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MEASURE OF DAMAGES IN SUITS RELATING TO GEOPHYSICAL OPERATIONS

When the late Walace Hawkins, then General Counsel of the Magnolia Petroleum Company, addressed the Gregg County (Texas) Bar Association on December 10, 1949, he discussed the geophysical trespasser and the negligent geophysical explorer.¹ He deplored the "famine of professional literature on the legal aspects of geophysical exploration," and hoped that his remarks might provoke much-needed professional consideration on the subject.²

This article was written in keeping with that hope, and is but a very modest and limited attempt to review the decisions extant when Mr. Hawkins spoke and to discuss those pertinent cases which have been adjudicated since that time.

Geophysical exploration, a highly technical science, is used to ascertain the location of subsurface structure and mineral deposits by surface measurements of physical qualities. It should be noted that no geophysical method itself locates oil, but each does determine geological structure, i.e., anticlines, salt domes and faults, which are indicia of oil possibilities. Specifically the main methods employed to determine underground structure are termed: (1) Gravity, (2) Magnetic, (3) Seismic, and (4) Electrical. Any of these methods might necessitate the use of, and/or injury to land with a resultant claim for compensation.

Generally, there are four grounds on which damages are sought against a geophysical operator, namely: (1) Trespass — bad faith; (2) Trespass — good faith; (3) Negligence; and (4) Lease Interpretation. However, any study of damages must be closely related to value. Consequently, this analytical survey will emphasize the various criteria for

² Id. at 318.
determining value, and the application of these standards to the various situations.

Other than the standard terms employed in damage claims, *e.g.*, nominal, punitive, exemplary or compensatory, there are several standards for value (a term which will be, for all practical purposes in this discussion, synonymous with the term "damage"). Basically, these are:

(a) Actual "shot hole" value.
(b) Actual surface damage.
(c) Shooting value (*i.e.*, exploration permit price).
(d) Destruction of market value of lease by wrongful exploration and/or dissemination of such information.
(e) Value reaped by wrongdoer.
(f) In negligence cases, the actual damage suffered by plaintiff.

As one approach to this problem let us analyze the existing decisions to determine the prevailing measure of value and the reasons therefor. For the purposes of continuity, we will review the cases chronologically within the framework of the four types of suits set out above.

_Trespass — Bad Faith_

_Thomas v. Texas Co._, 3 a 1928 Texas decision, is the forerunner of cases dealing with geophysical exploration. Thomas had sought punitive and loss of lease damages for the trespass by the Texas Company. The plaintiff alleged that the defendant entered the property without permission, explored, found negative results and then published this information. He further alleged destruction of the market value of his land, which was about $400.00 per acre prior to the defendant's tortious act, but worthless after the tests and the dissemination of the information. Nevertheless, Thomas was awarded

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only nominal damages since he failed to offer any evidence that the trespass was the proximate cause of the loss of the market value of the leasehold rights in the land; nor was proof offered of the dissemination of the information. This is a case of a bare recovery of nominal damages, in spite of the defendant having had the benefit of exploration and security of investment in the area. Moreover, it is common knowledge that the defendant's nominal damages payment would have been an infinitesimal part of the costs, had the Texas Company been required to drill. Further, since court costs and nominal damages on the one hand, are negligible as compared with drilling costs on the other, what deterrent is there to a possible trespasser; and what remedy for actual recompense is afforded the plaintiff?

Admittedly it is difficult, if not impossible, to ascertain a speculative loss and the courts are excusably hesitant in engaging in arithmetic conjecture in order to reach a reasonable valuation. This first case must simply be listed as one in which only nominal damages were granted for a bad faith trespass. Whether such recovery was for shot hole damages or a mere mechanical recovery for the trespass per se is not indicated in the opinion.

