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Texas Judge Revives IP Claims Against ConocoPhillips

By **Natalie Olivo**

Law360, New York (July 25, 2016, 8:21 PM ET) -- Geophysical Service Inc. got another shot at leveling trade secrets and infringement claims against ConocoPhillips, when a Texas federal judge on Monday found that GSI may have sued in a timely manner upon learning that the Canadian government released allegedly confidential documents to the oil and gas company.

U.S. District Judge Gray H. Miller dismissed GSI's suit **in May**, noting that the previous month, the Court of the Queen's Bench of Alberta, Canada, issued a judgment saying that GSI was fully aware that the seismic data submitted confidentially, and by law, would eventually be subject to public disclosure, and that there is nothing unlawful about oil and gas companies or anyone else accessing or copying the information from the board.

GSI knew or should have known that ConocoPhillips had the data in 2003, when the Canadian courts ordered the Canada Nova Scotia Offshore Petroleum Board, a Canadian regulatory board, to disclose to GSI who the board had given the data to, according to the opinion.

But Judge Miller on Monday granted GSI's bid to reconsider the trade secrets misappropriation and direct infringement claims from its September complaint, finding that the company may not have actually known about the released data until 2013, which fell within the three-year window to sue.

"Accepting all well-pleaded facts as true and viewing the facts in the light most favorable to GSI, the court now concludes that it is plausible that GSI exercised reasonable diligence after obtaining the 2003 ruling and still did not discover that ConocoPhillips had requested the seismic materials at issue occurred until the date listed in its complaint — September 23, 2013 — which is within the limitations period," Judge Miller said.

GSI in June asked Judge Miller to reconsider its infringement and trade secrets claims, arguing that ConocoPhillips and the petroleum boards withheld the details of ConocoPhillips's alleged infringement.

"Since the early 2000's, GSI has spent millions of dollars in legal fees in an effort to obtain information from Canadian petroleum boards to identify copyright infringers and pursue claims against them," the company said. "However, it was not until 2012 that the boards actually began to respond."

GSI did not ask to again allege its unjust enrichment and conversion claims — which had also been dismissed in May — saying that among other reasons, they duplicate the relief available under the copyright infringement and trade secrets misappropriation claims.

ConocoPhillips earlier this month hit back against GSI's reconsideration bid, arguing that the company's efforts were "too little, too late."

According to the oil and gas company, the purportedly new evidence on which GSI relied was not new at all, "and this court could not have erred in failing to consider evidence or facts that GSI could — but chose not to — submit or allege until after this court entered a final judgment."

But Judge Miller sided with GSI, allowing the company to amend its complaint, "which significantly narrows the issues."

GSI is a Canadian company that provides seismic data to the oil and gas industry, according to the May opinion. GSI claimed that the at-issue data was confidential and proprietary, but that by law it was required to submit the information to the CNSOPB. After 10 years, the documents that were submitted on a confidential basis became subject to open records laws and the board was authorized to release the data to third parties after that point, ConocoPhillips argued.

ConocoPhillips got the documents from the CNSOPB, but GSI told the court that had Conoco gone through it to get the data, it would have had to pay a licensing fee in excess of \$500,000. GSI alleged that ConocoPhillips used its seismic lines and sold licenses to those lines to third parties without referring to GSI's copyright.

GSI took its challenge of the CNSOPB's authority to make regulations about the collection and storage of seismic data generated by private companies to the Supreme Court of Nova Scotia in November 2013, according to the May opinion. The court found that national laws allowed for it and pointed out that GSI knew that the data would one day become subject to public release.

Joel B Rothman, an attorney representing GSI, told Law360 on Monday that the company is "pleased that the court granted the motion for reconsideration and will consider its amended complaint."

Counsel for ConocoPhillips did not immediately respond to request for comment on Monday.

ConocoPhillips is represented by Julie A. Hardin and Nicole S. Soussan of Reed Smith LLP.

Geophysical Service Incorporated is represented by Brent Taylor Caldwell of Prebeg Faucett & Abbott PLLC, and Joel B. Rothman of Schneider Rothman.

The case is Geophysical Service Inc. v. ConocoPhillips, case number 4:15-cv-02766, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Michelle Casady. Editing by Stephen Berg.

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