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$6.2M in Attorney Fees, Costs in Katrina Litigation

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Even though it's been almost 10 years since Hurricane Katrina pounded the Gulf Coast and damaged the oil and gas production facilities owned by Cox Operating, the company only recently was awarded a combined total of $6,297,903 in attorney fees, costs and expenses.

On Feb. 26, Cox's insurance carrier, St. Paul Surplus Lines Insurance Company, was ordered to make these payments by Judge Gray H. Miller, U.S. District Judge for the Southern District of Texas, Houston Division. These attorney fees and costs follow a hefty judgment of $25,394,218 awarded to Cox in 2014.

Cox was the operator of several offshore O&G production facilities located off the Louisiana coast. On Aug. 29, 2005, Cox's facilities were damaged by the forces of Hurricane Katrina, according to the memorandum opinion and order signed by Judge Miller on Feb. 7, 2014. Equipment at Cox's facilities was damaged and strewn into the water, and, as a result, hydrocarbons were released into the water. Cox's efforts to clean up the pollution continued through the summer of 2007, and it incurred more than $15 million in claimed pollution cleanup costs, according to the order.

At the time of the hurricane, St. Paul provided insurance coverage to Cox, and its working interest owners, for pollution cleanup cost liability up to $1 million per incident under a commercial general liability insurance policy, according to the order. In addition, St. Paul also provided an additional layer of insurance coverage to Cox for pollution cleanup cost liability up to $20 million per incident under an umbrella excess liability policy. When Cox filed its claim for coverage after the hurricane, St. Paul maintained that certain costs, including expenses unrelated to cleaning up or remediating pollution, were not covered, according to the order. The dispute between Cox and St. Paul has led to protracted litigation that is still ongoing.

In the amended final judgment, dated Jan. 10, 2014, Judge Miller ordered St. Paul pay to Cox the following amounts: $9,465,103 for monetary damages resulting from St. Paul's breach of the excess insurance policy; $13,064,948 for interest on the amount of contract damages at the rate of 18 percent per year as a result of St. Paul's failure to pay Cox promptly pursuant to the Texas Insurance Code; and $2,864,167 for prejudgment interest on the amount of contract damages at the rate of 5 percent a year.

On Feb. 26, Judge Miller ruled in the final judgment that Cox should recover the following from St. Paul: $309,410 in costs; $59,512 in nontaxable expenses related to attorney fees; $5,396,281 for legal services performed throughout the entry of the amended final judgment; $480,948 for legal services performed in connection with the appeal of the amended final judgment to the U.S. Court of Appeal for the Fifth Circuit; and $51,750 for legal services that would be performed in connection with the preparation of briefing in the Texas Supreme Court if a question or questions were certified by the Fifth Circuit and accepted by the Texas Supreme Court.

Jack T. Jamison and Alexandra Fernandez Stravinsky of Stravinsky & Jamison in Dallas represent Cox Operating in St. Paul's appeal of the Jan. 10, 2014 amended final judgment on the principal claims to the U.S. Court of Appeals for the Fifth Circuit, and with respect to issues of the amounts of Cox Operating's recoverable attorney fees, expenses, and costs presented in the U.S. District Court for the Southern District of Texas and resolved through the judgment of Feb. 26, 2015.

Jamison was lead counsel for Cox at trial and was assisted by co-counsel Stravinsky and Jon-Bernard Schwartz, a shareholder at Godwin Lewis in Dallas.

"St. Paul Surplus Lines Insurance Company's appeal of the final judgment on the principal claims remains pending in the U.S. Court of Appeals for the Fifth Circuit," Jamison said. "Today, I was informed that the oral argument in the appeal has been tentatively set during the week of April 27, 2015."

Currently, Charles T. Frazier Jr., who works in the Dallas office of Alexander Dubose Jefferson Townsend, is lead appellate counsel for St. Paul, and Robert Dubose, who works in the Houston office of Alexander Dubose Jefferson Townsend, is co-counsel in connection with St. Paul's appeal.

Neither Frazier nor Dubose returned a call seeking comment. TL