Decommisioning and the Petroleum Act 1998

On 17 May 2021, the Commercial Court handed down judgment in *Apache UK Investment v Esso Exploration and Production UK* [2021] EWHC 1283 (Comm). The judgment can be found here.

The dispute revolved around decommissioning liabilities following the sale by Esso to Apache of a subsidary with licenses to hydrocarbon producing fields in the North Sea. The Petroleum Act 1998 imposes an obligation to decommission offshore installations when they reach the end of their lives, and allows the Secretary of State to serve s29 notices imposing liability for decommissioning on a wide variety of entities that have previously been involved in the field exploration. Because of these liabilities, it is common practice for buyers and sellers of oil facilities to require a decommissioning security agreement as part of their sales securing indemnities agreed in sale and purchase agreements relating to potential decommissioning liabilities.

The court was asked to decide the amount of security that Apache was obliged to provide in respect of its decommissioning liabilities. This turned on two issues, the second of which was whether Esso could be liable under the Petroleum Act 1998 for decommissioning Additional Wells that were drilled after Esso had sold its interests to Apache. The court decided that, as the Additional Wells were not "intended to be established" at the time that the Secretary of State had served the s29 notices, Esso was not liable under the Act for decommissioning those Additional Wells.

This case is the first case that considers the decommissioning regime under the Petroleum Act 1998, and provides welcome clarification on the thorny question of when a seller can be responsible for decommissioning post-sale installations.

Nigel Tozzi KC acted for the defendant, Esso.

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