

## Jury: Energy Transfer Partners and Enterprise had legal partnership



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In a potential landmark verdict, a Dallas jury ruled Tuesday that two businesses can be involved in a legally binding partnership even when one of the parties never intended for the joint venture to be official.

The 12-person jury found that Houston-based Enterprise Products Partners formed a legal partnership with Dallas-based Energy Transfer Partners in 2011 to jointly build a pipeline from Cushing, Okla., to the Gulf Coast and that Enterprise violated that partnership when it ended the deal to do a more financially rewarding joint venture with Enbridge Inc.

The jury, in a 10-2 decision, ordered Enterprise to pay Energy Transfer Partners \$319 million in damages for violating the corporate version of a common law marriage.

The verdict, however, was not a complete victory for Energy Transfer Partners. The jury found that Canadian-based Enbridge did not conspire with Enterprise to cut Energy Transfer Partners out of their joint venture.

Legal experts say the jury's verdict sets a potential precedent by establishing new guidelines for what constitutes a business partnership under Texas law, which historically has been relatively undefined.

"This is going to be a case cited for a long time on the issue of when a relationship becomes a partnership," said Energy Transfer Partners' lead lawyer, Mike Lynn of Lynn Tillotson Pinker & Cox.

In a prepared statement, Enterprise senior vice president James Cisarik said that his company did not find the verdict to be supported by the evidence in the trial and that it would "promptly seek to reverse" the jury's findings.

"We do not have unintended corporations, LLCs or LLPs in business, and we should not have unintended partnerships," the statement said.

Jeffrey Nobles, an appellate law expert at Beirne, Maynard & Parsons in Houston, said: "The damage numbers are immense for most human beings like you and me, but the amounts generated in the pipeline business are so great that it's not terrible news for Enterprise shareholders.

"But it may be a big deal for management and legal departments, who are under a lot of pressure these days to avoid major hits and bad publicity and to control their legal budgets."

Energy Transfer Partners had asked jurors for \$594 million in actual damages and double that amount in punitive damages. Because the jury verdict was not unanimous, no punitive damages were awarded.

Enterprise claimed that its relationship with Energy Transfer Partners was never a legally binding partnership and that the potential for a joint venture fell apart when the pipeline project called Double E failed to attract enough oil and gas companies as customers.

Enterprise argued that each agreement signed for the Double E project was written so that either party could walk away from the project at any time with no binding legal obligation.

The five-week trial featured testimony from more than a dozen senior executives from the three giant oil companies.

Regan Lee, one of the jurors in the case, said the decision was not difficult because she found Energy Transfer Partners' witnesses more genuine than those for Enterprise and Enbridge.

Other jurors said that Energy Transfer Partners' chief executive, Kelcy Warren, especially appealed to them. Warren expressed his feelings of betrayal when he learned about Enterprise's decision to dump Energy Transfer Partners and do another pipeline project with Enbridge.

"When he said, 'Go to frickin' church,' he had me," said juror Maryanne Denning.

Lawyers for Enbridge said they were relieved that the jury did not find the company liable for conspiracy against Energy Transfer Partners.

"We're pleased with the verdict as it related to Enbridge," said Enbridge lead lawyer Michael Steinberg of Sullivan & Cromwell in Los Angeles.

Energy Transfer Partners has asked Judge Emily Tobolowsky for additional restitution, so the company could get more in damages than the \$319 million, depending on her decision.

Enterprise also prevailed in one other matter. The jury decided that Energy Transfer Partners owes Enterprise \$814,148 in damages for Energy Transfer Partners' failure to comply with a section in a reimbursement agreement that the two companies signed in 2011 for the proposed Double E joint venture.

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