



**FILED**

14 FEB 27 AM 9:22 CAUSE NO. 11-12667

ENERGY TRANSFER PARTNERS, L.P.,  
AND ENERGY TRANSFER FUEL, L.P.  
DALLAS CO., TEXAS

Plaintiffs DEPUTY

v.

ENTERPRISE PRODUCTS PARTNERS,  
L.P., ENBRIDGE (US) INC., AND  
ENTERPRISE PRODUCTS  
OPERATING LLC,

Defendants.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

CARY FITZSIMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS

DEPUTY

MAR-4 PM 4:15

FILED

298<sup>th</sup> JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for

another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

As used in the following questions and instructions, these terms mean the following:

“ETP” means Energy Transfer Partners, L.P.

“Enterprise” means Enterprise Products Partners, L.P.

“Enbridge” means Enbridge (US), Inc.

Certain testimony has been presented to you through a videotaped deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Some time before this trial, attorneys representing the parties in this case questioned those witnesses under oath. A court reporter was present and recorded the testimony. Some of those questions and answers were read and shown to you. This deposition testimony is entitled to the same consideration, and weighed and otherwise considered by you insofar as possible in the same way, as if the witness had been present and had testified from the witness stand in court. The process of editing the video for presentation to you in an efficient way may have produced “skips” in the apparent movements of the witness or counsel, but you should not weigh any such byproducts of edits in your evaluation of that witness’s testimony.

**QUESTION NO. 1**

An association of two or more businesses to carry on a business for profit as owners creates a partnership, regardless of whether businesses intend to create a partnership, or the association is called a "partnership," "joint venture," or other name. A joint venture is governed by the same rules as a partnership.

Factors indicating that businesses have created a partnership include their:

- (1) receipt or right to receive a share of profits of the business;
- (2) expression of an intent to be partners in the business;
- (3) participation or right to participate in control of the business;
- (4) agreement to share or sharing:
  - (A) losses of the business; or
  - (B) liability for claims by third parties against the business; and,
- (5) agreement to contribute or contributing money or property to the business.

Not all of these factors must be established for a partnership to exist. The issue of whether a partnership exists should be decided considering all of the evidence that bears on these factors. No single fact may be stated as a complete and final test of partnership.

Answer "Yes" or "No."

**Did ETP and Enterprise create a partnership to market and pursue a pipeline project to transport crude oil from Cushing, Oklahoma to the Gulf Coast?**

Answer:       yes

If you answered "Yes" to Question 1, then answer the following question. Otherwise, proceed to Question No. 12.

**QUESTION NO. 2**

Because of the partnership that you have found between Enterprise and ETP, Enterprise owed ETP a duty of loyalty and must prove it complied with its duty.

A partner's duty of loyalty includes:

(1) accounting to and holding for the partnership property, profit, or benefit derived by the partner:

(A) in the conduct and winding up of the partnership business; or

(B) from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a person who has an interest adverse to the partnership; and

(3) refraining from competing or dealing with the partnership in a manner adverse to the partnership.

A partner shall discharge its duties to its other partner and exercise any rights and powers in the conduct or winding up of the partnership business:

(1) in good faith; and

(2) in a manner the partner reasonably believes to be in the best interest of the partnership.

Partners by agreement may identify specific types of activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable.

Subject to all of the above, Enterprise does not violate its duty of loyalty merely because its conduct furthered its own interest.

Answer Yes" or "No":

**Did Enterprise comply with its duty of loyalty?**

ANSWER: NO

If you answered "No" to Question 2, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 3**

A partner has the right to withdraw from the partnership and cease to be a partner at any time.

A person ceases to be a partner on the occurrence of an event of withdrawal. An event of withdrawal of a partner occurs on receipt by the partnership of notice of the partner's express will to withdraw as a partner on the date on which the notice is received.

Answer with a date:

**On what date did Enterprise withdraw from the partnership you have found in response to Question No. 1?**

ANSWER: August 15, 2011

If you answered "No" to Question 2, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 4**

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

In answering this question about damages, consider consequential damages that result naturally but not necessarily from Enterprise's wrongful act. Do not include any amount for opportunities that arose after the date that Enterprise withdrew from the partnership that you have found in response to Question No. 3. You may consider only consequential damages relating to any partnership opportunities lost before that date.

