Journal of Forensic and Investigative Accounting
Volume 17: Issue 3, Special Issue 2025

JFIA Journal of Forensic and Investigative Accounting
LEARN MORE

Twists and Turns in a Huge Forensic Accounting Trial: Interview of T. Boone Pickens' Trial Attorney

*D. Larry Crumbley**

T. Boone Pickens was a Texas oil tycoon, former wildcatter, corporate raider or greenmailer, and rock star during the 1980s. He was an author of three books, one titled *The First Billion is the Hardest*. He made and lost billions over his lifetime. As founder and president of Mesa Petroleum, a large independent oil company, he took over Hugoton Production Company that was 30 times the size of Mesa. Although Pickens was forced out of Mesa, he retained the rights to the name and later formed Mesa Petroleum Partners to house his investments in oil and gas producing properties.

In 2006, Pickens signed an Area of Mutual Interest agreement to prospect for oil in a target called the Red Bull Prospect. For five years, Pickens' company, Mesa Petroleum Partners, would be given the right to ownership of 15 percent of all leases and wells acquired and drilled in the Red Bull Prospect, covering some 32 square miles, if it paid for 15 percent of the costs. It eventually grew to over 110 square miles. In 2014, Pickens discovered that he had been shut out of Mesa's 15 percent participation rights and hired a Dallas solo practitioner attorney to bring a lawsuit. I want to thank his attorney, Chrysta Castañeda, for agreeing to the interview about this fascinating lawsuit.

Q: How did you get hired for this trial? You were a solo practitioner, and a woman dealing with a complicated oil and gas case. You were a Democrat, and he was a Republican.

A: Success most often comes from who you know or networking. I handled an oil and gas lease dispute for Pickens in 2007, while I worked for a big law firm, and we won a summary judgment for him. In 2013, I went to work for an international PR firm, which published a quarterly journal called *The Brunswick Review.* I asked Sandy Campbell, Pickens' general counsel, for an interview with Pickens for a piece in *The Review*. On the day of the interview, I was surprised that Pickens gave us several hours of his time and tons of material. As I left the interview, Pickens said, "Chrysta, we will have another big case together." He said this even though I told him I was no longer practicing law, and he insisted. He was prescient, as he frequently was in his business dealings.

About a year later, I decided to go back into law practice. I opened my own firm, and shortly thereafter, had lunch with Sandy Campbell and told him about trying to build my own law firm from the ground up. He mentioned that Pickens might have a small contract matter that they could have me evaluate. A few weeks later I met with Sandy at their headquarters to talk about the Red Bull deal. He handed me a file that consisted of maybe four or five documents and e-mails. But we knew that in 2014, Pickens realized that Mesa had not heard anything about the Red Bull Prospect from the other parties to the agreement for a number of years, even though there was a lot of drilling going on in the Red Bull Prospect area I checked into the matter, and discovered that there were a ton of wells that had been drilled. I sent a pre-suit demand letter to Baytech, the company that put the deal together and J. Cleo Thompson, the operator. They claimed that Pickens said he wanted out of the deal, even though there was no paperwork he signed (as the law requires). We therefore decided to file the lawsuit.

Keep in mind that Pickens' initial buy-in was only $125,000 By 2014, the Red Bull, which targeted the Delaware Basin formation in the Permian, was one of the hottest plays in the U.S. By the time we started preparing for trial, Pickens had paid almost one million dollars for Mesa's share of the Red Bull bills. And his 15 percent interest was worth about a billion dollars by our analysis. All of these facts were found by forensic investigation or forensic accounting as you would say.

After the trial was over, Pickens' senior VP told me that if they had known what the Red Bull dispute was worth at the time, they wouldn't have hired me. He meant that they would have felt compelled to hire a big law firm, rather than taking the risky move of trusting it to be a solo practitioner. I'm glad he didn't tell me that until the case was over. I'm also glad that he, Pickens, and the other folks at Mesa had no idea what the case was worth until I had already demonstrated I could handle it.

*The author is Professor of Accounting at Texas A&M University – Corpus Christi.

As for my political views, we were able to good-naturedly tease each other about our differing viewpoints. That isn't common today.

And before we get deep into discussing the trial, please let me first point out that my co-author of *The Last Trial of T. Boone Pickens* is Loren C. Steffy, a journalist and the author of five nonfiction books. I thank him for all of his help and skills in writing the book.

Q: Tell me a little about Pickens.

A: At trial we portrayed him as a shrewd businessman, not a feeble geriatric. I knew that the defense would try to avoid their promises in the contracts and shift blame onto an 88-year-old they took the property from. They would essentially blame Pickens for his mistake of being late to recognize their theft of his valuable 15 percent interest in the property—those oil reserves under the ground. Black gold, as some would say.