*Le Bleu v. Vacuum Oil Co.*, 4 decided in 1931, is the earliest Louisiana opinion involving geophysical exploration. Exemplary damages were sought by the plaintiff. The defendant had unlawfully entered the plaintiff's fenced-in property, built a hut, installed a torsion balance for a three to four hour experiment and then left the hut standing for three days. The evidence showed that the information sought by the torsion balance related to land some two miles from the plaintiff's property. On the basis of this evidence, the plaintiff's claim for damages in the amount of $500.00 for lease depreciation was denied. Instead, he was awarded $100.00 for a "quasi offense" — in reality a nominal recovery for a

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4 15 La. App. 689, 132 So. 233 (1931).
wrongful invasion. This was the second case where a bad faith trespasser was assessed a small damage award for a blatant wrong.

A bad faith trespass was again in issue in Texas in 1931 before the Fifth Circuit Court of Appeals in *Shell Petroleum Corp. v. Moore.*\(^5\) A trespass had been committed on Louisiana land but the plaintiff sought recovery in Texas. On this basis the circuit court held that the action was not maintainable. However, in dictum, the court stated that the landowner's exclusive possession was the same after the trespass as before and there was no ground for an assertion of conversion. Stating only that bare trespass had been committed, the court did not venture to say what type of recovery in damages would be available, had the plaintiff not erred procedurally.

In 1934, the Fifth Circuit was again called upon to adjudicate a bad faith geophysical trespass case arising in Louisiana in *Shell Petroleum Corp. v. Scully.*\(^6\) The plaintiff sought to recover the value of the exploration privilege, at $5.00 per acre, plus the cost of refilling the holes (actual surface damage). He did not claim the loss of the leasing value. In fact, the plaintiff had benefited by the information obtained by the explorer. The defendant had offered to lease from the plaintiff, but what the plaintiff wanted, in the main, was recovery akin to the price paid locally for a "selection lease" (*i.e.*, a lease giving grantee, for a small down payment, the right for a limited time to explore premises with an option to lease at an agreed price such portion of lease as he, the grantee, might select). There was no actual damage to the plaintiff beyond the actual trespass, and defendant had exercised only the privilege of exploration. An integral part of the "selection lease", an option, was not acquired by the defendant.

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\(^5\) 46 F.2d 959 (5th Cir. 1931).
\(^6\) 71 F.2d 772 (5th Cir. 1934).
The court instructed the lower court to fix the value of the privilege assumed by the defendant. Therefore, it must be noted, the defendant was required to compensate for the wrongful appropriation of the right to explore, apart from liability arising out of his wrongful acts of actually damaging the land in question.

One writer presents the interesting observation that this opinion assures damages which are in substance being measured by the reasonable value of the benefit accruing to the defendant, rather than the "loss" to the landowner. Mr. Hawkins decried such a basis in his 1949 talk. In reality, the decision did provide a new concept, not in tort based on the plaintiff's loss as the measure, but instead geared to the value of the benefit obtained by the defendant. This same idea has been expressed as a "minus quality" on the part of the plaintiff (his temporary loss of the exclusive use of his land) and the "plus quality" falling to the defendant (the benefit of information received and the exercise of a privilege).

At least one other writer believes the damages assessed should be based on the value reaped by the wrongdoer. However, one qualification is made: award is to be granted only when the value of the information acquired by the defendant exceeds the cost of the market price of a permit in the area, thus barring any benefit to the defendant through the commission of a tort. It is submitted that the aforementioned concept is just in the end sought, but the difficult question is posed: What means or standards of measurement may be employed to secure such an equitable end?

Ten years later the same court was called upon in another Louisiana case, Iberville Land Co. v. Amerada Petroleum Corp. This case illustrated the area of substantive law in

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8 Hawkins, supra note 1, at 317.
9 41 W. Va. L. Q. 89, 90 (1934).
10 Comment, 4 La. L. Rev. 309 (1942).
11 141 F.2d 384 (5th Cir. 1944).
which the greater number of Louisiana geophysical decisions lie, namely tort, not quasi-contract. The plaintiff sought to recover a sum of money alleged to be the value of the information the defendant unlawfully obtained through geophysical operations on the plaintiff's property. The complaint was dismissed upon a plea of the Statute of Limitations, since the case was determined to be one of tort, not one of contract and the statute had run out. The dictum here is an excellent indication of the court's concept of such actions in the jurisdiction of Louisiana.

