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NRP Scores Take-Nothing Judgment in \$56M Dispute Against Anadarko

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A state judge in Houston ruled Wednesday that a tax simplification restructuring deal involving mining properties in Wyoming does not require Natural Resource Partners to pay \$56 million demanded by Anadarko.

The ruling by Harris County District Judge Tanya Garrison, which follows a one-week bench trial in September, is a take-nothing defense win for Houston attorney Barrett Reasoner and a team of lawyers from Gibbs & Bruns.

Reasoner said Wednesday's ruling takes a large burden off of NRP, which was facing the possibility of paying as much as \$78 million, which represented the top of Anadarko's damages model earlier in the litigation.

"The decision will lift the financial cloud of this suit and allow the company to move forward with its productive business," Reasoner told *The Texas Lawbook*. "This was an extremely important case from NRP's perspective both due to the substantial amount being sought and the client's firm conviction that we were right as to the meaning of the contract."

Susman Godfrey partner Katie Sammons, the lead lawyer for The Woodlands-based Anadarko (now owned by Occidental), has not responded to messages seeking comment on the ruling.

The parties' dispute dates back to January 2013, when NRP paid Anadarko \$310 million for a 49% stake in one of the world's largest soda ash mining operations, located in Wyoming. The deal contained a three-year earn-out provision that required NRP to pay Anadarko up to \$50 million based on revenue targets of the jointly-owned operating company, OCI Wyoming LP.

The deal also gave NRP 20% of the common shares and all of the preferred shares of OCI Wyoming Co, which owned a 1% limited partner interest in the operating company.

Lastly, the deal included an anti-flip provision that provided for a buyout payment of up to \$50 million to Anadarko if NRP ceased

owning the equity ownership interests.

Vinson & Elkins negotiated the deal for NRP, while Akin Gump handled it for Anadarko.

According to NRP, it participated in an internal tax restructuring in July 2013 at the request of the majority owner, which comprised entities affiliated with OCI Enterprises, Inc. In the restructuring, NRP exchanged its common and preferred shares in OCI Wyoming Co. for an equivalent value 49% portion of the limited partnership interests in OCI Wyoming LP that OCI Wyoming Co. held.

Anadarko alleged that this restructuring activated the anti-flip provision in their agreement, and as a result NRP owed Anadarko a buyout payment between \$56 million and \$78 million. Anadarko filed suit in 2017.

During September's trial, Judge Garrison granted NRP's motion on damages, which limited the maximum amount Anadarko could recover to \$56 million. Then, on Wednesday, she rejected all of Anadarko's arguments made throughout the litigation in an eight-page findings of fact and conclusions of law ruling.

"Even assuming Anadarko proved its own intent, it did not prove that NRP shared that intent," Judge Garrison wrote in Wednesday's ruling. "Instead, the parties mutually intended to exempt restructuring transactions in which NRP continued to own on approximate 49% beneficial interest in the operation, but no longer owned certain of the specific securities that NRP purchased from Anadarko."

According to Judge Garrison's ruling, Anadarko "externally and affirmatively manifested its intentional abandonment" of its buyout trigger event claim during a 27-month period before filing suit by remaining silent and "electing to accept the final earn-out payment in lieu of the buyout payment, without protest or reservation of rights."

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Anadarko did this after stating in writing in April 2015 that it would decide whether it would pursue its claim related to the July 2013 restructuring transaction “in the near future,” the ruling says.

“As a result of Anadarko’s repeated changes of position as to its allegation that the July 2013 restructuring was a buyout trigger event, NRP was forced into a pattern of stop-start disclosure, nondisclosure, and redisclosure of Anadarko’s threats in its public filings,” Judge Garrison wrote. “NRP was materially harmed as a result.”

Reasoner commended Judge Garrison’s ruling.

“Our client was very pleased that the court conducted a thorough trial and saw things our way after carefully considering the evidence and applicable law,” he said.

The NRP trial team also included Gibbs & Bruns partners Robin Gibbs and Mike Absmeier and associate Justin Patrick.

The Anadarko trial team also included Susman Godfrey partners Mark Wawro and David Peterson and associate Halley Josephs.