

# Texas Justices Keep Noble On The Hook For \$63M Indemnity

By Michael Phillis

Law360, New York  
(December 15, 2017, 8:45 PM EST) —

The Texas Supreme Court on Friday declined to revisit its decision that Noble Energy Inc. has to indemnify ConocoPhillips in connection with \$63 million in environmental cleanup costs despite arguments that Noble's predecessor wasn't properly told about the indemnity agreement.

The order, which was issued with a simple declaration that rehearing was denied, keeps in place the June 5-3 split decision that upheld an indemnity agreement Noble inherited from its predecessor that purchased oil and gas assets in Alma Energy Corp.'s Chapter 11 bankruptcy. Alma's undisclosed contractual indemnity obligation was handed over to Noble's predecessor, the bankruptcy court said.

Noble, which petitioned the state's high court to review the case in 2015, had said the indemnity provision at issue was not disclosed as part of a list of material contracts during the asset purchase negotiations. If Noble had known of that responsibility, it would have rejected it. But the state Supreme Court said Noble had at least "constructive knowledge" of the terms of the asset purchase agreement, the Chapter 11 plan and the court's order that it could be assigned executory contracts not specifically listed.

"As critical as disclosure in bankruptcy proceedings may be, we think it more critical that parties to bankruptcy proceedings and others have confidence that reorganization plans and court orders will be interpreted and enforced

according to their plain terms," the majority opinion said.

Noble filed its rehearing petition in September and argued that the court's decision deviated from established bankruptcy law. And it said state contract law doesn't allow for major provisions to be hidden.

"Complete disclosure is thus not merely 'more crucial' than enforcing the plain language of a reorganization plan and confirming order; it is a condition precedent to doing so," the now-denied motion for rehearing said.

In addition to the June majority opinion, a dissent was issued by Justice Phil Johnson that said Noble did not have constructive knowledge of the property exchange agreement because of the general language in the bankruptcy court's order. He said it conflicted with bankruptcy practices because Noble wasn't told about the obligation. In short, the dissent said transparency was vital.

The indemnity agreement concerns a Louisiana property, referred to as the Johnson Bayou property, which was later determined to be contaminated by oil and gas drilling, prompting ConocoPhillips to settle Louisiana's environmental contamination claims for \$63 million. A ConocoPhillips predecessor had swapped assets with Alma through an agreement with a mutual indemnity clause, and ConocoPhillips argued Noble clearly took on that contract and had to defend and indemnify it against the environmental contamination claim. The bankruptcy order provided that any executory contracts not specifically referenced in the reorganization plan were to be assumed and assigned to Noble's predecessor unless rejected at closing, and because the Johnson Bayou ex-

change agreement was not rejected, Noble took it on, the majority said. The bankruptcy court order must be read as intentional, the majority added.

Richard Mithoff, counsel for ConocoPhillips, said he was pleased with the order and thought this was the end of the line for the case.

"We are very happy to have this matter finally resolved. The decision reaffirms what we believe to be the well-accepted principle that executory contracts assumed in bankruptcy will be honored," he told Law360.

On the opinion, Chief Justice Nathan Hecht and Justices Don Willett, Jeff Boyd, John Devine and Jeff Brown joined the majority. Justices Phil Johnson, Paul Green and Eva Guzman dissented. Justice Debra Lehrmann did not participate in the decision.

A representative for Noble did not immediately return a request for comment Friday.

Noble is represented by John Zavitsanos, Jane Robinson and Foster Johnson of Ahmad Zavitsanos Anaipakos Alavi & Mensing PC, Deborah Hankinson of Hankinson LLP, and Tom Wright, Wanda McKee Fowler, Raffi Melkonian and Elizabeth Rivers of Wright & Close LLP.

ConocoPhillips is represented by Richard Mithoff and Sherie Beckman of Mithoff Law, and Tom Phillips, Omar Alaniz, Macey Stokes and Ben Geslison of Baker Botts LLP.

The case is Noble Energy Inc. v. ConocoPhillips Co., case number 15-0502, in the Supreme Court of Texas.

— Additional reporting by Jess Krochtengel.

— Editing by Adam LoBelia.

All Content © 2003-2017, Portfolio Media, Inc.