesus M. Dominguez, and EOG Resources, Inc. have been fully compromised and settled and the Court has entered orders disposing of those claims.

The rest of the claims, counterclaims, third-party claims, cross-claims, or third-party counterclaims, as asserted in the pleadings, including claims regarding the correctness and accuracy of future accountings after November 1, 2012, are hereby severed from the claims disposed by this judgment into a separate and distinct case. The Clerk of the Court is ordered to assign a separate case number to the severed action. Therefore, this judgment disposes of all claims and parties remaining after severance, nonsuit or settlement, and, it is intended to be and it is a final and appealable judgment.

All costs of court incurred expended or incurred in this cause by Leon Oscar Ramirez, Jr. and Minerva Clementina Ramirez are adjudged against ConocoPhillips Company. It is further ordered that all amounts due under this judgment shall earn post judgment interest at the rate provided in Tex. Finance Code § 304.003(c).

All writs and processes for the enforcement and collection of this judgment or the costs of court shall issue.

Signed on this 11day of May, 2015, in Zapata, Texas.

/s/ Hon. Jose A. Lopez
Judge of the 48th District Court
of Zapata County, Texas

EXHIBIT A TO JUDGMENT

698.45 acres of Las Piedras Ranch, more or less, located in Zapara County, Texas, and being:

All of Share Two (2) out of Porcion NO. 22, Abstract 71, in accordance with partition decree entered by the 111th District Court of Webb County in Cause No. 8096, containing 373.22 acres of land, more or less; and

The most northeasterly 325.23 acres in Porcion 21, Abstract No. 71, Original Grantee, Isabel Maria Sanchez, containing 645.23 acres, more or less, being described as all of Parcel Z-112.27-B containing 644.23 acres, and all or parcel Z-112.28-B containing 1.00 acre, said parcels being more particularly described in a Plat entitled "Plat of Porcion 21, Zapata County", made by the International Boundary & Water Commission, recorded in Volume 2 at page 128, of the Map Records of Zapata County, Texas, less and except the most southwesterly 320 acres, adjacent to said 325.23 acre tract, in said Porcion 21, Abstract No. 81, which were expressly retained and excepted from that Partial Release of Oil and Gas Lease dated January 11, 1993 and recorded in Volume 469, Pages 102-103 of the Official Public Records of Zapata County, Texas.

Said 698.45 acres contain within the following retained and created units, in Partial Release of Oil and Gas Lease recorded in Volume 643, Pages 629-649 (attached hereto as Exhibit 1):

- Retained Unit No. 1 where the ConocoPhillips Company L.O. Ramirez "A" Well No. 5 is located;
- Retained Unit No. 2 where the ConocoPhillips Company L.O. Ramirez "A" Well No. 7 is located;
- Retained Unit No. 3 where the ConocoPhillips Company L.O. Ramirez "A" Wells 4, 6 and 10 are located;
- Retained Unit No. 4 where the ConocoPhillips Company L.O. Ramirez "A" Well No. 11 is located; and,
- Retained Unit No. 5 where the ConocoPhillips Company L.O. Ramirez "A" Well No. 9 is located.

EXHIBIT 1 TO EXHIBIT A TO JUDGMENT

PARTIAL RELEASE OF OIL GAS LEASE

STATE OF TEXAS
COUNTY OF ZAPATA

WHEREAS, Palmyra Minerals, Ltd., a Texas Limited Partnership acting herein by and through Felicidad Ramirez de Perez and Gilberto Perez, Jr. as General Partners. Felicidad Ramirez de Perez, Individually, Ileana Ramirez, Individually and as Independent Executors of the Estate of Leonor V. Ramirez. Rodolfo C. Ramirez, Individually and as Trustee of Rodolfo C. Ramirez Trust, and Leon O. Ramirez, individually and as Trustee of the Leon O. Ramirez Trust entered into in Oil and Gas Lease as "Lessor" with Enron Oil & Gas Company, as "Lessee", dated July 1, 1993, a memorandum of which is recorded in Volume 483, Pages 531-535 of the Official Records of Zapata County, Texas covering 658.45 acres of land, more or less. (herein referred to as "Lease") and;

WHEREAS, Conoco Inc. is the current Lessor of the Lease;

NOW, THEREFORE, Conoco Inc., whose address is P.O. Box 2187, Houston, Texas 77252-2197, as Lessee does hereby Release, Relinquish and surrender all of its right and, interest and estate in the Lease. SAVE AND EXCEPT that certain acreage designated as Retained Units number 1 through 5 as shown and described on Sheet 1 of 10 through Sheet 10 of 10 attached hereto and more particularly described as follows:

Retained Unit No. 1

This unit shall consist of 160 acres of land, more or less, entitled to those depths lying from the surface of this ground down to 100 feet below the stratigraphic equivalent of the base of the Wilcox formation 7,550 feet sand. The base of the Wilcox formation 7,483 feet sand to found at 10,160 less measured depth (MD) on the electric log for the Conoco Inc., L.O. Ramirez "A" Well No. 5. This 160 acre tract is shown on sheet 1 of 10 and is described in Sheet 2 to 10 attached hereto. The Conoco Inc. L.O. Ramirez "A" West No. 6 is situated upon its tract.

Retained Unit No. 2

This unit shall consist of 89.96 acres of land, more or less, entitled to those depths lying from the surface of the ground down to 100 feet below the stratigraphic equivalent of the base of the Wilcox formation 7,483 feet sand. The base of the Wilcox formation 7,483 feet sand is found at 10,160 feet measured depth (MD) on the electric log for the Conoco Inc., L.O. Ramirez "A" Well No. 7. This 89.96 acre tract is shown on the sheet 3 of 10 and is described in Sheet 4 of 10 attached hereto. The Conoco Inc. L.O. Ramirez "A" Well No. 7 is situated upon this tract.

Retained Unit No. 3

This unit shall consist of 132.17 acres of land, more or less, entitled to those depths lying from the surface of the ground down to 100 feet below the stratigraphic equivalent of the base of the Wilcox formation 8,150 feet sand. The base of the Wilcox formation 8,150 feet sand is found at 10,160 feet

measured depth (MD) on the electric log for the Conoco Inc., L.O. Ramirez "A" Well No. 10. This 132.17 acre tract is shown on sheet 5 of 10 and is described in Sheet 6 of 10 attached hereto. The Conoco Inc. L.O. Ramirez "A" Well No. 4, 6 and No. 10 are situated upon this tract.

Retained Unit No. 4

This unit shall consist of 159.98 acres of land, more or less, entitled to those depths lying from the surface of the ground down to 100 feet below the stratigraphic equivalent of the base of the Wilcox formation 8,150 feet sand. The base of the Wilcox formation 8,150 feet sand is found at 11,230 feet measured depth (MD) on the electric log for the Conoco Inc., L.O. Ramirez "A" Well No. 11. This 159.98 acre land is shown on the sheet 7 of 10 and is described in Sheet 8 of 10 attached hereto. The Conoco Inc. L.O. Ramirez "A" Well No. 11 is situated upon this tract.

Retained Unit No. 5

This unit shall consist of 99.93 acres of land, more or less, entitled to those depths lying from the surface of the ground down to 100 feet below the stratigraphic equivalent of the base of the Wilcox formation 7,483 feet sand. The base of the Wilcox formation 7,483 feet sand is found at 11,214 feet measured depth (MD) on the electric log for the Conoco Inc., L.O. Ramirez "A" Well No. 8. This 99.93 acre land is shown on the sheet 9 of 10 and is described in Sheet 10 of 10 attached hereto. The Conoco Inc. L.O. Ramirez "A" Well No. 9 is situated upon this tract.

Lessor hereby affirms all of its consisting rights and interest in the Lease to the full extent. It affects the above referenced unit designations.

EXECUTED THIS 21st days of December 2000.

CONOCO INC.

By /s/ Barbara A. Sheedlo
Title Attorney-in-fact
Name Barbara A. Sheedlo

STATE OF TEXAS
COUNTY OF HARRIS

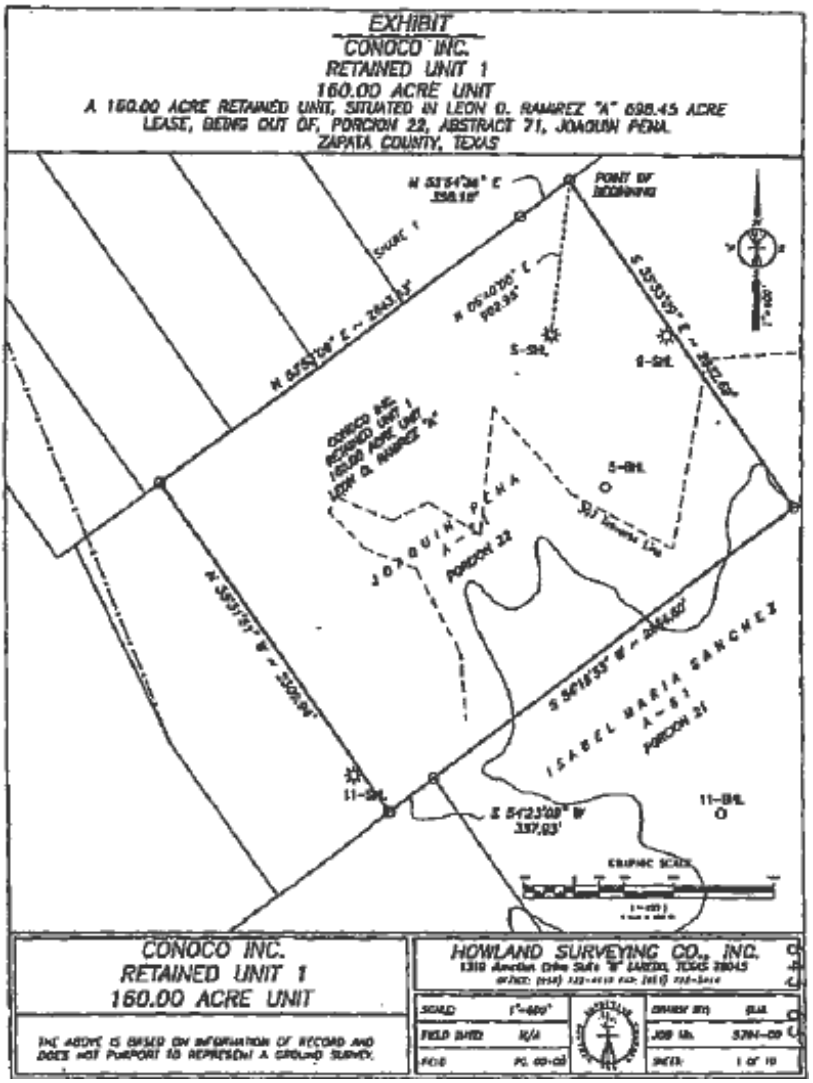
BEFORE ME, the undersigned authority, on this day personally appeared Barbara A. Sheedlo, Attorney-in-Fact of CONOCO INC., a corporation know to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and considerations therein expressed, in the capacity therein stated, and as the act and deed of the said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21 day of December 2000.

/s/ {illegible}
Notary Public, State of Texas
My commission expires: 10-25-01

CONOCO INC., RETAINED UNIT 1

A 160.00 Acre Retained Unit, Situated in Leon O. Ramirez "A" 698.45 Acre Lease, Being Out of, Porcion 22, Abstract 71, Joaquin Pena, Zapata County, Texas



HOWLAND SURVEYING CO. INC., USA
HOWLAND ENGINEERING & SURVEYING COMPANY
Oil and Gas Location Surveys * Boundary Surveys
* City Lot Surveys * Engineering and Planning

CONOCO INC.
RETAINED UNIT 1
160.00 Acre Unit
Zapata County, Texas

A 160.00 acre retained unit, situated in Leon O. Ramirez "A" 698.45 acre lease, being out of Porcion 22, Abstract 71, Joaquin Pena, Zapata County, Texas.

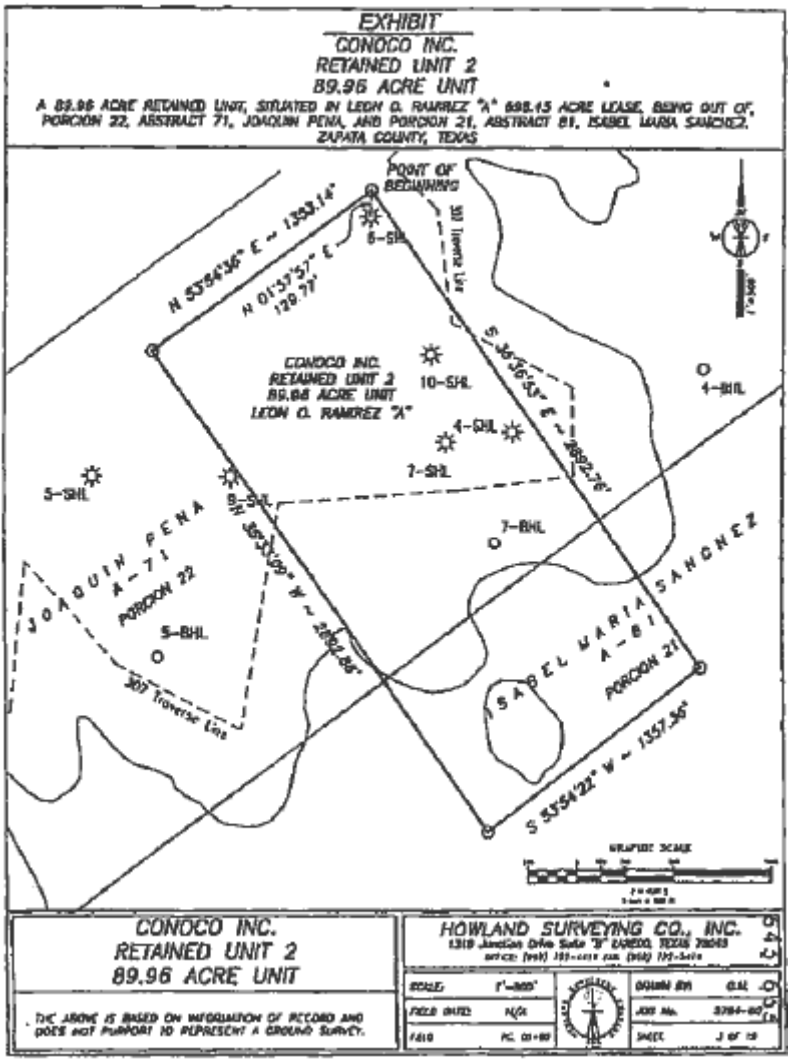
Beginning at a point which bears North 06 degrees 40 minutes 08 seconds East, a distance of 902.98 feet from the Ramirez No. 5 Gas Well for the most northerly corner hereof.

