

THE TAKEOFF

THE LATEST NEWS AND ANNOUNCEMENTS
SPRING 2025 EDITION



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APRIL 2025

PBLA EDUCATIONAL SEMINAR:

- Tuesday, April 15th, 2025 – **Petroleum Club of Midland** – 501 W. Wall Street, Midland, TX 79701
- 8:00 AM to 12:00 PM
- Speakers and topics include:
 - Elizabeth Ryan – ConocoPhillips – “Pooling & Spacing in New Mexico”
 - Brandon Durrett – Jackson Walker LLP – “Case Law Update”
 - Bryan Street – Dawson Springman – “Title Examination in Texas and New Mexico – A Comparison”
 - Ryan Hetrick – Antus, Hetrick & Smith LLP – “Ethics Fables: Lessons for Landmen and Lawyers in the Oilpatch”
 - Demetri Economou – Kane Russell Coleman Logan PC – “Suspense Accounts in Texas, Oklahoma & New Mexico”
- Check-in and breakfast will start at 7:15 AM (lunch will not be provided this year).
- Executive Sponsors will receive 4 spots, and Premium Sponsors will receive 2 spots to this event.
- This event will be available online (via live stream) and in-person.
 - If you are attending this event online, you will receive an email with the link to the seminar ahead of the event.
- If you are wanting to purchase additional tickets, this event will be \$150.00 per attendee - you may purchase tickets via the PBLA website.
- 3 hours of CLE credit and 1 hour of ethics credit available to attendees.

PBLA EXECUTIVE NIGHT:

- Tuesday, April 15th, 2025 – **Petroleum Club of Midland** – 501 W. Wall Street, Midland, TX 79701
- 6:00 PM to 9:00 PM
- Executive Night speaker will be U.S. House of Representatives, Congressman August Pfluger.
- The cocktail reception will begin at 6:00 PM, dinner will be served at 7:00 PM, and speaker presentation will begin at 8:00 PM.
- Executive Sponsors will receive a table (8 seats), and Premium Sponsors will receive 2 seats to this event.
- This event is SOLD OUT.

PBLA 105 TENNIS AND PICKLEBALL TOURNAMENT:

- Wednesday, April 16th, 2025 – **Midland Country Club** – 1 Wildcatter Way, Midland, TX 79705
- 9:00 AM to 3:00 PM
- Check-in will start at 8:30 AM, lunch will be available from 12:00 PM – 1:00 PM
- This is a free event; sign-ups are open on the PBLA website – this event will have a capacity limit of 32 tennis teams (4-person team) and 32 pickleball teams (2-person team).
 - Note tennis and pickleball tournaments will be held concurrently, therefore please only select one tournament to participate in.

PBLA SHRIMP BOIL:

- Wednesday, April 16th, 2025 – **The Tailgate** – 4401 N. Big Spring Street, Midland, TX 79705
- 5:00 PM to 8:00 PM
- Down South Seafood, Frenchy's, and Chatty Mule will provide catering for this event.
- Every member of PBLA will receive free entry for you and a guest via the email address on record for your PBLA account. Please expect an email from Tixr with your event tickets before the event.
- Uber code discount will be provided to attendees.

PBLA GOLF TOURNAMENT:

- Thursday, April 17th, 2025 – **Hogan Park Golf Course** – 3600 N. Fairgrounds Rd., Midland, TX 79705
- Tee times at 8:00 AM and 1:00 PM.
 - Registration opens at 7:00 AM for the 8:00 AM tee time and 11:30 AM for the 1:00 PM tee time.
- Lunch will be available from 11:00 AM to 1:00 PM.
 - ***Lunch is free and open to all PBLA members – please come out to socialize, eat, and enter our raffles! You DO NOT need to participate in the golf tournament to enjoy the lunch event.***
- Executive Sponsors will receive two teams (8 total golfers), and Premium Sponsors will receive one team (4 total golfers) to this event.
- This event is SOLD OUT.

For the events occurring above, PBLA has secured a hotel group block at Home2 Suites by Hilton Midland East: <https://www.hilton.com/en/attend-my-event/mafgsht-pbl-d7c63dea-bf21-4644-839a-09b719d000c1/> - You may also call the hotel at 432-682-6000 and reserve over the phone.

MAY 2025

PBLA HAPPY HOUR

- Tuesday, May 13th, 2025 – **Midland Country Club** – 1 Wildcatter Way, Midland, TX 79705
- 5:00 PM to 7:00 PM

AUGUST PFLUGER BIO

Serving his third term in the U.S. House of Representatives, Congressman August Pfluger represents 20 counties in Texas' 11th Congressional District, including Brownwood, Killeen, Llano, Midland, Odessa, and San Angelo. Rep. Pfluger grew up in San Angelo, where he lives with his wife Camille and three daughters.

