

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Jury Hands Defense Win to Devon in Saltwater Dispute

By Natalie Posgate

(Feb. 15) – A jury in Houston has delivered a complete defense win for Devon Energy Production Company related to a dispute that surfaced in 2014 with EP Energy E&P Company over a saltwater disposal contract that’s existed between the two companies for more than two decades.

In the 10-2 verdict, delivered Wednesday afternoon after a two-week trial, the jury ruled that Oklahoma City-based Devon did not fail to comply to its end of the agreement, and owes none of the \$3.3 million that EP asked the jury to award.

Devon and EP entered the agreement with each other in 1996. Both were operating in the Altamont-Bluebell fields in northeastern Utah. As is standard in many oilfields, there were wastewater disposal systems to get rid of the unwanted saltwater that becomes a byproduct of drilling.

Devon and EP both had wastewater disposal systems in the area. Moreover, some of their assets were more convenient to each other’s disposal system than their own. So they worked out an agreement to handle the disposal of each other’s saltwater where that situation applied.

The agreement worked out well for more than 20 years. But in 2013, EP began getting bothered with the imbalance in water it was disposing for Devon compared to what Devon was handling for EP. Because the amount of water EP was handling was much higher, EP asked Devon to restructure their agreement and pay a dollar per barrel for disposal.

Devon agreed, but then EP asked for retroactive pay for each barrel that contributed to the imbalance, an amount that totaled \$3.3 million. Devon refused to do so, and EP sued in 2014.

In its lawsuit, EP argued that a significant imbalance had been in place since 2007, which deferred “the expenses of expanding [Devon’s] water system” and shifted “costs to EP Energy.”

Devon countered that there had always been an imbalance – previously more in EP’s favor. In fact,

Devon argued, there would never be a perfectly equal trade because both companies were always producing different amounts of water, and the meter in the field wasn’t completely accurate.

Then, during discovery, Logan Johnson, Devon’s lead trial lawyer, found a copy of the agreement from 1996. Until that point, both parties had believed the agreement was carried out over a handshake.

Logan admitted the discovery of the document was not necessarily an adrenaline-fueled event, but it did help Devon win its case.

“It was consistent with how we understood the verbal terms of the agreement,” Logan told *The Texas Lawbook*.

In it, Logan discovered that both parties had contemplated an equal exchange of approximately 900 barrels a day. Both parties had disposed of significantly more by the second year of the agreement.

Logan argued to the jury that because both sides had far exceeded the original terms of the agreement, it was not fair to argue that Devon had breached its duty.

The jury agreed, finding in the first question of the jury charge that the 1996 letter was a valid contract between the parties. On the second question, jurors found that Devon didn’t fail to comply to the agreement. They left the remaining seven questions blank.

“We think the jury got it right and realized the original intent of the parties under the agreement,” said Logan, a partner at Schiffer Hicks Johnson. “We’re thrilled with the verdict and thrilled for the client.”

Houston partner Cliff Harrison of Munsch Hardt, who led the trial for EP, did not return a call seeking comment.