ENERGY NEWS ALERT

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Energy in the Law

Texas Jury Finds a "Common Law Partnership," Court Orders Costly Divorce

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Most people are familiar with the legal concept of "common law marriage," where the law deems a couple married if they act like a married couple and holds themselves out as one.

A Texas jury found the same concept could apply to a business partnership agreement, despite the lack of a formal partnership agreement and despite specific language in the governing contracts that no binding relationship existed between the parties without execution of a formal agreement. The case, while not necessarily binding, serves as a warning to energy companies to exercise caution when drafting documents governing prospective business relationships, including non-binding agreements and letters of intent. In addition, companies should pay particular attention to their course of conduct following execution of a letter of intent to be sure their behavior does not suggest or create an implied partnership.

In March, 2013, a jury in Dallas, Texas awarded Energy Transfer Partners a $319 million verdict, finding that Enterprise Products breached an agreement to develop a pipeline to carry crude oil from Oklahoma to refineries on the Gulf of Mexico. This verdict was particularly surprising due to industry-standard language in the governing agreement specifically disclaiming the existence of a binding agreement:

> No binding or enforceable obligations shall exist between the parties with respect to the transaction unless and until the parties have received their respective board approvals and definitive agreements memorializing the terms and conditions of the transaction have been negotiated, executed and delivered by both of the parties.

If the requirements of a definitive agreement and board approval were not met, the term sheet provided that the parties "for any reason, may depart from or terminate the negotiations without any liability or obligation to the other."

Despite a lack of board approval and execution of a formal term sheet, the jury accepted Energy Transfer Partners' argument that the language specifically disclaiming a formal partnership was insufficient to disclaim a partnership in light of the parties' conduct. Energy Transfer Partners argued that the language of the parties' agreement is only one of five factors to be considered in determining whether a partnership existed. When considered in light of the parties' other actions—including the announcement of a "joint venture" between the parties in a jointly-issued press release, establishment of a joint engineering team, and several joint meetings with potential pipeline users—the jury found that a formal partnership agreement did, in fact, exist.

Therefore, the jury found, when Enterprise Products abandoned its project with Energy Transfer Partners in favor of a joint project with a Canadian pipeline company, Enterprise Products breached the parties' common law partnership and was liable to Energy Transfer Partners for damages in the amount of $319 million.

On July 29, 2014, the Court ordered Enterprise Products to pay a total of $535.8 million, including the $319 million jury verdict plus an additional $150 million in disgorged profits from its alternate deal with the Canadian pipeline company, plus $66.4 million in pre-judgment interest.

The case is *Energy Transfer Partners LP et al. v. Enterprise Products Partners LP et al.*, case number DC-11-12667, in the 298th Judicial District Court of Dallas County, Texas.

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