

Hydraulic Fracturing Services: New York Appellate Court Addresses Whether Field Invoice Terms Limit Damage Claims



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The Supreme Court of the State of New York (Appellate Division) (“Court”) in a November 9th Memorandum and Order (“Order”) addressed whether field invoices provided to a customer for the performance of hydraulic fracturing services limited liability for alleged improper performance. See U.S. Energy Development Corporation v. Superior Well Services, Inc., et al. 2017 WL 5181739.

Plaintiff U.S. Energy Development Corporation (“Plaintiff”) allegedly sustained damages because of Superior Well Services, Inc.’s (“Defendant”) improper performance of hydraulic fracking operations on 97 natural gas wells owned by Plaintiff.

Plaintiff in its Third Amended Complaint asserted causes of actions for:

1. Breach of contract
2. Subordination payments
3. Promissory estoppel
4. Unjust enrichment
5. Negligence

One of the questions addressed in the Court’s Order was whether Defendant was entitled to summary judgment dismissing the Complaint because of certain terms and conditions in the “field invoices.” Field invoices had been provided to Plaintiff’s representatives at the worksite. They are stated to have contained “various terms and conditions limiting defendant’s liability.”

The Court rejected Defendant’s contention that it was entitled to summary judgment because of the field invoices’ terms and conditions. It stated in support of this decision that:

Although the field invoices contain various terms and conditions limiting defendant’s liability, it is undisputed that defendant did not provide the field invoices to plaintiff until after defendant completed its work on a particular well, and thus the postperformance terms and conditions relied upon by defendant never became part of the parties’ contract. . .

Also cited was the fact that the Plaintiff never remitted payment based upon the field invoices. Instead, the Plaintiff is stated to have paid Defendant based upon separate invoices that were mailed to Plaintiff’s

office. Such invoices were stated to have reflected the “agreed-upon discounted price that often differed from the price quoted on the field invoices, and did not contain the relevant terms and conditions.”

Consequently, the Court held that Plaintiff did not accept or ratify the terms and conditions contained in the field invoices.

[A copy of the Order can be downloaded here.](#)