

After a Quirky Trial, Shook Hardy Scores Win in Fifth Circuit

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By Natalie Posgate

(Oct. 15) – It was the trial of a defense lawyer’s dreams.

After the plaintiffs rested, Shook Hardy & Bacon lawyers Pete Henk and Ben Walther presented a motion for judgment as a matter of law to U.S. District Judge Samuel Ray Cummings in Lubbock.

Though such a request halfway through a jury trial is quite pie in the sky, Judge Cummings granted it without hesitation.

“Judgment will be entered for the defendants that plaintiffs take nothing,” Judge Cummings said on the third day of a March 2017 trial. “Bring in the jury.”

It was only the icing on top of an already unusual trial – one in which Judge Cummings instructed the lawyers to present their opening statements at the same time as jury selection (45 minutes per side), rarely interacted with counsel outside of the jury’s presence and made a sarcastic outburst about how “exciting” a video deposition was.

Judge Cummings’ ruling on the oil and gas dispute was affirmed for a second time last Friday when the U.S. Court of Appeals for the Fifth Circuit denied the plaintiffs’ request to rehear its appeal. The Fifth Circuit panel, which included Judges Edith Jones, Catharina Haynes and E. Grady Jolly, first struck down the plaintiffs’ appeal in an Aug. 31 opinion.

The case pitted Seismic Wells, an oil and gas lease operator and seismic data company, and its owner, Oklahoma resident Barry Tranckino,



Pete Henk



Ben Walther

against Utah-based Sinclair Oil Corporation and a string of affiliated companies.

The claims in the case were simple. Tranckino argued he would have never entered a deal to provide seismic data to Sinclair for land in Texas’s Borden and Garza counties had he known the company went through a restructuring in 2006. Because Sinclair did (and, as he claimed, failed to disclose the information to him), Tranckino argued Sinclair defrauded him and breached their original agreement.

Tranckino sued in 2015, and the case went to trial last spring. But even more interesting than the merits of the case was everything that’s usually un-newsworthy: the procedural matters.

“We didn’t meet him (Judge Cummings) until the prospective jurors were coming in for voir dire,” Henk, a partner in Shook Hardy’s Houston office, told *The Texas*

Lawbook. “There was no pretrial conference – not even a telephonic hearing. There was no exchange of niceties, no conversation at all. I’m not even kidding, he walked into the courtroom, and we were all at the counsel table, and Judge Cummings says, ‘Lead counsel for the plaintiffs is Gary Sorden. Mr. Sorden, where are you?’” Henk recalled.

Then: “ ‘Counsel leading for the defendants is Pete Henk. Pete, where are you?’ I say ‘met’ – that’s how we met him.”

Opening statements took place simultaneously with jury selection, in which each side had 45

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minutes to do both. No time limit within those 45 minutes were set – the lawyers were allowed to spend 40 minutes on jury selection and five on openings, divide the time half and half, or even spend a few minutes questioning jurors, switch to openings, then spend the remaining time asking follow-up questions.

Aside from one local lawyer who knew of Cummings conducting voir dire like this once before, “When I checked around nobody had ever heard of his procedure,” Henk said.

The next day Henk cross-examined Tranckino for around two hours, during which Henk said he felt like he had impeached him about two dozen times.

The trial came to a dramatically abrupt end on the third day. According to court documents, while the plaintiffs’ economic damages expert, Syd Thompson, was mid-sentence in his testimony, Judge Cummings blurted out to jurors that they should “consider his testimony with great caution” because his “testimony is based on a lot of speculation.”

This came shortly after a sidebar conference regarding Thompson’s qualifications to testify (the defense pointed out he had never testified before) in which Judge Cummings said he would allow Thompson to testify, but warned the plaintiffs’ counsel they were “on thin ice.”

Later, the jury took a break while the lawyers waited for a Sinclair corporate representative to arrive to testify. The plaintiffs had just rested their case, and lawyers on both sides argued their motions for judgment as a matter of law.

Judge Cummings denied the plaintiffs’ motion and granted the defendants’, and just like that, the trial was over.

“I’ve never seen a moment like that in the courtroom as far as surprise [element,]” Henk said. “The judge ruled immediately after I started arguing, told the jury they can go home, and then left the courtroom. I was looking at the other side and it looked like they had just seen a ghost. In a matter of minutes, they went from playing a video [deposition] to the case being over.”

Multiple attempts to set up an interview with Gary Sorden, Seismic Wells’ lead attorney, were unsuccessful.

Seismic Wells appealed, and the Fifth Circuit panel struck down the appeal in an Aug. 31 ruling. Seismic Wells filed a petition for rehearing, which was denied Oct. 5.

Ben Walther, an associate at Shook Hardy, argued in Sinclair’s briefs that the Fifth Circuit should look no further at Seismic Wells’ appeal because it brought the case long after the statute of limitations had expired.

In its Aug. 31 opinion, the Fifth Circuit sided with Sinclair’s argument.

“Whether any of these theories ultimately has merit is dubious,” the 15-page opinion says. “We do not discuss them, however, because we are persuaded that as a matter of law, Seismic Wells sat on its rights too long before filing suit on June 5, 2015, nine years after every alleged fraudulent representation or nondisclosure occurred.”

Had statute of limitations not been a factor, the Fifth Circuit indicated in its opinion as well as during oral argument that it would still side with Sinclair on the merits of the fraud claims.

“You go on with your argument, but speaking for myself alone, I think this is one of the most ludicrous cases I have ever seen,” Judge Edith Jones fired at Klemchuk attorney Tim Craddock, who was only a few minutes into his oral argument for Seismic Wells.

In addition to Craddock and Sorden, Seismic Wells’ legal team also includes Aaron Davidson, Corey Weinstein and Mandi Phillips, all of whom practice at the Klemchuk law firm in Dallas. The team also includes Chris Robeson of Hassman & Jones.

In addition to Henk and Walther, Sinclair’s legal team includes Randall Crump, another attorney at Shook Hardy, as well as J. Paul Manning of Field Manning Stone Hawthorne & Aycock in Lubbock.