

Susman Godfrey and Kelly, Hart & Hallman Defeat \$50 Million Breach of Contract Claim and Win a \$2 Million Counterclaim

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Dallas, Texas — Susman Godfrey lawyers again teamed with colleagues from Kelly, Hart & Hallman and Energy Future Holdings Corp. (“EFH”), this time in defeating a \$50 million breach of contract claim by Alcoa against Luminant in the 20th District Court of Milam County, Texas.

In the same case, a Milam County jury on June 2, 2010 rejected Alcoa’s claims for more than \$500 million against Luminant. The jury also awarded Luminant \$10 million in damages.

At the conclusion of the evidence in a bench trial on June 9, District Judge Ed Magre ruled against Alcoa on its claim that Luminant “wasted” lignite coal at the Three Oaks Mine, which straddles Bastrop and Lee Counties in central Texas. The Court also ordered Alcoa to pay Luminant about \$2 million for mining services and directed Alcoa to consent to the transfer of the mine permit for Three Oaks Mine to Luminant.

Alcoa sold Three Oaks Mine to Luminant in 2007 but kept ownership of some lignite. Alcoa claimed that Luminant did not operate Three Oaks Mine prudently and should have stockpiled lower-quality lignite for possible use in Luminant’s nearby power plants, Sandow Units 4 and 5.

Marshall Searcy, partner in Kelly Hart’s Fort Worth office, took the lead in the trial to the Court for EFH subsidiary Luminant Mining. The trial team consisted of Mr. Searcy; Stacey Dore, Associate General Counsel of EFH; Chad Arnette, also a Kelly Hart partner; and Barry Barnett and Joseph Portera of Susman Godfrey in Dallas.

“We are pleased to have helped show that Luminant Mining fully complied with its obligations and is entitled to transfer of the mine permit,” Mr. Barnett said. “Marshall Searcy, Stacey Dore, Chad Arnette, and Joseph Portera are terrific lawyers, and it’s been a pleasure and privilege to work with them on this important case.”