

Pecos Judge Enters Final Judgment in Pickens Case – Finally

By Natalie Posgate – (Dec. 13, 2017) – Three-hundred-and-eighty days after a West Texas jury found that billionaire oil mogul T. Boone Pickens was cut out of a lucrative oil and gas deal and awarded him \$145 million, the trial judge has entered his final judgment – but only after an appeals court ordered him to do so.



In a mixed final judgment filed on Friday, District Judge Mike Swanson ordered Midland-based Delaware Basin Resources and Baytech to pay Pickens and his company, Mesa Petroleum, \$117 million plus prejudgment interest for failing to live up to their end of an oil and gas deal. But the judge also tossed some of the jury’s rulings favorable to Pickens, including \$4 million in attorney fees and an additional \$24 million for Pickens’ 15 percent stake in the deal.

Swanson also tossed a jury finding of liability against one of the partners, J. Cleo Thompson, whose lawyers characterized the judgment as a “take-nothing” result.

However, appellate law experts say perhaps what’s more interesting than the judgment itself is the fact that Pickens first had to successfully secure a mandamus order to prompt Judge Swanson to make his ruling.

Pickens’ legal team filed a mandamus petition with the Eighth Court of Appeals on Sept. 5 after requesting multiple times for Judge Swanson to

enter his final judgment. Mesa’s briefings noted that since the jury’s verdict on Nov. 23, 2016, Pickens has turned 89 and declined in health after a series of strokes.

In their nine-page opinion, a three-judge panel in El Paso granted Mesa’s mandamus petition on Nov. 9 and ordered Judge Swanson to enter judgment within 30 days. Judge Swanson, who was appointed to the bench in August 2015 by Gov. Greg Abbott, complied with the order with less than 24 hours to spare.

While it is not common for judges to take a long time to sign a final judgment, it’s not necessarily unique. But being taken to task for an inordinate delay is unusual because of the inherent difficulty in determining from case-to-case what might be an unreasonable lapse of time.

“It is definitely difficult to get a mandamus opinion granted,” said Kirsten Castañeda, a Dallas-



Kirsten Castañeda

based mandamus expert who is not involved in the litigation. “It’s even more difficult to get a mandamus petition granted based on a standard that is measured by a reasonable time. It’s difficult to prove a ‘clear abuse of discretion’ when you don’t have a bright line test.

“This is another good example of a mandamus situation where the clear abuse of discretion itself establishes the lack of an adequate remedy by appeal,” added Castañeda, a partner at Alexander Dubose Jefferson & Townsend. >

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In their order, the Court of Appeals emphasized Mesa's repeated attempts to obtain an order, along with the lapse of time.

"By the time this opinion issues, it will have been almost one year since the jury rendered its verdict, more than eight months since the trial court conducted the hearing on Mesa's motion and the other post-verdict motions, and more than seven months since the parties submitted the post-verdict briefs," the judges wrote. "Mesa has also shown that it has repeatedly requested the trial court to enter judgment without further delay. The trial court's failure to rule under these circumstances constitutes a refusal to rule."



Chrysta Castañeda

The appellate order, said Castañeda, provides new guidance on a historically murky topic: How long should it take a trial judge to issue final judgment?

"It doesn't give us a bright line rule, but to have a case that goes through a step-by-step process of analyzing

what is a reasonable time I think is a great help to practitioners in Texas," Castañeda said.

At trial, lawyers for Mr. Pickens argued to jurors that Dallas-based J. Cleo Thompson, another legendary name in the oil and gas field, as well as Baytech and DBR breached their duty as business partners by cutting Mesa out of a joint operating agreement to acquire and drill more than 160 wells in the "Red Bull" area of West Texas's Reeves and Pecos counties and, in the process, stole Mesa's 15 percent interest in the project.



Lawyers for the defense argued during the three-week trial that they did nothing wrong, that Pickens willingly opted out of the deal after losing billions in the stock market crash in 2008 and that he only brought the lawsuit to repair his own ego and shift the blame from himself for cashing out of a deal that in 2014 became very lucrative.

With regard to the final judgment itself, lawyers for both Pickens and J. Cleo Thompson say they are pleased with the outcome.

"Mesa is very pleased that the court entered final judgment affirming the unanimous jury verdict and awarding Mesa approximately \$135 million," said Pickens' lead attorney Chrysta Castañeda of The Castañeda Firm (and no relation to Kirsten Castañeda). "Mesa feels that the judgment vindicates important legal rights in the oil and gas industry."



Geoffrey Bracken

In a written statement, J. Cleo Thompson's lead trial lawyer, Geoff Bracken, called Friday's ruling a "take-nothing" judgment.

"The court's final judgment confirms the jury's earlier rejection of the billion-dollar claims of T. Boone Pickens and Mesa Petroleum Partners LP involving J. Cleo Thompson and James Cleo Thompson, Jr., LP," said Bracken, a partner in Gardere's Houston office. "The court's take-nothing judgment is consistent with evidence presented at the November 2016 trial that J. Cleo Thompson was a good project developer and operator. This judgment follows the court's pretrial dismissal of most of Mesa's other claims. >



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“We also are grateful that the court ordered Mesa Petroleum Partners, LP to pay attorneys’ fees and costs to J. Cleo Thompson and James Cleo Thompson, Jr. LP,” he added. “We thank the jury and the court for their service and hard work in this case.”

Castañeda said Mesa is “disappointed” that Judge Swanson “rejected the jury’s unanimous findings that J. Cleo was grossly negligent and that it willfully disregarded Mesa’s rights.

“Mesa intends to appeal that portion of the judgment,” she said.

She also pointed out that the \$95,000 in attorneys’ fees awarded to J. Cleo is just pennies compared to the \$135 million that Mesa was awarded.

Yetter Coleman partner Tim McConn and Andrews Kurth Kenyon partner Stuart Hollimon, who led the defense for Delaware Basin Resources and Baytech, declined comment on the judgment.

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