

# IN THE SUPREME COURT OF TEXAS

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No. 03-1066  
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ARKOMA BASIN EXPLORATION COMPANY, INC., ET AL., PETITIONERS,

v.

FMF ASSOCIATES 1990-A, LTD., ET AL., RESPONDENTS

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS  
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**Argued December 1, 2005**

JUSTICE O'NEILL, concurring and dissenting.

I agree that Arkoma's reserve estimates cannot all be treated alike, as estimates for the relatively unexplored South Panola field were much more speculative. But the mere fact that estimating the South Panola field's reserves was more difficult did not provide Arkoma a license to deliberately falsify data to drive up the mineral rights' acquisition price, of which it received a sizeable percentage, and then cry "opinion" to avoid liability once it pocketed the commission. According to evidence presented at trial, Arkoma did not estimate reserves by working through the necessary data; instead, the desired reserve number was identified, then the calculations were worked backward to determine what the data should be to support that number. While good-faith opinions are shielded from fraud claims under Virginia law, opinions that are deliberately based on information known to be false are not. *Yuzefovsky v. St. John's Wood Apartments*, 540 S.E.2d 134,

142 (Va. 2001); *Horner v. Ahern*, 153 S.E.2d 216, 220 (Va. 1967). I agree with the court of appeals that, even if the represented gas reserves were opinions, they are actionable because those opinions were represented to be based on a particular data-driven process that was not used:

[Arkoma] told the partnerships they had determined the reserves using a particular process, and the partnerships presented some clear and convincing evidence that [Arkoma] did not use that process but falsified the results through manipulation and falsification of the data and calculations. When estimates and opinions are based on deliberate, intentional falsification of the data and calculations, they are the product of falsified facts and part of the fraudulent misrepresentation. When those estimates are made to a person without the maker's special knowledge of the subject matter, those estimates, if intentionally misrepresenting the facts, are actionable.

118 S.W.3d 445, 455 (citing *Horner*, 153 S.E.2d at 220–21).

According to the evidence presented at trial, Arkoma held itself out as having special expertise in the Arkoma Basin by its possession of a unique database that allowed it to more accurately estimate reserves and potential cash flows. FMF relied on Arkoma's purported expertise in acquiring the mineral rights that it marketed to investors, and paid a premium for those rights that directly benefitted Arkoma. Under these circumstances, I disagree with the Court's conclusion that Arkoma is exempt from liability for misrepresentations concerning the South Panola field, and to this extent I respectfully dissent. I join the remainder of the Court's opinion.

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Harriet O'Neill  
Justice

**OPINION DELIVERED:** January 25, 2008