

**SECURITIES FRAUD**

## Shareholders Claimed Financial Statements Were False and Misleading

**Settlement:** \$49,500,000

**Case:** In Re: Triton Energy Limited, Securities Litigation, No. 5:98CV256

**Court:** United States District Court, Eastern District, Texarkana

**Judge:** David Folsom

**Verdict Date:** 9/23/2002

**Plaintiff****Attorney(s)**

Richard Adams; Patton, Haltom, Roberts, McWilliams & Greeg; Texarkana, TX (Michael Brown,

Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon) Jeff Angelovich; Nix, Patterson & Roach; Daingerfield, TX (Michael Brown, Preston Ingrahm,

D.

H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

Brad Beckworth; Nix, Patterson & Roach; Daingerfield, TX (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

Keith Fleischman; Milberg, Weiss, Bershad, Hynes & Lerach; New York, NY (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

Lance Lee; Young, Pickett & Lee; Texarkana, TX (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

George McWilliams; Patton, Haltom, Roberts, McWilliams & Greeg; Texarkana, TX (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

U. Seth Ottensoser; Milberg, Weiss, Bershad, Hynes & Lerach; New York, NY (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

C. Cary Patterson; Nix, Patterson & Roach; Daingerfield, TX (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

Damon Young; Young, Pickett & Lee; Texarkana, TX (Michael Brown, Preston Ingrahm, D. H. Lee, Jr., Kelly McDonald, Val Sevilla, John Terril, Lonnie Whiddon)

**Defense****Attorney(s)**

Rodney Acker; Jenkins & Gilchrist; Dallas, TX (Thomas G. Finck)

David Crisp; Crisp, Boyd & Poff; Texarkana, TX (Thomas G. Finck)

Noel Hensley; Haynes & Boone; Dallas, TX (Peter Rugg, Triton Energy Limited)

Carrie Huff; Haynes & Boone; Dallas, TX (Peter Rugg, Triton Energy Limited)

Nicholas Patton; Patton & Tidwell; Texarkana, TX (Peter Rugg, Triton Energy Limited)

Ellen Sessions; Jenkins & Gilchrist; Dallas, TX (Thomas G. Finck)

**Facts**

A federal court judge has approved a cash settlement of \$49.5 million for shareholders of Triton Energy, a Dallas-based oil company. The shareholders sued the company alleging the company oversold the company and when a deal fell through, the stock prices dropped.

Court appointed lead plaintiffs, D.H. Lee, Val Sevilla, Lonnie Whiddon, John Terril, Kelly McDonald, Preston Ingrahm, and Michael Brown brought a class action on behalf of all persons who purchased on the open market the common stock of defendant Triton (the Class) between March 30, 1998 and July 17, 1998, inclusive (the Class Period).

Plaintiffs alleged that, during the Class Period, the defendants misled the investing public by: (1) falsely representing, among other things, that Triton was an attractive acquisition candidate; and (2) issuing false and misleading financial statements which artificially and improperly inflated the operating results of Triton at all relevant times. In truth and in fact, Triton was experiencing significant undisclosed financial and operating problems, which were known to, or recklessly disregarded by, defendants at all relevant times.

Lead plaintiffs contended that as a result of these material misrepresentations and omissions, Triton's true value in the marketplace was severely overstated and misunderstood. In reality, lead plaintiffs claimed that defendants knew that Triton was a highly unattractive to potential purchasers. Defendants, however, falsely represented to investors that Triton would command a premium price in the marketplace.

Lead plaintiffs contended that by year-end 1997, defendants were in a desperate financial position. They were out of cash, at their debt-ceiling limitations, and had lost credibility with Wall Street. Further, the individual defendants owed the company millions in personal loans and convertible debentures. So, lead plaintiffs alleged that defendants turned to fraud to bail themselves out.

First, plaintiffs alleged that defendants falsely announced the "sale" of Triton's interest in a Colombian pipeline called OCENSA. Defendants announced this transaction as a "sale." However, plaintiffs' alleged that it was an additional \$100 million loan, disguised through an off-balance sheet transaction, that plunged the company further into debt. Plaintiffs alleged that on March 31, 1998 (in Triton's 10-K and Annual Report) and again on May 13, 1998 (in Triton's 10-Q), Triton fraudulently represented the true nature of this transaction and its effect on the Company's financial condition.

