

**CORPORATIONS**

Breach of Fiduciary Duty, Contracts — Breach of Contract, Intentional Torts — Tortious Interference with a Contract, Intentional Torts — Conversion

Joint venturer cut out of picture after company sold

VERDICT **\$44,000,000**

CASE Mel R. Sweatman and Paz Gas Corp. v. Gulf Energy Marketing, Inc., Coral Energy Holdings, Tejas Coral GP, LLC, Kinder Morgan Energy Partners, LP, Kinder Morgan Inc., Intergen and Tejas Gas Operating, LLC, Intergen (North America) Inc., No. 02-06-19,059

COURT De Witt County Court, TX

JUDGE Whayland W. Kilgore

DATE 03/24/2005

PLAINTIFF

ATTORNEY(S) **Paul Smith;** Ware, Jackson, Lee and Chambers; Houston, TX
Lee Ware; Ware, Jackson, Lee and Chambers; Houston, TX
Eileen O'Neill; Steidley and O'Neill; Houston, TX
Michael A. Sheppard; Crain and Sheppard; Cuero, TX
Cynthia Sheppard; The Law Office of Cynthia Sheppard; Cuero, TX

DEFENSE

ATTORNEY(S) **Phillip D. Sharp;** Bracewell & Patterson; Houston, TX

Don Jackson; Haynes and Boone; Houston, TX

Earl Touchstone; Andrews and Kurth; Houston, TX

Emmett Cole; Cole, Cole and Easley; Victoria, TX

Julie Huff; Bracewell and Patterson; Houston, TX

Raymond Reese; Dietze and Reese; Cuero, TX

Tom Forestier; Haynes and Boone; Houston, TX

FACTS & ALLEGATIONS In 1989, plaintiff Mel R. Sweatman, a pipeline executive in his 50s, left his former employer, Tejas Gas Operating LLC, to start his own business. Tejas, worried that Sweatman might use his oil industry contacts to take business away from it, entered into a joint venture in which it agreed to give him 20% of all profits from natural gas sales to the energy company Entex Corp. Sweatman set up a company, Paz Gas Corp., to receive those payments and, in exchange, agreed not to pursue business on his own with Entex.

The partnership continued after Tejas was taken over in 1998 by Shell-owned Coral Energy Holdings LP and InterGen. Coral and InterGen drew up amendments to contracts with Entex but never drafted a wholly new contract and did not change the

joint venture with Sweatman. However in 2002, when Tejas was purchased again, this time by Kinder Morgan Inc., the company drew up a new contract with Entex which cut off payments to Sweatman, declaring that the joint venture was over and that it actually should have been discontinued in 1991.

Sweatman and Paz Gas sued Gulf Energy Marketing Inc., Coral Energy Holdings, Tejas Coral GP. LLC, Kinder Morgan Energy Partners LP, Kinder Morgan Inc., InterGen and Tejas Gas Operating LLC, and Intergen (North America) Inc. , claiming breach of fiduciary duty, breach of contract and tortious interference with a contract. Sweatman also claimed four different criminal penal code violations, including theft, commercial bribery and misapplication by a fiduciary “to bust the caps on punitives damages,” according to plaintiff’s counsel, referring to the exception for criminal activity.

Kinder Morgan countersued, claiming that Sweatman owed it more than \$4 million for payments he should never have received.

In court, the defense claimed that the joint-venture agreement was only effective until Jan. 1, 1991. All payments made after that date were erroneously made.

Plaintiff attorneys argued that the parties intended for all of the business between Tejas and Entex to be subject to the joint venture agreement and that their course of conduct indicated that was their intent and agreement.

Kinder Morgan, which at the time of trial owned Tejas and Gulf Energy, claimed that, by entering into new contracts for the sale of natural gas to Entex, the parties had effectively ended the joint venture.

The plaintiffs’ counsel argued that the business with Entex was the property of the joint venture regardless of the form the contracts took for the sale of gas.

Before the case went to the jury, Sweatman settled with Coral Energy and InterGen for an undisclosed sum.

INJURIES/DAMAGES Sweatman claimed he lost up to \$16.1 million when his interest in the joint venture was discontinued by Kinder Morgan. In addition, Sweatman asked the jury to force Kinder Morgan to pay him \$22 million in revenue it made from sales to Entex after 2002.

Sweatman also asked the jury for \$150 million in punitive damages and \$6 million in attorney fees.

VERDICT INFORMATION: The jury found the Kinder Morgan defendants 100% liable. The jury also found that Kinder Morgan not only acted with malice, but violated three penal codes - theft, commercial bribery and misapplication by a fiduciary-lifting the statutory cap on punitive damages.

The damages phase was bifurcated into compensatory and punitive phases. In phase one, the jury awarded \$44 million against Kinder Morgan. While the jury deliberated on punitive damages, the parties decided to settle the case for \$25 million paid to plaintiff.

Plaintiffs’ counsel credited the jury’s malice finding and its finding of criminal conduct as instrumental in prompting the final settlement because it put Kinder Morgan in the position of facing an “unpredictably large verdict against them.”

PAZ GAS CORP \$22,000,000 Profit Disgorgment

\$6,000,000 Attorney Fees

\$16,000,000 Actual Damages

PLAINTIFF

EXPERT(S) Jeffrey Spilker; Valuation; Houston, TX

DEFENSE

EXPERT(S) None