As a billionaire, Pickens could be remarkably unpretentious. He never complained about eating fast-food takeout or staying at a Best Western hotel in Pecos. He loved talking to the working oil men in the hotel at breakfast. He always insisted we stop at the local Dairy Queen to get a Butterfinger Blizzard soft-serve dessert. That became one of my favorites, too.

Q: The Pickens lawsuit title is *Mesa Petroleum Partners LC, v. Baytech LLP, Patriot Resources, Inc., J. Cleo Thompson, and James Cleo Thompson, Jr., LP, Delaware Basin Resources LLC, and Benjamin A. Strickling*. Mesa, of course, is the plaintiff, but there are six defendants. Can you explain the reason for six defendants?

A:

Mesa first acquired the 15 percent participation rights to the Red Bull through a January 8, 2007 contract between Baytech, Mesa and J. Cleo Thompson called an Area of Mutual Interest Agreement ("AMI"). (There were other participants who weren't parties to the lawsuit.) J. Cleo was the company serving as operator and was named after its deceased owner. The Participation Agreement gave Mesa the right in every interest (e.g., leases and wells) they acquired. There were around 160 leases, and Baytech and J. Cleo had a duty to give notice to Mesa of every lease taken and every well drilled in the defined AMI.

Benjamin Strickling III was the President and owner of Delaware Basin Resources (DBR) and Baytech. He tried to buy out Mesa's interest, but Mesa would not sell. After Mesa refused to sell, Strickling created DBR, and he, with Cleo's help, diverted Mesa's 15 percent interest to DBR without telling Mesa. DBR also took over Baytech's interest. But Mesa continued to pay its 15 percent share of the expenses, when it was notified of the demand. By trial, in October 2016, Mesa had paid nearly $1M related to the Red Bull Prospect. It was our position in the lawsuit that by no longer taking newly acquired interests (leases) in the name of Baytech, the defendants conspired to hide the interest and wells under the names of DBR and another entity Strickling controlled, Patriot Resources LLC.

Q: This original Red Bull Participation Agreement that Pickens signed was central to the entire dispute. Could you explain this agreement?

A: You are right about its importance. The Red Bull Participation Agreement was known as an "area of mutual interest" agreement, or AMI. The essential feature of an AMI is that it is built out over time. The parties define a territory—several sections of Reeves and Pecos Counties, Texas—where they think they can build out a lease position and drill wells. Then, when the reserves are proved, the idea is to sell to a bigger company for many multiples of the initial investment. The key to the deal is that anyone who acquires a lease or well, or wants to drill new wells, must tell the other parties to the AMI agreement. This AMI ran for five years. During that time period, all the investors were supposed to be notified of their right to participate in each acquisition. The Red Bull AMI originally ran from 2007 to 2012, but the defendants had expanded it after Mesa Partners was cut out of the deal in 2009, to encompass more target areas and extend it through 2018. They stopped telling Mesa about new acquisitions but continued to bill Mesa for the ongoing costs relating to Mesa's 15 percent of the first well, the Colt #1. Part of the reason Pickens didn't know what was happening was because he continued to get the bills, so he assumed they were still keeping him in the loop.

A second agreement was a Joint Operating Agreement which contained the procedures for drilling the wells, and an important requirement was that Cleo Thompson had to send notices to the investors regarding their participation rights in the wells. Cleo was not informing Pickens of the new wells. At trial we continued to argue that both the pivotal documents

in the dispute could only be amended in writing, and a verbal ”opt-out” would be non-binding and hard to prove since J. Cleo Thompson—the only person who heard the conversation—died in 2010.

Q: So, what was the defendants’ overall position?

A: They argued that Mesa only had until 2013, or four years after they took Mesa’s 15 percent in February 2009; to file the lawsuit. We had not filed until December 2014, more than a year later. Defendants were trying to get the case thrown out of court entirely based on the argument that we filed too late. I felt that the argument wasn’t correct, but I couldn’t find the case law that said so in my online research.

I received my law degree from SMU, so off to Dedman’s law library I went, and on the first day I was there, I found an old 1957 Texas Supreme Court decision that answered the question. The Texas Supreme Court said that the four years didn’t begin to run until the defendants notified us of *each acquisition*. If they never gave Mesa the notice in the first place, then the limitations period would never have begun to run. The old case said that we were dealing with a series of option contracts, and the defendants had to allow us to exercise each option. The four years would begin to run anew with each notice of acquisition, and they hadn’t even sent most of them yet.

Bingo! I could now prove we had filed Pickens’ claim of his 15 percent share of Red Bull in a timely manner. In one day, I had just earned Pickens millions of dollars.

By the way, people ask me if I got a cut of the lawsuit. I was always paid by the hour.

