

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Litigation Roundup: Details on Four Recent Jury Verdicts

SEPTEMBER 30, 2024 | BY MICHELLE CASADY

In this edition of Litigation Roundup, we've got updates in legal disputes involving hip hop and rap artists Cardi B and T.I., EOG Resources wins a \$15.6 million verdict in a dispute with a Webb County ranch owner, and private equity firm Welsh Carson gets dismissed from an antitrust lawsuit.

The Litigation Roundup is a weekly feature highlighting the work Texas lawyers are doing inside and outside the state. Have a development we should include next week? Please let us know at tlblitigation@texaslawbook.net.

Webb County District Court

Jury Awards \$15.6M to EOG in Fight with Rancher

In a fight between a landowner of ranchland in Webb County and EOG Resources, which had a lease on the property, a jury on Friday returned a verdict in favor of the oil and gas company, awarding more than \$15 million in damages.

Dean Davenport, as trustee of the CFR 2017 Trust, had filed suit against EOG Resources accusing it of “brazenly ignoring its contractual covenants and common law obligations” to his family by cutting a perimeter fence, refusing to use an agreed-upon access point to the lease and “destroying native Texas wildlife habitat” to build new roads.

According to court documents, EOG's predecessor and the prior owner of the Webb County land entered into an oil and gas lease in 1967. Davenport, who bought the plot in 2020, subsequently signed a

water use agreement with EOG in 2022.

EOG counterclaimed, alleging that Davenport had no right to interfere with its oil and gas operations but did so by “erecting a series of metal poles” near its access point to the property and also “obstructed access with a bulldozer and obstructed access through the actions of his ranch personnel.”

The jury found EOG complied with the water purchase agreement while Davenport failed to do so. The jury found EOG was entitled to \$15.6 million in damages for the breach of the water purchase agreement — including \$12.3 million to cover what EOG will spend on water to be used on the lease through January 2027, \$1.8 million in costs for transporting and delivering that water through January 2027 and about \$700,000 for costs EOG incurred constructing a frac pond.

The jury awarded an additional \$700,000 in attorney fees and conditional appellate fees of \$205,000.

Webb County District Judge Monica Z. Notzon presided over the trial.

EOG is represented by Corey F. Wehmeyer, John W. Ellis, Andrew “Drew” Simank, Renee Yanta and Patrick A. LeMasters of Santoyo Wehmeyer and David Ortega of Naman Howell Smith & Lee.

The Davenports are represented by Elliott S. Cappuccio and Leslie Hyman of Pulman Cappuccio & Pullen, David W. Navarro, Clayton N. Matheson and Brock A. Niederhofer of Hornberger Fuller Garza & Cohen, Alison Haynes of Trevino Haynes and Joseph R. Knight of Jewell, Brown, Blake & Knight.

The case number is 2023CVG000491D2.

Tom Green County District Court

Jury Awards \$6.56M in Drunken Driving Death Suit

A bar called Kimbo's Saloon and a patron a jury found was overserved at the establishment have been hit with a \$6.56 million verdict in a lawsuit over a March 2020 fatal crash.

Late Thursday afternoon, the jury of 11 returned a unanimous verdict finding Kimbo's 60 percent liable for the crash that killed Johnell Hornsby and finding the driver, Brian Keith Castillo, 40 percent responsible. Jurors heard Castillo's blood-alcohol level was .198 three hours after the accident, which is nearly two-and-a-half times the legal limit.

The lawsuit was filed in April 2020 by Hornsby's mother, Julieta Neira, and two minor children, according to court records.

Neira was awarded \$1.15 million for past and future mental anguish and \$1.5 million for past and future loss of companionship. The two minor children were awarded a total of \$3.9 million.

Police said Castillo was driving northbound on North Oakes Street when he crossed into southbound lanes, hit a power pole and then struck Hornsby. Castillo pleaded guilty to intoxication manslaughter and was sentenced to eight years in prison.

Lance Livingston of Dortch Lindstrom Livingston, who represented one of the children, praised the jury's verdict in a statement.

