

Partnership by Ambush: Lessons from *ETP v. Enterprise Products*

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How the Issue Arises

- E&P companies enter into informal relationships to pool resources, share expertise and apportion risk/cost.
- Such relationships are documented in a variety of agreements, such as letters of intent, confidentiality agreements, JOAs and AMIs.
- It is common that these agreements do not clearly define the scope of the parties' relationship.
- A misunderstanding of the relationship may lead to costly and lengthy litigation.



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A Common Misunderstanding

- For example, consider two E&P companies that have participated in several projects together.
- One may consider the relationship to be a series of arm's-length transactions.
- Believing that the current relationship has no more economic value, this party may decide to pursue competing ventures with other entities.
- The other party may feel wronged by being excluded from these new, competing ventures.
- The other party may claim that the parties' relationship extends beyond the contracts.



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Breach of Fiduciary Duty

- Argument is that the relationship is a joint venture or partnership, where fiduciary duties are owed.
- As such, it would be a breach of fiduciary duties for the party to engage in the other competing ventures.



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“Partnership by Ambush”

- Trial Court: 298th - Dallas
- Appellate Court: Fifth Court of Appeals - Dallas
- Issue: Whether Energy Transfer Partners (ETP) and Enterprise had formed a joint venture/partnership to build a crude oil pipeline from Oklahoma to Houston at the time Enterprise ended its relationship with ETP and began working with Enbridge?



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