Second, plaintiffs alleged that on March 31, 1998, the Company made several false statements in its 10-K, Annual Report, and in public speeches regarding the value of its assets in Colombia and failed to disclose write-offs and write downs in Colombia and certain other properties.

Third, plaintiffs alleged that defendants fraudulently represented the quality and quantity of its reserve base in the JDA in Triton's 10-K, Annual Report, 10-Q, and numerous public statements. Each of these misrepresentations was designed to conceal the company's desperate financial condition, give a false impression of the company's value, and create the myth that the company and its assets could and would fetch a premium price if open to bidding.

Fourth, on March 31, 1998, plaintiffs alleged that the company announced that it was up for sale and would entertain bids for the entire company, the JDA, and/or Colombia. Defendants called this auction a "Strategic Alternatives Process." Internally, management and Triton's investment banker called the process "Skean Dhu." Skean Dhu is a term for a Scottish Boot knife or a "weapon of last resort." Skean Dhu was doomed from the start. Plaintiffs alleged that as companies were invited to the data rooms to conduct due diligence, they learned the true state of affairs-evidence which was never revealed to the investing public. And, one by one these company's dropped out of the race, none willing to make an offer for the entire company, none willing to make an offer for Colombia at any price, and none willing to make a premium offer for Triton's interest in the JDA. Meanwhile, plaintiffs alleged, defendants continued to make false statements regarding the true value of the company and its assets, and claimed that the entire company would be bought at a premium.

Plaintiffs alleged that no company ever made a bid for the entire company or a premium bid for a single asset. Triton's common stock, traded under the ticker OIL, rose from \$30 to \$42 during the Skean Dhu

process. When news of the failure of the auction process reached the market, the stock price crashed to a class period low of \$20.62 per share.

Defendants sought to dismiss the case several times, requested interlocutory appeal to the Fifth Circuit, and moved to stay the case on at least three occasions.

On March 8, 2002, The Honorable Caroline Craven, U.S. Magistrate Judge, entered an order appointing a computer forensic specialist to "swab" or test all computers and computer systems used by defendants and their inside and outside directors on and after Jan. 1, 1998, to determine what, if any, evidence has been deleted or destroyed in violation of defendants' discovery obligations. The court also announced that it would appoint a special master to determine whether defendants failed to preserve and/or destroyed any evidence in this case.

The case was filed as a securities fraud class action under Section 10(b) of the Securities and Exchange Act of 1934 (the Exchange Act), Rule 10b-5 promulgated thereunder by the SEC and Section 20(a) of the Exchange Act.

### **Injuries**

### **Verdict**

This case settled, after 4 years of litigation, including full discovery on the merits. It settled after a mediation process, which took place over four weeks under the Honorable Robert Parker. The court granted final approval of a cash settlement of \$49,500,000 (\$42 million plus a contingent additional \$7.5 million) and also ordered defendants to pay taxable costs of \$75,000.

The court awarded plaintiffs' co-lead counsel \$13,000,000 in attorneys' fees, and \$1,010,000. in expenses.

**Demand:** None reported

**Offer:** None reported

### **Trial Details**

**Trial Length:** None reported

**Trial Deliberations:** None reported

**Jury Poll:** None reported

**Jury Composition:** None reported

### **Post Trial Status**

None reported

### **Plaintiff(s)**

**Michael Brown**

**Preston Ingrahm**

**D. H. Lee, Jr.**

**Kelly McDonald**

**Val Sevilla**

**John Terril**

**Lonnie Whiddon**

**Plaintiff**

**Expert(s)**

Geoffrey Miller, J.D.; trial strategy; New York, NY (Brad Beckworth)  
Blaine Nye, Ph.D.; economics; San Francisco, CA (Brad Beckworth)

**Defense**

**Expert(s)**

None reported

**Insurer(s)**

None reported

**Plaintiff(s)**

**Demographics**

**Michael Brown**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Preston Ingrahm**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**D. H. Lee, Jr.**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Kelly McDonald**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Val Sevilla**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**John Terril**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Lonnie Whiddon**

**Age:** zero Years

**Occupation:** None reported

**Gender:** Male

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Written By:** Pam Peaco