Q: Why was the trial held in Pecos, Texas? Mesa’s principal place of business was in Dallas. Baytech, Patriot Resources, Cleo Thompson, Jr., LP, Delaware Basin Resources, and Benjamin Strickling were all in Midland. I looked up Pecos, which is close to the New Mexico border with a population of about 19,000. The town is noted for cantaloupes and claims to be the place of the first rodeo in 1883. But Pecos must have been a good omen for you because local tycoon Billie Sol Estes was indicted for fraud there in 1962.

A: We originally filed in Dallas. The defense filed an eight-page Motion to Transfer Venue from Dallas to Reeves and Pecos counties because Red Bull, oil and gas leases, and production were in Reeves and Pecos Counties, Texas. We wanted Dallas because it is generally easier to get hearings and court time in the big counties. In the smaller counties, they share a judge with other counties. The defense wanted to transfer to Reeves County—the county seat is in Pecos—because there was a long-time judge out there who was known for his oil and gas acumen. He died of cancer right as we agreed to transfer the case. And Pecos turned out to be a good place to have a jury trial. Strike one, they insisted on the wrong location.

Q: But often the plaintiff or defendant will file a summary judgment motion before trial. Is this the same situation here?

A: The other side beat us to that. They filed dozens of summary judgment motions in the fall of 2015, asking the judge to end the lawsuit before it went to trial. Basically, they were asking the newly appointed judge, Michael Swanson, to end the lawsuit because of a lack of evidence or support under the law. We had to file hundreds of pages of briefs to respond to the summary judgment motions.

Eventually, I filed my own summary judgment motion. I argued that the defendants had to give Mesa notices of lease purchases and wells to be drilled. Pickens had never signed a contract relieving them of the obligation to do so. During the deposition of Cliff Milford, J. Cleo’s CFO (who kept the books and oversaw the land files), he admitted that Mesa should have received a legal document transferring ownership of its share of the original Red Bull sections, and Baytech and Cleo Thompson had not provided it. We based our motion on this argument and expected the judge to let us know after Christmas, but he took all of the motions under advisement, and we waited and waited. He finally ruled the day before the start of the trial that we would have a trial on the issue of the application of the Statute of Frauds, which requires an interest in land to be transferred in a writing signed by the transferor. That was the main issue we had argued in Mesa’s summary judgment, and it is a purely legal issue, but we were going to have a jury trial about it. Highly unusual.

Of course you know, before trial each side deposes fact witnesses and expert witnesses of the other side under oath. These depositions help lawyers to know what the person will say at trial. Also, these written depositions help lawyers decide whether to go to trial. A fact witness or expert witness should always tell truth in a deposition and at trial. We deposed dozens of people before trial.

Q: Did you do any of these mock trials like we see on TV? My wife and I liked the TV series Bull, about a trial consulting firm, that was on TV from 2016–2022.

A: Yes, we did. We presented our case like we would at trial, and we listened to our jurors. Some of the jurors would give us what we wanted, but many would give us only what we had in the deal as of March 2009, or $515,000. Not good, because Pickens had already spent that much on attorney fees.

Q: What happened with the defendants' summary judgment issues?

A: We got whacked, but not entirely. After about ten months of waiting, the court faxed a ruling upholding some of the defense's statute of limitations claims. The decision basically cut our potential damages of a billion dollars by at least one half. We had to make recalculations to determine how big a cut we had suffered.

Also, a few weeks before the trial we again met in the courthouse Monahans, in the center of the Permian Basin. Judge Swanson was going to determine if the defense could argue that Pickens could opt out orally from the written agreement. The defense was arguing that Pickens told Jimmy Thomson, long dead by the time the case was active on the phone in 2008 that he wanted out of the Red Bull Agreement to save money. Furthermore, defense wanted to allow Cliff Milford, who allegedly overheard the conversation, to testify about it. Both the hearsay rules and the Dead Man Statute should have completely barred those arguments, but the judge allowed the issue to go the jury. Again, it is highly unusual.

Q: The typical steps in a litigation dispute, such as Pickens, involve six major phases:

- Pleadings
- Discovery
- Pre-trial conferences
- Trial
- Jury verdict/judgment, and
- Possible appeal

Much of the work of a forensic accountant, as a consultant or expert witness, occurs in the discovery phase. But tell us about the pleading stage first.

A: Once Boone became suspicious that he hadn't heard about all of the drilling in the Red Bull vicinity, he hired me. As a lawyer, I was surprised that T. Boone had little experience with the legal system. Other than using a lawyer's help with his take-over battles, reviewing contracts, handling his divorces, and other personal matters, Pickens nor his top officers could ever recall being in such a significant trial.