*Layne Louisiana Co. v. Superior Oil Co.* is another bad faith trespass action coming from Louisiana. The plaintiff sued for illegal trespass and geophysical operations on its land. The defendant admitted the trespass but contended that the damages were only nominal. The court held that the complaint was entitled to only compensatory, and not punitive or exemplary damages.

Layne's gate had been broken open, the defendant had entered and had made a complete geophysical survey of the property (the plaintiff owned all the mineral rights and also had a fee simple title to various parts of the land). Four types of damages were sought by the plaintiff: $5.00 per acre for the loss of value of the land owned in fee or that under mineral lease to him; $25.00 per acre for the loss of value for mineral and royalty purposes on the lands under mineral lease or owned in fee. The court allowed only the first of the four claims, upholding a similar decision in the trial court. Since the right to geophysical exploration is a valuable one, plaintiff was awarded $5.00 per acre for those acres he owned in fee. All other claims were considered too uncertain and their values undeterminable. Further, the court held that the loss of value for mineral and royalty purposes was not proved, no evidence having been shown to indicate that defendant's

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13 209 La. 1014, 26 So.2d 20 (1946).
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operations affected the market value. *A fortiori*, compensatory damages may be recovered for certain and definite losses of mineral leasing values. Punitive damages were not awarded here and the effect of the judgment was to give damages equivalent to the value of similar geophysical rights on adjoining lands.  

Would not this be similar to a recovery for a trespass based on exploration permit costs? It is well to remember that the instant case clearly states that the right to explore had a market value apart from the value of the right to create a leasehold.

An interesting decision interpreting the criminal liability provisions of a Louisiana statute relating to geophysical tests was rendered in *State v. Evans*. The defendant, with the consent of the Louisiana State Highway Commissioner, had conducted geophysical operations from public roads crossing the plaintiff's lands. Under the law, the State had only a mere right of passage, and the soil in the roadbed belonged to the plaintiff. Evans was held liable for violation of Act 212 of 1934, which read:

It shall be unlawful for any person, firm or corporation . . . to prospect, by . . . any mechanical device . . . for oil, gas or other minerals . . . on the public lands of the state without the consent of the register of the state land office, or on the public highways of the state without the consent of the Louisiana highway commission, or on private property without the consent of the owner . . .

On appeal the defendant was saved on a technicality; the indictment charged "private lands" exploration whereas these roads were public. The statute being penal was strictly con-

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14 196 La. 604, 199 So. 656 (1940). *Accord*, as to the measure of damages is Holcombe v. Superior Oil Co., 213 La. 684, 35 So.2d 457 (1948). This case arose from the same acts of trespass as in the *Layne* case, the plaintiffs here, however, being the owners of the mineral rights. The court gave the same amount of damages, $5.00 per acre, for the appropriated exploration privilege. The award was directly related to the "going price" of exploration rights in the general area.

15 214 La. 472, 38 So.2d 140 (1948).

strued, and the defendant's conviction was set aside. One writer disapproves of this decision, calling attention to Act 283 of 1942, which required the consent of an abutting owner.\(^\text{17}\) The 1942 Act was not mentioned by either party, or by the court. As the writer notes:\(^\text{18}\)

As it was pointed out by the supreme court on appeal, the only portion of the 1934 statute not abrogated by subsequent legislation is the provision making it a misdemeanor to conduct geophysical surveys on private lands without the consent of the owner. The defendant did not get the consent of the complainant as required by this statute. He did not receive the consent of the commissioner of conservation, who under the 1940 act had the sole authority to grant permission to conduct operations on public roads, and who under the 1942 statute cannot issue such a permit without the consent of the abutting property owner. It would appear that within the meaning of these statutes the defendant might have been properly indicted for unauthorized exploration of either public or private lands.

This is a convincing argument, indicating the procedure which should have been followed.

