

CAUSE NO: 2021-12076

ENHANCED INDUSTRIAL
TECHNOLOGIES, LLC, and JOHN ETTERE,

Plaintiff,

v.

NATIONAL OILWELL VARCO, L.P., NOW
OILFIELD SERVICES, LLC, and NOV, INC.

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

COME NOW, ENHANCED INDUSTRIAL TECHNOLOGIES, LLC, and John Ettere ("Plaintiffs") in the above-styled and numbered cause, complaining of NATIONAL OILWELL VARCO, L.P., NOW OILFIELD SERVICES, INC., and NOV, INC. (hereinafter the "NOV Defendants"), and for cause of action would show the Court and Jury as follows:

I.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

II.

PARTIES

2. Plaintiff Enhanced Industrial Technologies, LLC, is a New Jersey limited liability company with its principal place of business in New Jersey.

3. Plaintiff John Ettere is a resident of New Jersey.

4. Defendant, National Oilwell Varco, L.P., is a Delaware limited partnership, doing business in Texas, with its principal place of business at 7909 Parkwood Circle Drive, Houston, TX 77036. National Oilwell Varco, L.P., has appeared and answered herein.

5. Defendant, NOW Oilfield Services, LLC (f/k/a NOW Oilfield Services, Inc.), is a Delaware limited liability company, doing business in Texas, with its principal place of business at 7909 Parkwood Circle Drive, Houston, TX 77036. NOW Oilfield Services, LLC, has appeared and answered herein.

6. Defendant, NOV, Inc., is a Delaware corporation, doing business in Texas, with its principal place of business at 7909 Parkwood Circle Drive, Houston, TX 77036. NOV, Inc., has appeared and answered herein.

III. **JURISDICTION**

7. This Court has subject matter jurisdiction over this lawsuit because the amount in controversy is within this Court's jurisdictional requirements. Plaintiffs seek monetary relief of more than \$100,000, in accordance with Rule 47 of the Texas Rules of Civil Procedure.

8. This Court has personal jurisdiction over all of the Defendants because their principal place of business is in Houston, Harris County, Texas.

IV. **VENUE**

9. Venue for this suit is proper in Harris County under Civil Practice & Remedies Code §15.002 and §15.005 because all or a substantial part of the events or omissions giving rise to the claims herein occurred in Harris County, Texas.

V. **FACTS**

10. This case involves a large multinational oilfield services conglomerate that enticed an individual consultant to come out of retirement to spend eighteen months working to transfer to it extremely valuable knowhow, technology, and intellectual property, and then engaged in a series of misrepresentations to underpay the consultant, depriving Plaintiffs of

millions of dollars in commissions and usurping technology worth more than \$100 million.

11. Plaintiffs and Defendants entered into a contract on or about April 1, 2014. *See Exhibit 1.* The contract was amended on March 31, 2015 (as amended, the “Contract”). *See Exhibit 2.*

12. The Contract resulted from NOV’s request that John Ettere come out of retirement to assist NOV in “getting into the business” of gas/liquid, liquid/liquid separation, including high efficiency mass transfer structured packing and associated vessels worldwide. Ettere advised NOV that it should just acquire a company that had gas/liquid, liquid/liquid separation technology. Ettere pointed out that Cameron, NOV’s competitor, had recently acquired a company with similar technology. However, defendants stated they did not want to acquire a business, had no intention of doing so, but would rather develop the technology internally. The Contract was designed to compensate Plaintiffs for building a new business segment for NOV. In order to achieve this, training would have to be conducted and Plaintiffs would have to provide intellectual property for how to develop, market, sell, design, build, install, and maintain gas/liquid, liquid/liquid separation equipment including high efficiency mass transfer structured packing and associated vessels.

