

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

STATE OF MICHIGAN,

Plaintiff,

v

ENCANA CORPORATION,
a Canadian corporation, and

ENCANA OIL & GAS USA INC,
a Delaware corporation,

Defendants.

No. 14-554CP

HON. CLINTON CANADY III

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FINAL CONSENT JUDGMENT

Plaintiff, State of Michigan ("Michigan Attorney General"), and Defendants Encana Corporation and Encana Oil & Gas USA Inc. (together "Encana"), by and through the undersigned counsel, have requested entry of a Final Consent Judgment. Therefore, upon consideration of the papers filed and consent of the parties hereto, it is hereby ORDERED and ADJUDGED as follows:

I. JURISDICTION

The parties agree that this Court has subject matter jurisdiction over this matter and jurisdiction over the parties and agree to the continuing jurisdiction of this Court over this matter and the parties. The Michigan Attorney General filed a Complaint for Damages, Injunctive, and Other Statutory Relief (the "Complaint") against Encana pursuant to the Michigan Antitrust Reform Act, MCL 445.771 *et seq.*

II. GENERAL PROVISIONS

2.1 Agreement

The Michigan Attorney General and Encana are represented by counsel and have agreed on a basis for settlement of the matters alleged in the Complaint. The parties agree to entry of this Final Consent Judgment ("Judgment") without the need for trial, discovery in this action, or adjudication of any issue of law or fact. Defendants enter into this Judgment freely and without coercion, and without admitting any violation of the law. Defendants acknowledge that they are able to abide by the provisions of this Judgment.

2.2 Definitions

a. "Area of Mutual Interest" or "AMI" shall mean a geographic location in which more than one Energy Company has a stake, typically defined by a contract that describes the

geographic area contained in the AMI and the rights each party has in the AMI.

b. **“Covered Conduct”** shall mean the alleged anticompetitive conduct as described in Plaintiff’s complaint.

c. **“Effective Date”** shall mean the date on which a copy of this Judgment, duly executed by Defendants and by the Michigan Attorney General, is approved by and becomes a Judgment of the Court.

d. **“Encana”** shall mean Defendants Encana Corporation and Encana Oil & Gas USA, Inc., including all of their parents, subsidiaries, and divisions.

e. **“Energy Company”** shall mean an oil and/or natural gas company.

f. **“Joint Venture”** shall mean a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task.

g. **“Lease”** shall mean an arrangement where the lessee (the renter) is guaranteed the use of an asset and guarantees the lessor (the Oil and Gas Rights owner) regular payments from the lessee for a specified number of months or years.

h. **“Oil and Gas Rights”** shall mean the rights to exploit an area for the minerals, including oil and gas, that it harbors.

i. **“Parties”** shall mean Encana and the Michigan Attorney General.

j. **“Private Complaints”** shall mean all civil complaints filed by nongovernmental parties against Encana or other Energy Companies relative to agreements, or the negotiation of agreements, to Lease Oil and Gas Rights in the State of Michigan between January 1, 2009 and the Effective Date.

k. **“State”** shall mean the State of Michigan.

2.3 **Preservation of Law Enforcement Action**

Nothing herein precludes the Michigan Attorney General from enforcing the provisions of this Judgment, or from pursuing any law enforcement action with respect to the acts or practices of the Defendants not covered by this Judgment or any acts or practices of the Defendants conducted after the entry of this Judgment. The fact that such conduct is not expressly prohibited by the terms of this Judgment shall not be a defense to any such enforcement action.

2.4 Compliance with State and Federal Law

Nothing herein relieves Defendants of their duty to comply with applicable laws of the State and all federal or local laws, regulations, ordinances, and codes, nor constitutes authorization by the Michigan Attorney General for the Defendants to engage in acts or practices prohibited by such laws.

2.5 Non-Approval of Conduct

Nothing herein constitutes approval by the Michigan Attorney General of Encana's past or future practices. Encana shall not make any representation to the contrary.