One of Louisiana's most recent contributions to the field is the case of \textit{Franklin v. Arkansas Fuel Oil Co.},\(^\text{19}\) decided in 1951. The plaintiff sued on the grounds of an unauthorized entry, also for wrongful dissemination of the information gained from the illegally conducted tests. Damages for $37,834.45, or $5.00 per acre, had been awarded in the lower court. Louisiana's Supreme Court recognized the right of exploration as valuable, but ruled that only compensatory damages may be awarded and that the evidence did not support an award of more than $7,500.00.

Exemplary damages were sought by the plaintiff in \textit{Kennedy v. General Geophysical Co.},\(^\text{20}\) an opinion rendered by a Texas Court in 1948. The plaintiff sought such recovery on the alleged trespass caused by seismographic vibrations. The

\(^{17}\) Comment, 9 La. L. Rev. 561 (1949).

\(^{18}\) \textit{Id. at} 562-3.

\(^{19}\) 218 La. 987, 51 So.2d 600 (1951).

defendant had been refused the right to “shoot” on this land. Determined to obtain valuable data the defendant set off charges alongside plaintiff’s tract with receiving points located on the highway; thus none of the shots were directed through the plaintiff’s land. It was alleged that the vibrations constituted a trespass. At no time was there any actual physical invasion of the plaintiff’s land. The court found evidence lacking as to any physical damage, any malice, or trespass. Recovery therefore was not allowed.

Highway usage did not come under judicial surveillance in this decision, but the facts clearly show that the highway was the source of defendant’s operations. We shall see later that highway use is a possible subject of litigation. In the instant case the court cited for corroboration of its decision the case of Comanche Duke Oil Co. v. Texas & Pacific Coal & Oil Co.: 21 “If the purpose be lawful, physical trespass absent, primary use reasonable, and manner of that use duly careful, consequences are damnum absque. . . .”

This case may illustrate, by analogy, that actions against aircraft carrying testing apparatus would be fruitless. Despite the absence of an actual, physical invasion constituting a trespass, it is obvious that information secured from a highway or from the air is just as useful to the explorer; and if negligible results are obtained and then communicated to the public, equally as harmful to the landowner.

Could a unique type property interest in the nature of the right of privacy be developed? Information regarding the presence of oil, regardless of the source, has a real market value. The value of the information is one thing and the value of a person’s land another. Impossibility of measuring damages, even nominal, will continue to retard acceptance of any scheme to make the property owner whole.

Surveying the above nine cases, six of them from or concerned with Louisiana law and three of Texas origin, one

cannot escape the conclusion that compensatory damages will be the criterion in both jurisdictions, despite the fact that wrongdoers might reap very material benefits from their tortious acts over and above any actual damage they might cause.

_Trespass — Good Faith_

Angelloz v. Humble Oil & Refining Co.,\(^2\) decided in 1940, involved a careless trespass, the plaintiff alleging an unauthorized operation on his land. The defendant had placed four torsion balance stations on the plaintiff's property and learned from the tests that production of oil was improbable. This resulted in a considerable loss of the speculative value of the land, and the owner sued for the actual trespass and the dissemination of ruinous information.\(^3\) Damages specifically sought were (1) recovery for value of the right to enter and survey the land (i.e., permit value); and (2) recovery for the resulting loss incurred by the plaintiff through his inability to lease his land for oil and gas. On appeal, the lower court's judgment of $7,500.00 to plaintiff — the value of an exploration permit plus disparagement of mineral quality caused by the defendant — was affirmed.

Thus, we note here a further development in the Louisiana courts. The plaintiff was permitted to recover the potential leasehold value, the court ruling that the exploratory privilege is a valuable property right. As damages are discretionary with the trier of fact in this state, recovery was computed on the basis of the market value of similar privileges granted elsewhere in the locale.

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\(^2\) 196 La. 604, 199 So. 656 (1940).