13. At the time the Contract was negotiated and signed, Defendants had an existing solid/liquid separation business. However, Defendants had not been in the gas/liquid, liquid/liquid separation business including high efficiency mass transfer structured packing and associated vessels which required the designing of all such internals, sizing the vessels diameters/length or diameters/height. The industry requires that equipment providers provide performance warranties for their equipment, but NOV was not able to do so because it was not designing this type of equipment. This precluded NOV from winning bids for most large

projects, such as FPSOs. At the time, NOV was having to purchase this type of equipment from others, reducing their profit margins and making it impossible for NOV to provide performance warranties to clients. Plaintiffs were asked to build that business for Defendants so that NOV could offer their own design for internals and set competitive, improved performance and reduced sizes vessel/separators/columns at higher profit margins, and to allow NOV to win bids for larger modular projects that included separation and mass transfer equipment.

14. Plaintiffs accomplished that feat. Plaintiffs worked with the PFT Process Technology group at NOV. EIT transferred to NOV the internals technology, training to design and size vessels/columns, and “know-how” for this equipment, brought them a low-cost, high-quality manufacturer for NOV private label internals (HMT), and assisted NOV in generating its first sales of their own complex gas/liquid, liquid/liquid separators including high efficiency mass transfer structured packing and associated vessels with performance warranties. Once NOV saw how lucrative the business could be, they chose to expand the business by acquisitions and otherwise. They identified and acquired Fjords Processing for \$145.2mm, a Norwegian company, and announced that it would be integrated with the very division of NOV that Plaintiffs taught to sell gas/liquid and liquid/liquid separators, in an effort to “expand the business” EIT had created. The business did expand, but NOV stopped providing Plaintiffs with sales reports, and has never accounted to Plaintiffs for sales of covered equipment after the business was expanded. It is now clear that NOV never planned to live up to the Contract and never intended to compensate Plaintiffs for their work or the technology. Additionally, NOV also has admitted in this lawsuit that before and after the contract with EIT was executed, NOV’s executives, including Larry Engel, were looking at potential acquisition targets that could get NOV into the liquid-liquid and gas-liquid separations business faster. Not only was this not

disclosed to Plaintiffs, but it directly contradicts what NOV told John Ettere and EIT before the contract was executed.

15. Using what Plaintiffs taught them, NOV applied for and received patents related to separation technologies. Specifically, U.S. Patent No. 9,975,063 involves separation technology and the horizontal gun barrel design that is in EIT's technical specifications and drawings. NOV hid that patent application from Plaintiffs so that it would not have to pay royalties to Plaintiffs. NOV never informed Plaintiffs that it was applying for that or any other patents in the U.S. or elsewhere. This is just one example of Defendants' pattern of bad faith deceptions.

16. NOV took the intellectual property created and owned by Plaintiffs for its own use and did not pay in full for it. As a result, Plaintiff EIT only received a fraction of the compensation it expected for the work it did and the technologies it delivered to NOV.

VI. CAUSES OF ACTION

A. Breach of Contract with EIT

17. Plaintiffs performed all components of the Contract with NOV. However, NOV breached the agreement with EIT multiple times in multiple ways.

18. Pursuant to Paragraph 3(c) of the Contract, NOV was obligated under the parties' agreement to pay commissions to EIT on products sold by NOV (which is defined to include Defendant National Oilwell Varco, L.P., and all of its affiliates) identified on Exhibit A to the Contract. NOV paid some, but not all, commissions owed. NOV has admitted on multiple occasions that it underpaid EIT. NOV made multiple late payments to EIT, but has still not paid all sums due. NOV admitted that it only paid commissions on products manufactured by HMT, despite the fact that there is no such limitation in the Contract. NOV admitted that it only paid

commissions for sales made in the United States, despite selling relevant equipment in other countries. NOV admits that it has not paid commissions for sales made after Fjords was merged into the PFT Process Technologies department of NOV – the department that Plaintiffs helped develop the new business. Through this litigation, Plaintiffs have learned that NOV now admits that all payments that were made to EIT were miscalculated. Instead of paying the commissionable rates on the sales price of the equipment sold, NOV understated the sales prices of the equipment and induced EIT to issue invoices that were a fraction of the actual amounts owed.

19. The Contract also provided that NOV must deliver to EIT quarterly reports setting forth ***all*** the net sales value of each category of products sold, shipped/invoiced, and paid during each quarter from January 15, 2016, to January 14, 2020. Those reports are to include ***all*** sales of the products listed on Exhibit A to the Contract, from all NOV affiliates. NOV materially breached the agreement by failing to provide those reports.

