

AMERICAN UNIVERSITY, WASHINGTON COLLEGE OF LAW

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Case Law:

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Articles:

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Gaillard, E. Anti-suit Injunctions Issued by Arbitrators. ICCA Congress Series n. 13, International Arbitration 2006: Back to Basics?, Kluwer, 2007, p. 235-266 (“Gaillard”).

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Awards, New York, June 10, 1958 (“NYC”).

Business Organizations Code (“Vernon’s Texas Statutes and Codes Annotated”).

ICC Arbitration Rules 2012 (“ICC Rules”).

New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral.

Restatement (Second) of Contracts (1981) (“Rest.”).

Model Forms:

A.P.P.L. Model Form Operating Agreement – 1989 (“Model Form 1989”).

CLAIMANT IS ENTITLED TO THE CONTINUATION OF THE JOA

- I. Respondent invalidly terminated the JOA and must comply with its obligations.
 - a. Claimant respected its obligations under the JOA.
 - b. Respondent did not exercise its Non-Consent Rights and, therefore, must comply with its cash call obligations.

- II. Claimant was entitled to take the Percentage Interest of Respondent and its rights under the JOA because the forfeiture provision is valid and applicable under Texas Law (See

- i. A provisional relief must not be used to obtain an advance ruling on the merits, which is what Respondent is asking for (Flat Wireless, 1).
- ii. However, a provisional relief can be granted to preserve the contractual (Born, 2483) and the contract's continuation is necessary to prevent irreparable harm and is urgent (Born, 2466).

IV. Subsidiarily, if the Tribunal decides that the JOA should not be continued, the operation should continue as a Sole Risk Operation and damages should be awarded to Claimant for the termination of the JOA (Rest., §236).

RESPONDENT IS NOT ENTITLED TO DAMAGES FOR THE ALLEGED BREACHES OF THE JOA.

- I. Claimant cannot be held responsible for the alleged breaches of the JOA because the Limitation of Liability Clause applies. (JOA, Clause 3).
 - a. The Limitation of the operator's responsibility to only willful misconducts set forth in the JOA is valid under Texas law, general usages and practices in the oil and gas industry (8 Tex. J. Oil Gas & Energy L. 202).
 - b. The Limitation of Liability Clause is applicable to any breach of the JOA committed by the operator.
 - i. The protection of the Limitation of Liability Clause extends not only to the operator's duty in operations ("acts unique to the operator"), but also to any acts done under the authority of the JOA "as operator" (Stine, 261).
 - ii. "Its functions" means "its activities under the agreement" such as the 1989 model form JOA because the parties modeled their JOA after the 1989 model form, therefore, the Parties should have been aware of the use of the term "its functions" includes actions under the JOA that are not limited to operations (Reeder, 795; Model Form 1989).