\(^3\) As a right not possessed was asserted here by the defendant, by analogy some of the principles evolved in Humble Oil & Refining Co. v. Kishi, 276 S.W. 190 (Tex. Comm'n App. 1925) might be applied. At least one authority styles this case as one of "slander of title." 1 Thornton, Oil & Gas § 215 (Willis ed. Supp. 1948). Any discussion of the possibility of slander of title is, unfortunately, not within the scope of this paper.
Oklahoma, in a Tenth Circuit Court of Appeals decision, *Ohio Oil Co. v. Sharp*, first added case law to the problem in 1943. The plaintiff had employed an agent to conduct seismographic operations along the public roads of the state. Neither the plaintiff nor its agent had secured the permission of abutting landowners to conduct these tests. This suit arose when the defendant, after obtaining information from the agent concerning certain of the abutting properties, secured an oil and gas lease of that property. Plaintiff asked the court to hold the defendant as a constructive trustee of the lease for plaintiff’s benefit. The defendant moved to dismiss on the ground that plaintiff had himself approached the equity court with “dirty hands,” since his operations were trespasses on the owners’ properties. The court, however, imposed the trust, holding that plaintiff had acted in good faith and was therefore only an innocent trespasser.

It is perplexing to try to ascertain the degree to which a court will go in order to protect a person against the acquisition of geophysical information obtained without entering his land. This decision is the earliest recorded which raised the nicety of determining whether a geophysical operation is a legitimate use of the public highways. The Oklahoma court indicated that the plaintiff’s use of the highway was not proper, although that point was not material to the decision because plaintiff had acted in good faith. As we saw in the later *Kennedy* opinion, the courts will not hold such activities actionable in the absence of bad faith.

Though the concurring justice agreed with the decision he felt compelled to distinguish the trespass question, saying, “... it is difficult for me to see how there can be a trespass upon an incorporeal hereditament.” Since the mineral owners were not parties there is no discussion of damages, even for innocent trespassing. The opinion should provide, how-

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24 135 F.2d 303 (10th Cir. 1943).
25 *Id.* at 310.
ever, a guide to Oklahoma's viewpoint should damages be sought in a suit directly related to the problem under discussion.

Mississippi first contributed authority in 1949 in General Geophysical Co. v. Brown. The facts in this case show a different facet of geophysical trespassing decisions. The plaintiff, landowner, granted the defendant permission to enter for purposes of drilling (testing), but with the stipulation that such testing would not be made within a given area near the plaintiff's house and water well. Subsequently, the defendant violated this proviso and destruction of the plaintiff's well resulted from such activity. The jury found that the defendant had willfully violated instructions, making him a trespasser ab initio. This verdict was affirmed on appeal, the court stating that even the absence of any negligence did not prevent recovery by the plaintiff. As a measure of damages the court took the difference between the value of the farm before the testing and after the injury to the well occurred. This is called the "before and after rule as to value." This case could easily be placed within the "Bad Faith Trespasser" category, but for the original valid entry on plaintiff's land.

The latest Texas case on this subject is Wilson v. Texas Co. Mrs. Wilson, the plaintiff, sought damages for injury to the surface of her property, and for a trespass to her right to grant exploratory permits for the property. She was denied recovery for injury to the surface because her evidence failed to show the amount of damage inflicted by the defendant's geophysical operations. She was denied recovery for trespass to her right to grant exploratory permits, because at the time that the defendant's operations were carried out, she had already leased the land to two other oil companies, granting them the exclusive right to prospect and explore the property.

26 205 Miss. 189, 38 So.2d 703 (1949).
The court held, that in light of these existing leases, she no longer had any right to grant or sell exploratory permits.