20. Each of the above was a material breach of the parties' Contract that caused Plaintiffs damages.

21. Based on Defendants' breaches, Plaintiffs seek rescission of the Contract's terms and take the position that all technology for gas/liquid, liquid/liquid separators including high efficiency mass transfer structured packing and associated vessels used by NOV and its affiliates was effectively stolen from EIT and Etere. Therefore, Plaintiff seeks to recover all gross profits generated by NOV from April 1, 2014, to present using EIT and Etere's knowhow and technology, including all projects for which NOV Employees who were trained by Plaintiffs participated in the sales, engineering, design, or implementation of liquid-liquid separation, gas-liquid separation, and/or mass transfer equipment. Plaintiffs estimate that EIT is owed

approximately \$18 million in usurped profits. In addition, Plaintiff EIT is entitled to the present value of expected future gross profits EIT will generate using the technology provided by EIT. EIT estimates that the net present value of future gross profits to be generated is \$44 million. Plaintiffs agree to an offset of commissions and consulting fees actually paid to Plaintiffs against any profits obtained by NOV, and requests that the court make an equitable determination of the amount of any offsets and any applicable compensation owed to Plaintiffs for its time, expenses, knowhow, and work.

22. In the alternative, Plaintiff EIT seeks to be paid its commissions on all sales by all NOV affiliates all over the world from 2014 through the date of trial for any equipment type listed in the Contract that was not being designed and sold by NOV prior to April 1, 2014. Plaintiff EIT estimates that it is owed approximately \$4.5 million in commissions.

23. In the alternative, Plaintiff EIT pleads that the contract is vague as to whether all sales of gas/liquid, liquid/liquid separators including high efficiency mass transfer structured packing and associated vessels is subject to the Contract, and thus Plaintiffs assert that evidence outside of the Contract may be reviewed in interpreting the Contract and that the Contract should be construed against Defendants and in favor of Plaintiffs under Texas law.

B. Accounting

24. The Contract created an obligation for NOV to provide sales reports during the contract term. NOV has utterly failed to do this. Plaintiffs ask that the Court order Defendants to provide a full accounting of all sales of products listed in Exhibit A of the Contract, including equipment sold, drawings, purchaser, individuals involved, cost of goods sold, and sale price worldwide, whether or not Defendants agree with whether commissions are owed for those products.

25. Plaintiffs seek to recover their attorneys' fees and other costs related to the accounting.

C. Blank

D. Fraud

26. Plaintiffs assert three separate counts of common law fraud. First, that NOV promised to pay EIT commissions on all sales from its getting in the business, and never intended to do so. Second, that NOV misrepresented to EIT and John Ettere that it was not going to buy a company to get into the business described in the Contract, which induced Ettere to agree to a commission-based agreement instead of insisting on being paid in full on completion of the project. Third, each of the sales reports provided to EIT by NOV misrepresented and understated the sales price of the equipment involved by approximately 60%, thereby inducing EIT and Ettere to issue invoices for a fraction of the money NOV actually owed.

27. Defendants never intended to comply with their obligations under the Contract. Defendants enticed Plaintiffs to accept the job on the promise that NOV would develop the business and grow it, generating significant commissions, numerous patents, and resulting royalty streams in perpetuity. However, it is now apparent that NOV never intended to compensate Plaintiffs once the business became mature. The fact that NOV did not tell Plaintiffs that the horizontal gun barrel patent was applied for while Plaintiffs were working for NOV and was issued during the commission period demonstrates the companies' bad faith. The fact that they repeatedly told EIT that NOV had "paid it in full" and denied that additional commissions were owing, even after being shown deficiencies in their reporting provides further evidence of their intent. The fact that NOV refused to provide sales reports for all internals sold during the commission period is further evidence of their intent to deprive Plaintiffs of the benefits of the

