

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0046

OXY USA INC.

VERSUS

*J.P.  
J.E.K.  
T.M.H.*

QUINTANA PRODUCTION COMPANY, FIDELITY AND CASUALTY COMPANY OF NEW YORK, THE HOME INDEMNITY COMPANY, FEDERAL INSURANCE COMPANY, AMERICAN INTERNATIONAL GROUP, UNDERWRITERS INDEMNITY COMPANY, ADMIRAL INSURANCE COMPANY, AIU INSURANCE COMPANY, ALLIANZ UNDERWRITERS INSURANCE COMPANY, GRANITE STATE INSURANCE COMPANY, AMERICAN CENTENNIAL INS. COMPANY, AMERICAN EXCESS INSURANCE, AMERICAN GENERAL COMPANIES, ASSOCIATED INTERNATIONAL INS. COMPANY, CALIFORNIA UNION INSURANCE COMPANY, CHICAGO INSURANCE COMPANY, CRUM & FORESTER, NATIONAL UNION FIRE INSURANCE OF PITTSBURG, HARBOR INSURANCE COMPANY, INA OF TEXAS, INSURANCE COMPANY OF NORTH AMERICA, INTERSTATE FIRE & CASUALTY, LEXINGTON INSURANCE COMPANY, LONDON GUARANTEE & ACCIDENT OF NY, NATIONAL SURETY, NORTHERN INSURANCE COMPANY OF NEW YORK, OLD REPUBLIC INSURANCE COMPANY, PURITAN INSURANCE COMPANY, REPUBLIC INSURANCE COMPANY, THE CONTINENTAL INSURANCE COMPANIES, THE UNDERWRITERS INC., NORTHERN INSURANCE COMPANY OF NEW YORK, SAFETY MUTUAL CASUALTY CORPORATION, NEW YORK UNDERWRITERS INSURANCE COMPANY, FIDELITY & CASUALTY COMPANY OF NEW YORK, NATIONAL SURETY CORPORATION, MUTUAL FIRE MARINE & INLAND INSURANCE, LEXINGTON INSURANCE COMPANY (AIG), INTEGRITY INSURANCE COMPANY CHUBB GROUP OF INSURANCE COMPANIES, ALLIANZ UNDERWRITERS INSURANCE COMPANY, HARTFORD ACCIDENT & INDEMNITY COMPANY, FIRST STATE INSURANCE COMPANY, UNDERWRITERS AT LLOYD'S, LONDON, AETNA CASUALTY & SURETY COMPANY, FIDELITY AND CASUALTY CO. OF NEW YORK (CNA), EVEREST RE: GROUP, LTD., (GIBRALTAR CASUALTY CO.), GOVERNMENT EMPLOYEES INSURANCE CO. (GEICO), TWIN CITIES FIRE INSURANCE COMPANY, INTERNATIONAL INSURANCE COMPANY, HIGHLANDS INSURANCE COMPANY, VALIENT INSURANCE COMPANY, AND ASSOCIATED INTERNATIONAL INSURANCE COMPANY

Judgment rendered **OCT 19 2011**

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Appealed from the  
19th Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court No. 571,910  
Honorable Timothy Kelley, Judge

\* \* \* \* \*

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<sup>1</sup> Defendant CENTURY INDEMNITY COMPANY was erroneously identified in OXY's original petition as California Union Insurance Company and Insurance Company of North America; defendant ACE AMERICAN INSURANCE COMPANY was erroneously identified in OXY's original petition as INA of Texas.

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\* \* \* \* \*

**BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.**

**PETTIGREW, J.**

OXY USA, Inc. ("OXY") commenced this litigation through the filing of a Petition for Damages on October 21, 2008, seeking contribution and/or indemnity for property contamination and remediation claims that OXY had previously agreed to settle in an earlier oilfield contamination lawsuit filed against it by the Brownell Land Company, Inc. ("Brownell") in 2004 ("the Brownell lawsuit"). The earlier Brownell lawsuit asserted claims against OXY, Quintana Production Company ("Quintana Production") and others claiming that said defendants' oil and gas exploration and production activities caused contamination on property owned by Brownell in Assumption Parish, Louisiana. Brownell further claimed that it did not discover the alleged damage to its property until less than one year before suit was filed. No third-party claims or cross claims were filed by OXY or any other party against Quintana Production in the Brownell lawsuit. Quintana Production was voluntarily dismissed from the Brownell lawsuit in 2005.

