

Susman Godfrey Leads Client to Big Oil and Gas Win in Louisiana Trial Court

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Dallas, Texas – The other side thought the case related to theft of their 3D seismic data. They felt so strongly about it that at trial they asked for more than \$70 million — for what they deemed misuse of their trade secrets.

But the court saw things differently. On March 5, 2012, the 36th District Court of Beauregard Parish, Louisiana, issued its Reasons for Judgment. And, in those Reasons for Judgment, by The Honorable H. Ward Fontenot, Susman Godfrey's client won a near-total victory.

Olympia Minerals held mineral leases and servitudes that covered 445 square miles in western Louisiana. In 2000, Olympia, which then belonged to El Paso Production Company, entered into a contract with Aspect Resources and a predecessor of Kerr-McGee Oil & Gas for a project over 135 square miles in Beauregard and Calcasieu Parishes. Aspect and Kerr-McGee agreed to conduct a 3D seismic survey, to sublease at least 15 percent of the acreage, and to provide Olympia with a copy of the seismic data, including in the form of raw data or field tapes. But Aspect and Kerr-McGee shot only about half of the 135 square miles, did not sublease any acreage, and provided only processed seismic data to Olympia.

Aspect and Kerr-McGee nonetheless claimed that Olympia had misused the seismic data by letting other parties, which had subleased some of the Louisiana lands from Olympia, "work" the data in a secure data room. They also alleged that one of the sublessees removed the data from the data room and put it on the company's computer system. They asked for disgorgement of all profits Olympia and the sublessees had made on productive wells plus a five percent royalty on future discoveries and other relief.

In the Reasons for Judgment, the trial court found the evidence "strongly suggests that it was never the intention of the defendants to honor the terms of the" contract with Olympia and that Aspect breached the contract intentionally and therefore in "bad faith". The court cited testimony of "Alex Cranberg, the chairman and founder of Aspect", on the question of why Aspect chose not to shoot more than half of the 3D survey, in support of the court's finding that Aspect made "conscious and calculated business decisions" to commit "major breaches" of the contract with Olympia. The court also found that "the 'shell game' played by Aspect . . . when Olympia sought the [field] tapes is inexcusable." The court therefore struck the contractual limitation on consequential damages, awarded damages (including for loss of royalties) that Olympia estimates at \$40 million or more, dissolved the contract between Olympia and Aspect, and directed Aspect to provide Olympia with the field tapes for the 3D data. The court also dismissed all of Aspect's claims against Olympia and its sublessees for misappropriation of trade secrets, breach of contract, and other theories with prejudice.

"I knew the only way ultimately to prevail was to be genuinely prepared to try the case represented by a firm with a track record of success", said Olympia's President, Michael Lewis. "That said", he added, "the Susman Godfrey attorneys presented a rare combination of strong legal intellect, common sense about right and wrong, and credibility in the courtroom".

“Judge Fontenot’s scholarly and compelling analysis demonstrates the importance of keeping promises, in the oil patch and in everyday life”, said Barry Barnett, Olympia’s lead trial counsel and a partner in Susman Godfrey L.L.P. “It also shows that mineral owners in Louisiana can count on the law to protect the rights they bargain for.”

The Olympia trial team consisted of Mr. Barnett and partner Daniel Charest, both of Dallas, and Brian Gillett, an associate in Susman Godfrey’s Houston office. Pat Long, a Patton Boggs partner in Dallas, and Carver Darden partner John Dunlap and associate Harry Barton, both of New Orleans, represented different groups of the working interest owners. Barry Wertz and Jonathan Baughman of McGinnis Lochridge & Kilgore in Houston represented Aspect.

Olympia and the working interest owners settled with Kerr-McGee following summary judgment rulings favoring the plaintiffs.