

## 5th Circ. Says Chevron Off Hook For Mesothelioma Deal

By **Sarah Jarvis**

Law360 (February 19, 2020, 3:38 PM EST) -- The Fifth Circuit has affirmed a lower court's judgment that a construction engineering company is responsible for Chevron's settlement with a welder who contracted mesothelioma after working at an oil refinery, saying the engineering company was contractually obligated to indemnify Chevron.

A three-judge panel said in a published opinion Tuesday that Jacobs Field Services North America Inc. passed up opportunities to be involved in Chevron Oronite Co. LLC's settlement negotiations with Wayne Bourgeois, who contracted the cancer after being exposed to asbestos while working at a Chevron refinery in Louisiana, among other places.

Chevron twice informed Jacobs that it believed it could settle Bourgeois' case for between \$500,000 and \$600,000, but Jacobs declined to participate in negotiations and never objected to the settlement amount, U.S. Circuit Judge Jerry E. Smith wrote in the opinion for the panel. The Fifth Circuit rejected the construction company's argument on appeal that it is not liable for the eventual \$550,000 settlement.

"We decline Jacobs's invitation to play Monday-morning quarterback when it refused to step on the field with time still left on clock," Judge Smith said.

Bourgeois, who died from his illness in September 2017, sued Chevron and several other defendants in state court in March 2017 for damages related to alleged asbestos exposure while working as a welder for J.E. Merit Constructors Inc. and other employers between 1988 and 1994, according to court documents.

Jacobs, as successor-in-interest to J.E. Merit, was subpoenaed by Chevron and produced four contracts between Chevron and J.E. Merit that covered welding work between 1989 and 1993. Chevron sued Jacobs under the contracts' indemnity provisions in March 2018, seeking the cost of settlement and defense in the underlying suit plus attorney fees.

The district court mostly ruled in Chevron's favor at the summary judgment and trial stages, which the appellate panel affirmed Tuesday, saying the lower court "committed no reversible error."

"The district court found that [the contracts' indemnity] provision unambiguously entitles Chevron to indemnity in the Bourgeois suit and attorney's fees and 'ordinary litigation costs' in Bourgeois and the indemnity case against Jacobs," Judge Smith said. "The district court did not err in reaching that conclusion."

The panel also rejected Jacobs' argument that the lower court was wrong to conclude that Chevron only had to prove its potential liability in the underlying suit. Jacobs bore the burden of proving the settlement in the Bourgeois case was unreasonable, and the company did not meet that burden, according to the opinion.

Counsel for the parties did not immediately respond to requests for comment Wednesday.

U.S. Circuit Judges E. Grady Jolly, Jerry E. Smith and Gregg J. Costa sat on the panel for the Fifth

Circuit.

Chevron is represented by Edwin S. Gault Jr. and Spencer M. Ritchie of Forman Watkins & Krutz LLP.

Jacobs Field Services North America Inc. is represented by Arthur H. Leith and Patrick J. O'Cain of McGlinchey Stafford PLLC.

The case is Chevron Oronite Co. LLC v. Jacobs Field Services North America Inc., case number 19-30088, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Bruce Goldman.