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Tesco, National Oilwell Settle \$5M Fee Dispute In IP Row

By Jacob Batchelor

Law360, New York (April 17, 2015, 3:33 PM ET) -- Tesco Corp. and National Oilwell Varco LP settled a claim Thursday for \$5 million in attorneys' fees and expenses in a suit over drilling rig-related patents, following the court's dismissal of the suit in August over alleged misrepresentations made by Tesco's counsel.

National Oilwell and co-defendants Offshore Energy Services Inc. and Frank's International LLC claimed in October that they were entitled to attorneys' fees incurred while having to litigate the "meritless case," particularly as U.S. District Judge Keith P. Ellison found on Aug. 25 that a former attorney for Tesco, Glenn A. Ballard Jr., had mischaracterized crucial witness testimony.

Now, the defendants have filed a joint motion with Tesco to dismiss that claim, saying they have reached an undisclosed monetary settlement in regards to the attorneys' fees and expenses.

After finding that Ballard, previously of Bracewell & Giuliani LLP, had misrepresented crucial testimony that could have hurt Tesco's case, Judge Ellison dismissed the suit with prejudice in an August order, holding that the alleged misrepresentations had "irrevocably poisoned" the proceedings. National Oilwell and the co-defendants' motion for more than \$5 million came shortly thereafter.

National Oilwell argued in the motion that it was entitled to attorneys' fees and expenses under both Federal Circuit and U.S. Supreme Court precedent, given that the court found a "smoking gun" of bad faith.

The drilling product company further argued that the court should award it fees in order to "send a message," and deter future improper conduct from litigants. National Oilwell therefore sought a

total of \$5,091,385 in fees and costs, of which \$4,406,640 was proposed attorneys' fees. Offshore Energy Services made a claim for a total of \$824,187.

Additionally, National Oilwell asked for fees contingent on whether Tesco pursues its appeal, which the company provided notice for in early October. The terms of the settlement were not disclosed.

The underlying lawsuit revolves around a casing drive system used in the oil industry to pick up, rotate and run casing in oil wells. Tesco alleged when it filed the infringement suit in 2008 that it held patents on the system since as early as 2006.

After the case went to trial in 2010, Ballard was eventually caught in the alleged deceit after a brochure animator Ballard said he had spoken with during the proceedings. Judge Ellison eventually concluded that Tesco's counsel had misled the court, and that as a result, the case had to be dismissed. The judge left the door open to attorneys' fees in his ruling.

In October, a representative for Bracewell & Giuliani confirmed to Law360 that Ballard had left the firm "by mutual agreement." Tesco subsequently discharged Bracewell and hired Beck Redden LLP to appeal the ruling, court records indicate.

Attorneys for National Oilwell and Tesco did not immediately respond to requests for comment Monday.

The patents-in-suit are U.S. Patent Number 7,140,443 and one claim within U.S. Patent Number 7,377,324.

Tesco is represented by David J. Beck and Russell S. Post of Beck Redden LLP.

National Oilwell Varco is represented by John W. Raley III, Robert M. Bowick and Bradford T. Laney of Raley & Bowick LLP.

Offshore Energy is represented by C. James Bushman of Bushman & Associates PC. Frank's Casing Crew and Rental Tools Inc. is represented by Lester L. Hewitt, David R. Clonts, Sarah J. Ring, Jamie L. Duncan III and Michael F. Reeder II of Akin Gump Strauss Hauer & Feld LLP.

Ballard is represented by Grant J. Harvey, Jeffrey C. Kubin, Ayesha Najam and Brice A. Wilkinson of Gibbs & Bruns LLP.