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December 31, 2020

Supreme Court of Texas
Supreme Court Building
201 W 14th Street
Suite 104
Austin, TX 78711

REF: No. 19-0233; *Concho Resources, Inc. et al. v. Marsha Ellison, d/b/a Ellison Lease Operating*

TO THE SUPREME COURT OF TEXAS:

Founded in 1908, the Texas Land Title Association (TLTA) is a statewide trade association representing the Texas title insurance industry and currently serving over 15,000 professionals involved in the safe and efficient transfer of real estate. In the course of their daily work, our membership serves over a million consumers each year. With active members in every Texas county, TLTA membership comprises approximately 90 percent of the title insurance agents and underwriters licensed to do business in Texas. From time to time, cases come before the Court that have significant impact on real estate commerce in Texas and which impact the ability of TLTA's members to safely insure title to real property. On those occasions, we will endeavor to share with the Court our support of those parties who advocate the sanctity of the Texas real property laws and doctrines. The TLTA has received no compensation for the preparation of this letter.

We write today to express our serious concern with the position of the Petitioners and other amici in this case as to the validity of the 2008 Boundary Stipulation. Petitioners would have this Court upend long-standing and well-established Texas law on real property descriptions and conveyancing solely to benefit a group of oilfield operators' attempt to gain an additional 154 acres of leasehold land. Texas law should not be so easily disregarded, especially where the positions urged by Petitioners and the other amici would result in significant damage and uncertainty to our law and real property record system.

First, the Petitioners should not be allowed to manufacture a dispute as to the boundaries of the Northwest Tract in order to validate the 2008 Boundary Stipulation. The Court of Appeals correctly concluded that there was never any ambiguity or uncertainty in the 1927 Deed's legal description, which is a requirement for a correction deed to be valid. It further interpreted the 1927 Deed as including all land north and west of the public road, regardless of the acreage recital, in accordance with this Court's opinion in *Stribling v. Millican DPC Partners, LP*, 458

S.W.3d 17 (Tex. 2015). That decision is also in accordance with how legal descriptions are examined in Texas. The Texas Administrative Code and the Texas Title Examination Standards list the order of the dignity of calls in a survey as: (1) natural objects (rivers, etc.); (2) artificial objects (marked trees, stone mounds, adjoinder calls, etc.); (3) courses (bearings); (4) distances; and finally (5) acreage. 31 TEX. ADMIN. CODE § 7.5; Texas Title Examination Standard 5.10 (Comment). Similarly, Texas title insurance policies do not insure the amount of acreage included in a legal description. Acreage is merely a measure of area, mathematically incapable of describing boundaries. Especially in irregularly shaped properties, the calculations are notoriously incorrect. Texas deed records are replete with accurate descriptions of property that nevertheless contain inaccurate, often guesses, as to acreage. The surveyor typically notes this by utilizing the words "more or less", just as was done in the 1927 Deed. Any title examiner reviewing the 1927 Deed would readily conclude that the public road was the southern boundary of the Northwest Tract, as did the October 2006 title opinion sent to Samson's landman, Tim Reece.

If the 2008 Boundary Stipulation is allowed to retroactively change the boundaries of the Northwest Tract without any evidence of an error or dispute as to those boundaries, it will inject unnecessary uncertainty into our deed records and call into question the standard interpretation of legal descriptions. As noted in a prior letter from TLTA to this Court in *Myrad Properties, Inc. v. LaSalle Bank National Association*, the harm is that "[a] decision such as this would have a chilling effect upon future transactions . . . because parties would fear that, even though they are aware of all documents filed at the courthouse, a subsequent correction document may jump backward in time and change ownership." In this case, would the Ellisons have acquired the leasehold over the Northwest Tract had they known that they would not have rights to the disputed 154 acres?

Moreover, if subsequent parties in a chain of title or examiners were required to check and recalculate a tract's area, even when there was an accurate perimeter description, it would become exceedingly difficult to transfer, encumber, or insure titles. Reexamination and second title opinions would become the norm, along with later disputes every time an acreage calculation was inconsistent with a perimeter boundary description. This additional time, effort, and expense is wholly unnecessary where corners, monuments, and objects clearly describe a tract, and would hinder the free alienability of real property. The property is known, can be located on the ground, has not changed, and is only subject to a faulty acreage calculation. Here, the Petitioners' desire to give effect to their subsequent contractual agreement does not outweigh the harm that would be done to real property titles in this state.

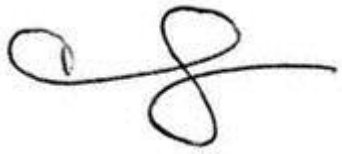
Second, the 2008 Boundary Stipulation cannot stand as a valid legal conveyance. As explained by the Court of Appeals, regardless of the 2008 Boundary Stipulation's attempt to include "adequate words of grant and conveyance as are necessary and proper to transfer and vest the ownership of the mineral estate," the four corners of the document did not identify a grantor or grantee nor include any operative words of grant as to the 154 acres. Moreover, the 2008 Boundary Stipulation was not signed by the Ellisons, and thus not agreed to by all parties with an interest in the mineral estate, and the purported ratification by Jamie Ellison was never recorded, despite its statement that "upon your acceptance a more formal and recordable document will be provided." While parties may certainly contract among themselves, a void

boundary line agreement cannot be ratified – and thus affect the record chain of title – by an unrecorded letter agreement. Again, a decision to uphold the 2008 Boundary Stipulation or the ratification letter as a conveyance of land would be contrary to established law and harm the reliability of our real property records.

Notably, the Petitioners had other accepted means to resolve the issues regarding rights to oil production, but they did not avail themselves of those tools and procedures. The parties could have reallocated the leased area without affecting the rights of the Ellisons, or they may have entered into and recorded an agreement involving all parties having an interest that included standard grant and conveyance provisions. The foundational suggestion in the other amicus briefs that two tenants/lessees should be able to agree and reallocate leased property denies the rights of other parties in interest, including the lessor(s), and creates ambiguity and uncertainty in the deed records. In addition, while the currently adopted Correction Instrument statute (Tex. Prop. Code sections 5.027-5.031) was not in effect in 2008, the statute reinforces the long-standing principle that a correction cannot be used to "change the original deal", nor can it affect the rights of prior existing bona fide interests. But that is exactly what the proponents of the Boundary Stipulation seek to do in this case.

Ultimately, stability in title to real property benefits us all and should be protected above contractual expediency. Therefore, we respectfully request that this Court uphold the Thirteenth Court of Appeals opinion with respect to the inability of the 2008 Boundary Stipulation to change a legal description and confirm the southern boundary of the Northwest Tract as the public road, as it has been for nearly 100 years. We do not express any opinion as to the matters outside of the deed records, including the estoppel and contractual issues raised.

Sincerely,



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CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,539 words in the portions of the document are subject to the word limits of the Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ Aaron Day
Aaron Day

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2020, a true and correct copy of the foregoing amicus letter has been served by electronic mail to all attorneys of record.

/s/ Aaron Day
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