

R. PAUL YETTER

Digging up a big win in a tough mining town

ATTORNEY: *Paul Yetter*

FIRM: *Yetter & Warden, Houston*

CASE: *Equatorial Tonopah v. Kvaerner U.S. Inc.,
No. 16392 (5th Dist. Ct., Nevada (Nye Co.)).*

By Peter Page

SPECIAL TO THE NATIONAL LAW JOURNAL

WHAT'S THE FASTEST way to make a small fortune in mining?

Start with a large fortune.

People who live in vast and arid Nye County, Nev., have been telling that joke on themselves since the first prospectors arrived on mules before the Civil War. The county is so remote and desolate that the cheeriest slogan its tourism boosters can offer is "Gateway to Death Valley."

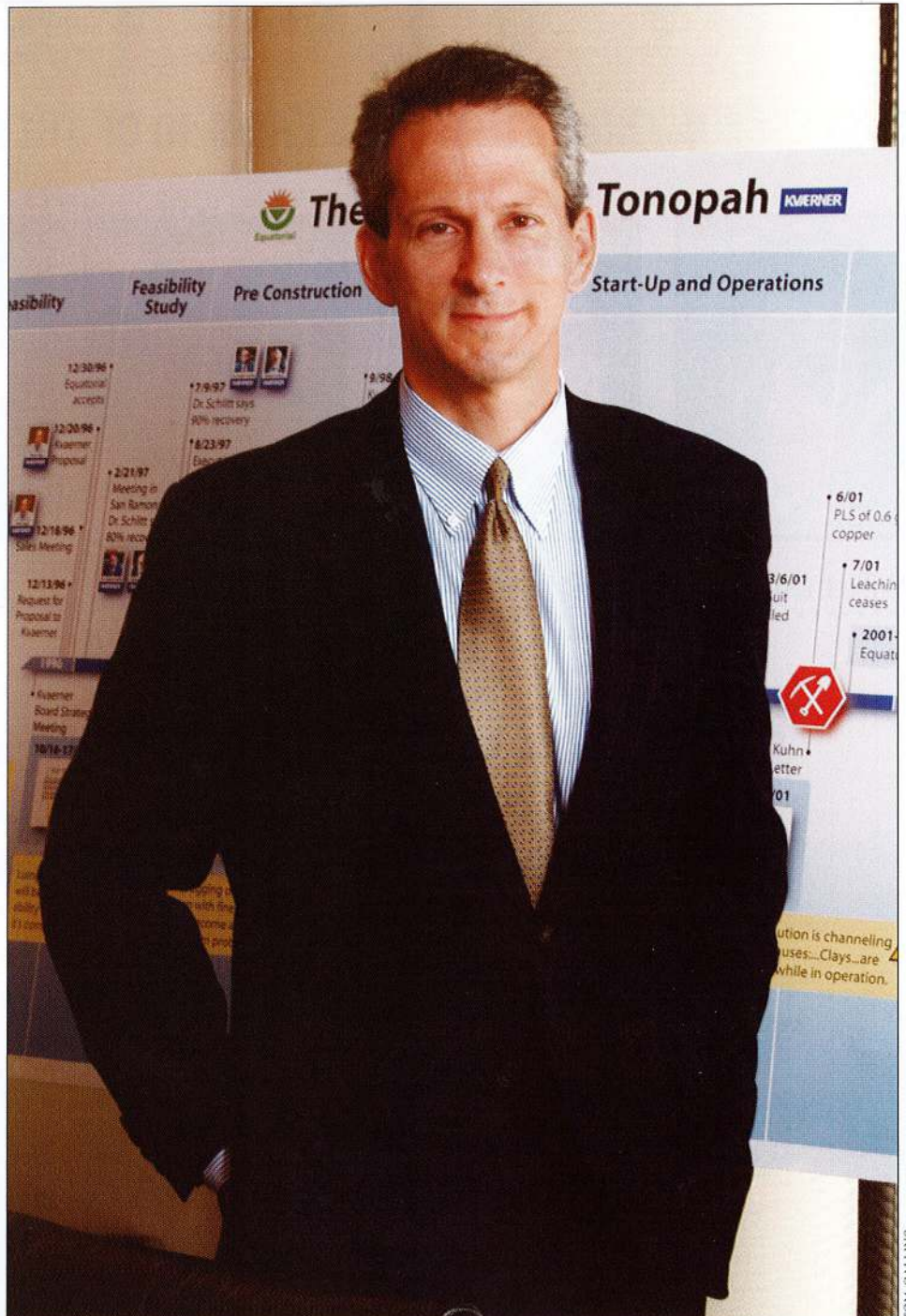
That the county hosting the proposed Yucca Mountain nuclear waste repository even has tourism boosters is one manifestation of the implacable Old West optimism and self-reliance bred into the bones of the people living there.

Paul Yetter, 43, founding partner of Yetter & Warden in Houston, suspected those admirable traits would make jurors skeptical that his client, Equatorial Tonopah, the local subsidiary of the savvy multinational mining firm Equatorial Mining Ltd., had been snookered by its equally savvy engineering consulting firm, Kvaerner U.S. Inc.

Going broke mining in Nye County is nothing to be ashamed of, but blaming anybody for bad luck is.

"Literally everyone either works in the industry or knows somebody who does," Yetter said. "These are very conservative, self-reliant people. Everybody has a day job, something on the side and something cooking. Mining has boomed and busted a half-dozen times in the last century, so everybody knows mining is cyclical."