2.6 Release

Upon the Effective Date, the Michigan Attorney General, acting on behalf of the State of Michigan, hereby releases and discharges Encana and any of its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, agents, general or limited partners or partnerships (collectively, the "Released Persons") from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that the Attorney General, acting on behalf of the State of Michigan, has or may have had against the Released

Persons, including claims for damages, fines, injunctive relief, remedies, sanctions or Penalties, arising out of, relating to, or in connection with the claim that any or all of the Released Persons violated, or attempted to violate, the Michigan Antitrust Reform Act or any other State or Federal law in connection with the attempted or actual purchase, lease or other acquisition of oil, gas or other mineral interests or rights in the State of Michigan during 2010, including but not limited to any claim related to alleged wrongdoing during any auction of mineral rights held by the State of Michigan during 2010 (collectively, the "Released Claims"). Nothing herein shall be construed as a waiver or release by any entity or person against the Defendants of any governmental or private rights, causes of action, or remedies other than the Released Claims.

2.7 Evidentiary Effect of This Judgment

This Judgment is not an admission of the validity of any fact, allegation or claim that the Michigan Attorney General has asserted or could assert against Encana, or an admission of any alleged wrongdoing or liability by Encana in any civil, criminal or administrative court, administrative agency, or tribunal.

2.8 Titles or Headings

The titles or headings to each section or provision of this Judgment are for convenience purposes only and are not intended by the Parties to lend meaning to the actual provisions of this Judgment.

2.9 Modification of Terms

No amendment of the terms of this Judgment is valid or binding unless made in writing, agreed to by both Parties, and approved by this Court, and then only to the extent specifically set forth in such written amendment.

2.10 Execution in Counterparts

This Judgment may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

2.11 No Acts to Circumvent Terms

Encana shall not participate directly or indirectly in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited by this Judgment or for any other purpose that would otherwise circumvent any part of this Judgment.

III. PERMANENT INJUNCTIVE RELIEF AND COMPLIANCE

Injunctive Relief

3.1 Encana agrees that for a period of four years from the Effective Date it will:

a. Not engage in bid rigging, price fixing, market allocation, or other conduct which constitutes a violation of Section 2 of the Michigan Antitrust Reform Act.

b. Nothing in this paragraph shall be interpreted as limiting in any way Encana's obligation to comply to the fullest extent with the Michigan Antitrust Reform Act.

Compliance Program and Reporting

3.2 Encana agrees that for a period of four years from the Effective Date it will:

a. Establish or, if applicable, maintain and update a program or programs for the purpose of assuring compliance with applicable United States and State antitrust and competition laws, including the Michigan Antitrust Reform Act, by its officers and/or employees who have responsibility for Leasing Oil and Gas Rights, or who Encana reasonably believes know non-

public information about the Leasing of Oil and Gas Rights.

b. Said program or programs shall provide relevant compliance education to its officers and employees regarding the legal standards imposed by such antitrust laws, the remedies that might be applied in the event of violations of said laws, and their obligations in the event that they observe violation of said laws.

c. On an annual basis, Encana shall certify to the Michigan Attorney General that Encana is fully compliant with the provisions of this Paragraph 3.2 and submit a written report to the Michigan Attorney General setting forth how Encana has complied and is complying with the provisions of this Paragraph 3.2.

d. Encana shall notify the Michigan Attorney General before entering into any AMI or Joint Venture that has a substantive nexus to the State of Michigan.

Cooperation

3.3 Encana agrees to fully cooperate with the Michigan Attorney General in his investigation of Energy Companies related to the Covered Conduct and the conduct alleged in the Private Complaints by:

- a. Promptly providing a detailed account of relevant material facts known to Encana.
- b. Producing all non-privileged and non-work product protected Encana documents that evidence any meetings and communications between Encana and other Energy Companies that Lease or have Leased Oil and Gas Rights in the State of Michigan, or plans for such meetings, or results of such meetings, and all documents evidencing how any conspiracy regarding Leases of Oil and Gas Rights was formed, implemented, and enforced, to the extent known by Encana.
- c. Producing copies of any transcripts of depositions.

d. Providing all reasonably requested data and reasonable access to Encana employees (through counsel).

e. Making Encana officers and/or employees available for depositions, interviews, or to testify.