Named as defendants in the present litigation are Quintana Production together with Fidelity and Casualty Company of New York;<sup>2</sup> Allianz Underwriters Insurance Company;<sup>3</sup> Hartford Accident & Indemnity Company; Northern Insurance Company of New York; Valiant Insurance Company; International Insurance Company; Aetna Casualty and Surety Company;<sup>4</sup> Highlands Insurance Company;<sup>5</sup> Twin Cities Fire Insurance Company; Safety Mutual Casualty Company;<sup>6</sup> New York Underwriters Insurance Company; National Surety Corporation; Mutual Fire Marine & Inland Insurance; Lexington Insurance Company;<sup>7</sup> Integrity Insurance Company; Government Employees Insurance

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<sup>2</sup> OXY subsequently filed a motion on October 21, 2009, dismissing defendant, The Continental Insurance Company, f/k/a Fidelity and Casualty Company of New York, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>3</sup> OXY subsequently filed a motion on October 21, 2009, dismissing defendant, Allianz Underwriters Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>4</sup> OXY subsequently filed motions on October 21, 2009 and November 3, 2009, dismissing defendant, Travelers Casualty and Insurance Company, f/k/a Aetna Casualty Surety Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>5</sup> OXY subsequently filed a motion on August 12, 2009, dismissing defendant, Highlands Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>6</sup> OXY subsequently filed a motion on August 14, 2009, dismissing defendant, Safety National Casualty Corporation (sued herein as Safety Mutual Casualty Corporation), without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>7</sup> OXY subsequently filed a motion on June 8, 2010, dismissing defendant, Lexington Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

Company (GEICO);<sup>8</sup> Gibraltar Casualty Company;<sup>9</sup> Chubb Group of Insurance Companies; First State Insurance Company; Associated International Insurance Company;<sup>10</sup> Federal Insurance Company;<sup>11</sup> John L. Wortham and Son, L.P.;<sup>12</sup> Underwriters at Lloyd's, London; Granite State Insurance Company; The Home Indemnity Company; American International Group;<sup>13</sup> Underwriters Indemnity Company; Admiral Insurance Company; AIU Insurance Company;<sup>14</sup> American Centennial Insurance Company;<sup>15</sup> American Excess Insurance Company; American General Companies; California Union Insurance Company;<sup>16</sup> Chicago Insurance Company; Crum & Forester;<sup>17</sup> National Union Fire Insurance Company of Pittsburgh, PA;<sup>18</sup> Harbor Insurance Company;<sup>19</sup> INA of Texas;<sup>20</sup> Insurance Company of North America;<sup>21</sup> Interstate Fire & Casualty; London Guarantee & Accident of New York; National Surety; North Insurance Company of New York; Old Republic Insurance Company; Puritan Insurance Company; Republic Insurance Company;<sup>22</sup> The Continental Insurance Companies; and The Underwriters, Inc. Said insurers are alleged by OXY to have provided insurance coverage to Quintana Production

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<sup>8</sup> OXY subsequently filed a motion on August 12, 2009, dismissing defendant, Government Employees Insurance Company (GEICO), without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>9</sup> OXY subsequently filed a motion on October 21, 2009, dismissing defendant, Gibraltar Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>10</sup> OXY subsequently filed a motion on November 17, 2009, dismissing defendant, Associated International Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>11</sup> OXY subsequently filed a motion on August 26, 2009, dismissing defendant, Federal Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>12</sup> OXY subsequently filed a motion on August 12, 2009, dismissing defendant, John L. Wortham and Son, L.P., without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>13</sup> OXY subsequently filed a motion on August 12, 2009, dismissing defendant, American International Group ("AIG"), without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>14</sup> OXY subsequently filed a motion on June 8, 2010, dismissing defendant, AIU Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>15</sup> OXY subsequently filed a motion on August 12, 2009, dismissing defendant, American Centennial Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>16</sup> Defendant Century Indemnity Company was incorrectly designated herein as California Union Insurance Company.

<sup>17</sup> OXY subsequently filed motions on January 28 and February 10, 2010, dismissing defendant, Crum & Forster Insurance Company (incorrectly designated herein as Crum & Forester), without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>18</sup> OXY subsequently filed a motion on June 8, 2010, dismissing defendant, National Union Fire Insurance Company of Pittsburgh, Pa., without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>19</sup> OXY subsequently filed a motion on October 21, 2009, dismissing defendant, Harbor Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

<sup>20</sup> Defendant ACE American Insurance Company was incorrectly designated herein as INA of Texas.

<sup>21</sup> Defendant Century Indemnity Company was incorrectly designated herein as Insurance Company of North America.

<sup>22</sup> OXY subsequently filed a motion on August 12, 2009, dismissing defendant, Republic Insurance Company, without prejudice, and specifically reserving its rights against all remaining defendants.

for its operations, including the operations conducted by Quintana Production on the Brownell property. OXY also alleges that Quintana Production conducted exploration and production activities on the Brownell property pursuant to a 1979 Farmout Agreement and Operating Agreement between OXY's predecessor-in-interest, Cities Service, and Corbin J. Robertson ("Robertson"), predecessor-in-interest to Quintana Production. Pursuant to the terms of the 1979 Farmout Agreement and Operating Agreement, Quintana Production was obligated to indemnify and hold Cities Service harmless from all liability and damages arising from Quintana Production's performance or non-performance of the agreement. OXY further alleges that although it settled the Brownell lawsuit on October 22, 2007, it has continued to incur costs in connection with the regulatory closure of the Brownell property pursuant to its settlement.

