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Free Speech, Due Process and Trial by Jury

Houston Jury Hits Fracking Company with \$8.9M Verdict in Patent Infringement Trial

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A Houston federal court jury recently decided Nitro Fluids LLC owes Cameron International Corporation more than \$8.9 million for infringing on two of its patents for fracturing-fluid delivery systems.

Cameron, a subsidiary of the global technology company Schlumberger NV, had filed suit against Nitro in July 2018. Nitro conceded infringement after Cameron obtained a pretrial summary judgment finding that Nitro infringed one claim. Nitro countered by attempting to invalidate Cameron's patents.

Nitro was represented by the Houston firm Cabello Hall Zinda. Its lawyers did not respond to requests for comment.

John Keville, a partner at Sheppard Mullin's Houston office, presented the case over the six-day trial by telling a story of an inventor, Kirk Guidry, a Louisiana man who joined the company right out of engineering school, who rose up the ranks and in 2011 executed an idea for making fracking safer and more efficient.

The company developed a "Monoline Fluid Delivery System" which became commercially successful. The equipment paired down the number of small high-pressure diameter fluid conduits connecting the fracturing trees to a manifold to one single conduit, thus reducing the risk of connection failures amid multiple possible locations.

Nitro, in 2017, made a similar system. Nitro's witnesses, including its president, argued the technology was an obvious invention to introduce.

Cameron refuted the argument that it was an "obvious" invention. The company questioned why Nitro only created its

invention after Guidry created his and Cameron made it popular.

"I think that's a hard story for a jury to believe," Keville said. "If it was so obvious, why did it take you seven years to adopt it?"

Nitro's case was hurt by the testimony of its president, Keville believes. Keville adversely called Nitro president Bob Koricanek to the stand.

Koricanek insulted people from the witness stand, according to Keville, which he believes did not play well with the jury.

When asked about testimony from his vice president that contradicted his own, Koricanek called his business partner a "slow guy from Corpus Christi," Keville said.

When testifying about an idea, Koricanek interrupted himself to say, "Oh I'm sorry, the idea," in such a way that Keville believes was aimed to ridicule Guidry's Louisiana accent.

"He looked around like, 'Haha, that's funny,' and the jurors were stone-faced," Keville said.

Keville referred to that moment during his closing arguments. He said he'd bet jurors remembered the way Koricanek seemed to mock Guidry.

"And like four jurors shook their heads like, 'Oh yeah, we remember that,'" Keville said.

After deliberating less than two hours over two days, the jury awarded Cameron exactly what the company asked for, which was just over \$8.9 million: about \$5.5 million in lost profits and \$3.4 million in royalties. The jury did not send out any notes during their deliberations, Keville said.

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Prior to trial, Nitro had filed three inter partes review petitions before the Patent Trial and Appeal Board. Cameron prevailed in two of the reviews, but Nitro successfully invalidated some claims in one of the patents at issue in the trial. Keville said he knew Nitro would make the same claims at trial, and he would have to face the challenges they would mount.

Keville was able to use statements made in the IPR proceedings to impeach Nitro's expert witness, but doing so was "walking a fine line," he said.

Nitro's lawyers asked for sidebar conversations with the judge to argue Keville opened the door to discuss the proceedings before the jury, but each time the judge disagreed, Keville said.

Lawyers for other fracking technology companies attended the trial, Keville noted. In his closing argument, Keville said: "It's important what you do here to protect the innovation, because there are lawyers from other infringers who have been sitting here watching this whole time, hoping that you don't protect Cameron."