- Thence South 35 degrees 33 minutes 09 seconds East, a distance of 2132.69 feet, to the easterly corner hereof;
- Thence South 54 degrees 18 minutes 53 seconds West, a distance of 2664.60 feet, for a point of deflection hereof;
- Thence South 54 degrees 23 minutes 09 seconds West, a distance of 337.93 feet, to the most southerly corner hereof;
- Thence North 35 degrees 31 minutes 51 seconds West, a distance of 2309.94 feet, to the most westerly corner hereof;

- Thence North 53 degrees 53 minutes 09 seconds East, a distance of 2643.63 feet, to a point of deflection hereof;
- Thence North 53 degrees 34 minutes 36 seconds East, a distance of 358.16 feet to the Point of Beginning and containing 160.00 acres of land, more or less.

CONOCO INC., RETAINED UNIT 2

A 89.96 Acre Retained Unit, Situated in Leon O. Ramirez "A" 698.45 Acre Lease, Being Out of, Porcion 22, Abstract 71, Joaquin Pena, and Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas



HOWLAND SURVEYING CO. INC., USA
HOWLAND ENGINEERING & SURVEYING COMPANY
Oil and Gas Location Surveys * Boundary Surveys
* City Lot Surveys * Engineering and Planning

CONOCO INC.
RETAINED UNIT 2
89.96 Acre Unit
Zapata County, Texas

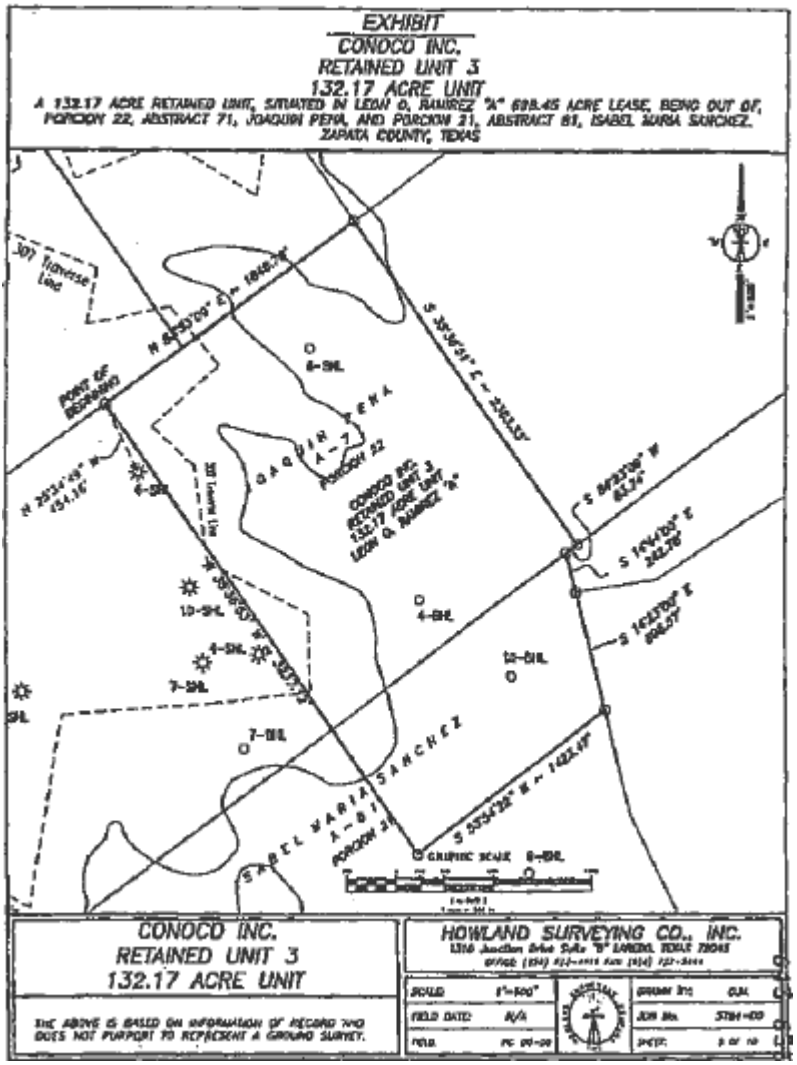
A 89.96 acre retained unit, situated in Leon O. Ramirez "A" 698.45 acre lease, being out of Porcion 22, Abstract 71, Joaquin Pena, and Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas.

Beginning at a point which bears North 01 degrees 57 minutes 57 seconds East, a distance of 129.77 feet from the Ramirez No. 6 Gas Well for the north corner hereof.

- Thence South 35 degrees 36 minutes 53 seconds East, a distance of 2892.76 feet, to the east corner hereof;
- Thence South 53 degrees 54 minutes 22 seconds West, a distance of 1357.36 feet, to the south corner hereof;
- Thence North 35 degrees 33 minutes 09 seconds West, a distance of 2892.88 feet, to the west corner hereof;
- Thence North 53 degrees 54 minutes 36 seconds East, a distance of 1353.14 feet, to the Point of Beginning and containing 89.96 acres of Land, more or less;

CONOCO INC., RETAINED UNIT 3

A 132.17 Acre Retained Unit, Situated in Leon O. Ramirez "A" 698.45 Acre Lease, Being Out of, Porcion 22, Abstract 71, Joaquin Pena, and Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas



HOWLAND SURVEYING CO. INC., USA
HOWLAND ENGINEERING & SURVEYING COMPANY
Oil and Gas Location Surveys * Boundary Surveys
* City Lot Surveys * Engineering and Planning

CONOCO INC.
RETAINED UNIT 3
132.17 Acre Unit
Zapata County, Texas

A 132.17 acre retained unit, situated in Leon O. Ramirez "A" 698.45 acre lease, being out of Porcion 22, Abstract 71, Joaquin Pena, and Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas.

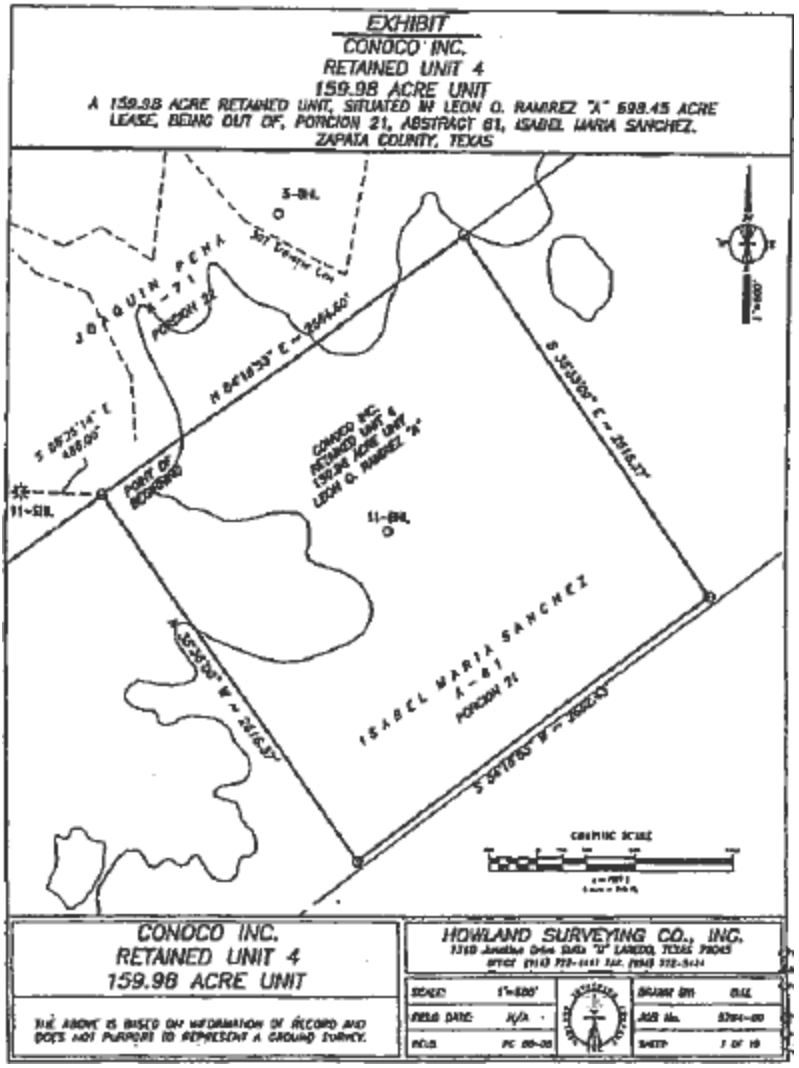
Beginning at a point which bears North 25 degrees 34 minutes 49 seconds West, a distance of 454.16 feet from the Ramirez No. 6 Gas Well for the west corner hereof.

- Thence North 53 degrees 53 minutes 09 seconds East, a distance of 1846.76 feet, to the north corner hereof;
- Thence South 35 degrees 36 minutes 51 seconds East, a distance of 2363.33 feet, to an exterior corner hereof;
- Thence South 54 degrees 23 minutes 09 seconds West, a distance of 83.74 feet, to an interior corner hereof;
- Thence South 14 degrees 44 minutes 00 seconds East, a distance of 242.78 feet, to a point of deflection hereof;

- Thence South 14 degrees 23 minutes 00 seconds East, a distance of 698.57 feet, to the southeast corner hereof;
- Thence South 53 degrees 54 minutes 22 seconds West, a distance of 1423.47 feet to the south corner hereof.
- Thence North 35 degrees 36 minutes 53 seconds West, a distance of 3237.12 feet to the Point of Beginning and containing 132.17 acres of land, more or less.

CONOCO INC., RETAINED UNIT 4

A 159.98 Acre Retained Unit, Situated in Leon O. Ramirez "A" 698.45 Acre Lease, Being Out of, Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas



HOWLAND SURVEYING CO. INC., USA
HOWLAND ENGINEERING & SURVEYING COMPANY
Oil and Gas Location Surveys * Boundary Surveys
* City Lot Surveys * Engineering and Planning

CONOCO INC.
RETAINED UNIT 4
159.98 ACRE UNIT
ZAPATA COUNTY, TEXAS

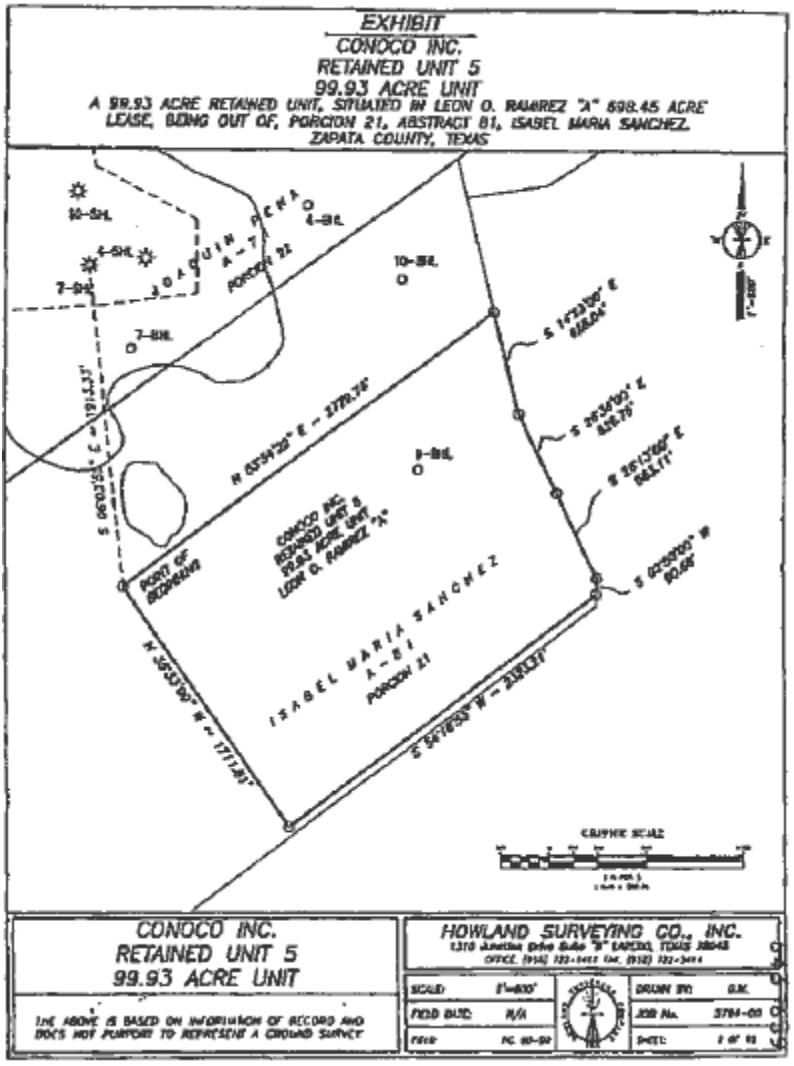
A 159.98 acre retained unit, situated in Leon O. Ramirez "A" 698.45 acre lease, being out of Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas.

