



Pig Promise Produces No Prudhoe Pork For Plaintiff

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What We've Got Here is A Failure to Pig

In 2006, BP Exploration (Alaska) Inc. shut down its pipelines and oil production in Prudhoe Bay, Alaska after leaks were discovered in two of its pipelines. Both leaks resulted from internal corrosion due to sediment in the pipes. A year later, BP pled guilty to one count of violating the Clean Water Act. In the plea agreement, BP admitted that it was aware of the sediment before the leaks and had failed to “pig” the pipelines. Pigging consists of cleaning the pipes and pushing an inspection tool through the pipes. The term is an initialization of “pipeline inspection gauge”. In contracts filed with the Securities and Exchange Commission, BP promised to conduct its Prudhoe Bay oil operations as a “prudent operator”.

Promises, Promises

A securities fraud class action was filed against BP alleging that the promises in the contract would give a reasonable investor the impression that BP was in compliance with its prudent operator promise. In *Reese v. BP Exploration (Alaska) Inc.*, the Ninth Circuit Court of Appeals rejected this contention, finding that the promise was a “forward-looking” statement and not a misrepresentation of a current fact. The Court also rejected an argument that the repeated filing of the contract converted the contract into a statement of ongoing and current compliance.

Representations vs. Covenants

The Court of Appeals distinguished *In re MobileMedia Securities Litigation*, 28 F. Supp. 2d 901 (D. N.J. 1998). In that case the defendant filed a Form 8-K that included terms of a credit agreement. However, the Court noted that the *MobileMedia* case involved a misrepresentation in the agreement of a present-existing fact and not a promise of future performance.

Who Filed The Contract Anyway?

Interestingly, BP actually didn't file the contract with the SEC. The contract was filed by the BP Prudhoe Bay Royalty Trust, which was formed for the purpose of distributing a royalty interest derived from oil production at Prudhoe Bay. The Trust's units are traded on the New York Stock Exchange. BP agreed to provide the Trust with the information needed by the trust to comply with its SEC filing requirements. In a footnote the Court of Appeals stated that the plaintiff's claims would still fail because the plaintiff's allegations do not support a

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finding that the Trust's SEC filings are attributable to BP, citing the U.S. Supreme Court's decision in *Janus Capital Groups, Inc. v. First Derivative Traders* (a decision that I recently discussed in this [post](#).)

Alaska, Oil And My Uncle

My uncle, Walter Parker, moved to Alaska in 1946. He was the Chair of the Alaska Oil Spill Commission, which investigated the 1989 wreck of the Exxon Valdez in Prince William Sound, Alaska. A decade later, President Bill Clinton [named](#) my uncle as the academic representative to the Arctic Research Commission.

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