



Texas Supreme Court Update *Opinions Issued March 3, 2017*

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***In Personam* Jurisdiction: Two Trips to Texas to Negotiate Settlement Is Not Enough to Create Specific Personal Jurisdiction.**

In overly simplified terms, Pepsi's contractual indemnitor settled a suit in New York against entities including those ultimately related to M&F Worldwide entities. The New York suit was a dispute over funding of settlements of asbestos claims against Pepsi's contractual indemnitor. Pepsi later sued M&F in Texas, claiming that the New York settlement was intended to limit the funds available to satisfy its indemnitor's contractual obligations to Pepsi. None of the parties to the New York suit or the agreement settling it were Texas domiciliaries or citizens. Pepsi is not a Texas domiciliary or citizen. On two occasions, representatives of M&F Worldwide entities traveled to Texas to participate in negotiations leading to the New York settlement. agreement of the New York suit. Further, other parties to that settlement retained a Texas entity to manage the funds created under the settlement.

As a result of the settlement, Pepsi sued in Texas for tortious interference with the contract it had with its New York indemnitor. In a unanimous opinion written by Justice Lehrmann, the supreme court ruled in [M&F Worldwide Corp. v. Pepsi-Cola Bottling Co., Inc.](#) that Pepsi had not shown that Texas had specific personal jurisdiction over the defendants in its suit. Citing *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995), the court rejected Pepsi's contention that the non-resident defendants' alleged conspiracy with a Texas resident sufficed to confer specific personal jurisdiction. "[N]egotiating, executing, and carrying out the settlement agreement" was not committing a tort, doing business, or causing an injury in Texas and, in any event, there was no causal connection between the defendants' Texas activities and the harm for which Pepsi sought to recover. The court remanded the case for consideration of whether the defendants were shown to be subject to general jurisdiction in Texas. Under [Daimler A.G. v. Bauman](#), general personal jurisdiction would not exist unless Texas was effectively the state of incorporation or principal place of business for the defendants. **Oil & Gas: Top Leases Do Not Violate the Rule Against Perpetuities.**

Charge Error: Question About Production in Paying Quantities Cannot Be Limited to a Particular Time.

[BP America Production Co. v. Laddex Ltd.](#) involved the against perpetuities. Do not operate heavy machinery while under the influence of reading about this decision. While the property in question was ostensibly under lease to BP, Laddex took a contingent lease (a "top lease") that would become effective if and when BP's underlying lease expired. Laddex sued BP claiming that BP's lease had terminated because it had not achieved production in paying quantities. BP countered that Laddex's lease was void under the Rule Against Perpetuities. After the trial court refused to invalidate the Laddex top lease for violation of the Rule Against Perpetuities, it charged the jury to decide whether the lease had stopped producing in paying quantities during a specified period in which the lease had its lowest production.

¹ The opinions expressed are solely those of the author. They do not necessarily represent the views of Munsch, Hardt Kopf & Harr, P.C. or its clients.

For a unanimous supreme court, Justice Lehrmann agreed with the trial court that the Laddex top lease did not violate the Rule Against Perpetuities. She reasoned that the top lease presently conveyed the lessor's right of the possibility of reversion if the BP lease terminated. In other words, the top lease vested an interest when the lease was signed. It did not create an interest that only vested at an unspecified future time.

The opinion then turned to the propriety of the jury question and instructions and found them wanting. Under Texas law is "there can be no limit as to time...to be taken into consideration" when deciding whether a lease was producing in paying quantities. *Clifton v. Koontz*, 325 S.W.2d 684 (Tex. 1959). Because the charge limited the time period that the jury could consider, the charge impermissibly influence and incorrectly limited the evidence that the jury could consider. Although the court did not permit the charge to limit the time period the jury could consider, it suggested that the parties could argue for the jury limit its consideration to a particular time. This suggestion is troubling because, taken to its logical limit, the court is endorsing jury argument that jury should answer a question other than the question submitted in the charge.