Do not increase or reduce the amount in your answer because of your answer to any other question. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers when the Court enters judgment.

Answer separately in dollars and cents for damages, if any. Please write a number figure and spell out that number in words.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ETP for its damages, if any, that were proximately caused by the conduct you have found in response to Question No. 2?

ANSWER:

\$319,375,000.00  
Three-hundred-nineteen million, three hundred, seventy-five thousand dollars and zero cents.

If you answered Question 4 with a positive number, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 5**

To be part of a conspiracy, Enbridge and Enterprise must have had knowledge of, agreed to, and intended a common objective or course of action to damage ETP in the manner you have found in response to Questions Nos. 2 and 4. Enbridge, Enterprise, or both must have performed some act or acts to further the common objective or course of action. Enbridge also must have agreed to engage in Enterprise's breach of the duty of loyalty that caused injury to ETP.

**Was Enbridge part of a conspiracy to breach Enterprise's duty of loyalty to ETP?**

**ANSWER: "Yes" or "No."**

NO



If you answered "No" to Question No. 2 and "Yes" to Question No. 5, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 6 - SKIP (NA)

Assign percentages of responsibility only to those you found caused or contributed to cause ETP's damages. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found.

For each defendant you found caused or contributed to cause damages to ETP, find the percentage of responsibility attributable to each:

- 1. Enterprise: \_\_\_\_\_ %
- 2. Enbridge: \_\_\_\_\_ %
- TOTAL 100%

If you answered "No" to Question No. 2, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 7**

The "benefit" to Enterprise is not the whole of the gain from the transactions in question, but the amount of the gain that is attributable to the conduct you have found in response to Question No. 2.

When a benefit has been realized in part as a result of misconduct and in part as a result of legitimate business activities, you may award only that portion of the benefit attributable to the misconduct.

A benefit is attributable to misconduct if Enterprise would not have entered into the transaction and realized the benefit but for the wrong. If Enterprise would have realized the benefit in any event, or if the benefit was the result of alternative causes aside from the misconduct of Enterprise, it is not attributable to misconduct.

Do not include any amount for opportunities that arose after the date that Enterprise withdrew from the partnership that you have found in response to Question No. 3. You may consider only benefits from partnership opportunities wrongfully acquired before that date.

Do not increase or reduce the amount in your answer because of your answer to any other question. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers when the Court enters judgment.

Answer separately in dollars and cents. Please write a number figure and spell out that number in words.

**What is the value to Enterprise, if any, of the benefit it gained as result of the conduct you have found in response to Question No. 2?**

ANSWER: \$595,257,433.00

Five-hundred-ninety-five million, two-hundred-fifty-seven thousand, four-hundred thirty-three dollars and zero cents.

Answer the following Question only if you unanimously answered "No" to Question 2. Otherwise, do not answer the following Question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

**QUESTION NO. 8** (NA-Skip)

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent to cause substantial injury or harm to ETP.

**Do you find by clear and convincing evidence that the harm to ETP resulted from malice by Enterprise?**

**ANSWER: "Yes" or "No."**

**ANSWER:**

\_\_\_\_\_

Answer the following Question only if you unanimously answered "Yes" to Question 5. Otherwise, do not answer the following Question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

**QUESTION NO. 9**

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent to cause substantial injury or harm to ETP.

**Do you find by clear and convincing evidence that the harm to ETP resulted from malice by Enbridge?**

**ANSWER "Yes" or "No."**

NO

Answer the following Question only if you unanimously answered "Yes" to Question 8. Otherwise, do not answer the following Question.

You must unanimously agree on the amount of any award of exemplary damages.

**QUESTION NO. 10** - SKIP/NA

What sum of money, if any, if paid now in cash, should be assessed and awarded to ETP and against Enterprise as exemplary damages, if any, for the conduct found in response to Question No. 8.

Answer in dollars and cents for damages, if any. Please write a number figure and spell out that number in words.

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment. Factors to consider in awarding exemplary damages, if any, are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of the Defendants.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.