Well, pleadings involve preparing and filing a complaint (in state court, a petition) to be served on the defendants, studying their answers, and sometimes there can be a counterclaim by the defendants against the plaintiff. If you have watched any lawyer TV shows, defendants may try to avoid being served with an official complaint. Where fraud is suspected, a party can sue for fraud as well as breach of contract. There are two types of fraud: civil and criminal. In a civil trial a party has to prove its claims by a "preponderance of evidence"; say more than 50 percent. Whereas criminal fraud has a much higher standard of proof—"beyond a reasonable doubt"—where no one can reasonably doubt that the complainant is right and fraud was committed.

Often a plaintiff will plead every type of claim that could possibly apply to the facts as they are known at the time. In our original 24-page complaint we had eight major causes of action: breach of contract, fraud/fraudulent concealment, Texas Theft Liability Act, slander of title, trespass to real property, money had and received/accounting, conspiracy, and principal/agent liability.

As for answers, defendants in Texas state court don't have to say much other than "no"; that is called a general denial. However, our defendants argued that the statute of limitations had run, Mesa had opted out of participating, Mesa failed to elect to participate when notified, and that Mesa had not paid the necessary expenses. Defendants even counterclaimed against Mesa to recover their attorney fees and other costs incurred.

Q: What does a plaintiff need to prove to win in a fraud dispute? I have read the expert witnesses are not allowed to talk about law in their report or at trial.

A: There are generally five elements to prove in a civil fraud dispute.

- First, the defendant must make a false statement or conceal a material fact.

- Second, the defendant knew the statement was false. This requirement is the tough one since you have to get inside their minds, although it can be proved by circumstantial evidence. And just because someone breaks a contract doesn't constitute fraud. In fact, when there is a contract, it is difficult to prove a fraud claim, which must deal with damages beyond what was contracted for.
- Third, the defendant wanted the plaintiff to rely on the false statements or omissions.
- Four, the plaintiff did rely on the false statements or omissions.
- Five, the plaintiff must have suffered losses (damages) as a result of their reliance on false statements or concealed facts.

In a civil trial, an allegation of fraud may be based upon a misrepresentation of a fact that is either intentional or negligent, which is a lower standard than in a criminal trial.

Q: Would you talk about the discovery phase of the lawsuit where forensic accounting consultants and expert witnesses get involved?

A: Yes, discovery is important in a trial, because all of the facts are not known. We gather facts and evidence many ways:

- First, there are requests for documents. In our situation we needed accounting records that could be reviewed by our consultants, expert witnesses, and employees. Sometimes subpoenas are used if the necessary documents are not in the possession of the parties to the lawsuit.
- Interrogatories are served. Interrogatories are written questions posed from both sides of the dispute to the other parties.
- Fact witnesses on both sides are deposed under oath. These depositions can include non-parties.
- Consultants and expert witnesses are found. After sifting through all of the documents and interrogatories and deposition testimony, the testifying experts prepare reports which are made available to the other side. The work product of consultants who don't provide their work to testifying experts is normally not shared (e.g., reports of consultants).
- Expert witnesses for both sides are deposed under oath after preparing their reports.

Expert depositions can last for more than a day, and the verbatim reports are used to contradict or impeach the expert during his or her testimony. Depositions help us to pin down the expert's work and assumptions, eliminate surprises at trial, and to sometimes point out weak and strong points for the purpose of evaluating settlement. If the expert witnesses do a bad job during deposition, that side may decide to settle out of court.

Requests for admission are a tool that allows parties to ask the other side to admit or deny a fact (e.g., it was raining that day). This process allows the trial to move along faster and reduces expenses if properly used and enforced, but judges rarely do so.

Q: Texas follows a modified version of the *Daubert* standards whereby the judge must determine prior to the witness taking the stand at trial whether he or she is qualified and should be allowed to state the opinions offered. I have been following an IRS lawsuit against Coca-Cola in the U.S. Tax Court, and Coca-Cola had 15 expert witnesses, and the IRS had 10 expert witnesses. How did Judge Swanson handle this chore? I am asking about the pre-trial conferences, of course.

A: In Texas, judges are not required to act on pretrial motions before a trial starts. That was certainly a problem because we had received almost no pretrial motion rulings, even though we had served, responded to and argued many such motions. We did not know what case we could argue. We did not know if the defense could argue that Pickens had orally opted out of the Red Bull agreement. Could we assert the Statutes of Fraud and require the defense to produce a written document to support its opt out claims? Could our experts take the stand and present the $600 million in damages we were asserting? We were still waiting on rulings for a number of claims that the defense had moved to dismiss.

The defense moved to strike the testimony of all five of our experts. So, on the first day the judge required each expert to take the stand without the jurors present to prove that they were qualified and that their opinions were sound. The hearing lasted hours, and the defense was able to cross-examine them.

