

# Court Advisory

Fourth Court of Appeals  
Cadena-Reeves Justice Center  
300 Dolorosa, Suite 3200  
San Antonio, Texas 78205-3037



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FOR IMMEDIATE RELEASE  
October 24, 2013

## Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in one appeal on Tuesday, October 29, 2013, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Patricia O. Alvarez.

The following case will be presented:

*W.H. Sutton, et al. v. SM Energy Company* - SM Energy Company ("SM"), appellee and plaintiff below, filed a declaratory judgment action seeking a declaration that a 1966 oil and gas lease terminated with respect to approximately 18,000 acres of the original 40,000-acre premises; that appellants' overriding royalty interests ("ORRIs") carved out of assignments of the lease were extinguished; and SM was not obligated to pay appellants royalties based on their claimed ORRIs in 18,000 acres. Appellants filed counterclaims and a request for declaratory relief, and raised certain affirmative defenses. SM moved for summary judgment on its request for declaratory relief and on appellants' counterclaims and affirmative defenses. Without stating its grounds, the trial court granted SM's motion for summary judgment. Sutton now appeals. The dispositive issue in this appeal is the date on which the 1966 lease terminated.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, October 31, 2013, beginning at 1:30 p.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Patricia O. Alvarez.

The following case will be presented:

*Peacock Hospitality, Inc. d/b/a Holiday Inn Express-Burnet v. Association Casualty Insurance Company* - This appeal arises from a lawsuit by Peacock Hospitality, Inc. d/b/a/ Holiday Inn Express-Burnet against Association Casualty Insurance Company relating to an insurance claim for water damage to the hotel. The damage occurred after Peacock had defaulted on its loan to First National Bank Group, Inc. (the "Bank"), and the claim was paid by Association Casualty after the Bank sent notice of foreclosure. Peacock appeals the summary judgment granted in favor of Association Casualty. The

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crux of the argument on appeal is whether the anti-assignment clause precluded Association Casualty from recognizing the Bank’s right to the insurance proceeds or whether the covenants in the Deed of Trust divested Peacock of its rights to the insurance proceeds.

The oral arguments will be held in the Fourth Court’s Courtroom, Caden-Reeves Justice Center, Third Floor, 300 Dolorosa, San Antonio, Texas.