bargain. The fact that NOV limited its sales reports to Horizontal Gun Barrel equipment sold in the United States and internals manufactured by HMT, despite none of those items being contemplated by the Contract or EIT's services, is further evidence that NOV was acting in bad faith and never intended to comply with its obligations. The fact that Larry Engel and Lionel Boudreaux were contemplating buying other companies to get into the business, while telling EIT that they were not going to do that demonstrates that prior to the execution of the contract the NOV executives were already engaging in deceptive conduct in connection with the deal. It is clear that NOV intended from the beginning to pay Plaintiffs a couple hundred thousand dollars, obtain the technology and test the business line, and then deprive Plaintiffs of the majority of the commissions and all of the royalties promised. Defendants made a promise of future performance, with an intent at the time the promise was made not to perform as promised. This fraud caused damage to Plaintiffs by inducing them to perform work and transfer technology to NOV without being compensated.

28. Second, NOV represented to Ettere and EIT that it was not looking at other companies it could purchase to expand their solid separation business. Ettere pointed out to NOV, prior to the execution of the contract, that it should just buy a company to get into the business, rather than paying EIT a reasonable fee of \$1.8 million for one year's work. In order to avoid having to pay EIT the reasonable value of its services, NOV stated it was not looking at and not interested in buying another company and that it wanted to have EIT help it build the business organically and wanted to share the upside of that business with EIT when successful. If NOV had informed EIT that it was actively looking at other parties to purchase or that it would purchase a company like Fjord's to "get into the business," or "to jump start the business," or "to acquire proprietary technology rather than designing it from scratch," then EIT would have

insisted on written provisions in the Contract to include any sales from any other channels in the Contract. Or, in the alternative, EIT would have insisted on being paid the reasonable value of its services as it performed them, which would have been a minimum of \$150,000 per month. Defendant's misrepresentation of its actions and intent caused damages to Plaintiffs by inducing Plaintiffs to enter into a bad deal.

29. Plaintiffs have learned that the few sales that were reported by NOV grossly understated the commissionable value of those sales. The Contract provides that commissions are to be paid on the sales price, but NOV reported only the out-of-pocket cost it incurred for each job. This resulted in an approximate 60% understatement of the commissions owed. Each line item of those reports was a statement of material fact, reasonably relied upon by Plaintiffs, that was false, that induced Plaintiffs to take action (preparing invoices), and thereby caused Plaintiffs' damages. Defendants knew the statements were false or made them recklessly without knowledge of their truth. Defendants intended that Plaintiffs rely on those reports by preparing invoices for the stated amounts and accepting payments in those fraudulent amounts.

30. Plaintiffs seek to recover their damages incurred in the past, royalties owed in the future, any other actual damages incurred, and exemplary damages because Defendants acted intentionally and with malice or with reckless disregard for the interests of Plaintiffs.

E. Declaratory Judgment

31. As detailed above, NOV breached the Contract with Plaintiffs.

32. Paragraph 6 of the Contract provides that Plaintiffs are required to keep certain NOV information confidential. It also provides that Plaintiffs will not attempt to replicate or reverse engineer NOV technologies outside public domain. It also states that all reports written by EIT in connection with the Contract shall be the property of NOV. It also provides that

Plaintiffs were to transfer to NOV the ownership of all intellectual property related to Gas/Liquid Separation, Liquid/Liquid Separation, and/or Mass Transfer Products. The Contract also stated that Plaintiffs were to assign to NOV the exclusive right to print, publish, or sell any and all materials developed by EIT as part of the services under the terms of the Contract, with exclusive authority to dispose of all Copyrights. Plaintiffs seek a declaration that it is excused from all of those obligations and that all of the information and intellectual property it provided to NOV is rightfully owned by EIT to the exclusion of NOV.

33. Plaintiffs seek to recover their attorneys' fees incurred in connection with their application for declaratory judgment.

VII.

FRAUDULENT CONCEALMENT & DISCOVERY RULE

34. Plaintiffs plead that any limitations defense asserted by Defendants is barred by Defendants' fraudulent inducement. Under Texas law, fraudulent inducement occurs when (1) the defendant made a material representation that was false, (2) the defendant knew the representation was false or made it recklessly without any knowledge of its truth, (3) the defendant intended the plaintiff to rely upon the representation, and (4) the plaintiff actually and justifiably relied upon the representation, thereby suffering injury.

