



## Opinion Summaries April 29, 2022

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### OPINIONS

### CONTRACTS

#### Releases and Reliance Disclaimers

*Transcor Astra S.A. v. Petrobras America, Inc.*, —S.W.3d —, 2022 WL (Tex. Mar. 18, 2022) [[20-0932](#)]

This case arises from the breakup of a joint venture between two international petroleum corporations. In 2006, Petrobras and Astra entered into a stock purchase and sale agreement that created the joint venture to own and operate a Texas oil refinery. By 2009, the parties became embroiled in numerous disputes, which were adjudicated in arbitration. The arbitration award terminated their joint venture and required Astra to sell its 50-percent interest in the refinery to Petrobras. Petrobras accepted the interest but failed to pay Astra the \$640 million purchase price. The parties continued litigating and arbitrating issues until 2012 when the parties reached a comprehensive settlement agreement. At the time, Astra had obtained over \$750 million in judgments against Petrobras and had other pending claims demanding \$400 million more. As part of this settlement agreement, Petrobras agreed to pay Astra more than \$820 million to satisfy the judgments against Petrobras.

After the settlement agreement was signed, Petrobras alleged that it later discovered that Astra had engaged in substantial corruption to convince Petrobras to accept the 2006 stock-purchase agreement and 2012 settlement agreement. Notably, Petrobras has not alleged that anyone accepted the bribes offered in connection with the 2012 settlement agreement. Upon discovering Astra's alleged misconduct, Petrobras initiated two legal proceedings against Astra, this suit and an arbitration proceeding.

In this suit, Petrobras asserted claims for common-law and statutory fraud, negligent misrepresentation, breaches of fiduciary duties, declaratory judgment, conspiracy, aiding and abetting, unjust enrichment, exemplary damages, and attorney's fees. Astra filed counterclaims to seek declaratory judgment that the settlement agreement is valid and enforceable, and the settlement agreement bars the claims Petrobras asserts in this suit and in the arbitration proceeding.

Astra filed a series of summary-judgment motions based on the settlement agreement's release and disclaimer of reliance. The trial court granted those motions and issued a final judgment that the 2012 settlement agreement bars Petrobras's claims, including the claims asserted in arbitration. The judgment also awarded Astra \$1.3 in attorney's fees and costs.

Petrobras appealed the final judgment, and the court of appeals reversed the judgment. The court held that Petrobras released its fiduciary-duty claims to the extent they relate to the 2006 settlement agreement but not to the claims related to the negotiation and signing of the 2012 settlement agreement. The court of appeals also held that the settlement agreement's reliance disclaimer bars Petrobras's fraud claims against the Astra entities but not against the individual defendants named in this suit. Finally, the court held that the release bars Petrobras's remaining claims to the extent they are derivative of the fraud claims. The court then reversed Astra's award of attorney's fees and remanded for further proceedings. Both Astra and Petrobras petitioned this Court for review.

The Supreme Court concluded that the settlement agreement bars all of Petrobras's claims in both this suit and the arbitration proceeding. In doing so, the Court held that Petrobras's claims relating to fiduciary duties were barred by the settlement agreement's release because the claims fell outside of the release's exception clause. Next, the Court held that the settlement agreement's reliance disclaimer was enforceable under the *Forest Oil* factor test. *See Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 60 (Tex. 2008). The Court also held that the settlement agreement and its reliance disclaimer extended protection to the individual defendants, and it held that Petrobras's fraud claims against the individuals were also barred. Related to the ongoing arbitration proceeding, the Court held that the stock purchase agreement's arbitration clause was superseded by the 2012 settlement agreement, and thus, the claims Petrobras asserted in arbitration were also barred by the settlement agreement. And finally, the Court reinstated the trial court's attorney's fee award under section 37.009 of the Texas Civil Practice and Remedies Code.