

Examining The Antitrust Claims In Texas Pipeline Suit

By **Brian Robison** (July 22, 2022)

Magellan, a Tulsa-based midstream company, was recently sued on antitrust and breach-of-contract grounds by Converge Midstream Partners, which operates a crude oil storage business in the Houston area.

The lawsuit, Converge Midstream Partners LLC v. Magellan Crude Oil Pipeline, filed May 3 the 11th Judicial District Court in Harris County, Texas, alleges that Magellan has denied Converge access to its Houston-area crude oil distribution system.



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But in a motion for partial summary judgment filed July 8, Magellan argues that Converge's antitrust claims are basically old news. The motion points out a statement from Converge's petition, wherein Converge concedes that the parties "have been down this road before."

Indeed they have, argues Magellan, pointing out that Converge's recently filed antitrust claims largely duplicate, and in some respects repeat verbatim, claims Converge's predecessor brought against Magellan in a similar antitrust suit also filed in Texas district court in 2017.

That case ended in settlement not long after it was filed, and the 2017 settlement agreements between Magellan and Converge's predecessor, Fairway Energy, included both an agreement to provide connection from Fairway's storage facilities to Magellan's distribution system, as well as a broad release and covenant not to sue — essentially a promise from Fairway not to sue Magellan again on the same or similar claims.

Converge bought Fairway's assets out of bankruptcy in 2018, and at that time fully assumed Fairway's rights and responsibilities under the 2017 settlement agreements. Key executives serving at Fairway when the company previously settled its suit against Magellan and then declared bankruptcy also transitioned into the leadership of Converge.

In its recently filed petition, Converge seeks to enforce the terms of that same settlement for its own benefit. Magellan's motion for summary judgment treats this as a concession as well. If Converge fully stands in Fairway's shoes and can enforce the prior settlement, Magellan argues, Converge likewise is bound by Fairway's promise not to reassert the same or similar claims against Magellan, warranting summary judgment.

The release at issue here is broadly worded. It encompasses

any and all claims ... of every nature and kind, whether vested or contingent, accrued or unaccrued, known or unknown, in law or in equity, matured or unmatured, relating to or arising from [Fairway's prior] request for a connection [to Magellan's crude oil distribution system].

The parties added that this broad release included any claims "in connection with" the prior litigation.

Magellan's summary judgment motion contains a three-page chart comparing Fairway's 2017 antitrust allegations with Converge's allegations in this new suit, and the wording and

substance are strikingly similar and in some instances identical.

Magellan argues that this is grounds for summary judgment, at least on Converage's antitrust claims, all which of which, according to Magellan, involve Converage's request for a connection to Magellan's Houston-area pipelines.

The broad release in the prior settlement included a carveout for contract-related claims, and Magellan's motion does not attack Converage's contract-based cause of action.

In another recent court filing, on June 24, Magellan brought its own contract claims, or counterclaims, against Converage.

The counterclaims and partial summary judgment motion are based on similar reasoning. Magellan's argument is fairly simple: Fairway unequivocally promised not to sue Magellan on the same antitrust-related claims; yet Converage, after buying Fairway's assets out of bankruptcy, sued Magellan in a direct breach of that promise.

Magellan's counterclaims also seek to hold Converage accountable for publishing a press release announcing its suit, for disparaging Magellan with various allegedly untrue statements, and for publicly disclosing the terms of the prior settlement — all additional breaches of the settlement's express terms, according to Magellan.

Magellan suggests in its counterclaims that Converage's lawsuit is a transparent effort to try to improve on the commercial terms of the 2017 settlement. According to Magellan, this whole dispute boils down to Converage wanting to connect to Magellan's pipelines at two different locations, while the prior settlement only provided for one such connection.

Whatever Converage's motivations, one thing that is virtually certain to drive the outcome here is Texas law on the enforceability of settlement releases. Texas courts, as a general matter, enforce settlement releases as written, even when that entails releasing future or unanticipated claims.

To the extent Converage's lawsuit was a vehicle to pressure Magellan to make further commercial concessions beyond what was agreed to when the prior litigation was settled, that strategy could backfire, as Converage's antitrust claims may face dismissal at the outset due to the prior release of claims and Converage, by filing those claims, may have exposed itself to significant damages for breach of contract.

In terms of the substance of Converage's arguments, the principal theme repeated throughout the petition is that Magellan has refused to give Converage access to Magellan's Houston-area crude oil distribution system.

That may be a difficult argument to support, in part for factual reasons referenced in the petition.

Converage alleges that during the discussions leading up to the prior settlement, Magellan offered to give Converage an interconnect at either of Converage's two preferred locations, and the petition acknowledges that, as a result of the settlement, Converage now has a connection to Magellan's pipelines at one of those locations.

While Converage may prefer to have two connections, not one, these facts could make a refusal-to-deal antitrust theory particularly challenging.

There may also be significant legal obstacles for Converge to overcome. Courts are typically quite skeptical of antitrust refusal-to-deal claims, taking the view that companies are generally entitled to deal or not deal with whomever they wish.

In this case, Converge is attempting to overcome that hurdle by emphasizing that Magellan's pipelines enjoy common carrier status under Texas law. The petition suggests that Magellan as a common carrier pipeline operator has a duty to allow interconnects to other carriers.

However, Texas law in fact does not impose such a duty. Rather, there is a procedure under Texas law whereby the Texas Railroad Commission can, in its discretion, order a connection if it determines that certain criteria are met.

These and other state regulatory issues could raise yet additional complications for Converge's antitrust claims, to the extent those claims survive Magellan's summary-judgment motion.

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