35. In this case, Defendants provided Plaintiffs with fraudulent sales reports that misstated both the number of legitimate sales, and the commissions owed (by reporting out-of-pocket costs as the sales price). In connection with those false reports, Defendants repeatedly, orally and in writing, assured Plaintiffs that there were no other relevant sales on which commissions were owed. Defendants knew those representations were false or made them recklessly without any knowledge of their truth. Defendants intended Plaintiffs to rely on their representations, and Plaintiffs justifiably relied on those representations by refraining from

immediately filing suit. As recently as March of 2025, Defendants have omitted that additional jobs were omitted from the sales reports that should have been paid, and as of the filing of this Amended Petition, Defendants have not paid Plaintiffs the commissions owed for the sales price having been misreported. Defendants' false statements that Plaintiffs had been paid in full and that there were no other sales of equipment listed in Exhibit A tolled limitations through March of 2025.

36. Plaintiffs further assert that the discovery rule applies to toll the applicable statute of limitations under Texas law. The discovery rule applies in breach of contract cases when the nature of the breach and injury are concealed and inherently undiscoverable, and the injury itself is objectively verifiable. Both of those conditions apply here. The rule provides that the limitations period does not begin to run until the injured party discovers, or through the exercise of reasonable diligence should have discovered, the nature of their injury.

37. In this case, Plaintiffs could not reasonably have discovered Defendants' breaches of contract and fraudulent activities at the time they occurred because Defendants had sole control over the relevant information and intentionally concealed their activities. Specifically, Defendants hid critical information regarding sales figures and internal developments related to Plaintiffs' provided technology, including the preparation of patent applications and the ongoing sales and marketing of technology EIT brought to NOV, which directly impacted Plaintiffs' rights and remuneration under the contract. Plaintiffs were provided false and incomplete sales reports and were not informed about potential patent applications that used their technology. It was only after extensive diligence and investigation by Plaintiffs, prompted by Defendants' repeated failures to provide accurate sales reporting and commission payments, that Plaintiffs discovered Defendants' breaches and fraudulent conduct. To this date, Defendants continue to

hide information on sales of liquid/liquid, gas/liquid separation, and mass transfer equipment from Plaintiffs. As recently as April of 2025, Defendants produced additional project files for sales of relevant equipment. Therefore, the discovery rule applies, and Plaintiffs' claims are timely asserted within the appropriate limitations period, as Plaintiffs filed suit within a reasonable time after discovering Defendants' fraudulent activities and breaches of contract.

VIII. **DAMAGES**

1. As a proximate result of Defendants' breaches of contract, Plaintiff has been harmed and has incurred actual and consequential damages in an amount to be determined by the jury. Plaintiffs seek damages in the approximate amount of \$62,000,000.00. Plaintiff also seeks to recover exemplary damages, costs, attorneys' fees, pre-judgment interest, and post-judgment interest.

IX. **PRAYER**

For the reasons stated above, Plaintiffs ask the Court to award them judgment against Defendants for the following:

- a. all actual, consequential, special, and exemplary damages allowed by law;
- b. reasonable and necessary attorneys' fees incurred by Plaintiffs;
- b. pre- and post judgment interest at the maximum rate allowed;
- c. costs of court; and
- d. such other relief to which Plaintiffs may be justly entitled.

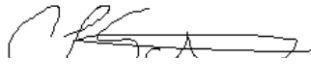
X. **JURY DEMAND**

Plaintiffs hereby demand a trial by jury. Plaintiffs have paid the jury fee.

April 7, 2025

Respectfully submitted,

SCHMIDT LAW FIRM, PLLC

By: 
C. Thomas Schmidt
State Bar No. 00797386
7880 San Felipe, Suite 210
Houston, Texas 77063
firm@schmidtfirm.com
713-568-4898 telephone
815-301-9000 facsimile

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the date above, a true and correct copy of the above and foregoing document was served on all counsel of record through the ECF Filing System

/s/ Tom Schmidt
Tom Schmidt