In response to OXY's original petition, various insurers named herein (hereafter "defendant insurers") filed multiple exceptions including peremptory exceptions raising the objection of no right of action based upon the corporate dissolution of their alleged insured, Quintana Production. The defendant insurers submitted evidence that Quintana Production, a Texas corporation, filed articles of dissolution with the Texas Secretary of State on November 24, 1997. The dissolution plan provided that dissolution and liquidation would be completed within twelve months after November 14, 1997, the date upon which the plan was adopted by the shareholders.

Pursuant to the former Texas Business Corporation Act, Quintana Production continued to exist for three years after the date of dissolution to permit the survival of any existing claim by or against the dissolved corporation. It is alleged that Quintana Production ceased to exist on or before November 14, 2001, and all existing claims against Quintana Production were extinguished. The exceptions filed by the defendant insurers asserted that OXY lacked a right of action pursuant to the Louisiana Direct Action Statute because OXY had no substantive cause of action against their insured, Quintana Production, at the time OXY filed its original petition on October 21, 2008.

Prior to the October 26, 2009 hearing on the peremptory exceptions filed in response to OXY's original petition, OXY, on October 16, 2009, filed a first supplemental

and amended petition wherein it clarified the identities of certain previously-named defendant insurers and further named Quintana Petroleum Corporation ("Quintana Petroleum") and Corbin J. Robertson, Jr., in his capacity as the Independent Executor of the Estate of Corbin J. Robertson, as additional defendants in this matter.

Through its first supplemental and amended petition, OXY alleged that its predecessor-in-interest, Cities Service, leased minerals on the Brownell property from the Brownell-Kidd Company in the 1970s. It also alleged that on December 10, 1979, Cities Service and Robertson entered into the 1979 Farmout and Operating Agreement, whereby Cities Service "farmed out" certain leases to Robertson, allowing him to earn the right to acquire an interest in the leases as he drilled for oil and gas. Said agreement specifically referred to and covered oil and gas lease 1-01X6-1706480 ("Lease No. 1706480"), which included, among other property, the Brownell property situated in Section 23, Township 12 South, Range 12 East, in Assumption Parish, Louisiana.

Additionally, OXY alleged Cities Service and other working interest owners entered into another Operating Agreement in 1981, with Quintana Petroleum, to operate a gas well ("Well No. 182889) on Lease No. 1706480. OXY alleged that Quintana Production, Quintana Petroleum, and Robertson, were the alter egos of each other and operated Well No. 182889 on the Brownell property from September 1982 until October 1990, when Quintana Petroleum plugged and abandoned the well. OXY also alleged Cities Service in the interim assigned its rights under the Farmout Agreement to Robertson on May 6, 1983, effective as of July 17, 1981.

OXY alleged that Robertson, Quintana Production, and Quintana Petroleum each had a legal duty to perform their respective obligations under the 1979 Farmout and Operating Agreement and the 1981 Operating Agreement in good faith, fairly, and with due care so as to protect OXY and Brownell from suffering damage, contamination, or any other harm. Despite said obligations, OXY alleged that Robertson, Quintana Production, and Quintana Petroleum conducted their operations on the Brownell property in a negligent, grossly negligent, willful, imprudent, and/or reckless manner.

OXY further alleged that the 1979 Farmout and Operating Agreement between Cities Service and Robertson, and the 1981 Operating Agreement between Cities Service and Quintana Petroleum obligated Robertson, Quintana Production, and Quintana Petroleum to obtain and maintain in force policies of liability insurance with defendant insurers covering their liability for acts and omissions arising out of their activities on the Brownell property. OXY claimed at all times relevant hereto defendant insurers had in full force and effect policies of liability insurance covering the negligence, fault, reckless acts, and/or omissions of Robertson, Quintana Production and Quintana Petroleum, and that said defendant insurers are answerable to OXY as solidary obligors pursuant to the provisions of the Louisiana Direct Action Statute, La. R.S. 22:1269.

In conclusion, OXY, as part of its first supplemental and amended petition, alleged that to date, Robertson, Quintana Production, and Quintana Petroleum have failed to recognize their obligations as solidary obligors with OXY and have refused to reimburse OXY for their virile share of all sums expended by OXY to settle in full all claims, damages, and losses incurred and claimed by Brownell.

