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## Dallas Judge Awards ETP \$500 Million in Enterprise Partnership Dispute

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By Mark Curriden – (July 23) – A Texas judge has awarded Dallas-based Energy Transfer Partners nearly a half-a-billion dollars in damages in a dispute with a Houston pipeline company over an attempted partnership that went awry.

State District Judge Emily Tobolowsky notified lawyers for the two oil and gas pipeline conglomerates late Wednesday that she was ordering Enterprise Products Partners to pay ETP about \$500 million in damages and interests.

Legal experts say it is the largest civil judgment ever awarded by a Dallas state court judge. Analysts also predict the case will be appealed and will attract strict scrutiny from the Texas Supreme Court because of the size of the judgment and the legal issues in question.



ETP's Dallas Headquarters. Photo courtesy of dallasnews.com

ETP sued Enterprise claiming that the two companies had agreed to jointly build a pipeline from Cushing, Okla., to the Gulf Coast, but that Enterprise violated the partnership when it walked away from its plans with ETP to do a more lucrative project with a competitor.

Enterprise argued that it never had a legally binding partnership with ETP.

A five-week jury trial ended in March when a Dallas jury ruled in favor of ETP and awarded \$319.4 million in damages.

Judge Tobolowsky told lawyers Wednesday that Enterprise must pay the \$319 million plus another \$150 million in disgorgements, which would be ETP's share of the value of the joint venture if it had succeeded. The judge also said Enterprise needed to pay ETP's trial costs and pre-judgment interests dating back to September 2011.

The total amount, according to lawyers, would exceed \$500 million.

ETP's lawyer, Mike Lynn of Lynn, Tillotson, Pinker Cox, and Enterprise's lawyer, David Beck of Beck Redden, declined to comment.

During a court hearing last week, Lynn asked the judge to award \$1 billion in damages. Beck argued that the judge should award ETP nothing.

The case is considered a landmark because the jury found that two businesses can be involved in a legally binding partnership even when there is no official partnership agreement and when one of the parties claims it never intended for the joint venture to be official.

"It is basically the business version of a common law marriage and divorce," says former Texas Supreme Court Justice Craig Enoch, who is now a partner at Enoch Keever in Austin.

"The extremely large size of the judgment and the fascinating legal issue for businesses will most certainly attract the eye of the state Supreme Court," Enoch says.

Dallas appellate law expert Chad Ruback said this case "is a battle between two Goliaths," noting that ETP is a midstream company with about \$50 billion in oil and gas assets, while Enterprise has an estimated \$38 billion in assets.

"I have no doubt that Enterprise began consulting with appellate counsel long before trial began and has already formulated strategy for arguments to be made on appeal," says Ruback. "Cases with especially large judgments receive extra scrutiny in the appellate courts. A case with a judgment of this magnitude is simply not going to go unnoticed."

At last week's hearing, Beck told Judge Tobolowsky that ETP's case was nothing more than "partnership by ambush" and that the two companies signed written agreements that there would be no partnership unless both sides agreed.

ETP's appellate counsel, Nina Cortell, a partner at Haynes and Boone, told the judge that the jury heard and rejected Enterprise's arguments because of the "mountains" of documents from both companies showing there was indeed a partnership.

The judge is expected to enter a final order of judgment in the next week or so.

Other lawyers involved in the case are David Coale of Lynn Tillotson representing ETP and Dick Sayles of Sayles Werbner defending Enterprise.

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Chad Ruback