

Gulf Coast Western and Fish & Richardson Announce Countersuit Filed Against Colorado Division of Securities over Oil & Gas Joint Venture Partnerships

COLORADO SPRINGS – Attorneys with Fish & Richardson P.C. have filed a countersuit on behalf of Gulf Coast Western against the Colorado Division of Securities in response to allegations of securities violations levied against long-standing oil and gas joint ventures.

Last month the Division of Securities filed suit against Gulf Coast Western, LLC, its co-chief executive officer, Matthew Fleegeer and HEI Resources Inc., whose assets were acquired by Gulf Coast Western in 2008, alleging that they violated state securities laws by offering oil and gas joint venture partnerships.

In the countersuit, Gulf Coast Western and HEI assert that, due to the active involvement of their investors as general partners, the joint ventures cannot be considered “securities.” The determination that the joint venture interests are not “securities” is an important issue for Gulf Coast Western and the other parties, as the active management of the joint venture by the partners permits the partners to avail themselves of federal tax benefits associated with the domestic exploration for oil and gas.

Counterclaimants are relying on a 1999 federal court ruling, *SEC v. Kinlaw Securities Corp.*, 3:93-CV-02010-T (N.D. Tex. July 21, 1999), finding that similar joint venture interests were not securities.

The principals of Gulf Coast Western and HEI were involved in the successful defense against similar claims by the SEC in that case.

Notably, in 2002, the Colorado Division of Securities, under current Commissioner Fred Joseph, made claims against HEI similar to those filed in its most recent action. However, the Division lost the case after the Colorado Securities Board found that regulators failed to prove that HEI was selling securities, forcing the Division to concede to the entry of a finding against it.

“A federal court and Colorado state regulators have all previously accepted that having a partnership stake in an oil and gas concern is quite a bit more involved than buying a mutual fund,” says Bill Mateja, a principal in Fish & Richardson who represents Mr. Fleegeer and Gulf Coast Western. “So how can the Colorado Division of Securities now somehow accuse these legitimate businesses of violating the securities laws, especially in light of the fact Gulf Coast Western is not involved in litigation with any of its joint venture partners?”

According to the countersuit, the joint ventures were formed relying on the legal principles and guidelines articulated in the previous federal court ruling in *Kinlaw*, the prior regulatory actions in Colorado and multiple legal opinions. The countersuit, filed on August 24, 2009 in Denver County District Court (Case Number 2009CV7181), seeks to have the court rule that the joint venture interests are not securities. “Business and professional reputations are at stake,” says Mateja. “The foundation of these joint ventures rest on considerable legal authority and precedent.”

Gulf Coast Western and Mr. Fleegeer are represented by Mr. Mateja and Kip Mendrygal from the Dallas office of Fish & Richardson and William Leone from the Denver office of Faegre & Benson. HEI Resources is represented by Andrew Shoemaker from Shoemaker, Ghiselli & Schwartz in Boulder, Colo. ***For more information, contact Mike Androvett at 800-559-4534 or mike@androvett.com.***