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## Foro Energy Secures Trade Secrets Trial Defense Win Against Fellow Houston Co.

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A Houston federal judge Tuesday cleared Houston-based Foro Energy of misappropriating trade secrets and breaching a contract with Vita International over technology involving decommissioning work — an aspect of the equipment-removal process — in offshore oil and gas extraction.

The 40-page order, signed by U.S. District Judge Keith Ellison of the Southern District of Texas, clears Foro from potential liability amounting to tens of millions of dollars that Houston-based Vita sought. It follows a four-day bench trial in August that was originally scheduled to be heard by a jury, until the Delta variant took storm.

In an email, Bracewell partner Chris Dodson, Foro's lead attorney, expressed his satisfaction with the outcome.

"For years, Foro Energy contended that the trade-secret and breach-of-contract claims brought by Vita International were baseless," Dodson said. "Foro Energy is grateful for the opportunity to have its day in court and to establish once and for all that these claims were entirely without merit."

Famed plaintiff's lawyer Tony Buzbee, Vita's lead counsel, did not immediately respond to a request for comment.

Founded in 2009, Foro is in the business of commercializing the application of sustainable, high-powered lasers for the oil, natural gas, geothermal and mining industries. Vita, founded in 1998, is a small manufacturer oilfield and industrial-service equipment manufacturer. Its main competitors are the much-larger NOV and Stewart & Stevenson, the opinion says.

In 2014 Foro contacted Vita to discuss building a deployment wheel for Foro's laser, which it marketed as a multiconductor cutting tool. The purpose of the deployment wheel was to guide and retrieve the umbilical — flexible piping that among other things provides the laser with power — with the laser attached through the wellbore. Once at the sea bed,

the laser would cut casing as part of offshore decommissioning projects.

Vita agreed to produce a feasibility study, a nonbinding assessment that would determine if Vita could do the work and its cost. The parties entered a nondisclosure agreement in July 2014.

According to the opinion, the feasibility study was led by Alex Ritter, an employee with a background primarily in truck maintenance who Vita hired in October 2014 to develop a frac-sand separator. At trial, Ritter testified that he had never designed equipment for any of the technology at issue, nor any equipment in the North Sea, where Foro needed the equipment.

Ritter's work materialized as conceptual drawings for a deployment wheel, which were sent to Foro in early 2015. According to the opinion, Foro thought Vita's estimate to complete the project was too high and, because key elements of the project had changed by the time Foro got the proposal, Foro declined it and went with another company.

Because the type of key equipment for deploying the laser tool changed and because the project location changed from the Gulf of Mexico to the North Sea off the Norwegian coast, Foro went with Hytech Norway, a company with a track record in constructing North Sea-specific equipment and versed in meeting standards developed by the Norwegian petroleum industry.

Vita sued Foro in 2018, alleging that its conceptual drawings were trade secrets and that Foro misappropriated them and violated the nondisclosure agreement by sharing them with third parties.

But in his ruling, Judge Ellison declined to side with Vita's arguments. He ruled that Vita failed to prove at trial that the drawings were trade secrets for a multitude of reasons: the "essential characteristic" of the drawings was publicly disclosed by an expired Vita patent,

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thus not a secret; they were part of a generally known concept in the industry; and nothing about its design was “novel or unique.”

Moreover, Foro never misappropriated the so-called trade secrets, Ellison ruled, because Foro lawfully received the information and it never shared the drawings with third-parties — only a Norwegian contract worker who even had a Foro email address.

The judge ruled that Foro did not violate the NDA because the information Vita provided was either generally known, available to the public or information known by Foro before it received it from Vita.

Ellison declined to award Foro its attorneys’ fees, rejecting its arguments that Vita brought its misappropriation claim in bad faith. Because Vita lost, it will not recover its attorneys’ fees, either.

In addition to Dodson, the Houston-based Bracewell team representing Foro included Andrew Zeve, Kyle Mason and Will Moss.

Houston lawyer Joseph David Sibley IV of Camara Sibley assisted Buzbee.

“I don’t think I’ve thought about us as a safe haven,” Lehotsky said. “A lot of the folks that we’ve hired, we’ve worked with before. Some of them are Supreme Court clerks and some of them aren’t, but they’re all really good lawyers.”

Asked what they would do if a Sonia Sotomayor law clerk knocked on their door, both Lehotsky and Keller said emphatically that they would welcome him or her in.

“Absolutely, to be very clear,” Keller said. “What we want to do is be one of the nation’s premier litigation boutiques. There is no political litmus test. I can tell you right now, not every lawyer in our firm is a conservative Republican. We are looking to represent the most sophisticated clients and the most complex cases.”

So far, four of the firm’s 10 lawyers will be based solely in Washington. Keller will work from Washington as well as Austin, a signal that the firm wants to keep a Texas presence. In August, the firm issued a roundup of decisions issued by the Supreme Court of Texas.

“With my background, having been Texas Solicitor General, having taught at UT law school, being a UT law grad, I have deep ties to Texas,” Keller said. “It made a lot of sense to be able to use that experience on behalf of our clients.”

Two of his colleagues from the Texas attorney general’s office Matt Frederick and Todd Disher, have signed up to the new firm.

“Having a national footprint in Texas was just a very key pillar of our strategy,” Keller said.

Allyson Ho, a partner at Gibson, Dunn & Crutcher, who was an early “Texas-by-the-Potomac” Supreme Court practitioner, agreed that advocates don’t need to work in the nation’s capital to be successful.

“When it comes to the Supreme Court bar these days, geography isn’t destiny,” said Ho, who knows Lehotsky and Keller and wishes them well. “Speaking as a proud native Texan, it’s not surprising that Texas attracts a lion’s share of top practitioners—especially given the increasing sophistication of the Texas legal market.”

Underscoring the point, Ho said she just recruited Stephen Hammer, who clerked for Chief Justice Roberts in the 2020-2021 term and will join Gibson Dunn soon. “He’s a rock star,” Ho said, “He’ll be resident in the Dallas office.”