



Excalibur LLC

- and -

- (1) Texas Keystone Inc.**
(2) Gulf Keystone Petroleum Limited
(3) Gulf Keystone Petroleum International Limited
(4) Gulf Keystone Petroleum (UK) Limited

This is the summary of the reasons for the decision reached by Mr Justice Christopher Clarke as read out by him today, Tuesday, 10th September 2013.

In summary, what I have decided is this:

- (a) the Collaboration Agreement does not create, give rise to, or recognise, any entitlement of Excalibur to an *indirect* interest in the Shaikan or any other PSC;
- (b) Excalibur consented not to be on the Shaikan PSC (on which it was impossible for it to get) and withdrew, or is deemed to have withdrawn, from the Bid to be on it; it has, accordingly, no valid claim against either Texas or Gulf to an interest in that or any other PSC;
- (c) Gulf was not a party to the Collaboration Agreement *ab initio* and did not become one thereafter whether by assignment or otherwise. Excalibur has no claim against it for any breach of that agreement;
- (d) If, contrary to my view, the Collaboration Agreement does give Excalibur an entitlement to an indirect interest in the Shaikan PSC, then Excalibur (i) was not ready, willing and able to perform its obligations thereunder in 2007 and early 2008; (ii) repudiated its obligations under it; and (iii) was in material breach of it. As a result Texas, and, if it was a party, Gulf were not obliged to give effect to any entitlement to an indirect interest (had there been one) and were discharged from any obligation to Excalibur;
- (e) Excalibur did not have the necessary financial resources and technical ability to get on the Shaikan PSC in 2007. Its lack of financial resources prevented it from being able to fulfil its financial obligations as (according to its claim) an indirect participant in the Shaikan PSC before being in material breach of its obligations. For this reason Texas, and Gulf, if a party, are not under any liability to Excalibur;
- (f) Excalibur was not prevented from raising finance by any wrongful act of Texas or Gulf. If in 2007 Texas and/or Gulf had provided some explicit acknowledgment of Excalibur's entitlement to an indirect interest in the Shaikan PSC, it would have made

no difference to Excalibur's chances of raising the necessary finance in sufficient time to avoid the loss of its interest;

- (g) The *alter ego* doctrine of New York law does not apply because the question whether any such doctrine applies is, as a matter of English conflict of laws, to be determined by the laws of Texas, which are not shown to differ from those of England and Wales. If New York law applies, Texas was not the *alter ego* of Gulf for the purposes of that law;
- (h) Neither Texas nor Gulf owed to Excalibur the duties of a fiduciary whether under the law of New York or that of England and Wales;
- (i) Neither Texas nor Gulf was guilty of any fraud or deceit or any other tortious act or omission giving rise to a right of action in favour of Excalibur; nor is Gulf liable to Excalibur on the footing of unjust enrichment;
- (j) If I had held that the Collaboration Agreement entitled Excalibur to an indirect interest in the Shaikan PSC, I would not have made an order for specific performance in its favour;
- (k) If Excalibur had been entitled to damages for breach of contract on account of the failure of Texas and/or Gulf to recognise and give effect to its entitlement to an indirect interest in the Shaikan PSC, those damages would fall to be assessed at the date of breach, namely in late December 2007 and early 2008 when the defendants' failed to acknowledge Excalibur's interest;
- (l) On that basis Excalibur would only be entitled to nominal damages because the value at that time of a right to a 30% indirect interest (of an unspecified nature) in the defendants interests in the Shaikan PSC was nil;
- (m) Excalibur has no valid claim in respect of any block other than Shaikan.