The latest Louisiana case relating to geophysical activities is *Picou v. Foks Oil Co.* Picou, plaintiff landowner, sued the oil company and its employees for unlawful invasion of her property to conduct geophysical explorations. A good faith trespass was spelled out, however, because the plaintiff’s husband had granted permission to enter the tract. The plaintiff claimed damages for injury to trees; for illegal entry; for information obtained and deterioration of leasing value because of dissemination of information wrongfully secured. The defendant denied securing or disseminating any data, but did admit damaging the trees. The court found that defendant had authority to enter and had exercised it in a lawful manner and furthermore had obtained no information whatsoever and so could not have disseminated any. However, in its discretion under statute the court awarded $100.00 damages for the trees cut down. One writer in commenting on this case observed: *It is interesting to note the opinion indicates that if the trespass is in good faith and unintentional, the same rule applies as where the entry is authorized.*

**Negligence**

A discussion within this category may be brief, for the usual general rules of negligence govern. Exemplary cases include *Tupper v. Continental Oil Co.*, a Louisiana case decided in a United States District Court in 1947. In this case the plaintiff’s mausoleum was damaged by explosive testing. Judgment was given for $750.00 as costs of repair plus $1,000.00 for the structure which could not be repaired. This case stands for the proposition that damages which are prox-

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28 222 La. 1008, 64 So.2d 434 (1953). Reported and discussed in 2 OIL & GAS REPORTER 525 (1953).

29 2 OIL & GAS REPORTER 525, 531 (1953).

mately caused by geophysical activities will be assessed the responsible parties.

In a recent Mississippi case, *Magnolia Petroleum Co. v. McCollum,* the defendant set off charges of explosives for seismographic tests on the plaintiff's lands, allegedly destroying plaintiff's water well. Entry upon the land was with permission. The defendant was adjudged liable, the court holding that the evidence was sufficient to justify the jury's findings that the dynamite explosion was the proximate cause of the damage to the plaintiff's well. However, proximate cause was not sufficiently spelled out by the Mississippi complainant in *Humble Oil & Refining Co. v. Pittman,* where the plaintiff, Pittman, sued Humble for damages to his water well allegedly caused by the defendant's explosions of dynamite 900 feet from the well.

Explosives discharged on adjoining land caused damage to the plaintiff's water wells in *Stanolind Oil and Gas Co. v. Lambert,* a 1949 Texas decision. The court said the plaintiff's res ipsa loquitur charge was inadequate and the burden was his to show negligence and the standard of care required of the defendant.

Specific and detailed cases seeking damage for negligence in geophysical tests are rather rare, but it would appear from the above cases that the same standards of care, proximate cause, necessary evidence, etc., as would be found in the ordinary negligence case, have governed.

**Lease Interpretation**

Exclusiveness of reservations or grants in oil and gas leases is the problem of this phase of our discussion. *Shell Petroleum Corp. v. Puckett,* a 1930 Texas opinion, typifies the prob-

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31 211 Miss. 166, 51 So.2d 217 (1951).
32 210 Miss. 314, 49 So.2d 408 (1950).
34 29 S.W.2d 809 (Tex. Civ. App. 1930).
lem. In this case the outcome hinged on an interpretation of the granting clause of the lease in which the words "mining and operating for oil and gas" were employed. Obviously the wording was general in nature, not mentioning the grant of an exclusive right to prospect for or to conduct geophysical explorations.

An unusual factual situation was presented. Puckett and others had leased the property in question. Subsequently the lessees gave one Skinner "an option to purchase all or any of the leases." Shell acquired the option from Skinner. Before exercising the right Shell decided to do some geophysical work on the lands under option. The landowner, lessor, gave his permission, but after unencouraging results Shell did not take up its option.

Puckett and others were damaged by the activities of Shell and sued for interference with an exclusive right to explore. It was held the lessee had no right to sue and that the defendant's use of the seismograph did not deprive the plain-tiff of the use of the land. The court reasoned that as the plaintiff did not have an exclusive right under the terms of the lease; the landowner lessor still had the same right, and could accord such a privilege to a third party.

This seems to delimit the scope of the lease, but, it is submitted, such a concept should not be given cognizance in the absence of an express reservation (running in lessor's favor) in the lease.

Here the court held that if there were any injury to the use of the land the right to recover damages rested with the owner of the land. Of course, the plaintiff's lease gave no possessory interest in the surface and therefore could not be the basis for an action in trespass. Nonetheless, the defendant has obtained an unjust benefit from his acts, even if they are not deemed wrongful. He has obtained valuable information relative to geological formations, aiding him in a decision of
whether or not to buy other leases in the area and more important, whether to buy the lease for which he had an option.

