



## Business Alert



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### Bocado and deep trespass: The Supreme Court judgment

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Yesterday the Supreme Court gave judgment in the appeal of *Bocado SA v Star Energy*, a case raising important issues relating to deep trespass and the extraction of onshore petroleum.

#### The facts: a recap

Star Energy drilled three deviated pipelines under Bocado's land, without permission, to extract oil pursuant to a petroleum production licence.

Both the High Court and the Court of Appeal decided that Star Energy had trespassed on Bocado's land and that damages were payable. Even though the drilling and subsequent extraction did not affect or interfere with Bocado's use or enjoyment of its land, the High Court awarded damages equivalent to 9% of the value of the petroleum extracted. The Court of Appeal subsequently reduced this to £1,000 in respect of all past and future trespass.

Bocado appealed to the Supreme Court, requesting that the High Court's assessment of damages be reinstated. Star Energy cross-appealed on the question of whether there had been a trespass in the first place.

#### Was there a trespass?

The five Justices unanimously agreed that Star Energy had committed a trespass. Bocado's ownership of the land extended at least as far down as the strata into which Star Energy had drilled and Star Energy's petroleum production licence did not carry with it an implied right to drill through Bocado's land to extract the oil. Star Energy should therefore have obtained Bocado's permission before drilling.

#### RPC comments

Common sense has prevailed, albeit after three days in court, 60 pages of judgment and a slim margin.

It appears from evidence presented at the trial that deviated or directional drilling has been used as a technique by onshore oil companies for many years without ancillary access rights from surface landowners being sought. The Supreme Court's confirmation of the High Court's and Court of Appeal's findings of trespass will no doubt lead to a rethink of such common industry practice.

From now on companies involved in the extraction of oil (and indeed coal bed methane) will need to obtain land rights for their wells in much the same way as those involved in the sub-surface transportation of gas have done for years under the Pipe-lines Act and the Gas Acts.

**Business Alert continued****The assessment of damages**

By a majority of three to two, the Justices decided that the sum of £1,000 awarded by the Court of Appeal was correct. When assessing the level of damages the "ransom value" of Bocardo's land had to be disregarded. Since Bocardo had no right to extract the oil itself it had lost nothing and nominal damages were therefore deemed appropriate.

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