"We hope this sends a signal to every bar and restaurant that they can be liable for knowingly overserving a customer," he said.

Tom Green County District Judge William C. Sowder presided over the trial.

The plaintiffs are also represented by Timothy Dortch of Dortch Lindstrom Livingston, Austin Mathis of Mathis Law and Tex Quesada of Sommerman, McCaffity, Quesada & Geisler.

The defendants are represented by Ryan Hughes and Edgar Korzeniowski of Griffith and Hughes and Ed Gendry of San Antonio.

The case number is D200111C.

Southern District of Texas

Welsh Carson Beats Back Antitrust Class Claims

On Friday, U.S. District Judge Alfred H. Bennett found that a proposed class of plaintiffs suing a private equity firm for its role in allegedly creating a monopoly waited too long to bring suit and tossed the claims as time-barred.

Electrical Medical Trust filed suit in November against both Welsh, Carson, Anderson & Stowe and U.S. Anesthesia Partners, accusing Welsh Carson of helping create the physician services organization as part of a multiyear scheme to monopolize hospital anesthesia services in Texas.

Welsh Carson had argued Electrical Medical's suit was filed after the four-year statute of limitations that govern such claims.

"Based on the foregoing, the court finds that plaintiffs have not sufficiently alleged Welsh Carson's 'independent[] participat[ion] in the enterprise's scheme' during the limitations period," Judge Bennett wrote. "Rather, plaintiffs, like the FTC, have failed to 'allege any conduct by Welsh Carson in the past six years that is a plausible antitrust violation.'"

In May Welsh Carson was also dismissed from a related lawsuit brought by the Federal Trade Commission, accusing it and U.S. Anesthesia Partners of collaborating in a yearslong effort to consolidate anesthesiology practices in Texas to drive up costs and profits.

In the Electrical Medical Trust case, Judge Bennett on Friday also trimmed the suit against U.S. Anesthesia Partners, tossing the claims alleging it was part of a conspiracy to monopolize the market. He allowed the plaintiffs to proceed with "claims for monopolization and attempted monopolization under Section 2, unlawful acquisition under Section 7, and horizontal agreement to fix prices and divide market under Section 1."

Electrical Medical Trust is represented by Nimish Desai, Benjamin A. Trouvais, Brendan P. Glackin, Jules A. Ross and Lin Y. Chan of Lieff Cabraser Heimann &

Bernstein.

Welsh Carson is represented by Paul Yetter, Matthew Zorn and Tyler Young of Yetter Coleman and David B. Hennes, Elena Davis, Jane E. Willis and Kathryn E. Caldwell of Ropes & Gray.

U.S. Anesthesia Partners is represented by Derek C. Reinhold, Mark C. Hansen, Collin White, David J. Schwarz, Dennis Howe, Geoffrey Klineberg, Kenneth Fetterman, Kevin Miller and Kyle Wood of Kellogg, Hansen, Todd, Figel & Frederick.

The case number is 4:23-cv-04398.

Cardi B Hires DLA Piper to Defend Against \$50M Copyright Infringement Suit

Belcalis Almanzar, better known as Cardi B, has hired Brett Solberg of DLA Piper to defend her in a lawsuit brought by two McAllen music producers who have accused her of copyright infringement.

On Monday, Solberg filed a motion to dismiss the lawsuit that was lodged July 3 by Joshua Fraustro and Miguel Aguilar. The duo allege they wrote the musical composition “Greasy Frybread” in 2021 that is available on Spotify and is featured in the FX series “Rez Dogs,” according to the lawsuit.

The lawsuit alleges that Cardi B’s song “Enough (Miami),” released in March 2024, infringes the copyright for “Greasy Frybread.”

“Defendant Cardi B, along with other Defendants, has used the song in her new album without permission,” the Fraustro and Aguilar allege.

In the motion to dismiss filed Monday, Cardi B argues Fraustro and Aguilar haven’t shown the case belongs in Texas courts and should be dismissed accordingly.

“At best, plaintiffs might have pleaded — but did not — that copies of the allegedly infringing song ‘Enough (Miami)’ have been sold online and distributed to this forum,” the motion reads. “But that too would be insufficient to confer personal jurisdiction without any evidence that this forum was purposefully targeted.”