Beginning at a point which bears South 88 degrees 25 minutes 14 seconds East, a distance of 486.00 feet from the Ramirez No. 11 Gas Well for the west corner hereof;

- Thence North 54 degrees 18 minutes 53 seconds East, a distance of 2664.60 feet, to the north corner hereof;
- Thence South 35 degrees 33 minutes 09 seconds East, a distance of 2616.37 feet, to the east corner hereof;
- Thence South 54 degrees 18 minutes 53 seconds West, a distance of 2662.43 feet, to the south corner hereof;
- Thence North 35 degrees 36 minutes 00 seconds West, a distance of 2616.37 feet, to the Point of Beginning and containing 159.98 acres of land, more or less.

CONOCO INC., RETAINED UNIT 5

A 99.93 Acre Retained Unit, Situated in Leon O. Ramirez "A" 698.45 Acre Lease, Being Out of, Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas



HOWLAND SURVEYING CO. INC., USA
HOWLAND ENGINEERING & SURVEYING COMPANY
Oil and Gas Location Surveys * Boundary Surveys
* City Lot Surveys * Engineering and Planning

CONOCO INC.
RETAINED UNIT 5
99.93 ACRE UNIT
ZAPATA COUNTY, TEXAS

A 99.93 acre retained unit, situated in Leon O. Ramirez "A" 698.45 acre lease, being out of Porcion 21, Abstract 81, Isabel Maria Sanchez, Zapata County, Texas.

Beginning at a point which bears South 06 degrees 03 minutes 55 seconds East, a distance of 1913.33 feet from the Ramirez No. 7 Gas Well for the west corner hereof.

- Thence North 53 degrees 54 minutes 22 seconds East, a distance of 2739.74 feet, to the north corner hereof;
- Thence South 14 degrees 23 minutes 00 seconds East, a distance of 628.04 feet, to a point of deflection hereof;
- Thence South 26 degrees 36 minutes 00 seconds East, a distance of 526.75 feet, to a point of deflection hereof;
- Thence South 26 degrees 13 minutes 00 seconds East, a distance of 563.11 feet, to a point of deflection hereof;

- Thence South 02 degrees 50 minutes 00 seconds West, a distance of 90.66 feet, to an exterior corner hereof;
- Thence South 54 degrees 18 minutes 53 seconds West, a distance of 2323.21 feet, to the south corner hereof;
- Thence North 35 degrees 33 minutes 09 seconds West, a distance of 1711.81 feet, to the Point of Beginning and containing 99.93 acres of land, more or less.

The State of Texas
County of Zapata

I hereby certify that this instrument was filed for record in my office this the 5th day of January A.D. 2001 at 2:11 o'clock P.M. and was recorded in the Official Records in Volume 643 pages 629-641

Consuelor Villarreal
County Clerk
Zapata, Texas
By: /s/ {illegible}
Deputy

EXHIBIT B TO JUDGMENT

Located in Zapata County, Texas and being the most southwesterly 320 acres of Las Piedras Ranch, adjacent to the northeasterly 325.23 tract described in Exhibit A to this judgment, in Porcion 21, Abstract No. 81, the whole tract containing 645.23 acres, more or less, being described as of all of Parcel Z-112.27-B containing 644.23 acres, and all of parcel Z-112.28-B containing 1.00 acre, said parcels being more particularly described in a Plat entitled "Plat of Porcion 21, Zapata County", made by the International Boundary and Water Commission, recorded in Volume 2 at page 128, of the Map Records of Zapata County, Texas, save and except to the depth of 100 feet below the stratigraphic equivalent depth of 10,430 feet from the surface of the ground as seen on the dual induction log for the Enron (ARCO)-L.O. Ramirez No.1 Well, said interval having been retained in Partial Release of Oil and Gas Lease, Instrument 93069 in Volume 460, pages 102-103 of the Real Property Records of Zapata County, Texas. Said 320 acres is where Conoco Phillips Company L.O. Ramirez Wells 3 and 8 are located.

FINDINGS OF FACT AND CONCLUSIONS OF LAW (JUNE 29, 2015)

IN THE DISTRICT COURT OF
ZAPATA COUNTY, TEXAS
49TH JUDICIAL DISTRICT

LEON OSCAR RAMIREZ, JR., Individually, and JESUS M. DOMINGUEZ, as Guardian for MINERVA CLEMENTINA RAMIREZ, an Incapacitated Person, Individually,

Plaintiffs,

v.

CONOCOPHILLIPS COMPANY, EOG RESOURCES, INC., EL MILAGRO MINERALS, LTD., and RODOLFO C. RAMIREZ, Individually and as Independent Executor of THE ESTATE OF ILEANA RAMIREZ, DECEASED.

Defendants.

Cause No. 7,637

Before: The Hon. Joe LOPEZ, Judge.

On April 19, 2015, the Court held a hearing to consider Plaintiffs' claim for attorneys' fees. The Plaintiffs, Leon Oscar Ramirez, Jr. ("Leon Oscar Jib) and Jesus M. Dominguez, as Guardian fox Minerva Clementina Ramirez ("Minerva"), an incapacitated

person, and Defendant, ConocoPhillips Company ("ConocoPhillips"), agreed to waive a jury on the claim of attorneys' fees and to try it to the Court.

On May 11, 2015, the Court signed a final judgment awarding $1,125,000.00 in attorneys' fees to Minerva and $1,125,000.00 in attorneys' fees to Leon Oscar Jr, against ConocoPhillips. The Court has subject matter jurisdiction in this case and finds venue to be proper.

On May 18, 2015, ConocoPhillips requested the Court file findings of fact and conclusions of law in support of the Court's award of attorneys' fees. The Court makes the following findings of fact and conclusions of law in support of the attorneys' fees award based on the evidence, testimony, and arguments presented at the March 19, 2015, heating, as well as having taken judicial notice of the entire court's file.[1]

Findings of Fact

1. This case was litigated for over four years. During this time, Plaintiffs defended multiple

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[1] This includes, without limitation, the docket sheet, each docket sheet entry, each pleading and other documents on file, motions, applications, briefs, case law and statutes cited to the Court, letters, issues raised, summary judgment evidence, accountings, all orders entered, and all evidence presented and arguments made, proffered, or adduced at hearings, copies of briefs, as well as other documents filed and orders issued in interlocutory appeal to the Fourth Court of Appeals, copies of applications, briefs, other documents filed and orders issued in original mandamus proceeding in the Fourth Court of Appeals, and copies of applications, briefs, other documents and orders filed in original mandamus proceeding in the Supreme Court.

attempted appeals and original appellate proceedings by ConocoPhillips, none of which were successful.

2. Despite the amount in controversy, Plaintiffs were represented by a single attorney at. the trial court level, Alberto Alarcon. Mr. Alarcon maintained contemporaneous time records that itemized specific tasks he performed for his clients, the time required for those tasks, the rate charged and a total value. These time records were sufficiently detailed and consistent with the Court's own knowledge of the case as reflected in the case file. Although some of the time entries were redacted in order to protect attorney work product and privileged communications, the redactions did not prevent the Court from evaluating the services performed or the hours expended.

3. Mr. Alarcon also properly segregated the time and labor invested by him on claims fox which recovery of attorneys' fees is not allowed. Specifically, during the period of October 2010 through December 2014, and, before doing any segregation of time and labor for claims for which no award of attorneys' fees is allowed, Attorney Alberto Alarcon on labored 2,442 hours in this case, including defending multiple appeals. Segregating the time and labor for claims for which no award of attorneys' fees is allowed, Attorney Alberto Alarcon labored 2,273 hours in this case related to those claims for which fees may be recoverable. The 2,273 hours were necessary for a successful representation of Plaintiffs. In reaching this finding, the Court observes and finds:

a. The claims and issues in this case fall in three distinct categories. One category involves the Texas Natural Resources Code Chapter 91/trespass-to-try title/accounting

claims. Within these claims, the case involved the issue of good faith/bad faith between cotenants, as that claim related to whether the producing cotenant would be allowed to deduct cost of production and marketing in its accounting. The second distinct category involved a number of claims sounding in tort. The third category involved the issue of the Court's subject matter jurisdiction, as that issue was presented all the way to the Supreme Court

b. Plaintiffs asserted claims against two defendants and a third set of defendants. The first two defendants were ConocoPhillips and EOG Resources, Inc. ("EOG"). The third set of defendants, who came to be referred to as the Ramirez Defendants, were Rodolfo C. Ramirez, individually and as executor of the Estate of Ileana Ramirez, Deceased, and El Milagro Minerals, Ltd. (a limited partnership who was a successor in interest to Rodolfo C. Ramirez).

c. EOG Resources, Inc. was an unleased cotenant of the Plaintiffs for a very short period of time and for a small amount of production from late 1993 thru the end of 1994. EOG held oil and gas leases on the subject lands from Plaintiffs' cotenants. In 1995, ConocoPhillips succeeded to the interest of BOG. Rodolfo C. Ramirez and his now deceased sister Ileana Ramirez were two of more grantors of the subject leases and claimed to be owners of a possibility of reverter of part of Plaintiffs' interest in the

land. All defendants were claimed to be recipients of proceeds from production from the subject lands, BOG and ConocoPhillips, as lessees from Plaintiffs' cotenants and as Plaintiffs' unleased cotenants, and Rodolfo Ramirez and the late Deana Ramirez as lessors in their own right and as purported owners/lessors of Plaintiffs' interest in the lands. The bulk of the production went to Conoco Phillips.

d. Plaintiffs' claims against all defendants were identical with the exception of the Texas Natural Resources Code Chapter 91/trespass-to-try title/accounting claims and the trespass-to-try-title claim of Rosalinda Ramirez Echardt FOG was claimed to have received a small amount of the production as an unleased cotenant of Plaintiffs from one well for a short period of time between November 1993 and December 1994, while ConocoPhillips received all production as Plaintiffs' unleased cotenant after January 1995 until the present. A very small portion of the production claimed by Plaintiffs was paid to Rodolfo C. Ramirez and the late Ileana Ramirez and successors, supposedly as a royalty. Unlike Minerva and Leon Oscar Jr, Rosalinda Ramirez Echardt signed ratifications of the subject oil and gas leases, and, thus, her claims involved setting aside those ratifications. Eventually, BOG settled with Plaintiffs and Rosalinda Ramirez Echardt nonsuited all her claims. Plaintiffs also nonsuited all their claims against the Ramirez

Defendants, except the trespass-to-try title claims.

e. The 2,273 base hours segregates, as much as is feasible, the tort claims, the claim regarding good/bad faith between cotenants, and the claim of Rosalinda Ramirez Echardt regarding her ratifications of the subject leases.

f. Regarding Alberto Alarcon's time and labor involved in the claims under Texas Natural Resources Code §§ 91.401 thru 91.409, the Court finds that it was necessary for Plaintiffs' recovery to establish ownership of the minerals in question. The Court finds that it is not necessary, if not impossible, to segregate time and labor invested pursuing the claims under the Texas Natural Resources Code §§ 91.401 thru 91.409 from the time and labor invested in pursuing equitable and common law accounting claims and trespass-to-try-title claims. The time and labor invested pursuing one claim is the same time and labor invested in pursuing any of the others.

g. Regarding the time and labor invested by Alberto Alarcon pursuing claims under the Natural Resources Code §§ 91.401 thru 91.409 against all defendants and the time and labor, which was the same, invested by Alberto Alarcon pursuing claims of equitable and common law accounting claims and trespass-to-try-title claims, the Court finds that all defendants pursued a joint defense, many times, if not always, ConocoPhillips Company leading the charge by filing a motion or application just to be followed by

an identical, if not very similar, motion or application by the other Defendants. Invariably, the Plaintiffs efficiently responded by fling a combined response.

h. The segregation of time and labor involved as to claims and parties performed by Alberto Alarcon is a reasonable and fair estimate of the time and labor that should have been segregated. It is also the finding of the Court that the Court's file, as described in footnote 1 above, corroborates the testimony of Alberto Alarcon and the findings of the Court.

i. The testimony of Allison W. Haynes is disregarded as conclusory and inconsistent with the record and the knowledge the Court has of this case and the Court's file.

4. ConocoPhillips presented its jurisdictional challenge all the way to the Texas Supreme Court, requiring Plaintiffs to retain an appellate practitioner with experience before that Court The appellate attorney, Lisa Hobbs, labored 193 hours defending the proceeding during the period of August 2013 through December 2013. Given the nature of the challenge, Ms. Hobbs had no duty to segregate her time as her services supported all claims, whether attorneys' fees were recoverable or non-recoverable for some. The hours Ms. Hobbs worked in the case were necessary.

5. Although the Court finds that there was no legitimate title dispute in this case, the case was fax from routine. The Court concludes, based on its own experience on the bench and with this case in partic-

ular, that the complicated, albeit undisputed, facts of the case, the jurisdictional challenges, the voluminous and repeated summary judgment motions and collateral attack on previous rulings made on summary judgment motions, made this case an exceptionally difficult one. Whether the services were in response to action taken by an opposing party and whether the action taken by an opposing party had any merit is interrelated to the novelty and difficulty of the questions involved and the necessity of the services. Regarding these factors and other interrelated factors of novelty and difficulty of the questions involved and the necessity of the services, the Court, by way of example, makes the following findings regarding some of the questions involved in the case, including, without limitation:

a. In December 2011 Minerva and Leon Oscar Jr. filed their respective Amended Motions for Partial Summary Judgment The motions specifically requested summary judgment that the mineral interest of each was a 1/12 undivided mineral interest devised to them in Leonor V. Ramirez' will. The motions also requested judgment that the oil and gas leases relied on by ConocoPhillips were invalid as to their respective mineral interest. ConocoPhillips and the other defendants responded on January 5 and 6, 2012. The hearing on the amended motions for summary judgment was held on January 24, 2012. The motions were granted on December 6, 2012. The summary judgment of December 6, 2012 decreed that Minerva and Leon Oscar Jr. were the owners of 1/6 of the minerals

(1/12 each) and that the 1993 and the 1997 leases were invalid as to their interest

b. In their responses to the amended motions for partial summary judgment, none of the Defendants questioned the plain meaning of the will and the Court applied its plain meaning. Therefore, it was undisputedly established that Minerva's and Leon Oscar Jr.'s title in the minerals the subject of the Final Judgment, was devised to them in Clause VI of the will:

> I give, devise, and bequeath to my son, LEON OSCAR RAMIREZ, all of my right, title and interest in and to Ranch "Las Piedras" out of Porciones 21 & 22, and situated in Zapata County, Texas, and during the term of his natural life. Upon the death of my son, LEON OSCAR RAMIREZ, the title shall vest in his children then Living in equal shares.

c. As part of their amended motions for partial summary judgment Minerva and Leon Oscar Jr. presented a 1997 letter from Conoco Phillips to Rodolfo C. Ramirez in which ConocoPhillips acknowledged the same plain meaning that Plaintiffs presented and which was accepted by the Court as undisputed unambiguous language. ConocoPhillips' letter stated in pertinent part:

> At the time of Leonor's death she owned a 1/2 interest in the surface of Las Piedras Ranch and 1/4 of the minerals.