Rep. Pfluger graduated from the U.S. Air Force Academy before serving in the military for twenty years as a decorated fighter pilot and squadron commander, including two deployments to Syria and Northern Iraq. Rep. Pfluger also served on the United States National Security Council (NSC) during President Trump's first presidency and still serves as a colonel in the U.S. Air Force Reserves.



In Congress, Rep. Pfluger serves as Chairman of the Republican Study Committee – the largest caucus of conservatives on Capitol Hill – and as Chairman of the House Homeland Security Subcommittee on Counterterrorism and Intelligence. He is also the first Member to represent Midland and Odessa on the House Energy and Commerce Committee.

Rep. Pfluger is committed to unleashing American energy and restoring American energy dominance with President Trump back in office. Rep. Pfluger hit the ground running in the 119th Congress by introducing several pieces of legislation to accomplish this goal by removing burdensome regulations imposed on every single American consumer during the Biden administration and protecting the hardworking men and women in the Permian Basin who deliver affordable, reliable energy every day. Of the legislation he has introduced this Congress, one has already passed the House, and another has already been signed into law by President Trump.

NOTE FROM THE PRESIDENT

As we head into April and prepare for PBLA Week, I hope this note finds you thriving amidst the Permian Basin's energy landscape. It has been an honor to serve as the PBLA President this past year and to have the opportunity to support over 1,100 members.

PBLA has already offered our members many great activities this year from monthly educational lunches to the Clay Shoot and the Christmas Party. I look forward to the Education Seminar and Executive Night on April 15th, the Tennis and Pickleball Tournament and Shrimp Boil on April 16th, and rounding out the week with the Golf Tournament on April 17th. PBLA offers our members, who come from all over Texas, New Mexico, Oklahoma and beyond, a chance to network and build lasting professional relationships.

The Permian Basin remains a cornerstone of global energy, and I as your PBLA President feel privileged to live and work in the Permian Basin and support this talented group of professionals. Please don't hesitate to reach out to myself, or any of the other PBLA Board members, with ideas or feedback.

Here is to a strong finish to our fiscal year. We look forward to welcoming First Vice President, Josh Anderson, as the next PBLA President effective June 1st.

I look forward to seeing everyone in April!

Best,
Randis Butts, PBLA President



LEGAL HIGHLIGHT

Deed Interpretation After *Van Dyke*: Texas Courts' Application of the Presumption that 1/8th means 8/8th

In 2023, the Supreme Court of Texas issued its opinion in *Van Dyke v. Navigator Group*,¹ both clarifying and muddying the legal waters of Texas deed interpretation. This article will review two recent Texas appellate decisions applying the holding from *Van Dyke*. As a refresher, in *Van Dyke*, the Supreme Court of Texas interpreted the following reservation from a 1924 Deed:

It is understood and agreed that *one-half of one eighth* of all minerals and mineral rights in said land are reserved in grantors, Geo. H. Mulkey and Frances E. Mulkey, and are not conveyed herein. [Emphasis added.]²

The successors of the reserving parties believed the reserved interest should be one-half of the minerals, whereas the grantee's successors believed a mathematical approach should be applied, resulting in the reserved interest being one-sixteenth of the minerals. The Court's reasoning has been widely discussed elsewhere, so I will cut to the chase. The Court, ultimately, interpreted the reservation as reserving one-half of the minerals. More important than its interpretation, the Court first left us with a new rebuttable presumption:

Antiquated instruments that use 1/8 within a double fraction raise a presumption that 1/8 was used as a term of art to refer to the "mineral estate." That presumption is readily rebuttable, however. If the Texas itself has provisions—whether express or structural—illustrating that a double fraction was in fact used as nothing more than a double fraction, the presumption will be rebutted.³

Even though the Court already determined the deed unambiguously reserved a one-half mineral interest, it further opined that the successors of the reserving parties would have also succeeded to their claim through the application of the "presumed grant" doctrine. The Court set out the following three elements necessary to satisfy the presumed-grant doctrine:

1. a long-asserted and open claim adverse to that of the apparent owner;
2. nonclaim by the apparent owner; and
3. acquiescence by the apparent owner in the adverse claim.⁴

¹ *Van Dyke v. Navigator Grp.*, 668 S.W.3d 353 (Tex. Feb. 17, 2023).

² *Id.* at 357.

³ *Id.* at 359.

⁴ *Id.* at 366. The Court further clarified that the Eastland Court of Appeals addition of a fourth element, the existence of a gap in the chain of title, was mis-founded.

