

## Litigator of the Week: A Jury ‘Thriller’ for a Music Legend

By **Todd Cunningham**

July 27, 2017

Veteran Texas litigator Mike McKool calls the breach of contract case pitting producer Quincy Jones against MJJ Productions and the estate of pop superstar Michael Jackson “one of the most enjoyable I’ve ever handled.”

The \$9.4 million verdict for his client Jones, delivered by a jury after two days of deliberations to cap a two-week trial in Los Angeles Superior Court, surely had a lot to do with that. And it’s why McKool, who with Phil Smith in 1991 founded McKool Smith in Dallas, is our Litigator of the Week.

Jones, the 84-year-old music industry icon, had sued in 2013 alleging that the Jackson estate had underpaid him for royalties from the soundtrack to the documentary film “This Is It” and Jackson’s two Cirque du Soleil shows.

“The defense tried to paint him as greedy,” said McKool, “but these three albums—‘Off the Wall,’ ‘Thriller’ and ‘Bad’ --sold more than 185 million copies, and ‘Thriller’ is the best-selling album ever. He just wanted his fair share.”

McKool called Jones’ testimony “fantastic,” and said it may have made the difference.

“He was open and honest and charming, and he seemed very sincere. He spoke from the heart and very clearly wasn’t playing chess,” said McKool. “He was almost astoundingly sharp, and made very clear to the



**Mike McKool.**

*Courtesy photo*

jury that this was not a case against Michael Jackson, but rather against the estate.” Timing, drama and a little luck never hurt, and Jones’ appearance in court gave McKool’s case a boost on all those fronts. Prior to the trial date being set in April, Jones had agreed to appear at the Montreux Jazz Festival on the Lake Geneva shoreline in Switzerland. When he rolled into Judge Michael L. Stern’s courtroom on July 12 as the trial was winding down, it was his first appearance at the hearing and he was the last witness to testify.

Did McKool plan Jones' entrance for maximum effect?

"I knew he was going to be here on the second Thursday of the trial," said McKool, "but I didn't know they weren't going to call any other witnesses."

McKool thought his side also benefitted from the testimony of the first witness, Jackson's former attorney and co-executor of the estate, John Branca. Under questioning from McKool, he acknowledged that the estate has offered to settle for between \$2 million and \$3 million and that Jones should not have been excluded from the credits of "This Is It."

McKool clients are more often corporations and include Ericsson, American Airlines and Exxon Mobil. So it was a little surprising that he got the call from Jones.

The original suit was filed by Henry Gradstein and Maryann R. Marzano of Gradstein & Marzano PC.

"I'm not really sure of the reason for the decision to change lawyers," McKool said, adding that partner Robert Allen represented Jones prior to joining McKool Smith in 2015. "I'm sure that, coupled with our reputation for courtroom success, was a selling point for our firm," he said.

Still, it was a new subject area for the veteran litigator. "I had never had a case that dealt with music industry royalties," McKool said. "That is a concept unto itself."

His grasp proved sufficient to enable Jones to prevail, and he believes it could establish a significant precedent.

"This verdict is significant for the entertainment industry because the jury found that profits from the

joint venture between the Jackson Estate and the record company are subject to Quincy's royalty," he said. "This is an important and needed protection for producers and other third party royalty holders. The verdict should increase Quincy's royalty stream into the future."

Along with its schooling in royalties, the jury received a music appreciation refresher course. The defense played clips from four songs by the King of Pop, including "Beat It" and "Thriller," and followed that with clips from the same songs after Jones' production work.

"This was a hard-fought case," McKool said, adding that he thought the defense, led by Howard Weitzman of Weitzman Iser Kump and Aldisert LLP, and Zia F. Modabber of Katten Muchin Rosenman LLP, did a good job. "I didn't agree with their case, but I totally understood it."

That, along with the celebrity factor, also contributed to McKool feeling so good about the case, he said. McKool's team included J. Michael Hennigan, Robert E. Allen, Scott L. Cole, Frank Vecella and Caroline M. Walters, and associate Elizabeth Lachman, along with Henry Gradstein and Maryann R. Marzano of Gradstein & Marzano PC.

McKool's spoke from Los Angeles International Airport and was heading home to Texas. He said that "representing Quincy, a musical genius I've always admired, has been a highlight of my career."

McKool will be returning to L.A. soon for a case involving two pharmaceutical companies.

"That one may not be quite as exciting as this one," McKool said with a chuckle. "But you never know."

Contact **Todd Cunningham** at [tcunningham@alm.com](mailto:tcunningham@alm.com).