(The Ramirez family owns a 1/2 mineral interest in the Las Piedras Ranch so Leonor owned 1/2 x 1/2 = 1/4).

Under paragraph VI. of Leonor's Will she conveyed all of her right, title and interest in and to the "Las Piedras Ranch" to Leon Oscar Ramirez during the term of his natural life and upon his death to his surviving children.

d. After the summary judgment hearing of January 24, 2012, and notwithstanding the acknowledged and undisputed plain meaning of the will, ConocoPhillips began asserting that the case was a "will construction" suit by filings a plea to the jurisdiction. Fifteen months after suit was filed, and almost 9 months after it asked the Court for judgment in its favor, ConocoPhillips filed its plea to the jurisdiction, on February 15, 2012, claiming the case was a "probate proceeding" that must be heard in the Webb County Court at Law No. 1, where the will was admitted to probate on April 26, 1990. By this time, the parties had been litigating the case for so long that they were within 90 days of trial.

e. ConocoPhillips nor any of the other defendants sought leave of court to add any evidence or to bring forth any argument or issue to the summary judgment record that the will had a different meaning than the one presented by Plaintiffs and acknowledged and unopposed by ConocoPhillips and the other defendants.

f. After the December 6, 2012, partial summary judgment, ConocoPhillips filed an interlocutory appeal and it also sought mandamus relief in the Fourth Court of Appeals and in the Supreme Court, on the premise that the case was all about the construction of the will and claiming that the Court lacked subject matter jurisdiction to construe the will. Mandamus relief was denied by the Fourth Court of Appeals and the Supreme Court. The Fourth Court of Appeals dismissed the interlocutory appeal for lack of jurisdiction. In denying a motion for rehearing, the Fourth Court of Appeals held that this Court was not exercising probate jurisdiction, but it did not decide whether this Court would have lacked subject matter jurisdiction if its exercise of jurisdiction was characterized, partially, in total, pendent or ancillary, as probate.

g. In response to Plaintiffs' amended motions for summary judgment ConocoPhillips presented the "open mine" doctrine as a defense. ConocoPhillips argued that the open mine doctrine applied and presented a lease signed by Leonor V. Ramirez on October 6, 1983 under which the LO Ramirez No. 1 was drilled in the mid-80s, before Leonor's death. However, the Court finds that said lease was superseded by a lease dated April 26, 1990, and that the lease and the land it held were released by FOG Resources, Inc. in January 11, 1993, except 320 acres to the depth of 10,530 feet, precisely to keep LO

Ramirez No. 1 under that lease, which Plaintiffs expressly stated they were not challenging to the extent not released.

h. In response to Minerva's amended motion for partial summary judgment ConocoPhillips argued that her father, brother and sister were her *de facto* guardians, because they took care of hex and handled her social security disability benefits. ConocoPhillips argued that her father as her *de facto* guardian could bind her to oil and gas leases. ConocoPhillips also argued that because she had *de facto* guardians any applicable statute of limitations should run against her via her *de facto* guardians. The Court finds that such propositions advanced by ConocoPhillips are not supported by any authority.

i. In response to the amended motions for partial summary judgment ConocoPhillips argued that Plaintiffs improperly excused their father for wasting their contingent interest in the corpus of the life estate and that ConocoPhillips had already paid their father what belongs to the Plaintiffs. There is no authority stating that Plaintiffs' failure to sue their father or his estate is a defense to Plaintiffs' Natural Resources Code/accountings/trespass-to-try title claims. Furthermore, each of the Plaintiffs' claims is for 8.33% of the minerals as an unleased cotenant and not for any overpayment of royalties, based on an erroneous ownership interest, to their father, uncle and aunt.

j. The Court also finds that paying royalties to Ileana Ramirez and Rodolfo C. Ramirez on the basis of a 1/6 ownership each was erroneous, but Plaintiffs are not seeking royalties. They claim as unleased cotenants. Thus, this finding is made in relation to the correct percentage ownership of the subject minerals.

k. The Court finds that Leon Juan Ramirez and his sister Felicidad Ramirez de Perez owned a 1/2 undivided interest in the minerals in the subject lands. In 1952 Leon Juan Ramirez gifted in equal shares to his wife Leonor V. Ramirez and children, Leon Oscar Sr., Ileana and Rodolfo a 1/2 non-participating royalty interest for a 1/16 non-participating royalty interest to each, in the subject land.

l. In his will, Leon Juan Ramirez left 1/2 of his interest in the subject minerals to his wife Leonor, or 1/4 of the total. He left the other half in the minerals (1/4 of the total) to his three children, Leon Oscar Sr., Ileana and Rodolfo (1/12 to each).

m. Leonor V. Ramirez left her interest in the subject lands to his son Leon Oscar Sr. for life, and upon his death to his surviving children. ConocoPhillips correctly delivered to Leon Oscar Sr., during his life, the 1/16 non-participating royalty given to Leonor V. Ramirez by her husband in 1952. Therefore, ConocoPhillips correctly delivered royalty (participating and non-participating) to Leon Oscar Sr. during his life on the basis of 1/6 (Leon Oscar Sr.'s NPRI of 1/16 given to him

by his father in 1952 + Leonar's NPRI of 1/16 given to her by her husband in 1952 + the interest inherited by Leon Oscar Sr. from his father, a 1/24 (1/3 of 1/4 burdened by the 1/2 NPRI burden) (1/16/+1/15+1/24= 8/48 or 1/6).

n. Although the leases of 1993 purport to have been signed by Ream Ramirez bath individually and in her capacity as independent executrix of the estate of Leonor V. Ramirez, the leases show on their face that they were detrimental to the estate of Leonor V. Ramirez, and not in any way for the benefit of the estate of Leonor V. Ramirez. The leases attribute ownership and commit to pay all lease benefits on the basis of 1/6 ownership to each Ileana Ramirez, individually and as independent executrix, Leon Oscar Ramirez, and Rodolfo C. Ramirez. But the estate of Leonor V. Ramirez had a 1/4 ownership interest in the minerals, not a mere 1/6 to be distributed to Ileana Ramirez, individually and as executrix. Each, Ileana Ramirez, Leon Oscar Ramirez, Sr. and Rodolfo C. Ramirez, only owned individually a 1/12 in the minerals, plus the non-participating royalty given to them by their father in 1952.

o. There is no evidence that the granting of the leases was to pay debts of the estate of Leonor V. Ramirez or of any other condition that would have authorized the leases, especially when the consideration was not to be paid to the estate of Leonor V. Ramirez. In fact, there were no debts of the estate of

Leonor V. Ramirez and there was no evidence of any debts.

p. All lease benefits were paid to Deana Ramirez, Leon Oscar Ramirez, Sr. and Rodolfo C. Ramirez, individually, and on the basis of a 1/6, as if each owned 1/6, and nothing was paid to the estate of Leonor V. Ramirez. There was no evidence that any lease benefits were paid to the estate of Leonor V. Ramirez.

q. ConocoPhillips even had a stipulation of interest drafted and signed by Ileana Ramirez, Leon Oscar Sr. and Rodolfo C. Ramirez stating that each owned 1/6 of the minerals, and, thus, that nothing was owned by the estate of Leonor V. Ramirez or her devisees under Clause VI of the will. Moreover, ConocoPhillips removed the estate of Leonor V. Ramirez in its internal documentation from any ownership of the minerals. In the third lease, Ileana Ramirez did not even purport to sign as independent executrix.

r. The will left Plaintiffs' minerals to them in undivided interests. The will does not provide a means to partition the minerals. Ileana Ramirez did not ask the probate court for either a partition in kind or by sale. The oil and gas leases are, in effect, a sale, and, in this case without any payment of consideration to the estate of Leonor R. Ramirez or to the devisees under the will. Rather, all lease payments were made directly by ConocoPhillips to non-devisees of the subject land under the will, leans Ramirez, Rodolfo C. Ramirez and ConocoPhillips Company.

s. The original life tenant or the assignee of his life tenancy interest, ConocoPhillips, had a very limited right to receive investment income of the proceeds from corpus.

t. In response to Minerva's Amended Motion for Partial Summary Judgment defendants did not claim or present any evidence of ratification or estoppel against Minerva Clementina Ramirez.

u. Leon Oscar Jr. did not sign any ratifications of the subject leases and he did not authorize anyone to sign the ratifications for him. Defendants did not present any evidence that Leon Oscar signed the ratifications or authorized anyone to sign the ratifications fox him. The ratifications were signed by Leon Oscar Sr.

v. The subject leases were not recorded in the public records. The memoranda of the oil and gas leases recorded do not establish any details of the oil and gas leases. Leon Oscar Jr. did not see or know the contents of the subject oil and gas leases until they were produced in this case. There is no evidence that Leon Oscar r. knew what the oil and gas leases stated prior to the oil and gas leases being produced in this case.

w. Leon Oscar Sr. had his own fee simple interest in minerals in the subject lands which he inherited under his father's will. Leon Oscar Sr. also held a 1/16 non-participating royalty interest given to him by his father in 1952. In addition, Leon Oscar Sr. was paid the

1/16 non-participating royalty given to Leonor V. Ramirez by her husband in 1952. While he had the right to possess the corpus of the 1/16 non-participating royalty interest once belonging to Leonor V. Ramirez, he had the duty to preserve such corpus for the remaindermen under the life estate created in Clause VI of the will. The failure to preserve such corpus of the 1/16 non-participating royalty interest once belonging to Leonor V. Ramirez has the effect of creating a liability for Leon Oscar Sr. in favor of the remaindermen. The recognition of such indebtedness by the executors of the Leon Oscar Sr.'s estate is not a ratification of the subject leases. The outstanding non-participating royalty is not a benefit of the subject leases.

x. Even the receipt of proceeds from production by Leon Oscar Sr. in excess of his own interest in the subject t lands might create liability to other owners whose interest was diminished, not because other owners are entitled to royalties under the leases, but simply because they are owners of the gas or their proceeds. The recognition of such debt by the executors of the Estate of Leon Oscar Sr. is not a ratification of the leases. On contrary, it is a repudiation of the leases. The claim is not for participating royalties under the lease, but simply for gas proceeds belonging to them as owners.

y. Because Leon Oscar Sr. had his own fee simple interest in the subject lands and was a lessor in his own right, the execution by

his executors, on behalf of his decedent's estate, of a division order does not constitute a ratification of the leases by the executors in their individual capacity for their own interest inherited from their grandmother. Moreover, the evidence is that they did not know what the leases stated. Moreover, a division order is not a ratification as a matter of law because it only operates prospectively.

z. Although ConocoPhillips claimed that the original inventory filed by the executors of the estate of Leon Oscar Sr. in his probate proceeding estopped the executors individually to deny that they had no interest in the estate of Leonor V. Ramirez, ConocoPhillips' own evidence of amended inventories, filed by the executors and approved by the probate court, establishes that they are not estopped to claim an interest in the estate of Leonor V. Ramirez. Moreover, the original inventory is not specific enough to give it the meaning defendants advanced, but even if it was, those statements have been corrected with the approval of the probate court.

aa. The statements made by Leon Oscar Jr. in the lawsuit against Rodolfo Ramirez only referred to Leon Oscar Sr.'s own interest in the land and not to the interest inherited by Leon Oscar Jr. from his grandmother Leonor V. Ramirez. The main purpose of that lawsuit was to set aside a quitclaim deed allegedly given by Leon Oscar Sr. to Rodolfo C. Ramirez for the former's interest in Las Piedras Ranch which did not include the

interest left in the will to Leon Oscar Jr, Leon Oscar St could not have conveyed more to Rodolfo C. Ramirez than what he owned. Statements regarding Leon Oscar Sr.'s possession as against Rodolfo C. Ramirez's claim by virtue of the quitclaim deed are not statements of his ownership of other owner's interests, such as Plaintiffs or even Rodolfo C. Ramirez' own interest in Las Piedras Ranch.

bb. The leases could not convey more than what the grantors owned.

cc. The statutes of limitations never ran against Minerva Clementina Ramirez.

dd. As to Leon Oscar Jr., the statutes of limitations began to run on the death of his father on November 27, 2006, and not before. *Garza v. Cavazos*, 221 S.W.2d 549, 553 (Tex. 1949); *Evans v. Graves*, 166 S.W.2nd 955, 956-58 (Tex. Civ. App.-Dallas 1942, writ ref'd).

This list of claims and issues and related findings is not intended to include all issues and claims decided by the Court. This list is presented in order to address, in some context, the factors of novelty and difficulty of questions involved and the necessity of the services.