Despite the filing of OXY's first supplemental and amended petition, the trial court, on October 26, 2009, nevertheless heard arguments on the objections of no right of action filed on behalf of the defendant insurers, Granite State Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; AIU Insurance Company; Hartford Accident & Indemnity Company; Twin City Fire Insurance Company; First State Insurance Company; Old Republic Insurance Company; Admiral Insurance Company; Valiant Insurance Company; Northern Insurance Company of New York; Certain Underwriters at Lloyd's, London; Century Indemnity Company; ACE American Insurance Company; and Puritan Insurance Company in response to OXY's original petition for damages. At the hearing on the exceptions, the trial court, for reasons orally assigned, granted the objections of no right of action filed by the aforementioned defendant insurers as to OXY's original petition for damages. A judgment to this effect was signed on January 20, 2010.

In response to OXY's first supplemental and amended petition filed on October 16, 2009, the defendant insurers, Granite State Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; AIU Insurance Company; Hartford Accident & Indemnity Company; Twin City Fire Insurance Company; First State Insurance Company; Old Republic Insurance Company; Admiral Insurance Company; Valiant Insurance Company; Northern Insurance Company of New York; Certain Underwriters at Lloyd's, London; Century Indemnity Company; ACE American Insurance Company; and Puritan Insurance Company, again filed peremptory exceptions pleading no right of action, no cause of action, and prescription. Following a hearing on January 25, 2010, the trial court, again for reasons orally assigned, similarly granted the objections of no right of action filed by the defendant insurers. A judgment to this effect was signed on February 24, 2010. On April 20, 2010, the trial court signed a judgment granting defendant insurers' peremptory exception raising the objection of no cause of action as to OXY's first supplemental and amended petition. The judgment of April 20, 2010, is not the subject of this appeal and will not be addressed by this court in this opinion, but will be addressed in a separate writ action in *OXY USA, Inc. v. Quintana Production Company, et al.*, No. 2010 CW 1307.<sup>23</sup>

On February 10, 2010, OXY applied for supervisory writs from this court with respect to the trial court's grant of the objections of no right of action filed in response to OXY's original petition for damages. Later, OXY sought supervisory writs from this court with respect to the trial court's grant of the objections of no right of action filed in response to OXY's first amended and supplemental petition for damages.

This court, unaware that a second writ request also decided on August 5, 2010, was indispensable to the proper disposition of this matter,<sup>24</sup> held that the judgment signed by the trial court on January 20, 2010, was a final, appealable judgment, and remanded

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<sup>23</sup> The trial court considered the peremptory exception raising the objection of prescription and referred same to the merits on the issue of whether OXY was at fault only. In other respects, the exception was denied.

<sup>24</sup> **OXY USA, Inc. v. Quintana Production Company, et al.**, 2010-CW-0746 (La. App. 1 Cir. 8/5/10).

this matter to the trial court with instructions to convert the initial writ sought by OXY to the present appeal.<sup>25</sup> OXY thereafter filed a timely motion seeking a devolutive appeal on August 17, 2010.

In reviewing this matter on appeal, this court is of the opinion that the trial court erred on October 26, 2009, in proceeding to hear arguments regarding the objections of no right of action filed on behalf of the defendant insurers in response to OXY's original petition for damages. Previously, on October 16, 2009, OXY had filed its first supplemental and amended petition wherein OXY named Quintana Petroleum and Robertson, as additional defendants in this matter. Pursuant to La. Code Civ. P. art. 1153, when the action asserted in the amended petition arises out of the conduct, transaction, or occurrence set forth in the original pleading, the amendment relates back to the date of filing the original pleading.

For the reasons more fully assigned in the related appeal in this matter,<sup>26</sup> we hereby affirm in part, the trial court's maintenance of the peremptory exceptions pleading no right of action as to the allegations set forth in OXY's original petition, against defendants, Quintana Production and Quintana Petroleum. To the extent the trial court's maintenance of the peremptory exceptions pleading no right of action with respect to the allegations set forth in OXY's original petition serve to release defendant Robertson and his insurers, then, and in that respect, said judgment is hereby reversed in part. The matter is remanded to the trial court for further proceedings.

With respect to the remaining issues raised in OXY's first amended and supplemental petition for damages, said issues will be resolved in the related appeal in this matter, **OXY USA, Inc. v. Quintana Production Company, et al.**, 2011 CA 0047 (La. App. 1 Cir. 10/19/11). All costs associated with this appeal shall be assessed against plaintiff, OXY USA, Inc.

**AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

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<sup>25</sup> **OXY USA, Inc. v. Quintana Production Company, et al.**, 2010-CW-0638 (La. App. 1 Cir. 8/5/10).

<sup>26</sup> **OXY USA, Inc. v. Quintana Production Company, et al.**, 2011-CA-0047 (La. App. 1 Cir. 10/19/11).