Exclusiveness of leasing provisos was also discussed in the case of Wilson v. Texas Company. Shell Petroleum Corp. v. Puckett may be distinguished from the Wilson case by noting that the earlier Puckett lease did not clearly spell out an exclusiveness of exploration as the majority of the present leases do. The problem may now be avoided by the insertion of the following words in the granting clause of an oil and gas lease: "... hereby grants, leases and lets exclusively to the lessee for the purpose of investigating, exploring, prospecting. ..." In fact, very recent leases leave nothing to the vagaries of interpretation being even more detailed.\textsuperscript{35} They rightly include the principles for paying the lessor additional sums for injury to the surface resulting from seismographic operations.

An oil and gas lessee obtained an injunction against a surface (grazing) lessee, whose lease was subsequent in time to the oil and gas lease of the complainant, in the 1944 Texas case of Stanolind Oil and Gas Co. v. Wimberly.\textsuperscript{36} The plaintiff had a dominant tenement with the right of ingress and egress as an appurtenant easement and a servitude on the land. The right to explore was considered an incident of mineral ownership. The plaintiff had no title to the surface, but he sued to enjoin interference with servitude and the court held his action proper and appropriate. Does not this opinion vitiate the effectiveness of Shell Petroleum Corp. v. Puckett?

Close scrutiny was given the exclusiveness of the granting clause of an oil and gas lease in the 1950 Fifth Circuit Court of Appeals case of Yates v. Gulf Oil Corp.,\textsuperscript{37} which arose in

\textsuperscript{35} 7 Summers on Oil and Gas, § 1235, (Supp. 1952).
\textsuperscript{36} 181 S.W.2d 942 (Tex. Civ. App. 1944).
\textsuperscript{37} 182 F.2d 286 (5th Cir. 1950).
Texas. The plaintiffs, oil and gas lessees, sought to restrain defendants, tenants-in-common and occupants of the land involved, from interfering with the plaintiff's agents who were engaged in seismographic testing. The defendants, Yates and his wife, insisted that the intention of the parties in making the lease in 1924 should control. Geophysical operations, not having been heard of at that time, could not be inferred in the granting clause, and no mention of "exploration" had been made in the lease. Payment for the privilege was necessary according to the defendants. The court upheld the plaintiff's contention, basing its decision on the ground of "implied right", i.e., the right to use so much of the surface as necessary to enforce and enjoy the mineral estate. The insertion of the specific words of grant, suggested above, would have precluded the necessity for trying the instant case. Again, this appears to be another decision which runs contra to Shell Petroleum Corp. v. Puckett, but today such a right would be implied and/or included within the actual words of the oil and gas lease.

Summary

Regardless of the subdivision within which the geophysical case may fall it is apparent that recovery may usually be had for one or both of the following:

1. Shot hole value, actual surface or property damage — based on the local valuation.
2. Exploring permit — adjusted to the area's prevailing price.

Market value recovery for loss of mineral rights because of dissemination of harmful information diminishing speculative values may be awarded, provided sufficient evidence of such loss is adduced. Louisiana grants this recovery but insists that only compensatory damages be awarded.

The value reaped by the wrongdoer is still a rare criterion for damages, though it has been employed and certainly
appears to be a proper grant and effective deterrent. As noted above, the evaluation for such an award poses a real problem for any court that decides to employ this means as a yardstick.

To reiterate, every lease should have a specific and exclusive grant of exploratory rights, eliminating any ambiguity and uncertainty. To ensure his recovery by one of the value criteria the plaintiff, where he is suing for wrongful entry and dissemination of damaging information, should present clear and convincing evidence of the shot hole value in the community, the actual physical damage suffered to realty and personality, and the market value of his right to lease prior to and after the entry. Geophysical operators, in order to protect themselves from either civil or criminal action, should secure the written approval of both surface and mineral owners, and state administrative officials where there are applicable statutes.

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