6. The voluminous and repeated summary judgment motions made this case an exceptionally difficult one. For example, the Court decided the undisputed question of the meaning of Clause VI of the will in the Court's December 6, 2012 order granting Minerva's and Leon Oscar Jr.'s Amended Motions for Partial Summary Judgment ConocoPhillips admitted in the Court of Appeals and in the Supreme Court that the

Court had interpreted and applied the will in the December 6, 2012 summary judgment order. Nonetheless, ConocoPhillips and the Ramirez Defendants filed, in June 2014 and September 2014, respectively, their motions for summary judgment asking the Court to construe the will. The Court denied their request to construe the will because the Court applied and interpreted the plain meaning of the will, without contention of a different meaning by any of the defendants, in the December 6, 2012 summary judgment order.

7. In those same motions for summary judgment ConocoPhillips and the Ramirez Defendants also sought to further collaterally attack the December 2016 summary judgment order with arguments of ratification and estoppel. But the Court finds that in their responses to the Plaintiffs' amended motions for partial summary judgment, granted on December 6, 2012, the Defendants had not raised any issues of ratification and estoppel against Minerva and the issues of ratification and estoppel raised against Leon Oscar Jr. were overruled and merged in the December 6, 2012 summary judgment order. The Court finds that any new issues of ratification and estoppel raised in the subsequent motions for summary judgment on ratification and estoppel had been waived by not being raised in responses to the Plaintiffs' amended motions for partial summary judgment.

8. Another example that this was an exceptionally difficult case can be found in ConocoPhillips' motion to reopen and reconsider the December 6, 2012 summary judgment order, filed on or about April 19, 2013. The motion was denied by the Court on November 17, 2014. The Court finds that this was another

collateral attack on the order of December 6, 2012, under the disguise of allegedly newly discovery evidence. In resolving this motion to reopen and reconsider, the Court considered the evidence presented for this motion as well as the evidence presented by ConocoPhillips and the Ramirez Defendants in their motions for summary judgment for will construction, ratification and estoppel and the evidence in response presented by the Plaintiffs. The Court finds that the motion, alleges among other things, a recognition of a debt by Leon Oscar Jr. and supposedly by the guardian for Minerva, owed by the Estate of Leon Oscar Sr. to them for gas proceeds received by Leon Oscar Sr. This allegation is not different from the allegation presented in response to Minerva's and Leon Oscar Jr.'s Amended Motions for Partial Summary Judgment The recognition of a debt for Leon Oscar Sr.'s failure to preserve the corpus of the 1/16 non-participating royalty interest once belonging to Leonor V. Ramirez is not a ratification of the subject leases. The non-participating royalty is not a benefit of the subject leases; it is a non-lease payment. and, it is significantly much smaller than the gas proceeds kept by ConocoPhillips which belonged to Plaintiffs. Even the receipt of production proceeds by Leon Oscar Sr. in excess of his own interest might create liability to other owners whose interest was diminished, not because other owners are entitled to royalties under the leases, but simply because they are owners of the gas or their proceeds. The recognition of such debt by the executors of the estate of Leon Oscar Sr. is not a ratification of the leases. On the contrary, it is a repudiation of the leases. Plaintiffs' claim against ConocoPhillips is not for royalties under the lease,

but simply for gas proceeds belonging to them as owners who have not leased their interest

9. The legal services required advanced legal skills, including the ability to perform title work in the public records and deep knowledge of property law and nuances of oil and gas law. Both lawyers representing the Plaintiffs possess the advanced skill needed to perform the legal services properly.

10. The case and the vigorous defense presented by ConocoPhillips and its team of eight lawyers consumed a quarter of the work time of Alberto Alarcon for 4 1/2 years. Alberto Alarcon maintains a regular and typical work schedule of forty hours per week. This significant strain on Mr. Alarcon's docket preluded him from accepting other cases. Moreover, the unusually protracted nature of this lawsuit—contributable primarily to the number of interlocutory appeals, mandamus proceedings, and other tactical maneuvers by the defense—were not foreseeable to Mr. Alarcon when he accepted the representation.

11. Mr. Alarcon represented his clients zealously, resulting in an award of almost $10 million. Specifically, due to Mr. Alarcon's successful representation, each Plaintiff was awarded $3,764,489.00 plus pre-judgment interest of $966,295.00 from November 27, 2006 (the date of death of Leon Oscar Ramirez, Sr.) until the date of judgment for a total of $9,461,568.00 for both Plaintiffs. Although Plaintiffs did not prevail on all aspects of the case, the degree of success obtained by Mr. Alarcon was significant and he conferred a substantial benefit to his clients by securing the judgment

12. When the attorney's representation is on an hourly basis regardless of the result, the fee customarily

charged in Zapata and Webb counties for similar representation is $300.00 per hour. When the attorney's representation is on an hourly basis regardless of the result, the fee customarily charged in Texas, including in Zapata, Webb and Travis counties, for similar appellate representation is $350.00 per hour.

13. When the attorney's representation is on a pure contingency fee basis, the fee customarily charged in Travis, Zapata, and Webb counties fox similar representation is 40% of the results obtained.

14. Alberto Alarcon has held a long attorney-client relationship with Leon Oscar Jr.

15. Alberto Alarcon has been practicing law for 27 years and has an outstanding reputation in Webb and Zapata counties. Lisa Hobbs is a board certified appellate lawyer who also has an excellent reputation. The Court was impressed by the quality of representation by both counsel and the efficiency with which they represented their clients.

16. The fee agreement that the two prevailing Plaintiffs have with Alberto Alarcon is a pure contingency fee of 40% of results obtained Alberto Alarcon has a fee sharing agreement with Lisa Hobbs, who has been hired as appellate counsel, where Alberto Alarcon will share 5 percentage points with Lisa Hobbs. These fee agreements were approved by the County Court at Law No. 1 of Webb County, who oversees the guardianship of Minerva, an incapacitated individual who was born with Down's syndrome.

17. Both prevailing Plaintiffs are in a dire economic situation and they did not have the economic ability to afford counsel on an hourly or fixed fee

basis. Plaintiffs had no choice but to enter into the contingency fee agreement with Alberto Alarcon.

18. The terms of the contingency fee agreement with Alberto Alarcon are customary in Zapata, Webb and Travis Counties when the claimants cannot afford to pay a lawyer on an hourly basis or otherwise.

19. The Court finds that the base loadstar amount is $750,000.00 and it is reasonable.

20. A contingency fee (based on the judgment amount) would be 5 times higher than the base loadstar amount.

21. The contingency fee agreement in this case offers the potential of a greater fee than might be earned under an hourly billing method, but such compensation is justified because the attorneys have taken the risk of receiving nothing if the case was lost. The amount of the litigation risk the contingent fee agreement transfers to the lawyers was 100%. But the fact that the fee is being shifted to the non-prevailing party must also be considered.

22. Considering all of the foregoing, the Court finds that an enhancement of 3 times the base loadstar amount is reasonable in this exceptional case.

23. This upward enhancement is not based solely on the contingency fee agreement between Plaintiffs and their counsel but is based on careful weighing of all the relevant factors.

24. The Court finds that the $1,125,000.00 in attorneys' fees awarded to Minerva is reasonable.

25. The Court finds that the $1,125,000.00 in attorneys' fees awarded to Leon Oscar Jr. is reasonable.

Conclusions of Law

1. Having been awarded a final judgment in their favor, Plaintiffs Minerva and Leon Oscar Jr. are entitled to reasonable attorney fees under Chapter 91 of the Texas Natural Resources Code.

2. Plaintiffs Minerva and Leon Oscar Jr. are prevailing parties.

3. In the determination of reasonable attorneys' fees the Court considered and applied the principles stated in *Arthur Andersen & Co. v. Perry Equipment Corporation*, 945 S.W.2d 812 (Tex. 1997).

4. In the determination of reasonable attorneys' fees the Court also considered and applied each of the following factors:

a. The time and labor required;

b. The novelty and difficulty of the questions involved;

c. The skill required to perform the legal service properly;

d. The likelihood that the acceptance of the employment by the lawyers would preclude other employment by the lawyers;

e. The fee customarily charged in Zapata, Webb, and Travis Counties for similar representation;

f. The amount involved;

g. The results obtained;

h. The time limitations imposed by the client or by the circumstances;

i. The nature and length of the professional relationship with the client;

j. The experience, reputation and ability of the lawyers performing the services;

k. Whether the fee was fixed or contingent on results obtained or the uncertainty of collection before the legal services were rendered.

l. The necessity of the services;

m. Whether the services were in response to action taken by an opposing party and whether the action taken by an opposing party bad any merit.

5. As part of 4(k), other factors considered by the Court, together with the factors mentioned above, in relation to contingency fee agreements:

i. The terms of the contingency fee agreement;

ii. Whether there was any reasonable alternative to the contingency fee, *i.e.* whether the client was capable of undertaking the payment of fees on an hourly basis or fixed fee, regardless of the results;

iii. Whether contingency fee agreements are customary in Zapata, Webb and Travis Counties when the claimants cannot afford to pay a lawyer on an hourly basis or otherwise;

iv. The customarily contingency fee charged in Zapata, Webb and Travis Counties for similar representation;

v. A comparison of the contingency fee (based on the judgment amount) to the base loadstar amount;

vi. The amount of the litigation risk the contingent fee agreement transfers to the lawyers; and,

vii. The fact that the fee is being shifted to the non-prevailing party under the particular fee-shifting statute.

6. The attorneys' fees awarded by the Court were reasonable and necessary.

7. The attorneys' fees awarded by the Court are equitable and just.

To the extent that any finding of fact made by this Court should properly be considered a conclusion of law, and to the extent that any conclusion of law made by this Court should properly be considered a finding of fact, it is the express intent of the Court that any statement identified herein as a finding of fact also be deemed a conclusion of law and any statement identified herein as a conclusion of law shall also be deemed a finding of fact. Also, to the extent any findings are made to describe issues and claims relevant to the factors fox the award of attorneys' fees, such findings are not intended to be an exhaustive list which includes all issues and claims decided by the Court. Those findings ale discussed and made solely to put in context the factors relevant to the award of attorneys' fees.

Signed on this 29 day of June, 2015

/s/ Hon. Joe Lopez
Judge of the 49th District Court
of Zapata and Webb Counties

LAST WILL OF LEONOR V. RAMIREZ (OCTOBER 20, 1987)

THAT I, LEONOR V. RAMIREZ, a widow, of the County of Webb, State of Texas, being of sound and disposing mind and memory do make and publish this my Last Will, hereby revoking all Wills by me at any time heretofore made.

I.

I am now an unmarried woman, my late husband, LEON J. RAMIREZ, having died in 1966. I have three (3) children now living, whose names are:

1. LEON OSCAR RAMIREZ,
2. ILEANA RAMIREZ,
3. RODOLFO C. RAMIREZ

All references in this Will to my "children", or "issue" include the Above children and any child or children born to or adopted by me after the date of execution of this Will.

II.

It is my intention by this Will to dispose of all of the property that I own at the time of my death.

III.

I give to my son, LEON OSCAR RAMIREZ, the automobile which I possess at the time of my death.

IV.

I give all of my clothing, jewelry, household furniture and furnishings, personal effects, works of

art and other tangible articles of a personal nature not otherwise specifically disposed of by this Will to my daughter, ILEANA RAMIREZ.

V.

I give in fee simple to my daughter, ILEANA RAMIREZ, the real property and improvements at 919 Chihuahua more fully described as Lot Number Seven (7) and the East One-half of Lot Number Eight (E. 1/2 of 8), in Block Number Five Hundred Fifty-eight (558), situated in the Eastern Division of the City of Laredo, Webb County, Texas.

VI.

I give, devise and bequeath to my son, LEON OSCAR RAMIREZ, all of my right, title and interest in and to Ranch "Las Piedras" out of Porciones 21 & 22, and situated in Zapata County, Texas, and during the term of his natural life. Upon the death of my son, LEON OSCAR RAMIREZ, the title shall vest in his children then living in equal shares.

VII.

I give all of the residue of my estate in equal shares to my children, LEON OSCAR RAMIREZ, ILEANA RAMIREZ and RODOLFO C. RAMIREZ, share and share alike. If any residuary beneficiary should predecease me, leaving issue who survive me, the share of my estate that would otherwise go to that deceased residuary beneficiary shall instead go to his issue per stirpes.

VIII.

I appoint my daughter, ILEANA RAMIREZ, as the Executrix of this Will. If ILEANA RAMIREZ, does not survive me, is unable or unwilling to act or to continue to act as Executrix, or ceases to serve as Executrix for any reason after having been appointed, then I appoint my son, LEON OSCAR RAMIREZ, as the Executor of this Will.

No Executor, whether originally appointed or successor, shall be required to furnish a bond for the performance of his duties as Executor under this Will.

I authorize my Executor to administer my estate independently, and the Executor shall be free from judicial supervision, adjudication, order, or direction to the extent allowed by law.

IX.

If any person named a beneficiary under this Will challenges or contests this Will or any of its provisions by legal proceeding or in any other manner, or attempts in any way to oppose or set aside the probate of its provisions any gift or other provision I have made to or for that person under this Will is revoked, and the rights of any such person under this Will are to be disposed of as if that contesting beneficiary had predeceased me without issue.

X.

If any part, clause, provision, or condition of this Will is held by a court of competent jurisdiction to be void, inoperative, ineffective, or otherwise invalid, its invalidity shall not affect any other part, clause,

provision, or condition of this Will, and the remainder of this Will shall be carried into effect as if this Will had been executed without the invalid part, clause, provision, or condition being included.

For the purposes of this Will, in determining whether a person has survived me or another person, the person is deemed to have survived if he or she is alive at least sixty (60) days past the date of my death or of the death of the other person.

This Will is to be exclusively governed by and construed in accordance with the laws of the State of Texas.

IN TESTIMONY WEREOF, I hereunto sign my name to this, my Last Will, consisting of four (4) pages including the attestation clauses and the self-proof affidavit each of which pages I am initialing for the purpose of identification, all in the presence of the undersigned, who witness the same at my request, on this the day of 20th day of October, 1987.