I intended to call five experts and dozens of fact witnesses, some by deposition video. Our key witnesses included Pickens, who would testify as both a fact and expert witness, Ricardo Garza, a petroleum engineering expert witness on the value of the Red Bull, and Rodney Sowards, an expert in forensic accounting. In addition, we had designated a title attorney on limited subjects and the VP of Land for another operator to prove that J. Cleo's conduct as operator was not up to standards. The hearing to strike our expert witnesses took hours, and each of my experts had to be questioned about their written report and face cross-examination.

The defense claimed Pickens, who would offer an expert opinion about the value of his 15 percent interest in the Red Bull, had no day-to-day experience as a geologist in recent decades. Eventually, Pickens was only allowed to testify as a fact witness and our title attorney and operations expert were booted (without Judge Swanson giving a reason). The title attorney was probably booted because he was an attorney. Experts are not to testify about the law (except for foreign laws). The judge is charged with knowing the law, so legal witnesses (except on the amount of attorney's fees) are routinely struck.

Worse yet, the judge announced that he had other court business and gave us the next day off. He might have wanted the time to decide some of the pending motions in our case, because we received a fax with a flurry of orders attached late that afternoon. He ruled that our Statute of Frauds argument would have to be tried, meaning that the defense could argue that Pickens orally "opted out." He ruled that the defense could introduce the purported conversation between Pickens and J. Cleo Thompson and Cliff Milford's overhearing of it. It was an unprecedented ruling, in my experience. I rationalized that if the judge hadn't ruled that way, the defense would have no case left to try. He wasn't going to do that.

Plus, the judge included a cryptic note at the end of the orders that Ricardo Garza and Rodney Sowards must establish that their opinions about damages were based on fair market value immediately before and immediately after any breach. It was not clear what he meant by that, but we would learn later. This was Judge Swanson's first trial and a big one.

Q: What was this opt-out conversation?

A: As I mentioned, when we sent the pre-suit demand letter to Baytech and J. Cleo Thompson, they claimed that Pickens had opted out of the Red Bull agreement by telling Jimmy Thompson he no longer wanted to participate, supposedly in 2008. I could not find any document in the Red Bull material that mentioned an opt out provision, nor was there even an e-mail stating that Pickens had opted out. Now, we did find a July 2008 e-mail where CEO Ben Strickling told an employee that he wanted as much of the Red Bull as possible, and we learned that he wanted more so that he could bring in investors to help finance the Red Bull expansion. Shortly thereafter, J. Cleo stopped sending Mesa any Red Bull notices, and J. Cleo transferred Mesa's 15 percent interest to Baytech in early 2009.

Q: You indicated that you intended to call Pickens as a witness. Was that a problem? In your book you state that Pecos was an oil town and Pickens was one of the biggest oil guys on earth. His arrival was like Elvis showing up at Graceland.

A: True, but Pickens' fame had peaked awhile before the 2016 trial. But Pickens really had to testify since he was involved with the initial signing and had to refute the opt-out position that the defendants were taking. Pecos' reputation in the legal community was that of being plaintiff friendly, but it was possible that the jury would just see the dispute as a billionaire suing other billionaires.

Although Pickens was known as a master communicator, skilled in preparing for his many TV appearances, he refused to review the signed contracts that formed the backbone of our case as I was preparing him for testimony. I carefully scripted the questions he would need to answer, some under brutal cross-examination by hostile lawyers. We rehearsed him on the stand a dozen times, including in a mock courtroom in Dallas several weeks before the trial. We could get him to focus for about fifteen minutes, but he would veer into things he wanted to say. Always, he'd return to "I signed a deal, I paid the money, and they took my 15 percent without me signing a document saying they could." How could they just walk away with his interest, he'd ask? Every time he talked about how the other participants got to stay in the deal, but the defendants had cut him out, he would make the same motion with his right hand. He would punctuate it with a looping motion of his right hand, pointing his index finger straight at me, then twist it around counterclockwise so his finger ended up sideways, as if he was pointing to the door.

In Pecos, on the weekend before the trial with our jury consultants, we continued to prepare him, but over and over he would do the same thing. We could not keep him on track. He was 88 years old. Even though I knew his mind to be sound, would the jury believe he remembered what he did 10 years ago? Under cross-examination, would he lose his temper and embarrass himself? Pickens also could not see or hear well. It was a nail-biter, thinking about what might happen.

Q: Let me move to the trial itself. First comes the greeting and instructions from the judge, then voir dire, plaintiff gives their opening statement, followed by defense's opening statement. Plaintiff then calls their fact and expert witnesses and asks questions, which is followed by cross-examination of each witness by the hostile attorney, followed by a redirect by the friendly attorney. Once a witness is finished, the next plaintiff witness is called to the stand.