The Court determined the elements were satisfied by evidence that, over the past 90 years, the parties and their successors engaged in numerous transactions, including deeds, oil and gas leases, division orders, and other contracts, which put all necessary parties on notice of the presumed grant claim.

Although the Court believed its new rebuttable presumption would “substantially reduc[e] the frequency of disputes about double fractions[,]”⁵ the addition of presumed-grant theory has greatly changed the approach attorneys take for double-fraction based disputes. Let us now review how the courts are applying *Van Dyke*.

1. *Montgomery, Trustee of Tri-Mont Irrevocable Trusts v. ES3 Minerals, LLC*⁶

The El Paso Court of Appeals was asked to interpret the following language in a 1955 Deed conveying a non-participating royalty interest in Reeves County, Texas:

[T]he Grantors do hereby expressly include in this conveyance, a non-participating royalty of one-fourth (1/4th) of the landowner’s usual one-eighth (1/8th) royalty on oil and gas produced and saved from said land[.]⁷

The Appellants alleged the 1955 Deed conveyed a floating 1/4 “of royalty” non-participating royalty interest, while Appellees argued it conveyed a fixed 1/32 royalty. The trial court held the 1955 Deed conveyed a fixed 1/32 royalty.

The El Paso Court of Appeals reversed the trial court’s decision, relying on the rebuttable presumption established in *Van Dyke*, holding: “1/8 reflects the entire mineral estate, not just 1/8 of it[,] or, in the context of royalty interests, that 1/8 was used as a placeholder for future royalties generally[.]”⁸ Because the 1955 Deed contained no express language rebutting the presumption, the deed must be interpreted as conveying a floating 1/4 “of royalty” non-participating royalty interest. No presumed-grant arguments were made in this case. While most title examiners would likely have already credited the 1955 Deed as a floating royalty coupled with a curative requirement to stipulate as to the result, the *Van Dyke* presumption now allows third-parties (such as oil and gas operators) to reliably interpret a double fraction deed.

2. *Boren Descendants and Royalty Owners v. Fasken Oil and Ranch, Ltd.*⁹

The Eastland Court of Appeals (the same court reversed in *Van Dyke*) was asked to interpret the following exception clause in a 1933 Deed:

Excepting, saving and reserving from this conveyance, however, unto and for the use and benefit of the grantor, Midland Farms Company, and its successors and assigns forever, an undivided

⁵ *Id.* at 357.

⁶ *Montgomery, Trustee of Tri-Mont-Irrevocable Trusts v. ES3 Minerals, LLC*, 697 S.W.3d 397 (Tex. App.—El Paso 2024, no pet.).

⁷ *Id.* at 400.

⁸ *Id.* at 402 (citing *Van Dyke v. Navigator Grp.*, 668 S.W.3d 353, 364 (Tex. 2023)).

⁹ *Boren Descendants and Royalty Owners v. Fasken Oil and Ranch, Ltd.*, 703 S.W.3d 874 (Tex. App.—Eastland 2024, no pet. h.).

one-fourth (1/4th) of the usual one-eighth (1/8th) royalty in and to all oil, gas, and other minerals in, to, and under... said lands.¹⁰

Fasken is the successor of Midland Farms Company. Between 2013 and 2020, Fasken executed a series of division orders each crediting the excepted interest as 1/32. Royalties were then paid and accepted under that interpretation. In 2019, Fasken filed a suit to establish that it actually owned a floating 1/4 “of royalty” interest. The trial court rendered partial summary judgment in favor of Fasken, and the other owners (the “Descendants”) then filed a permissive interlocutory appeal.¹¹

On appeal, the Descendants argued that the use of “the *usual* 1/8th” rebutted the presumption established in *Van Dyke*. The court rejected this argument, holding that the use of “the usual 1/8th” did not rebut the presumption and the trial court correctly interpreted the deed even when viewed through a pre-*Van Dyke* lens.

The Descendants also asserted various affirmative defenses. First, the Descendants argued their interest was protected by Fasken’s prior division orders which all showed the interest was 1/32. The court rejected this estoppel by division order argument because protections afforded by a division order are not extended to third parties, and the Descendants were not parties to the division orders.