/s/ Leonor V. Ramirez
Testatrix

ATTESTATION

The foregoing instrument was, on this the 20th day of October, 1987, made and published as the Last Will of LEONOR V. RAMIREZ, and is signed and subscribed by the said LEONOR V. RAMIREZ in our presence, and we, the undersigned, at her request and in her presence, and in the presence of each other, sign and subscribe our names hereto as attesting witness.

/s/ Witness 1
1619 Reynolds
Laredo, TX 78043

/s/ Witness 2
1318 Kearney
Laredo, TX 78040

SELF-PROVING AFFIDAVIT

STATE OF TEXAS
COUNTY OF WEBB

Before me, the undersigned authority, on this day personally appeared LEONOR V. RAMIREZ, Testatrix, /s/ witness 1 and /s/ witness 2 known to me to be the Testatrix and the Witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and all of said persons being by me duly sworn, the Testatrix, LEONOR V. RAMIREZ, declared to me and to the said Witnesses in my presence that said instrument is her Last Will, and that she had willingly made and executed it as her free act and deed for the purposes therein expressed; and the said Witnesses, each on their oath stated to me, in the presence and hearing of the said Testatrix, that the said Testatrix had declared to them that said instrument is her Last Will, and that she executed the same as such and wanted each of them to sign it as a Witness; and upon their oaths each Witness stated further that they did sign the same as Witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen (18) years of age or over and was of sound mind; and that each of said Witnesses was then at least fourteen (14) years of age.

/s/ Leonor V. Ramirez
Testatrix

/s/ {Illegible}
Witness

/s/ {Illegible}
Witness

SUBSCRIBED AND ACKNOWLEDGED BEFORE ME by the said Testatrix, Leonor V. Ramirez, and Subscribed and sworn to before me by the said witnesses, /s/ witness 1 and /s/ witness 2 on this the 20th day of October, 1987.

/s/ {Illegible}
Notary Public, State of Texas
My Commission Expires: 10-30-87

PARTITION DEED
(JANUARY 15, 1975)

STATE OF TEXAS
COUNTY OF WEBB

WHEREAS, the Estate of Leon J. Ramirez has been fully administered and all debts due and owning have been paid and owners of the Estate of Leon J. Ramirez, Deceased, namely:

(1) LEONOR V. RAMIREZ, who owns an undivided one-half (1/2) interest;

(2) LEON OSCAR RAMIREZ, who owns an undivided one-sixth (1/6th) interest;

(3) ILEANA RAMIREZ, who owns an undivided one-sixth (1/6th) interest;

(4) RODOLFO RAMIREZ, who owns an undivided one-sixth (1/6th) interest;

desire to reach an agreement for the partition of the surface but not of the oil, gas and other minerals in and under all ranch and farm land belonging to the Estate of Leon J. Ramirez, situated in Porciones 19, 20, 21 and 22 in Zapeta, County, as hereinafter referred to, and parties have reached an agreement that the surface but not the oil, gas and other minerals will be partitioned as between the undersigned owners of the Estate of Leon J. Ramirez, as follows:

FIRST

LEONOR V. RAMIREZ, will be entitled to approximately Eight Hundred (800) acres of land situated principally in Porcion 20 and partly in Porcion 19, being all of the Leon J. Ramirez ownership

in Porciones 20 and 19 lying west of U.S. Highway 83, which includes all the improvements and what may be referred to as "Headquarters Ranch" and is known as West El Milagro Pasture, and situated in Zapata County.

SECOND

RODOLFO C. RAMIREZ will be entitled to all of the land in Porciones 20 and 19 in Zapata County, located east of U.S. Highway 83, containing approximately FOUR HUNDRED (400) ACRES known as East El Milagro Pasture, less and except, however, a TEN (10) ACRE tract in the form of a rectangle fronting west on U.S. Highway 83, to be owned and selected by Leon Oscar Ramirez and also less and except TEN (10) ACRES in the form of a rectangle fronting west on U.S. Highway 83 and to be owned and selected by ILEANA RAMIREZ.

THIRD

LEON OSCAR RAMIREZ and ILEANA RAMIREZ, jointly and equally will be entitled to ONE THOUSAND AND FIFTY-EIGHT (1,058) ACRES situated partly in the north one-half (1/2) of Porcion 21 and partly in Porcion 22, known as Las Piedras Pasture, being all the land owned and possessed by us in north 1/2 of Porciones 21 and 22 in Zapata County.

This partition is not to include oil, gas and other minerals which for the present are to remain undivided and this partition is subject to existing oil, gas and mineral leases that are of record in the office of the County Clerk of Zapata County and each of the undersigned owners is to receive his or her propor-

tionate part of the delay rentals, royalties and other benefits payable under said oil, gas and mineral leases.

As a part of this partition, all the undersigned agree that LEONOR V. RAMIREZ shall be entitled to graze cattle on the land leased from the International Boundary and Water Commission and each of the undersigned will cooperate in having such agriculture and grazing lease from the International Boundary and Water Commission, insofar as same covers land taken by the United States Government out of Porciones 19 and 20 renewed or taken in the name of LEONOR V. RAMIREZ. Future rentals will be paid by LEONOR V. RAMIREZ.

Likewise, Leon Oscar Ramirez and Ileana Ramirez shall be entitled to exclusive right to graze their cattle on that part of the north one-half (1/2) of Porcion 21 and Porcion 22 that has been leased by the International Boundary and Water Commission for grazing and agricultural purposes to the Estate of Leon J. Ramirez, all parties will cooperate in having such renewal or new leases made in the name of LEON OSCAR RAMIREZ and ILEANA RAMIREZ, with understanding that renewal under such International Boundary and Water Commission will be paid by Leon Oscar Ramirez and Ileana Ramirez.

This informal partition agreement is to be binding on each of the undersigned, notwithstanding the fact that proper field notes may be prepared for each of the tracts of land, nevertheless, it is mutually agreed that should any of the undersigned parties, at a later date, desire at his or her own expense to hereafter have said land surveyed, with proper sketches and field notes prepared, giving a more accurate description of the land, then each of the parties hereto agree to

execute, join in and acknowledgment an instrument describing by course and distance or proper field notes any of the pastures hereinabove referred to as being subject to this partition and any such corrected partition deed will be executed and acknowledged by each of the undersigned.

WITNESS OUR HAND AND SEAL at Laredo, Texas this 15th day of January, 1975, in multiple copies.

/s/ Leonor V. Ramirez

/s/ Leon Oscar Ramirez

/s/ Ileana Ramirez

/s/ Rodolfo C. Ramirez

EXCHANGE DEED
(MARCH 27, 1978)

THE STATE OF TEXAS
COUNTY OF ZAPATA

WHEREAS, the surface, but not the oil, gas and other minerals, in and under all ranch and farm lands belonging to the Estate of Leon J. Ramirez, Deceased, in Porciones Nos. 19, 20, 21 and 22, in Zapata County, Texas, was portioned as between the owners, namely: (1) Leonor V. Ramirez, as owner of an undivided 1/2 interest; (2) Leon Oscar Ramirez, as owner of an undivided 1/6th interest; (3) Ileana Ramirez as owner of an undivided 1/6th interest; and (4) Rodolfo Ramirez as owner of an undivided 1/6th interest, by a partition instrument dated the 15th day of January, 1975, and recorded in Vol. 186, pp. 503-506, Deed Records of Zapata County, under the terms of which Leonor V. Ramirez was partitioned the surface to approximately 800 acres of land situated principally in Porcion 20 and partly in Porcion 19 in Zapata County, described as being all of Leon J. Ramirez ownership in Porciones 20 and 19 lying West of U.S. Highway 83 which includes all of the improvements and what may be referred to as "Headquarters Ranch" and what is also known as "West El Milagro Pasture", in Zapata County, Texas; and

WHEREAS, Leon Oscar Ramirez and Ileana Ramirez were jointly and equally portioned the surface to 1058 acres situated partly in the North one-half of Porcion 21 and partly in Porcion 22, in Zapata County, known as "Las Piedras Ranch", being all of the land owned and possessed by the above named

owners in the North one-half of Porciones 21 and 22 in Zapata County, Texas; and

WHEREAS, reference is here made to the above mentioned January 15, 1975 partition of the surface rights instrument and to the record of such instrument in Vol. 186, pp. 503-506, Deed Records of Zapata County, including a provision that such partition is not to include oil, gas and other minerals; and this partition is subject to existing oil, gas and mineral leases that are of record in the office of the County Clerk of Zapata County, Texas, and each of the undersigned owners is to receive his or her proportionate part of the delay rentals, royalties and other benefits payable under said oil, gas and mineral leases; and

WHEREAS, Leonor V. Ramirez and her daughter, Ileana Ramirez, mutually desire to exchange the surface to approximately 800 acres of land belonging to Leonor V. Ramirez situated principally in Porcion 20 and partly in Porcion 19, lying West of U.S. Highway 83, referred to as "Headquarters Ranch" and also known as the "West El Milagro Pasture" for the one-half interest belonging to Ileana Ramirez that was acquired by Ileana Ramirez under third paragraph of said Partition instrument in and to 1,058 acres of land in Zapata County, situated partly in the North one-half of Porcion 21 and partly in Porcion 22, known as "Las Piedras Ranch";

NOW THEREFORE, in furtherance of said mutual desire to exchange, LEONOR V. RAMIREZ does by these presents GRANT, SELL AND CONVEY unto ILEANA RAMIREZ all of her right, title and interest in and to the surface to the HEADQUARTERS RANCH partitioned to Leonor V. Ramirez on first page under paragraph designated "FIRST" of said January 15,

1975 Partition Agreement as recorded in Vol. 186, pp. 503-506. Deed Records of Zapata County, described as containing 800 acres of land in Zapata County, situated principally in Porcion 20 and partly in Porcion 19, described as being all of the Leon J. Ramirez ownership in Porciones 20 and 19 lying West of U.S. Highway 83 known as HEADQUATERS RANCH and also known as WEST EL MILAGRO PASTURE, LESS Leonor V. Ramirez' undivided interest in and to all of the oil, gas and other minerals which are excepted and reserved by Leonor V. Ramirez for the benefit of herself, her legal representatives, heirs and assigns, together with right of ingress and egress for the purpose of developing, drilling, producing, storing and transporting oil, gas and other minerals; and

ILEANA RAMIREZ in furtherance of said exchange, does by these presents GRANT, SELL AND CONVEY unto LEONOR V. RAMIREZ all of her right, title and interest in and to the surface to undivided one-half interest in 1,058 acres of land in Zapata County, situated partly in the North one-half of Porcion 21 and partly in Porcion 22, known as LAS PIEDRAS PASTURE and described as being all of the land owned and possessed by the above named owners of the Estate of Leon J. Ramirez , Deceased, in the North one-half of Porcion 21 and partly in Porcion 22 in Zapata County, LESS and EXCEPT Ileana Ramirez' undivided interest in and to oil, gas and other minerals in and to 1,058 acres described on the second page under paragraph designated "THIRD" of the above mentioned January 15, 1975 Partition Agreement, together with right of ingress and egress for the purpose of developing, drilling,

producing, storing and transporting oil, gas and other minerals, which undivided interest in oil, gas and other minerals as well as the right of ingress and egress are reserved by Ileana Ramirez.

Reference is here made to the partition of the surface of the land here in above referred to made under the January 15, 1975 Partition Deed as recorded in Vol. 186, pp. 503-506, Deed Records of Zapata County, as it is expressly agreed in conformity with provisions contained in said January 15, 1975 Partition Deed that this Deed of Exchange is not to include oil, gas and other minerals which are to remain undivided, and this Deed of Exchange is subject to existing oil, gas and mineral leases that are of record in the office of the County Clerk of Zapata County, and each of the undersigned is to receive her proportionate part of the delay rentals, royalties and other benefits payable under said oil, gas and mineral leases, together with right of ingress and egress for the purpose of developing , drilling, producing, storing and transporting oil, gas and other minerals.

In making this exchange, Leonor V. Ramirez represents and covenants that she has not executed any liens or encumbrances on the surface to the land herein given and conveyed to Ileana Ramirez, and likewise, Ileana Ramirez represents and covenants that she has not the land herein exchanged and conveyed to Leonor V. Ramirez.

In view of the relationship of mother and daughter that exists as between the undersigned parties and of the fact that during the lifetime of Leon J. Ramirez, Leonor V. Ramirez often visited and at times resided in the main ranch house located on the 800 acres, the surface to which is being conveyed herein to Ileana

Ramirez in exchange, and of the memories of many happy hours and occasions spent on the above Ranch, Leonor V. Ramirez for and during her lifetime reserves the right to periodically visit said West El Milagro Pasture and for reasonable periods of time to use and enjoy the improvements particularly the main ranch house located on said West El Milagro Pasture, as Ileana Ramirez desires that her mother be free to visit such Ranch for and during the term of her natural life.

Ileana Ramirez further covenants and agrees that she will at her own cost and expense have a qualified Attorney or Accountant prepare a Gift Tax Return to he executed by Leonor V. Ramirez reporting this Exchange and that she will at her own cost and expense have said land appraised and pay to her mother an amount equal to any gift tax that Leonor V. Ramirez may be required to pay to the Internal Revenue Service covering any difference in valuation between the value of the surface rights herein acquired by Ileana Ramirez. and the rights herein acquired by Leonor V. Ramirez; and Ileana Ramirez agrees to indemnify and hold harmless Leonor V. Ramirez of and from any liability for gift taxes due and owing or that may arise out of this Exchange.

