

## Buffett's buyout of BNSF heads to court to decide location

(The following story by Bob Cox appeared in the Star Telegram December 4, 2009.)

Legal skirmishing has commenced in courts in Texas and Delaware as lawyers from across the country prepare to do battle over whether Warren Buffett should have to pay more than \$26.3 billion to take over BNSF Corp.

More than a dozen attorneys gathered Friday in the Tarrant County courtroom of state District Judge Dana Womack for one of a series of hearings on how and where the cases will go forward.

On Nov. 3, business television talk shows were still interviewing Buffett hours after the deal was announced when the first of a dozen lawsuits was filed, alleging that BNSF shareholders were getting shortchanged.

Buffett's Berkshire Hathaway agreed to buy BNSF stock for \$100 a share, a 31 percent premium over the previous day's closing stock market price.

It's likely that by the end of next week, the four cases in Tarrant County, three in Dallas County and five in Delaware will be consolidated into one class-action lawsuit, lawyers said.

What has to be determined is which judge will handle the case and which lawyers will lead the shareholders' legal team in an effort that could generate tens of millions of dollars in legal fees.

Dallas attorney Joe Kendall suffered what may have been only a temporary setback Friday. Womack declined to rule on Kendall's motion to name him interim lead counsel over all four Tarrant County cases until she and the other judges involved decide where the case should be tried.

Womack said she will confer with the Delaware judge by telephone next week to work out where the case should be tried. BNSF and Berkshire are registered Delaware corporations; the railroad is based in Fort Worth, and several shareholder plaintiffs are from Dallas.

A state judge in Dallas is scheduled to hold a hearing Tuesday on a motion by BNSF and Berkshire to consolidate Dallas cases in Tarrant County. Attorneys for both sides said they expect the motion to be approved.

In the longer term, Kendall said, he believes that the case should be consolidated and tried in Fort Worth.

"The witnesses are in Tarrant County; the documents are in Tarrant County," Kendall argued before Womack. "A Texas judge can read Delaware law and apply it fairly. This is where the case should be resolved."

Fort Worth lawyer Ralph Duggins, representing Berkshire, and Houston lawyer Gerard Pecht, representing BNSF, expressed no preference for location. "Our view very strongly is that these cases need to be tried in one venue," Pecht said.

Lawyers from at least 14 other law firms ranging from San Diego to New York are involved in the case.

Trey Branham, a Dallas lawyer with experience in such litigation, said it's difficult to predict how the judges will decide where the case should be tried. The location, whether it's Fort Worth or Delaware, should not be an advantage to either side, he said.

"I've tried cases in Fort Worth, and I've tried cases in Delaware," Branham said. "I think juries in both places understand you've got to treat everybody fair."

The lawyers likely took the cases on a contingency basis, meaning that they hope to force Berkshire to pay significantly more for BNSF, either through a jury verdict or settlement, and will reap a sizable percentage of the final amount, he said.

Branham said such lawsuits are a way to make sure that small, individual stockholders get a fair return on their investment. The shareholders' attorneys will seek to have expert witnesses testify that BNSF is worth more than the \$100 a share Berkshire has agreed to pay.