
TEXAS SUPREME COURT CLARIFIES NUISANCE DOCTRINE IN *CROSSTEX V. GARDINER*

In the recent case of *Crosstex North Texas Pipeline, L.P. v. Gardiner*, the Texas Supreme Court clarified the law regarding the legal doctrine of “nuisance.” The Court held that “the term ‘nuisance’ refers not to a defendant’s conduct or to legal claim or cause of action but to a type of legal injury involving interference with the use and enjoyment of real property.” Further, the Court held that defendants can be liable for nuisance if their conduct is intentional or negligent, or by engaging in dangerous or ultra-hazardous activities. The opinion is available [here](#).

Crosstex North Texas Pipeline operated a natural gas pipeline and in May 2007 built a compressor station on a tract in rural Denton County, Texas, near the Gardiners’ ranch. The Gardiners found the roar of the compressor’s engines deafening. Over the next several years, Crosstex engaged in noise mitigation attempts, which the Gardiners found inadequate. Eventually, the Gardiners resorted to the legal system, obtaining a \$2 million judgment against Crosstex for negligent nuisance.

On appeal, the Second Court of Appeals remanded the case, finding the evidence legally, but not factually, sufficient to support the jury’s finding and that the trial court should have granted the Gardiners’ request for a trial amendment asserting nuisance through abnormal conduct. Both parties petitioned the Texas Supreme Court for review, and in its recent opinion, the Court affirmed the appellate court.

In analyzing the nuisance doctrine, the Court compiled a thorough history of the doctrine under Texas law, tracing its beginnings to Blackstone’s theory that annoying or damaging another is a nuisance, moving on to early Texas Supreme Court opinions that required the hurtful or annoying conduct to cause an unnecessary and unreasonable interference with the plaintiff’s use and enjoyment of its land, and ending with the definition adopted by more recent Texas Supreme Court rulings, that a nuisance is “a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it.” This last definition, the Court ruled, “appropriately describes a private nuisance that may be actionable under the common law.”

Although *Crosstex* allows such an injury to be actionable, it requires “substantial” interference and “unreasonable” discomfort; that is, the plaintiff must prove an unreasonable effect, not unreasonable conduct by the defendant. The standard for determining the effect is objective, what an ordinary person would find unreasonable, and includes numerous factors such as the location of the land, the social utility of the property’s usage, the defendant’s motive, and “the magnitude, extent, degree, frequency, or duration of the interference and resulting harm.”

But, as the Court noted, “[w]hether a defendant may be held liable for causing a nuisance depends on the culpability of the defendant’s conduct, in addition to proof that the interference is a nuisance.” In addressing culpability, the Court retained the traditional three categories of conduct—intentional,

negligent, or abnormally dangerous. Intentional conduct requires proof that the defendant intended the consequence, not the act, but does not require proof that the conduct was unreasonable. Negligent conduct follows ordinary negligence principles. The third category of strict liability requires not merely abnormal use of the land, but abnormally dangerous conduct creating a high risk of serious injury. The Court also examined potential remedies and the sufficiency of evidence in nuisance cases.

This case has tremendous impact for the Texas oil and gas industry at all stages—upstream, midstream, and downstream. *Crosstex* defines the scope of private actions by the public against oil and gas companies, which, given the large scale of their operations, often emit externalities, sometimes interfering with others’ enjoyment of their property. *Crosstex* provides a manual for how nuisance claims may be prosecuted going forward.

If you have additional questions, please do not hesitate to contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

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