TO HAVE AND TO HOLD the 800 acres situated principally in Portion 20 and partly in Porcion 19 in Zapata County, hereinabove referred to as "Headquarters Ranch" and also known as "West El Milagro Pasture", together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said Ileana Ramirez, her heirs and assigns forever; less the undivided interest in and to the oil, gas and other minerals belonging to Leonor V. Ramirez

which have been expressly excepted & reserved by Leonor V. Ramirez and subject to the other exceptions and reservations and other provisions herein contained. Leonor V. Ramirez binds herself, her heirs, executors and administrators TO WARRANT AND FOREVER DEFEND all and singular the title to the surface to the above described "Headquarters Ranch" and/or 'Vest El Milagro Pasture" unto the said Ileana Ramirez, her heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

TO HAVE AND TO HOLD the undivided interest in 1058 acres partly in North 1/2 of Porcion 21, and partly in Porcion 22, in Zapata County, known as "Las Piedras Ranch" together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said Leonor V. Ramirez, her heirs and assigns, forever; less the undivided interest in and to oil, gas and other minerals belonging to Ileana Ramirez which have been expressly excepted and reserved by Ileana Ramirez, and subject to the other exceptions and reservations and other provisions herein contained. Ileana Ramirez binds herself, her heirs, executors and administrators TO WARRANT AND FOREVZR DEFEND all and singular the title to the surface to the 1/2 interest in 1058 acres situated Partly in the North 1/2 of Porcion 21 and partly in Porcion 22 known as "Las Piedras Ranch" unto the said Leonor V. Ramirez, her heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, this Deed of Exchange is made on this the 27th day of March, 1978, by the execution of duplicate copies.

/s/ Leonor V. Ramirez

/s/ Ileana Ramirez

The State of Texas
County of Webb

BEFORE ME, the undersigned authority, on this day personally appeared LEONOR V. RAMIREZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 27th day of March, 1978.

/s/ Ed Mann
Notary Public,
Webb County, Texas

The State of Texas
County of Webb

BEFORE ME, the undersigned authority, on this day personally appeared ILEANA RAMIREZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 27th day of March, 1978.

/s/ Ed Mann
Notary Public,
Webb County, Texas

OIL, GAS AND MINERAL LEASE
(APRIL 27, 1946)

File No. 4194
From: LEON J. RAMIREZ ET AL.
To: L.G. LIVERMORE

This agreement made this 27th, day of April 1946, between Leon J. Ramirez, and wife, Leonor V. Ramirez, and Felicidad Ramirez de Perez, and husband, Gilberto Perez, Lesser whether one or more, and L.G. Livermore of Houston, Texas, Lessee, Witnesseth;

Lessor in consideration of $10.00 and other good and valuable consideration, $___ in cash in hand paid, receipt of which is hereby acknowledged, of the royalties herein provided, and of the agreements of Lessee herein contained, hereby grants, leases and lets exclusively unto Lease for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas and all other minerals, laying pipe line, building tanks, power stations, telephone lines and other structures thereon to produce, save take care of, trust, transport and can said products, and housing Lessees employees, the following described land in the County of Zapata State of Texas, to-wit;

All of Las Piedras Ranch in Porc 22 and N., 1/2 of Por. 21 that lies on the N.E. side of U.S. Highway 83, save and except Leon J. Ramirez ownership in Sh. L. Por. 83. The land included in this lease contains 791.79 acres, more or less, and consists of two acres described as follows:

FIRST TRACT: All of share No. Two (2) out of Porcion No. 22 as per partition decree entered by the 111th District Court of Webb County in Cause No.

8096, styled Mariano Serna vs. Simon de Benavides et al and containing 373.23 acres, more or less, and being all of said Sh. 2 see as partitioned to Ildefonso Ramirez and Leon J. Ramirez under and by virtue of partition proceedings in said Couse No. 8096.

SECOND TRACT: A tract out of the North one-half of said porcion No. 21 that adjoins the above mentioned Share No. 2 porcion No. 22 on the southeast and which is described by meters and bounds as follows: Beginning at a point on the common division line between Por. 21 and 22 that coincides with the East corner of the above mentioned Share 2, porcion 22, the South corner of Share No. 3, Porcion 22 and which point bears North 54 deg. 30 min. East a distance of approximately 6, 255 acres from the left bank of the Rio Grande River for the North corner hereof; Thence in a southerly direction along a fence line, the course of which is estimated to be south 14 deg. East a distance of approximately 590 acres to an angle in said fence line and thence continuing along said fence line the course of which is estimated to be approximately south 23 deg. East an additional distance of approximately 414 acres to a fence corner made by the intersection of said Northeast fence line of Las Piedras Ranch with the division fence between the Juana P. de Vela "amora and children's land on the Southeast and the Leon J. Ramirez Las Piedras Ranch on the Northeast, same being East corner hereof; Thence South 54 deg. 23 min. West along said fence line a distance of approximately 2,600 varas to the right-of-way of the Laredo-Brownsville Highway, known as U.S. Highway No. 83, for the South Corner hereof; Thence N. 22 deg. 12 min. West along the Northwest boundary line of said Highway right-of-

way a distance of approximately 940 varas to a point where said Highway intersects the common division line between Porcion 21 and Porcion 22 for the west corner hereof; Thence North 54 deg. 26 min. East along said common division line of said Porciones 21 and 22 a distance of approximately 2,668 varas to the place of beginning.

Said second tract out of the N. 1/2 said Por. 21 contains 418.5 acres, more or less, and same is further described as being bounded on the N.W. by said Sh. 2, Por. 22; as being bounded on the N.E. by 3 separate ownership consisting of Tract out of the N. 1/2 of Por. 22 belonging to Gabriel Flores, a tract out of N.1/2 of Porcion 21 belonging to Juan Gonzales Vela and a tract out of the N. 1/2 of said Por. 21 belonging to Humberto Gonzalez et al; as being bounded on the Southeast by land belonging to Sen Juana P. de Vela Zamora and children; and as being bounded on the Southwest by the Laredo-Brownsville Highway, known as U.S. Highway No. 83.

Subject to the other provisions herein contained, this lase shall be for a term of Ten (10) years from this date (called "primary term") and as long thereafter as oil, gas or other mineral is produced from said land hereunder.

The royalties to be paid by Lessee are: (a) on oil, one-eighth of that produced and saved from said land, the same to be delivered at the wells or to the credit of Lessor into the pipeline to which the wells may be connected; Lessee may from time to time purchase any royalty oil in Lessee's possession, paying the market price therefor prevailing for the field where produced on the date of purchase; (b) on gas, including casing head gas or other gaseous substance,

produced from said land and sold or used off the premises or in the manufacture of gasoline or other product therefrom, the market value at the well of one-eighth of the gas so sold or used, provided that on gas sold at the wells the royalty shall be one-eighth of the amount realized from such sale; where gas from a well or well producing gas only is not sold or used, Lessee may pay (within 3 months from completion of the first of such wells, and each 12 months thereafter) as royalty $791.72 per year, and upon such payment it will be considered that gas is being produced within the meaning of preceding paragraph hereof; and (c) on all other minerals mined and marketed, one-eighth either in kind or value at the well or mine, at Lessee election. Lessee shall . . .

[. . .]

. . . and while so presented, and for twelve months thereafter, this lease shall nevertheless continue in effect. If within such twelve months Lessee commences operations on, or resumes production free, the leased promises, as the case may be, this lease shall continue in effect thereafter subject to its limitations, covenants and terms as though the contingency provided for in this paragraph had not occurred. During such period of prevention and twelve months period Lessee must, irrespective of whether such prevention occurs in the primary term or thereafter, and irrespective, of whether oil or gas was being produced at the time of such prevention in order for this paragraph to be in force and effect, on or before such annual anniversary date hereof, pay to Lessor or to the credit of Lessor in the depository above named, the sum of $1.00 per acre per year for each acre on which this lease is then in force. In no event its Lessor to refund to Lessee any

part of such final payments paid under the terms of this paragraph.

IN WITNESS Whereof, this instrument is executed on the date first above written.

Leon J. Ramirez

Leonor V. de Ramirez

Felecidad Ramirez de Perez

Gilberto Perez

(Documentary Stamps $2.20)

THE STATE OF TEXAS
COUNTY OF WEBB

Before me, the undersigned authority, on this day personally appeared Leon J. Ramirez and wife Leonor V. de. Ramirez, known to me be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and the said Leonor V. de Ramirez, wife of Leon J. Ramirez each having been examined by me privily and apart from her husband, and having the sues fully explained to her, she, the said Leonor V. de Ramirez each acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this the 27th day of April A.D. 1946.

Olga B. Guerra

(Seal) Notary Public and for Webb County, Texas.

OIL, GAS AND MINERAL LEASE
RELEVANT EXCERPTS
(OCTOBER 6, 1983)

File No. 62162

THIS AGREEMENT made this 6th day of October 1983 between FELICIDAD RAMIREZ DE PEREZ, joined herein by PALMYRA MINERALS LTD., acting herein and through Felicidad Ramirez de Perez, a general partner, and Gilberto Perez, Jr., general partner; and also by LEONOR V. RAMIREZ, LEON OSCAR RAMIREZ, ILEANA RAMIREZ and RODOLFO C. RAMIREZ Lessor (whether one or more) whose address is Box 123, Roma, Texas 78584 and Stringer Oil & Gas Co., 8700 Crownhill Blvd. San Antonio, Texas, Lessee, WITNESSETH;

1. Lessor in consideration of a good and sufficient consideration paid in cash Dollars ($___), in hand paid, of the royalties herein provided, and of the agreements of Lessee herein contained, hereby grants, leases and less exclusively unto Lessee for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas and all other minerals, conducting exploration, geologic and geophysical survey by seismograph, core less, gravity and magnetic methods, injecting gas, water and other fluids, and air into subsurface streets, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon and on, over and across lands owned or claimed by Lessor adjacent and contiguous thereto, to produce, save, take care of, treat, transport and own said products, and housing its employees, the following described land in Zapata County, Texas, to –wit;

FIRST TRACT: LAS PIEDRAS RANCH in Porcion No. Twenty-one (21), Abstract No. 81, Original Grantee, Isabel Maria Sanchez, containing Six Hundred Forty-Five and 23/100 (645.23) acres, more or less, described as being all of Parcel Z-112, 27-B, containing 644.23 acres, and all of Parcel Z-112, 28-B, containing one acre. Said Parcel Z-112, 27-B, as well as Parcel Z-112, 28-B are more fully described in a Plat entitled "Plat of Porcion 21, Zapata County", made by the International Boundary & Water Commission recorded in Vol 2, p. 128 of the Map Records or Zapata County. Said Parcel Z-112, 27-B as well as Parcel Z-112, 28-B were taken by the United States of America under Declaration of Taking No. 36 as filed in the United States District Court for the Southern District of Texas, Laredo Division, in Civil Action No. 529. Styled "United States of America, Plaintiff vs. 85,237 acres of land, more or less, in Zapata County, State of Texas, Flumencio Munoz, et al., Defendants", and reference is here made to said Declaration of Taking No. 36 and to the orders and decrees entered in said Civil Action No. 529 affecting said Parcel Z-112, 27-B and Parcel Z-112, 28-B for a more particular description of said two Parcels.

SECOND TRACT: All of Share No. 2 out of Porcion 22, in accordance with partition decree entered by the 211th District Court of Webb County in Cause No. 8096 containing Three Hundred Seventy-Three and 22/100th (373.22) acres. Said Share No. 2 Porcion 22 was partitioned to Idelfonso Ramirez, et al, as containing 400 acres, but according to International Boundary 6 Water Commission survey, said Share No. 2 contains Three Hundred Seventy—Three and 22/100ths (372.22) acres.

[. . .]

. . . the end of ninety (90) days after the completion or abandonment of 'the final well, at which time Lessee shall execute and deliver to Lessor said written release, releasing all portions of the lease not then so developed.

16. There is excepted from this lease and reserved to Lessor, their heirs and assigns, all vanadium, uranium, plutonium, thorium, fissionable minerals and materials, and it is understood and expressly provided that the terms "mineral", "minerals", "other mineral", and "other minerals" whenever and wherever used in this lease shall not refer to and shall not include vanadium, uranium, plutonium, thorium, fissionable minerals and coal. Notwithstanding any other provisions herein contained, this oil, gas and mineral lease only covers oil, gas and minerals produced with oil and gas, including Sulphur.

17. Lessee may contract to sell gas at what may then be a reasonable market value of gas in that part of Zapata County. and contract may be made for a period of more than two (2) years. However, the price of gas is to be renegotiated periodically at periods not to exceed two (2) years with the understanding that the price of gas will be consistent with the market price of gas in that area.

18. This oil, gas and mineral lease and rights of Lessee hereunder are subject to rights of the United States of America under declarations of taking and decrees entered by the United States District Court for the Southern District of Texas, Laredo Division, Civil Action No. 529, styled in United States of America, Plaintiff, vs. 85,237 acres of land, more or less, in

Zapata County, Flumencio Munoz, et al, Defendants, and reference is here made to above Civil Action No. 529 and proceedings thereunder for all purposes.

19. Notwithstanding any other provisions herein contained, it is agreed that this lease may be continued in force and effect by payment of shut-in gas royalties for a period of not to exceed two (2) years from and after date of the expiration of the primer), term as it is agreed that such gas must be marketed within a period of two (2) years from and after the date of the expiration of the primary term.

20. It is mutually agreed that all benefits payable under this lease, including bonus, delay rentals and royalties, shall be paid and distributed as between Lessors in proportions as follows: one-half (1/2) to Felicidad Ramirez de Perez and Palmyra Minerals, Ltd., and the remaining one-half (1/2) to other Lessors, namely, Leonor V. Ramirez, Leon Oscar Ramirez, Ileana Ramirez and Rodolfo C. Ramirez.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

/s/ Felicidad Ramirez de Perez

/s/ Leonor V. Ramirez

PALMYRA MINERALS, LTD.

By: /s/ Felicidad Ramirez de Perez

By: /s/ Gilberto Perez, Jr.

