

Texas Oil & Gas Services Biz Dispute Ends In \$31M Verdict

By **Morgan Conley**

Law360 (April 21, 2021, 9:16 PM EDT) -- A Texas state jury found that an oil and gas electrical equipment company's majority owner failed to act in the company's best interest, and awarded about \$31 million to a partial owner of the company and to the company itself.

The jurors deliberated for about six hours on Tuesday before unanimously finding that Lee Burkett, the majority owner of L&S Pro-Line LLC, breached his fiduciary duty to the company and caused it to violate its contract with partial owner Garrett Gagliano.

The jury found Burkett and L&S Pro-Line liable for a total of \$5.6 million in actual damages for withheld payments owed to Gagliano and lost profits for Gagliano's company, Tactical Automation Inc. It also found Burkett liable for \$10 million in punitive damages to Gagliano, and for \$15.1 million in punitive damages on Gagliano's derivative claim on behalf of the company, finding he acted with malice, gross negligence and intentional self-enrichment.

Corey F. Wehmeyer of Santoyo Wehmeyer PC, an attorney for Gagliano, told Law360 on Wednesday that his client is "pleased that his business ethics and performance as chief financial officer was vindicated in the verdict."

Gagliano believes the jury verdict appropriately condemns the "unethical behavior " of which Burkett was accused, and believes the \$15 million in punitive damages will "serve an important deterrent effect in the community," Wehmeyer said.

Counsel for Burkett and L&S Pro-Line didn't immediately return requests for comment Wednesday.

The dispute is rooted in an April 2016 agreement in which Burkett sold a quarter stake of L&S Pro-Line — a company that specializes in selling and assembling structures to house electrical equipment for oil and gas operations — to Gagliano, who then became the company's chief financial officer and treasurer. As part of the agreement, Tactical Automation — which manufactures and sells electrical equipment used in oil and gas operations — had the right of the first refusal any time a customer was looking to purchase both the enclosures, and the control panels and control systems to go within them.

According to court records, numerous events caused the business relationship to sour in the summer of 2018. In one such instance, the police were called to the company's facility outside of Houston when a worker, who was hired by Burkett, allegedly exposed himself to employees of the animal hospital next door.

Gagliano said he discovered that the man was a convicted sex offender, who Burkett employed because his father was the project manager at a major client and had the power to send a significant amount of business to L&S Pro-Line.

Gagliano also owned the property that Pro-Line rented through a different company, Snook Holdings LLC, to which the jury awarded about \$150,000 in damages and attorney fees. Gagliano said he eventually told Burkett that Pro-Line could no longer operate on the property and ordered Pro-Line to vacate the premises. According to Gagliano, that decision was due to additional complaints from the animal hospital next door — including that Burkett had authorized bulldozing on the property, which eventually destabilized a significant portion of the animal hospital's property — as well as Burkett's violation of the contract by not clearing large transactions, and his misrepresentation of L&S Pro-Line as a competitor of Tactical Automation.

Burkett and Pro-Line launched the lawsuit to fight being forced to leave the premises, and accused Gagliano of breach of fiduciary duty, theft and breach of contract. Gagliano countered with similar cross-claims against Burkett.

The jury on Tuesday rejected arguments from Burkett that his decisions were protected under the Texas Business Judgment Rule, which shields corporate directors from liability when they make rational decisions that don't harm the business. It found that Gagliano did not breach his fiduciary duty to the company, nor did he break the L&S company agreement.

Burkett had also argued in writs of mandamus with Texas' Ninth Court of Appeals that Gagliano was bringing claims that only a current owner of L&S Pro-Line could bring. Burkett contended that he had bought out Gagliano's stake in the company and that Tactical Automation was not a beneficiary of the contract at issue.

The trial court and the appeals court didn't agree, finding the question of present ownership was a question for the jury.

The jury found that not only did Gagliano retain his 25% stake in L&S Pro-Line, but Burkett's conduct qualified as a terminating event under their contract. That means Gagliano now has the option to purchase complete ownership of L&S Pro-Line at a fraction of the appraisal value, Wehmeyer said.

Wehmeyer noted that "the litigation strategy from Mr. Burkett and his counsel had been incredibly aggressive" and it took significant effort to secure "the basic discovery" needed.

Gagliano and his companies are represented by Corey F. Wehmeyer and John W. Ellis of Santoyo Wehmeyer PC; Kirby D. Hopkins of Hopkins Centrich Winkelman & Drucker PLLC and David W. Navarro of Hornberger Fuller & Garza Incorporated.

Burkett and L&S Pro-Line are represented by William S. Helfand, Earl Touchstone and Felix Digilov of Lewis Brisbois Bisgaard & Smith LLP, and Kenna M. Seiler of Seiler Mitby PLLC.

The suit is L&S Pro-Line LLC and Lee Burkett v. Garrett Gagliano, Snook Holdings LLC and Tactical Automation Inc., case number 18-06-07704, in the 475th Judicial District Court in Montgomery County, Texas.

--Editing by Regan Estes.