But even if Texas courts did have jurisdiction, Solberg argued in the motion that the case should still be dismissed.

“Plaintiffs’ amended complaint replaced

their claim for federal copyright infringement with a common copyright law claim under Texas law. It appears this was done because they belatedly realized (after Almanzar’s counsel brought it to their attention) that they lacked a copyright registration,” the motion argues. “... Importantly, however, plaintiffs cannot circumvent the need for a copyright registration merely by framing their claim under common law. That is because the U.S. Copyright Act preempts any common law claim that is equivalent to a federal copyright claim.”

Fraustro and Aguilar are represented by Robert Ray Flores of Raymondville, Texas.

Counsel for the other defendants — Warner Music Group, Atlantic Records, Celebrity Booking Agency and two individual defendants — had not filed an appearance as of Monday.

Cardi B is also represented by Lisa F. Moore and W. Andrew Pequignot of Moore Pequignot.

The case number is 7:24-cv-00264.

Western District of Texas

SVV Technology Gets \$22.4M Verdict in Patent Case

A jury in Waco on Thursday found Taiwanese company ASUSTek Computer Inc. had willfully infringed four patents belonging to California-based SVV Technology Innovations that cover technology used in LED displays.

The lawsuit was filed in March 2022, according to court documents, and assigned to U.S. District Judge Alan D. Albright. Testimony began in the trial Sept. 23, and closing arguments were delivered Sept. 26. It took the jury about six hours of deliberations before reaching the verdict.

Warren McCarty of Caldwell Cassidy & Curry, who represented SVV at trial, issued a statement noting this is the second time a jury has sided with SVV in a patent infringement case this year.

“Our team and the client are very appreciative of the jury’s service and the careful consideration they gave to this case,” he said.

The patents at issue in the suit covered technology invented by Dr. Sergiy Vasylyev,

The Texas Lawbook

a physicist who founded SVV, which also does business as Lucent Optics.

SVV is also represented by Brad Caldwell, Daniel Pearson, Seth Reich, Aisha Mahmood Haley, Bjorn Blomquist and Ashton Duke of Caldwell Cassady & Curry and Robert Katz of Katz Law Firm.

ASUSTek is represented by Nickolas R. Apel, Chris R. Schmidt, Eric A. Buresh and Michelle L. Marriott of Erise IP in Overland Park, Kansas, Craig D. Cherry of Cherry Johnson Siegmund James and Michael J. Newton of Alston & Bird.

The case number is 6:22-cv-00311.

Central District of California

Houston-based Sheppard Mullin Team Wins Big for T.I.

In a case with a long history — two prior trials including a mistrial and a win for MGA Entertainment that was later reversed on appeal — a federal jury in California recently sided with the rap artist T.I. in a trade dress infringement lawsuit involving a musical group and childrens' dolls.

The jury returned its verdict in favor of Clifford “T.I.” Harris and his wife Tameka

“Tiny” Harris on the 13th day of trial, Sept. 23, finding MGA had infringed the trade dress of a now-defunct Atlanta-based pop group the couple had launched.

Jurors were tasked with deciding whether MGA's doll series, called “L.O.L. Surprise! O.M.G.” infringed the trade dress of the musical group, which was called the OMG Girlz. Jurors determined the distinctive dress the musicians wore in concert was infringed by the dolls sold by MGA.

The jury awarded \$17.8 million in compensatory damages — the amount MGA had profited from the sale of the dolls — and an additional \$53.6 million in punitive damages.

U.S. District Judge James V. Selna presided over the case.

MGA Entertainment is represented by its own Benjamin C. Johnson and Jennifer A. Marrow and Carole E. Reagan, Dean J. Zipser and Mark A. Finkelstein of Umberg Zipser.

T.I. is represented by and John R. Keville, Robert Green and associate Chante Westmoreland of Sheppard, Mullin, Richter and Hampton and B'Ivory LaMarr of The LaMarr Firm.

The case number is 2:20-cv-11548.