Another factor to consider when making his case, Yetter said, is that people in Nye



PAUL YETTER: "It was tough to convince [the jury] that a large mining firm with so much expertise was [allegedly] deceived by an engineering firm."

TOM COLLINS

County are not suspicious or cynical about large corporations.

On the contrary, they tend to admire corporations for their ability to plan, fund and execute costly, complex mining projects. Yetter assumed that the jurors would be predisposed to

“[I]f the jury thought we were overreaching, they would not listen...”

believe that the copper mine project failed for honest reasons and it would be work to convince them Equatorial Mining was a victim of alleged fraud.

“It was tough to convince them that a large mining firm with so much expertise was deceived, but they are also common-sensical people,” Yetter said. “We knew if the jury thought we were overreaching they would not listen to a thing we had to say, but we had substantial evidence the engineering firm had reached negative conclusions but decided not to tell the client.”

For most of the blistering summer of 2003, Yetter and his legal team lived in Tonopah, the Nye County seat. The town has just 1,500 residents, two motels, one supermarket, drag racing on Saturday nights and a spirited, if very short, Fourth of July parade.

The plaintiff and defense legal teams stayed in the same motel, ate breakfast and lunch at the same restaurant and gave the small town a contrast in styles as well as a substantial economic boost.

“I made certain we behaved as good guests,” Yetter said. “How the community sees your team is how they see your client. Every night of the week during the summer the team ate dinner at the Elks Club. By the end of the summer, we felt like part of the community.”

Facing the jury

The biggest challenge, Yetter said, was convincing the jury that Kvaerner had not just erred in its engineering assessment but had deliberately misled Equatorial. In seven weeks of trial, Yetter proved that Kvaerner doubted that the Tonopah mine was economically feasi-

ble but deceived Equatorial, because Kvaerner would receive the contract to build the mine.

The jury delivered a \$137 million verdict for Equatorial Tonopah, saving the company from bankruptcy. After a grueling series of appeals, Kvaerner settled the suit for \$116 million, triggering a five-fold rebound in Equatorial's stock price.

“That jury verdict was reported in the industry press quite widely, but it is not viewed as anti-mining,” he said.

“A jury of common citizens in a town almost entirely dependent on mining told the industry to do your job well and thoroughly, and be honest with your customer.”

Yetter began his career with Houston's Baker Botts in 1984. The following year, he was appointed to the team the firm assembled to represent Pennzoil in its marathon suit that won an \$11 billion punitive damages verdict against Texaco. *Texaco Inc. v. Pennzoil Co.*, 729 S.W.2d (Texas App. 1987). He was made partner in 1990.

Yetter studied at Columbia Law School and clerked for Judge John R. Brown on the 5th U.S. Circuit Court of Appeals. But he credits his father, Richard Yetter, with teaching him how to be a lawyer. The elder Yetter still works the solo practice in El Paso, Texas, he began when Yetter was a toddler.

“Whoever walked in the door, my dad's first thought was always what could he do to help,” Yetter said. “People relied on him as a champion and advocate. What I do is a lot more specialized, but I look at every client the same way.”

Yetter has won cases for clients in industries as varied as mining, airlines, software and television.

His clients are typically well-heeled corporations, with the very big exception of the clients for whom he started the firm and continues to represent on contingency.

In December 1996, a number of shareholders in Bre-X Minerals Ltd., a tiny Canadian mining firm that claimed to have found in Indonesia one of the largest gold deposits in history, came to him to defend against a

hostile takeover bid by mining giant Barrick Gold Corp.

Within a few months, independent tests revealed that there was almost no gold at the remote mining site and that the investors had been fleeced.

Five years later, Judge David J. Folsom of the U.S. District Court for the Eastern District of Texas upheld allegations that Bre-X, with the complicity of some major investment firms that were clients of Baker Botts, was a stock fraud scheme and there had never been any gold to recover. *McNamara v. Bre-X Minerals Ltd.*, 197 F. Supp. 2d 622 (E.D. Texas).

However, between the beginning of the case and that ruling, Yetter was put in the untenable position of either dropping the case to avoid suing major clients of Baker Botts or leaving.

“I had to choose between walking away from my clients or staying with the firm,” Yetter said. “I respect the firm but it was not a hard choice. I had too many people depending on me. I asked my dad for his advice. It was consistent with what I decided.”

A lot of the furniture in the house where Yetter grew up came from an estate his father represented that had no cash to pay him. The elder Yetter was just as flexible with other hard-luck clients who needed more lawyer than they could afford.

Yetter and his wife, Patti, have seven sons, and Yetter values the example he sets for them as much as the reputation he has built with his clients and colleagues. “My dad based his entire practice on doing what's best for clients,” Yetter said.

“That made a profound impression on me,” he added. “When I have a tough decision to make I think what my dad would do and what I want my sons to remember me doing. That makes it all pretty clear for me.” **MLJ**

This article is reprinted with permission from the June 21, 2004 edition of THE NATIONAL LAW JOURNAL. © 2004 ALM Properties, Inc. All rights reserved. Further duplication without permission is prohibited. For information, contact American Lawyer Media, Reprint Department at 800-888-8300 x6111.#005-07-04-0009

TRIAL TIPS

- Make sure jurors understand the jargon.
- Don't assume jurors' patience is unlimited.
- If you mistrust a jury, you'll never win a trial.