General Partners

/s/ Leonor Oscar Ramirez

/s/ Ileana Ramirez

/s/ Rodolfo C. Ramirez

LETTER FROM MICHAEL P. ROSE (JULY 1, 1997)

Michael P. Rose
Senior Land Advisor
Gulf Region

Conoco Inc.
600 North Dairy Ashford (77079-6651)
P.O. Box 2197
Houston, Texas 77252-2197
(281) 293-5571

July 1, 1997

Mr. Rudy Ramirez
8941 Woodshore Drive
Dallas, Texas 75243

Re: L-267883/267838; The Interest of Leonor V. Ramirez under the "Las Piedras Ranch" being 1058 acres out of the north part of porcion 21, A-81 and Porcion 22, A-71, Zapata County, Texas

Dear Mr. Ramirez,

Recently, we have been discussing the division of minerals and royalty under the captioned land which you, Leon and Ileana inherited from your parents. I believe under the Ramirez No. 1 and 3 wells you are being paid as if the three of you inherited your mother's interest equally (1/3 each). This was the way Enron had the interests set up and Conoco made no changes when we took over the wells. However, when we examined title to the 373.22 acre tract for division order purposes for the Ramirez No. 4 well, we discovered the actual instruments of title to not appear to convey the interest of Leonor 1/3 to each child. Below is an explanation of the instruments we have seen.

1.) The Partition Deed dated January 15, 1975 established the ownership of the lands after your Father's death to be as follows:

1. Leonor V. Ramirez 1/2
2. Leon Oscar Ramirez 1/6
3. Ileana Ramirez 1/6
4. Rodolfo Ramirez 1/6

The Partition Deed only partitioned the surface and conveyed the Las Piedras Ranch, 1058 acres 1/2 to Leon Ramirez and 1/2 to Ileana. It is important to note the minerals were still owned as above.

2.) The Exchange Deed dated March 27, 1978 operated to exchange the ownership of the surface of the Las Piedras Ranch with other lands to the end that Leon and Leonor now owned the surface equally 1/2 to each. Again, it is important to note the ownership of the minerals were still owned as set out in 1,) above.

3.) Last Will of Leonor V. Ramirez dated. October 20, 1987

> At the time of Leonor's death she owned a 1/2 interest in the surface of Las Piedras Ranch and 1/4 of the minerals. (The Ramirez family owns a 1/2 mineral interest in the Las Piedras Ranch so Leonor owned 1/2 x 1/2 = 1/4)
>
> Under paragraph VI of Leonor's Will she conveyed all of her right title and interest in and to the "Las Piedras Ranch" to Lean Oscar Ramirez during the term of his natural life and upon his death to his surviving children.

> Under paragraph VII of Leonor's Will she conveyed the residue of her estate to her children (Leon, Ileana and Rodolfo) in equal shares, 1/3 each However, at this point Leonor had already conveyed all of her right title and interest in the Las Piedras Ranch to Leon Oscar Ramirez Jr. in paragraph VI.

The end result of the instruments of record divide the minerals as follows:

1.) Leon Oscar Ramirez (1/2x1/6) + (1/2 x 1/2)* = 1/3

2.) Ileana Ramirez 1/2 x 1/6 = 1/12

3.) Rodolfo Ramirez 1/2 x 1/6 = 1/12

In order to accomplish the division of interest which you, your brother and your sister obviously desire and to correct the title of record, I would recommend a Stipulation of Interest and Cross Conveyance be executed by each of you. The Stipulation would specifically describe the land and set forth the interest claimed by each of you, that being 1/2 of 1/3 each.

Enclosed you will find a copy of the instruments referenced above for your files. I have also enclosed a Stipulation which will correct any question as to the Ramirez mineral title in the Las Piedras Ranch. I intend to send a copy of the Stipulation to Leon and Ileana for their execution. If you agree with the Stipulation, please execute and return one copy to the attention of the undersigned at your earliest convenience.

---

* This is the interest conveyed under Leonor's Will

Thank you for your cooperation in this regard.

Sincerely

/s/ Michael P. Rose
Senior Land Advisor

STIPULATION OF INTEREST OWNERSHIP OF THE MINERAL ESTATE (OCTOBER 31, 1988)

STATE: TEXAS

COUNTY: ZAPATA

PARTIES:

Leon Oscar Ramirez
Ileana Ramirez
Rodolfo Carlos Ramirez, aka
Rodolfo C. Ramirez

EFFECTIVE DATE: October 31, 1988

The undersigned ("Parties") own interests in the mineral estate in the following described lands located in the county and state named above (the "Lands") to wit:

> 1058 acres of land more or less situated partly in the North one-half of Porcion 21, Abstract 81, and partly in Porcion 22, Abstract 71, known as "Las Piedras Ranch", and described as being all of the land owned and possessed by the above named owners of the Estate of Leon J. Ramirez, Deceased, in the North one-half of Porcion 21 and partly in Porcion 22, Zapata County, Texas

Whereas a question has arisen among the Parties as to each of their proportionate ownership of the mineral estate in the Lands. It is the Parties desire to declare, stipulate, acknowledge, and establish of record each of the Party's ownership of the mineral estate in the Lands.

For adequate consideration, the Parties acknowledge, agree, and declare that the mineral estate in the lands is owned by the following Parties, and each of the Parties owns the interest in the mineral estate in the Lands set out opposite each Party's name:

Leon Oscar Ramirez, Trustee	1/6
Ileana Ramirez	1/6
Rodolfo Carlos Ramirez aka Rodolfo C. Ramirez, Trustee	1/6

This Stipulation shall be deemed to contain words of grant and conveyance as necessary and proper to transfer and vest the ownership of the mineral estate in the Lands to each of the Party's in the amounts set out above.

This instrument may be executed in any number of counterparts, each of which shall be considered an original-for all purposes.

Executed this 6th day of July, 1997, but effective as of the date first mentioned above.

/s/ Leon Oscar Ramirez
Trustee

/s/ Ileana Ramirez

/s/ Rodolfo C. Ramirez
aka Rodolfo C. Ramirez, Trustee

RESPONDENTS' BRIEF—RELEVANT EXCERPTS

[. . .]

. . . 534 S.W.3d at 502 (citation omitted). Rodolfo filed a motion for panel rehearing on the construction of the Will, which the court of appeals denied, prompting Rodolfo and ConocoPhillips to petition this Court for review.

SUMMARY OF ARGUMENT

The mineral and surface estates of the 7,016-acre Ramirez property were severed in 1941, when Leon Juan and Felicidad partitioned the surface estate and granted one another equal-sized surface tracts while expressly reserving equal undivided interests in the entire 7,016 acres of underlying minerals. While the surface estate was repeatedly partitioned and conveyed over the next half-century, the mineral estate was never partitioned and remained in the family in undivided ownership shares.

As severed estates, the minerals and the surface were as foreign and distinct from one another under Texas law as if they had been separate and distinct tracts of land. As such, any interest in those estates must be conveyed separately. When the court of appeals summarily read the phrase in Leonor's Will, "all of my right, title and interest" in Ranch Las Piedras, to convey not just her interest in the surface estate described, but also the long-severed minerals beneath that estate, it ignored Texas law that separate estates do not reunite by implication.

Leonor's devise of a life estate in Las Piedras Ranch to her son could only have also devised a life

estate in the minerals beneath the surface if those previously severed estates were somehow merged. As a matter of law, however, Leonor could not, through her will, have merged her 1/2 interest in Las Piedras Ranch with that portion of her 1/4 interest in the extended family's long-severed, 7,016-acre mineral estate that sat beneath Las Piedras Ranch.

This case presents the Court an opportunity to correct the contrary conclusion of the court of appeals and provide much-needed direction on the doctrine of merger of estates. Although this Court and others have recognized that the doctrine does not apply to severed estates, it has been almost a century since this Court offered thorough guidance on the transfer of a severed estate and the application of the doctrine of merger of estates.

Alternatively, even if there were a way under Texas law for Leonor to have passed a portion of her undivided mineral interest as well as all her surface estate in her devise of Las Piedras Ranch, Leon Jr.'s claims against Rodolfo in this case would nevertheless be barred by the general release Leon Jr. signed in a previous action against Rodolfo concerning the ownership of Las Piedras Ranch. Thus, at most, only the action brought by Minerva's guardian could remain.

ARGUMENT

I. "[A]ll of My Right, Title, and Interest in and to Ranch Las Piedras" Cannot Include the Minerals Beneath Las Piedras Because, as a Matter of Law, the Surface and Mineral Estates Were Severed in 1941 and Could Not Subsequently Have Merged.

As a matter of law, Leonor's mineral interest passed under the residuary clause in Section VII of her Will, where she bequeathed "all the residue of my . . . .

[. . .]

LIST OF PETITIONS FOR CERTIORARI BEFORE *STOP THE BEACH*

- Petition for Writ of Certiorari, *T H Investments, Inc. v. Kirby Inland Marine, LP*, No. 08-270, 2008 WL 4055803 (U.S. filed Aug. 28, 2008), *cert denied*, 555 U.S. 1098 (Jan. 12, 2009) (mem).
- Petition for Writ of Certiorari, *Boise Cascade Corp. v. Oregon*, No. 07-1612, 2008 WL 2555342 (U.S. filed Jun 24, 2008), *cert denied*, 555 U.S. 828 (Oct. 6, 2008) (mem).
- Petition for Writ of Certiorari, *Goeckel v. Glass*, No. 05-764, 2005 WL 3438569 (U.S. filed Dec. 12, 2005), *cert denied*, 546 U.S. 1174 (Feb. 21, 2006) (mem).
- Petition for Writ of Certiorari, *Marine Forests Society v. California Coastal Commission*, No. 05-373, 2008 WL 4893780 (U.S. filed Sept. 20, 2005), *cert denied*, 546 U.S. 979 (Oct. 31, 2005) (mem).
- Petition for a Writ of Certiorari, *McQueen v. South Carolina Department of Health and Environmental Control*, No. 03-159, 2003 WL 22428668 (U.S. filed July 30, 2003), *cert denied*, 540 U.S. 982 (Nov. 3, 2003) (mem).
- Petition for Writ of Certiorari, *Echevarrieta v. City of Rancho Palos Verdes*, No. 01-2, 2001 WL 34116121 (U.S. filed June 19, 2001), *cert denied*, 534 U.S. 950 (Oct. 9, 2001) (mem).
- Petition for Writ of Certiorari, *Phelps Dodge Corp. v. U.S.*, No. 00-1464, 2001 WL 34125404 (U.S. filed Mar. 19, 2001), *cert denied*, 533 U.S. 941 (June 25, 2001) (mem).

- Petition for Writ of Certiorari, *Chevy Chase Land Co. v. U.S.*, No. 00-31, 2000 WL 33999807 (U.S. filed July 3, 2000), *cert denied*, 531 U.S. 957 (Oct. 30, 2000) (mem).
- Petition for a Writ of Certiorari, *Nansay Hawaii, Inc. v. Public Access Shoreline Hawaii*, No. 95-1159, 1996 WL 33467483 ((U.S. filed Jan. 18, 1996), *cert denied*, 517 U.S. 1163 (Apr. 22, 1996) (mem).
- Petition for Writ or Certiorari, *Eldridge v. Ezell*, No. 92-321, 1992 WL 12073556 (U.S. filed Aug. 17, 1992), *cert denied*, 506 U.S. 918 (Oct. 13, 1992) (mem).
- Petition for Writ of Certiorari, *Gore v. Louisiana*, No. 91-147, 1991 WL 11176804 (U.S. filed July 22, 1991), *cert denied*, 502 U.S. 863 (Oct. 7, 1991) (mem).
- Petition for Certiorari, *Orion Corp. v. Washington*, No. 87-1575, 1988 WL 1094563 (U.S. filed Mar. 16, 1988), *cert denied*, 486 U.S. 1022 (May 23, 1988) (mem).
- Petition for Writ or Certiorari, *Tahoe Shorezone Representation v. California*, No. 86-1901, 1987 WL 954960 (U.S. filed May 29, 1987), *cert denied*, 484 U.S. 821 (Oct. 5, 1987) (mem).
- Petition for Writ or Certiorari, *Fogerty v. California*, No. 86-1877, 1987 WL 954951 (U.S. filed May 23, 1987), *cert denied*, 484 U.S. 821 (Oct. 5, 1987) (mem).

LIST OF PETITIONS FOR CERTIORARI AFTER *STOP THE BEACH*

- Petition for Writ of Certiorari, *50 Murray Street Acquisition LLC v. Kuzmich*, No. 19-554, 2019 WL 5617977 (US filed October 24, 2019), *cert. denied,* 140 S.Ct. 904 (January 13, 2020) (mem).
- Petition for Writ of Certiorari, *Hogen v. Hogen*, No. 18-1440, 2019 WL 2153335 (US filed May 13, 2019), *cert. denied*, 140 S.Ct. 119 (October 7, 2019) (mem).
- Petition for Writ of Certiorari*, Wallace v. Wallace*, No. 18-1404, 2019 WL 2053640 (US filed May 6, 2019), *cert. denied*, 140 S.Ct. 100 (October 7, 2019) (mem).
- Petition for Writ of Certiorari, *Stuart v. Ryan*, No. 18-85, 2018 WL 3520855 Petition for Writ of Certiorari (US filed July 9, 2018), *cert. denied,* 139 S.Ct. 244 (Oct. 1, 2018) (mem).
- Petition for Writ of Certiorari, *Nextel Commc'ns of the Mid-Atlantic, Inc. v. Commonwealth of Pennsylvania*, No. 17-1506, 2018 WL 2080201 (US filed May 3, 2018) *cert. denied*, 138 S.Ct. 2635 (June 11, 2018) (mem).
- Petition for a Writ of Certiorari, *Petro-Hunt L.L.C. v. United States of America,* No. 17-1090, 2018 WL 704347 (US filed February 1, 2018), *cert. denied,* 138 S.Ct. 1989 (May 14, 2018) (mem).
- Petition for Writ of Certiorari, *Stanford v. United States of America*, No. 17-809, 2017 WL 6034219 (US filed December 1, 2017), *cert. denied,* 138 S.Ct. 1985 (May 14, 2018 (mem).

- Petition for Writ of Certiorari*, L.D. Drilling, Inc. v. Northern Natural Gas Co.*, No. 17-786, 2017 WL 5952672 (US filed November 20, 2017), *cert. denied*, 138 S.Ct. 747 (January 16, 2018) (mem).