Interestingly, the Descendants submitted evidence that Fasken claimed to own a 1/32 interest in a series of tax suits filed in 2011 and, therefore, should not be allowed to claim it owns a different interest under the legal theory of judicial estoppel. The court too rejected this defense, holding that because the statements Fasken made admitting it owned a 1/32 interest occurred prior to *Van Dyke*, judicial estoppel could not apply here. The court concluded, “we do not believe that evidence of [Fasken’s] conduct in the 2011 litigation leaves the impression that Fasken attempted to deceive the court, either then or now.”¹²

Finally, the court refused to review the affirmative defense of presumed grant because it “was not within the list of issues that the trial court identified in its order permitting an interlocutory appeal.”¹³ The facts indicate Fasken executed division orders describing the interest as 1/32 for at least seven years prior to initiating its suit and accepted royalty payments thereunder. Whether Fasken’s actions are sufficient to meet the 3-part test set forth in *Van Dyke* is questionable. The Court listed executed division orders in the laundry list of evidence it relied upon in *Van Dyke*, but division orders in Texas are considered binding until revoked,¹⁴ and the Descendants also acknowledged they were neither parties to the division orders nor aware of their existence prior to the suit. As of the date of this article, the presumed grant claims were not yet subject to a final judgment from the trial court.

3. Conclusion

While *Van Dyke* clarified the lens through which we interpret double fractions, further appellate decisions are necessary to create some certainty around presumed-grant claims. In light of another recent Texas case,

¹⁰ *Id.* at 882.

¹¹ A permissive interlocutory appeal occurs when the parties, trial court, and appellate court all agree that a limited appeal addressing material issues of law is necessary to advance litigation toward a final judgment.

¹² *Id.* at 891.

¹³ *Id.* at 893.

¹⁴ *Gavenda v. Strata Energy, Inc.*, 705 S.W.2d 690, 691 (Tex. 1986).

Perdido Properties, LLC v. Devon Energy Production Company, LP,¹⁵ which calls into question an operator’s ability to rely on division orders to protect themselves from landowner claims for unpaid royalties, many Texas oil and gas companies are reevaluating judgment calls made in their pre-*Van Dyke* title opinions. It may make sense to revisit these older title opinions in light of new case law to supplement or simply seek the advice of an oil and gas attorney in regard to the risk posed by these rule changes.

¹⁵ 669 S.W.3d 535, 542 (Tex. App.—Eastland 2023, pet. denied).



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CERTIFICATIONS/SPECIALTIES:

- Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization

BAR ADMISSIONS:

Texas and New Mexico

BIO:

William “Billy” Burke was born in Huntsville, Texas, and raised in Austin. He attended the University of Texas at Austin for his undergraduate studies, earning a Bachelor of Arts in both History and Government. Billy earned his Doctor of Jurisprudence from Texas Wesleyan School of Law.

Billy’s first three years of practice focused on litigation for banks and other financial institutions. Since 2011, Billy has focused his practice on Oil, Gas and Energy Law. In 2018, Billy became a Shareholder at Mazurek, Belden & Burke, P.C. and became Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization.

Billy met his wife, Tyfany, at the University of Texas, where she was earning her Master’s Degree. Billy and Tyfany were married in Austin, Texas, in 2005 and have three children, Kiernan, Kincade, and Kennedy. Billy and Tyfany work closely with Rhodesian Ridgeback Rescue as Foster Coordinators and have been on the board of several animal rescue groups focusing on Rhodesian Ridgebacks, German Short-haired Pointers, and Cattle Dogs. When not wrangling children and dogs at home, Billy and Tyfany enjoy camping, hiking, fishing, and generally being outdoors.

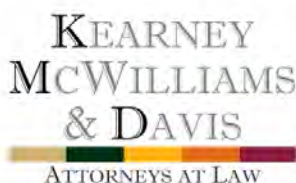
COMMUNITY INVOLVEMENT:

- Commissioner—Bexar County Emergency Services District No.8
- Foster Home Volunteer—Ridgeback Rescue of the United States
- Foster Home Volunteer—San Antonio Pets Alive



PBLA SPONSOR HIGHLIGHT

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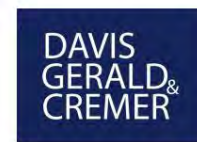
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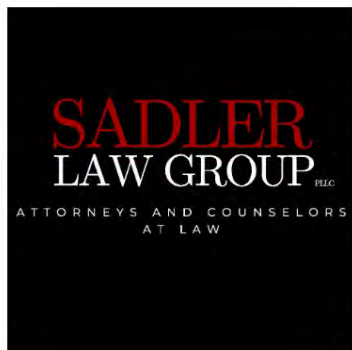
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NOTE FROM PBLA

Have questions about memberships, dues, or renewals?

Would you like to submit articles to be featured in our newsletter?

Would you like to contribute to the PBLA Scholarship fund?

Would you like to apply for PBLA charitable donations or scholarships?

Would you like to inquire about anything else?

Please reach out to Ariel Herrera at admin@pbla.com and we will be in touch!