IV. MONETARY RELIEF

4.1 Encana shall pay \$5,000,000.00 as settlement payment to the State of Michigan to be used as permitted by law. Encana shall make an initial payment of \$3,000,000.00 within 10 (ten) days after the entry of this Judgment. The remaining \$2,000,000.00 shall be paid in annual payments of \$1,000,000.00, due on January 15, 2015 and January 15, 2016. \$2.5 million of the initial payment shall be applied to the State Park Endowment Fund or other appropriate restricted fund. All remaining funds will be applied to antitrust enforcement as permitted by law. Encana's failure to make any required payments shall constitute non-compliance with the terms of this Judgment. Satisfaction of the monetary obligations in this Section IV shall not relieve any other obligations under other provisions of this Judgment.

V. COMPLIANCE ENFORCEMENT

5.1 The Michigan Attorney General may assert any claim that Encana has violated this Judgment in a separate civil action to enforce compliance with this Judgment or may seek any other relief afforded by law, provided that the Michigan Attorney General gives Encana written notice of the alleged violation and affords Encana thirty (30) days from receipt of the notice to respond to and remedy the violation, or any other period as agreed to by the Michigan Attorney General and Encana. However, the Michigan Attorney General is not required to provide notice in advance of taking any enforcement action within his authority upon determination by the Michigan Attorney General that prompt action is necessary to protect the

health or safety of the public.

5.2 A motion for alleged non-compliance with the requirements of this Consent Judgment will be accompanied by a request for hearing, at which time Encana may present evidence and argument relative to the alleged non-compliance. If the Court finds that Encana substantively failed to fulfill a requirement of this Consent Judgment, the Court may, in addition to ordering compliance with the requirements of this Consent Judgment, enter judgment against Encana in an additional reasonable amount to be determined by the Court given the nature of the violation, which shall become immediately due and payable as civil penalties or, upon motion of the Michigan Attorney General, as any element of relief available pursuant to the Michigan Antitrust Reform Act.

5.3 Proceedings to reopen this case instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be available by law, including any other proceedings that the Michigan Attorney General may initiate to enforce this Judgment.

VI. DISMISSAL WITH PREJUDICE

6.1 The Attorney General agrees that the Complaint and all claims contained therein shall be, and hereby is, dismissed with prejudice.

VII. NOTICES

7.1 All notices under this Judgment shall be sent by overnight U.S. mail to the addresses below:

For the Plaintiff:

Michigan Department of Attorney General
Corporate Oversight Division
525 W. Ottawa St., 6th Floor
Lansing, MI 48933
Attn: D.J. Pascoe
E-mail: PascoeD1@michigan.gov

For the Defendants:

Robert Wierenga
Schiff Hardin LLP
350 S. Main St., Suite 200
Ann Arbor, MI 48104
E-mail: rwierenga@schiffhardin.com

and

Executive Vice-President and General Counsel
Encana Corporation
500 Centre Street SE
PO Box 2850
Calgary AB T2P 2S5
Canada

VIII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this matter for all purposes.

ORDERED AND ADJUDGED at 4:15 pm this 5th day of May, 2014.

CLINTON CANADY III

Circuit Judge

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

For Plaintiff, State of Michigan Attorney General Bill Schuette:

By: D. J. Pascoe
D. J. Pascoe
Michigan Department of Attorney General
Post Office Box 30212
Lansing, MI 48909
(517) 373-1110

Date: May 5, 2014

For Defendant ENCANA CORPORATION and ENCANA OIL & GAS USA, INC:

By: _____

Date: _____

Nancy Brennan
Vice-President, Ethics and Compliance
Encana Corporation
500 Centre Street SE
PO Box 2850
Calgary AB T2P 2S5
Canada

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

For Plaintiff, State of Michigan Attorney General Bill Schuette:

By: _____

Date: _____

Michigan Department of Attorney General
Post Office Box 30212
Lansing, MI 48909
(517) 373-1110

For Defendant ENCANA CORPORATION and ENCANA OIL & GAS USA, INC:

By: _____

Date: May 5, 2014

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