**ANSWER:**

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Answer the following Question only if you unanimously answered "Yes" to Question 9. Otherwise, do not answer the following Question.

You must unanimously agree on the amount of any award of exemplary damages.

**QUESTION NO. 11** (NA/SKIP)

What sum of money, if any, if paid now in cash, should be assessed and awarded to ETP and against Enbridge as exemplary damages, if any, for the conduct found in response to the Question No. 9.

Answer in dollars and cents for damages, if any. Please write a number figure and spell out that number in words.

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment. Factors to consider in awarding exemplary damages, if any, are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of the Defendants.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and propriety.

**ANSWER:**

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**QUESTION NO. 12**

Did ETP fail to comply with its promise in paragraph 1 of the Reimbursement Agreement?

Answer "Yes" or "No."

Answer: Yes

If you have answered "Yes" to Question No. 12, then answer the following question. Otherwise, do not answer the following question

**QUESTION NO. 13**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Enterprise for its damages, if any, that resulted from ETP's failure to comply?

Consider the following elements of damages, if any, and none other: 50% of the expenditures.

**Answer in dollars and cents.**

Answer: \$ 814,140.00



**QUESTION NO. 14**

Did ETP fail to comply with Paragraph 9 of the Reimbursement Agreement?

Answer "Yes" or "No."

Answer: NO

**Presiding Juror:**

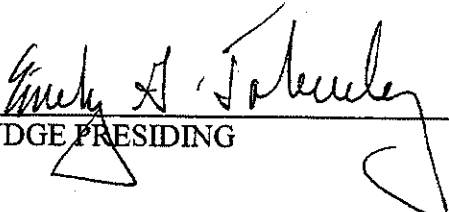
1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. have the complete charge read aloud if it will be helpful to your deliberations;
  - b. preside over your deliberations, meaning manage the discussions and see that you follow these instructions;
  - c. give written questions or comments to the bailiff who will give them to the judge;
  - d. write down the answers you agree on;
  - e. get the signatures for the verdict certificate; and
  - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

**Instructions for Signing the Verdict Certificate:**

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 8,9,10,and 11 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

  
\_\_\_\_\_  
JUDGE PRESIDING

### Verdict Certificate

Check one:

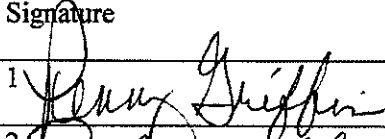
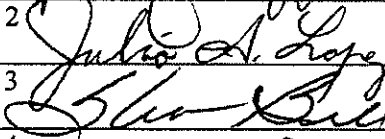
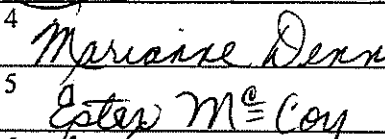
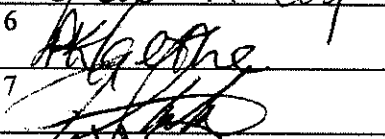
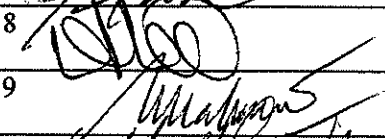
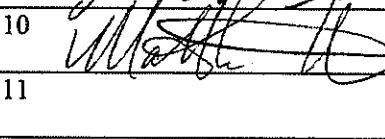


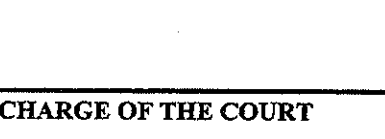

Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature	Name Printed
1 	Penny Griffin
2 	Julio A. Lopez
3 	STEVE BELL
4 	MARIANNE DENNING
5 	Ester McCoy
6 	PAUL NGETHE
7 	JAMES SPENSER
8 	Andrea Lee
9 	Noraisah Foo
10 	Matthew Hicks
11	

If you have answered Question No. 10, then you must sign this certificate also.

Additional Certificate (NA)

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Question No. 2

Question No. 8

Question No. 10

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

If you have answered Question No. 11, then you must sign this certificate also.

Additional Certificate (NA)

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Question No. 2

Question No. 5

Question No. 9

Question No. 11

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror