

Ruling-Class Action:

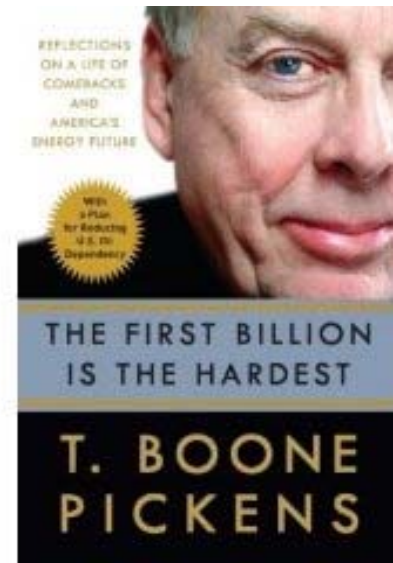
October 20, 2008

# Lawsuit Foe Pickens Sues Bankrupt Bank

- \$1 Million Donor To Texans for Lawsuit Reform Sues Lehman Bros. For \$60 Million
- The First Billionaire Lawsuit Is the Hardest

Lawyers for Dallas billionaire T. Boone Pickens—who spent \$1 million over the last four years to slam courtroom doors in the faces of Texas plaintiffs—traveled 1,500 miles this month to file a \$60 million lawsuit against the bankrupt investment bank Lehman Brothers. That takes what people in Manhattan, where Pickens filed his lawsuit, call “chutzpah.”

The \$1 million that Pickens gave to Texans for Lawsuit Reform (TLR) makes him the No. 2 donor to Texas’ biggest special-interest PAC.<sup>1</sup> On behalf of the wealthy businessmen who bankroll it, TLR promotes severe restrictions on Texas’ civil-justice system. TLR’s top eight contributors provided 59 percent of the \$8.2 million that this powerful PAC collected since 2005.



## Top Contributors To Texans for Lawsuit Reform PAC (2005 Through Sept. 2008)

| Amount             | Contributor             | City          | Business                              |
|--------------------|-------------------------|---------------|---------------------------------------|
| \$1,101,000        | Bob Perry               | Houston       | Perry Homes                           |
| <b>\$1,000,000</b> | <b>T. Boone Pickens</b> | <b>Dallas</b> | <b>BP Capital (energy hedge fund)</b> |
| \$725,000          | Robert McNair           | Houston       | Cogen Technologies/Houston Texans     |
| \$607,458          | Richard Weekley         | Houston       | Weekley Properties (strip malls)      |
| \$390,000          | James Leininger         | San Antonio   | KCI (hospital-bed manufacturer)       |
| \$450,000          | Harold Simmons          | Dallas        | Contran Corp. (nuclear dumps)         |
| \$300,000          | Harlan Crow             | Dallas        | Crow Holdings (real estate/investing) |
| \$250,000          | Anthony Annunziato      | Houston       | AAA Capital Management                |

TLR has successfully lobbied for changes in Texas civil justice laws that: Limit punitive damages that juries use to punish reckless behavior; Slash the liability of doctors who commit malpractice; and Restrict where plaintiffs can file suit.<sup>2</sup> These restrictions do not apply to the Manhattan court where plaintiff Pickens filed his own \$60 million lawsuit.

The dust jacket on Pickens' new book, *The First Billion is the Hardest*, says that the author became known as the "Oracle of Oil" "because of his uncanny ability to predict the direction of fuel prices." While this oily oracle has placed many lucrative bets, his BP Capital hedge funds lost \$1 billion in the current crisis, according to Bloomberg news.<sup>3</sup> Now the old tort warrior is appealing to New York courts to recover some of his losses.

Pickens' lawsuit demands \$60 million plus interest and attorney fees from a unit of the late great Lehman Brothers investment bank.<sup>4</sup> Pickens personally claims

the largest share of this money—\$18.2 million. Four of his BP Capital hedge funds claim the balance (including one registered in the Cayman Islands, a popular tax haven).

The Pickens plaintiffs allege that they entered into derivatives contracts with a Lehman Brothers unit in October 2007. Such contracts are widely used to hedge the financial risks that investors face as a result of the fluctuating value of such commodities as foreign currencies or oil. The plaintiffs allege that these contracts contained default clauses that obligated Lehman to make substantial, immediate payments in the event of bankruptcy. Not surprisingly, the plaintiffs claim that Lehman has not made any such post-bankruptcy payments.<sup>5</sup>

With his lawsuit stayed as a result of Lehman's record \$613 billion bankruptcy proceedings,<sup>6</sup> plaintiff Pickens apparently must get in line with Lehman's many frustrated creditors. ■

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<sup>1</sup> See "Texas PACs: 2006 Cycle Spending," TPJ, October 2007. <http://www.tpj.org/reports/txpac06/index.html>

<sup>2</sup> See "Texans for Lawsuit Reform: How the Texas Tort Tycoons Spent Millions in the 2000 Elections," TPJ, November 2001. <http://www.tpj.org/docs/2001/11/reports/tlr/>

<sup>3</sup> "Pickens Sues Lehman Unit Over Claims It Kept Funds," Bloomberg, October 7, 2008. <http://www.bloomberg.com/apps/news?pid=20601087&sid=aMG1ztM471wM&refer=home>

<sup>4</sup> *T. Boone Pickens et al. v. Lehman Brothers Commodity Services, Inc.*, Supreme Court of the State of New York, Case No. 8602884, filed October 6, 2008.

<sup>5</sup> The Pickens plaintiffs entered into the derivatives contracts with the defendant: Lehman Brothers Commodity Services. Those contracts designated another Lehman unit, Lehman Brothers Holdings, Inc., as the defendant's "Credit Support Provider." The bankruptcy of either of these Lehman units would trigger the derivatives default clauses in question, according to Pickens' complaint. The bulk of the Lehman empire, including Lehman Holdings, filed for bankruptcy on September 15, 2008. Lehman Brothers Commodity Services, Inc. filed for bankruptcy a couple weeks later on October 3. As a result, the Pickens lawsuit claims that the defendant's obligation to pay the plaintiffs predated the defendant's own filing for bankruptcy protection.

<sup>6</sup> Pickens Sues Lehman Unit Over Collateral," *Dallas Morning News*, October 10, 2008.