

## Conoco Wins Appeal Seeking Reimbursement for \$63 Million Settlement



Angela Neville, Texas Lawyer

The Fourteenth Court of Appeals in Houston recently ruled that Noble Energy owes a duty of defense and indemnity to ConocoPhillips with respect to a \$63 million settlement related to an environmental claim for damage to an oil field in Cameron Parish, Louisiana.

This appellate case, *ConocoPhillips v. Noble Energy*, dealt with the underlying environmental claim based on a 1994 exchange agreement and assignment and bill of sale involving the exchange of oil and gas assets in Louisiana, according to the opinion issued in the case by the Fourteenth Court of Appeals.

The Johnson Bayou oil and gas field in Cameron Parish had been operated as a unitized lease since approximately 1964. One of the operators of the Johnson Bayou field was General American, a predecessor to ConocoPhillips.

In 2010, the Cameron Parish School Board filed a suit in which the school board claimed there was environmental damage and contamination of the Johnson Bayou field. The resolution of the case resulted in a \$63 million settlement for the school board, according to attorney Richard Mithoff, lead counsel for ConocoPhillips. Mithoff is the founder of the Houston law firm of Mithoff Law.

ConocoPhillips agreed in August 2012 to that settlement, but argued that it had a contract with another company—Noble Energy Production Co.—that it contended was responsible for the damages, according to Mithoff.

After ConocoPhillips filed suit against Noble Energy for declaratory judgment and for breach of contract based on the failure to defend and indemnify and to perform other obligations, ConocoPhillips and Noble Energy filed competing motions for summary judgment, according to the opinion.

The trial court permitted Noble Energy to withdraw certain admissions and ultimately granted summary judgment in favor of Noble Energy, finding as a matter of law that Noble Energy was not a party to, did not assume and was not assigned, and otherwise had no obligation under the exchange agreement and assignment, according to the opinion.

In contrast, the Fourteenth Court of Appeals held that the exchange agreement constituted an executory contract that was assumed by the debtor/seller Alma Energy Corp. and assigned during Chapter 11 bankruptcy proceedings and pursuant to a 2000 Asset Purchase and Sale Agreement to buyer East River Energy/Elysium Energy.

The appellate court further concluded that Elysium was a wholly owned subsidiary of Patina Oil & Gas Corporation and Noble Energy Production, as a wholly owned subsidiary of Noble Energy, merged with Patina. Therefore, the trial court erred in refusing to grant partial summary judgment in favor of

ConocoPhillips and in granting summary judgment in favor of Noble Energy, according to the appellate court. The Fourteenth Court of Appeals reversed the trial court's final judgment, and rendered judgment that Noble Energy owes ConocoPhillips a duty of defense and indemnity, and remanded the case for further proceedings.

"The decision affirms the well-accepted principle that executory contracts assumed in bankruptcy will be honored," Mithoff recently said. "This decision reassures responsible oil and gas companies like ConocoPhillips that step up and take responsibility for the cleanup of contamination that they can rely on the indemnity provisions in those contracts."

John Zavitsanos, the lead counsel who represents Noble Energy, declined to comment about the case. Zavitsanos is a partner with the law firm of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing (AZA) in Houston.

According to Mithoff, Noble Energy has given notice that it will file an appeal.

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