A.: All true, and when the plaintiff rests its case, the defense often moves for a directed verdict arguing that the plaintiff did not prove the case. If the judge holds for the defendant on this motion, the trial is over. If not, defendant then presents the defense, using the same pattern as the plaintiff. The plaintiff then gest to put on a reply case (usually witnesses who clear up any last points that weren't previously made.) After that, the lawyers make closing arguments and the jury gets the case. They deliberate for as long as necessary and announce their decision. And if the defense loses with the jury, they can make a motion for judgment notwithstanding the verdict and ask the judge to disregard whatever the jury found.

Q: How well did you do on voir dire, which is the process of selecting the jurors? Did you use jury consultants?

A: Yes, I did. I assembled a team of ten lawyers and paralegals to go to Pecos. I hired a local attorney, Bill Weinacht, and his wife Alva Alvarez. Alva was the county attorney, and since it was a part-time job, kept her law practice. We used Bill's office across from the courthouse as our daytime war room. Bill knew everyone in Pecos, and he knew what would resonate with the 120 potential jurors called for the trial. Bill and I decided to split the voir dire. Keep in mind that you cannot talk about the case when questioning jurors, and your only goal is to figure out who might vote against your side. You are looking to present the worst aspects of your case (without directly discussing it) and figure out who to strike.

I started the voir dire by talking about the fact that the local high school had just won a marching band award. The townspeople were proud, so I used it to talk about how with a marching band show, the show falls apart if people don't follow the rules. This trial was going to be about asking people to follow the rules.

Q: So let the show begin. I was really impressed by two of your expert witnesses: Ricardo Garza and Roney Sowards. Garza was your oil and gas expert and Sowards was your forensic accounting expert. Since jurors have a short attention span and might not understand many concepts in a trial—especially oil and gas—I was impressed how they used simple, plain, ordinary examples. Parables and everyday examples are important. Keep it simple. How did Ricardo Garza handle his job of simplicity?

A: The defense had two basic arguments: Pickens opted out, and trying to hold us to the value of the property in 2009 when the Mesa interest was transferred to Baytech. The interest was worth far less in 2009 than in 2014, when leases were going for $60K an acre. In 2016, the Red Bull was sold to Oxy for even more.

It's important to note that in oil and gas properties, what you are really valuing are the minerals (oil and gas hydrocarbons) under the property. So, Garza had to explain how much oil was under the Red Bull and how those barrels counted as reserves. Even during the trial, the defense tried to get his testimony stricken, arguing about what was known in 2009.

Defendants argued in 2009 that no one knew the oil was under the ground. However, when the Colt well was worked over in 2009, Baytech and Cleo Thompson knew that Red Bull was worth many millions of dollars. Even after all the limitations were placed on us, Garza determined that Pickens should receive 28 million barrels of oil. Defense objected, arguing that they did not know about these barrels in either 2009 or in January 2012, the end of the Red Bull AMI period (and the latest date the judge would let us value the property). Garza pulled out a thumb drive that the defense had given us along with hundreds of thousands of documents. The thumb drive had their map showing five hundred wells were to be horizontally drilled on Red Bull as of January 2012. Defense had previously argued that horizontal well drilling was not known to them, but that was easy to disprove. They were first used in Texon, Texas in 1929, widely used in the early 1960s, and by 1990, and many had been drilled in the Austin chalk formation. Thus, Swanson had to allow Garza to testify because we were using the defendants' own documents. Finally, he could take the stand in front of the jury.

Garza set up tables in front of the jury box and placed all of his science projects on the tables to teach the jurors how oil is contained in shale rock, how you frack it, and how wells are drilled and produced. He used marbles and sand in jars to substitute for the pores in shale and poured a blue liquid over them to simulate how oil became wedged in the rock.

To explain how many barrels of oil were under Red Bull and how many barrels belonged to Pickens, Garza set up his stack of clay pigeons, or skeet, on my counsel table, right in front of Pickens and the jury. We all listened to him describe how each colored set of those pigeons represented a layer of oil shale, or "bench." The ten benches of oil under the Red Bull, represented by twenty painted skeets, rose about ten inches high. He then put a two-skeet stack next to it and said that was

the thickness of the Eagle Ford Shale in South Texas. Another single clay pidgeon represented the Bakken Shale in North Dakota. Using these stacks of skeet, he brought home an essential truth: the jurors were living in a county covering the largest oil play in the history of the world, one that was many times thicker than the most commonly known field in the U.S.

Q: Your accountant Rodney Sowards had to take the total reserves and put a fair market value number to them. How did he do that?

