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## Suit Sparks Brawl Over \$589K in Attorney Fees

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**BY ANGELA NEVILLE**

In something of a hollow victory, two Texas oil companies recently won a jury trial in a landman case fought in Dallas County, yet the jury failed to award the winning parties their respective attorney fees that together total approximately \$600,000.

In 2013, plaintiff Cherene Jackson Patty, who is a landman based in Dallas, filed a breach of contract suit in Dallas County against SDC Montana Consulting and U.S. Enercorp, both based in San Antonio. Her suit is for the recovery of revenue sharing and royalty interests allegedly due and owing to her as the procuring cause of multiple Montana Bakken shale oil and gas leases. The case is being

tried before Judge Jim Jordan in the 160th State District Court in Dallas.

Patty alleged in her pleadings that the two companies are contractually obligated to pay her for her work as a landman for all past revenue shares and overriding royalty payments. Patty alleged that the two defendants owe her approximately \$855,000 in commissions, after giving them credit for a partial payment of approximately \$188,650. She also was seeking punitive damages and attorney fees.

The jury's verdict in the case was returned on June 12, 2015. The jury decided that U.S. Enercorp president Bruce Gates and SDC Montana Consulting CEO Christopher Dedmon did



not violate their contract with Patty. However, the jurors did not award attorney fees to U.S. Enercorp and SDC Montana Consulting. In response, the two companies' lawyers filed on July 7 a motion asking the judge to disregard the jury's verdict and award legal fees. According to the court records, U.S. Enercorp is asking for \$490,000 in attorney fees and SDC Montana Consulting is asking for \$99,751.

After the jury rendered the take-nothing verdict, Patty in turn filed, on July 9, a motion to disregard the jury's finding in favor of U.S. Enercorp and SDC Montana. In addition, Patty also filed a response to the defendants' motion to disregard the jury findings and enter judgment on the remaining jury verdict. Now the case has been set for a hearing on Aug. 5 on Patty's motions.

Douglas Kittelson, the Dallas-based solo attorney who is representing Patty, said, "On Aug. 5, the court will hear competing motions to disregard the jury's findings," Kittelson said. "For Patty, we are asking the court to disregard the finding regarding the breach of contract because the jury improperly and incorrectly interpreted the contract. As for relief, we are asking for a new trial, or in the alternative, asking the court to hire an independent accountant to determine the full amount owed to Patty under the contract."

Daniel Lanfear is the founder of The Lanfear Law Firm in San Antonio. Lanfear, who represents SDC Montana Consulting in the case, did not return a call seeking comment.

Corey Wehmeyer, a partner with the San Antonio-based

law firm of Santoyo Moore Wehmeyer who represents U.S. Enercorp in the case, said, "The contract plaintiff sued under contains a 'loser pays' clause awarding attorney fees to the prevailing party in any litigation. After being sued in approximately 11 different causes of action by the plaintiff, U.S. Enercorp Ltd. prevailed on the entirety of every claim asserted by plaintiff in the case. In addition to its contractual right to recover attorney fees, U.S. Enercorp prevailed in causes of action for fraudulent transfer and declaratory judgment that statutorily provide for an award of fees to U.S. Enercorp as the prevailing party."

He commented that expert testimony from U.S. Enercorp's counsel at trial established the reasonable fee for U.S. Enercorp's attorneys' services as \$450,000, and plaintiff called no rebuttal witness and offered no testimony to rebut the reasonableness of the \$450,000 in fees. Pursuant to Texas Supreme Court precedent, in this situation U.S. Enercorp is entitled to judgment against plaintiff for \$450,000 as a matter of law, according to Wehmeyer.

"As to the take-nothing judgment against plaintiff requested

by U.S. Enercorp as part of the Aug. 5, 2015, hearing, the plaintiff had her opportunity over a week of trial to call witnesses, admit exhibits and make argument," Wehmeyer said. "After only three hours of deliberation, the jury correctly found that plaintiff failed her burden of proof and found no liability on the part of U.S. Enercorp. The take-nothing judgment against plaintiff will merely conform to the jury verdict form finding liability in U.S. Enercorp's favor."

Looking ahead, Wehmeyer also discussed how long it will probably take the court to make a decision concerning U.S. Enercorp's request related to the above-referenced motion. He said that there is no deadline for the court to make a decision and enter final judgment, "but as a matter of practice, the Hon. Jim Jordan is prompt in issuing orders on contested matters.

"We expect that the court will grant judgment to U.S. Enercorp against plaintiff for \$450,000 in attorney fees, plus contingent appellate fees and costs, and enter a take-nothing judgment conforming to the jury verdict against plaintiff on her contract claims against U.S. Enercorp," Wehmeyer said.