A: Sowards put more than 20 binders with calculations sitting around him on the witness stand. He literally had to value each barrel of oil on the date it was projected to be produced, then take a net present value of all of those future calculations. The judge placed limitations on us a number of times, and the judge wanted Sowards to sort the numbers into two buckets of damages: the Participation Agreement damages and the Joint Operating Agreement damages (which by the way, covered the same lands and the same reserves). Again, the defense demanded to cross-examine Sowards even before he could testify before the jury because they wanted to get him booted. The judge allowed him to testify, but his limitations put us in a bind because it wasn't possible to calculate damages exactly that way. We worked all night long to try to recalculate, but the next day the judge was not happy with the results, so he cut our damage award from $300 million to a little over $129 million.

Sowards finally took the stand later that day. For all the buildup, challenges, guidances, recalculations, and importance of fair market value to the judge, Soward's testimony was remarkably short. He said that Mesa had suffered more than $129 million in damages, a little over $117 million for breaches of the Participation Agreement and $12.5 for breaches of the Joint Operating Agreement. There was little discussion on fair market value, fair value, and other similar valuation concepts. The defense had lost that challenge, and we didn't want to spend any more time than necessary. The jury had already been in the box for four weeks and we had the defense case yet to be presented.

Q: You were worried about Pickens testifying. How did he do?

A: During questioning Pickens was a powerful witness. He held up to the strain of trial at 88 and proved his formidable expertise. Pickens not only survived his cross examination by the defense, but he scored some important points and deflected his cross examination. He pulled off his part of the dance.

But like with so much else that happened during this trial, there was additional drama. The day before he went on the stand, Donald Trump won the 2016 election and Hillary Clinton lost. We took different sides of that election, but we decided not to talk about it at all. We had work to do.

Q: So, what was the jurors' decision?

A: The trial lasted from October 31, 2016 to November 23, 2016; nearly five weeks. The jury was out for only three hours. The jurors found Baytech and DBR liable for breach of the Participation Agreement and found J. Cleo Thompson guilty of gross negligence and willful misconduct. Judge Swanson granted J. Cleo's JNOV motion, letting it out of the case without liability. The $140 million monetary award was far less than what we originally sought, but the jury awarded us every dollar that we were permitted to ask for.

Q: Were there any other particular accounting issues you felt contributed to the outcome?

A: Yes. I think the case turned on how J. Cleo kept its books on the Red Bull. Recall that under the Participation Agreement, Mesa and Pickens were supposed to be notified of each individual acquisition and given the right to say yes or no to participating in each. J. Cleo set up its accounting by having a master ledger account for the whole Red Bull—where acquisitions would be booked—and individual ledger accounts for particular line items, like the Colt #1 well. This was necessary to execute on Joint Interest Billing (JIB) accounting, so that the partners would be billed and would pay for costs as the wells were drilled.

At the end of the trial, the CFO for J. Cleo was on the stand, testifying for the defense. There were three ledger accounts that were at issue. If I could prove they booked Mesa's payments to the master account, it was strong evidence that Mesa and Pickens had bought into the whole project; not just individual purchases, as J. Cleo contended. J. Cleo also maintained that it had issued a refund for the overpayments, which also took Pickens out of the deal.

As I sat there listening to his direct examination, the light dawned. Mesa's original $125,000 payment was booked to the master account and had not been refunded. I was able to prove through J. Cleo's own records that they were holding Pickens' money for the Red Bull deal and that they hadn't refunded it.

You can't argue with numbers; if you can make them understood. We were able to do so that day.

Q: From reading your book and reviewing the facts and the damages, I felt that Judge Swanson tried to protect the defendants.

A: Judge John M. (Mike) Swanson was appointed by Governor Abbott, a Republican, on August 14, 2015 to replace a deceased judge for the term ending November 8, 2016. He ran for reelection and won without an opponent. My first complaint was dated December 2014, and the trial started on Halloween, October 31, 2016, a Monday. I do not like to speak negatively of anyone, but my assessment was that Judge Swanson was trying to "manage down" the damages at issue and hope that the parties would settle. He ruled against us on many issues, tossing out dozens of claims and whittling our damages to a sliver of what we had asked. Plus, during the trial, a defense witness actually threatened a plaintiff witness, and the judge did not halt the trial to investigate the incident.

For example, I thought we had an ace in the hole with our calculation of reserves, the underlying basis for calculating our damages. Delaware Basin Resources had used its own reserves report to get loans, and we had used that same reserves report to calculate Mesa's share of the Red Bull. This move was only logical, because DBR now held Mesa's 15 percent share. It would be hard for the defense to disclaim the reserves report as unscientific when they had used it to borrow money. We believed DBR would have a hard time arguing it had one number for the banks but another, much lower, number for the jury.

Judge Swanson once again wielded his pen and put our damages in doubt. He decided that we could claim damages only for properties and wells acquired in the Red Bull from December 2010 through January 2012; just 14 months of a 10-year string of acquisitions. He accepted the defendants' argument that the original Red Bull deal ended by its own terms in January 2012, and that we could not claim damages for the additional Red Bull acquisitions beyond that time, even though the defendants had amended the deal to continue into 2018. Moreover, the same reserves were booked by DBR to the sections, regardless of when the leases were acquired. The judge also ruled that we could not seek damages for properties taken before December 2010 because that was more than four years before we had filed suit. In doing so, he rejected my arguments based on the Texas Supreme Court case I had discovered in the stacks of the SMU law library.

These rulings were highly unusual. In more than 25 years of practice, I had never seen trial rulings like these. He reduced our potential damages from $1 billion to $300 million. Keep in mind he bounced three of my experts and would not allow Pickens to be an expert witness; without giving any reason. As is often true in state court in Texas, he didn't give any reasons for his rulings. Since this was his first trial, maybe he did not know what he was doing.

Q: For women who are forensic accountants, how do you dress for a trial?

A: Yes, getting ready for a big case is a big deal for a woman trial attorney or an expert witness. For the Pecos trial every item was thought out. The suit should be professional but not too imposing; shoes, comfortable but stylish; makeup—subtle but completely necessary in a place like Texas; wedding ring needed to be just that—a band, no flashy diamond—and the same for the rest of the jewelry—minimal, no bling; haircut, professional, styled and not too girly. I wore my hair in a short bob, but my bangs were already getting too long since I'd skipped my last cut because I hadn't had time during the trial preparation. How did I know my bangs were too long? Pickens told me. He mentioned it in the days before the trial when he was annoyed with me. He told me to get them cut so I'd stop pushing them out of my eyes and messing with them. Of course, I might make subtle changes for other locations; the important thing is to know your audience. I did leave my Audi at the hotel because it would appear conspicuously out of place.

Q: When did Pickens get paid? Often the loser appeals, fails to pay the verdict amount, is slow about paying, or files for bankruptcy.

A: Well, that is another interesting story. As I have mentioned, after you get a verdict, the judge has to enter a judgment. And we knew that judgment would be appealed. But first, we had to file a mandamus petition against Judge Swanson in the Court of Appeals, Eighth District of Texas. The judge would not render a final judgment, so we had to ask the appellate court to force Judge Swanson to render a final judgment in 30 days. On November 9, 2017, the Court of Appeals told Swanson to issue a final judgment. Pickens was 89 at that time. He had had a small stroke during the trial.

Keep in mind that the trial started on October 31, 2016 and the huge verdict occurred on November 23, 2016. Our motions for judgment based on the jury's verdict were filed on December 16, 2016, after the defendants filed their motions for judgment notwithstanding the verdict. A mandamus motion is used to obtain relief based upon a trial court's failure to

perform a ministerial duty within a reasonable time, and a reasonable time depends on the facts and circumstances of a particular case. The El Paso Appellate Court concludes that more than eight months was a reasonable period of time, held in favor of Mesa, and told the judge to issue judgment within 20 days. In other words, get it done.

A few months after the judgment was finally entered, and the appeals got filed, Mesa mediated the dispute again. That took two days, and we settled on a confidential amount. Pickens and I disagreed about the amount. However, without the mediation, there would be no resolution for him. The appeals could take years and he wouldn't live to see the retrial. Every time I talked to Boone he would ask me if we had done the right things. But even he said he was in the fourth quarter of his life, and he had to bring it to a close.

Q: I live in College Station, the home of the Texas A and M Aggies, and have heard about some connection between Boone Pickens and the Texas Aggies.

A: Yes, Boone would often talk about the colossal mistake of TAMU. Seems that Boone first went to Texas A and M University in the 1940s on a $25 per month basketball scholarship, but he was cut from the team. He then transferred to Oklahoma A and M, now Oklahoma State University, to study geology; but did not play on their basketball team. Over his lifetime, he gave one billion dollars to Oklahoma State University according to *Wikipedia*. Another source says $652 million, but still, that's a huge sum to forego for the $25 per semester scholarship that A and M refused to pay Pickens.

Pickens attended the renaming of the OSU football stadium to the T. Boone Pickens Stadium on October 1, 2003. A new permanent 10,000- square-foot museum opened in the west end zone of the stadium on April 19, 2025, as a tribute to the OSU billionaire. In the museum is his 1955 Ford station wagon, which he often slept in while searching for new wells and future business partners.

Professor: Thank you Chrysta for allowing me to interview you about this interesting trial for T. Boone Pickens. Hope you find another big dispute like this one.