Questions & Answers

MOONLIGHT FIRE SETTLEMENT

Q: What is the Moonlight fire case all about?

A: *The Moonlight fire broke out on September 3, 2007, on private forest lands in Plumas County, California. The fire eventually spread to other private lands and onto the Plumas and Lassen National Forests, ultimately consuming nearly 65,000 acres before it was finally extinguished nearly two weeks after ignition. Approximately 45,000 acres of national forest lands burned in the process.*

Sierra Pacific Industries does not own the land where the fire started, but purchased standing timber from a group of private landowners in the area and hired an independent contractor named Howell's Forest Harvesting to fall the timber. Two years after the fire, the US Government filed a lawsuit in federal court against Sierra Pacific Industries, the landowners, and Howell's. The US began by informing the defendants that it was seeking some $791 million in damages, plus interest.

Q: Why was the Moonlight Fire case settled before the trial was about to begin?

A: *Sierra Pacific was looking forward to trying this matter in court and showing the public how and why the investigation of what caused the fire was so misguided and wrong, but it chose to resolve it on favorable terms only after the federal trial judge held just before trial that Sierra Pacific may be liable for the fire <u>even</u> <u>if</u> its independent contractor Howell's did not start the fire. Sierra Pacific's primary defense was to show that the investigation was unreliable and that none of the defendants had anything to do with starting the fire.*

Q: What are the terms of the settlement agreement?

A: *Under the terms of the settlement, SPI, the individual landowners and Howell's agreed to pay $55 million to the federal government and, in addition, SPI agreed to transfer 22,500 acres of wildland for public use.*

Q: How is the state legislative reform proposal related to this?

A: *This case highlights the need for changes to state law. The proposed change to the law outlined in Governor Brown's May Revision to the state budget calls for a sensible set of guidelines to be used by the government when assessing damages. When this revision is passed,*

environmental and ecological impacts will be recognized for the first time and various ambiguities will be clarified. The proposed changes would allow for full recovery of lost values, including lost recreational value, damage to wildlife habitat, water or soil quality, or plants, and damage to any rare natural features and lost aesthetic value. The revisions would have no impact on recovering the cost of putting out the fire.

According to the Secretary of the California Natural Resources Agency, "existing law is ambiguous with respect to total damage recovery" (allowing aggressive prosecutors to exploit ambiguities in California law to seek excessive damages from private landowners when a fire occurs). Nevertheless, the Agency states that the bill is "explicitly not a limit on damage recovery," and it "allows for full recovery of lost values to public lands."[1]

Q: Why did the Federal Government settle for $55 million plus 22,500 acres of land when it initially informed the parties that it was after nearly $800 million in damages, plus interest?

A: *Sierra Pacific believes that its offer of high value environmental property which is difficult to use for timber land forced the government's hand. For years, the US Attorney's office has been attempting to justify its effort to recover excessive damages by pointing to the value of various environmental concerns. Sierra Pacific's settlement offer to provide the public with environmentally valuable land forced the US Attorney's to either accept the land offer, or end up demonstrating that these cases are all about collecting excessive damages, as opposed to protecting the environment. Thankfully, Sierra Pacific's land holdings allowed it to force this election, but its ability to do that here is certainly no answer for the future, and it's no answer for the large majority of California businesses and citizens who might find themselves facing the threat of such absurd damage claims in the future.*

It's also important to understand that the pre-fire fair market value of the government's land and timber affected by this fire was about $115 million dollars. After the fire, government's land had a market value of about $96 million, meaning that the fire reduced the value of the property by about $19 million. The government claimed damages of nearly 40 times the diminution in value of its land and nearly 8 times the pre-fire market value of its land. The federal government argued that it could recover damages far in excess of the fair market value because the land is owned by government rather than a private party. However, Sierra Pacific has sold and traded land with the federal government based on fair market value for decades. It is only after the U.S. attorney gets in the business of assessing fire damage that the actual damages (well under $100 million) climb to nearly $800 million.

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[1] Letter from Natural Resources Secretary John Laird to U.S. Interior Secretary Ken Salazar, July 5, 2012

Sierra Pacific is concerned that the increasingly common practice of exaggerating fire damages is a tactic used by the federal government to coerce settlements as private landowners and private companies cannot afford the risks inherent in such excessive company- and job-killing claims, nor the legal fees and costs associated with exposing deeply flawed and biased investigations.

Q: How does the settlement affect Sierra Pacific Industries' business?

A: *SPI is a large company and will continue to operate all of its facilities at current employment levels.*

Q: What is the impact of recent legal rulings on private landowners?

A: *Sierra Pacific chose to resolve this case because federal court Judge Mueller ruled on a motion in limine that the defendants could be liable for the government's damages without having caused the fire. Any ruling that property owners and timber companies are essentially strictly liable for fires that start on their watch – regardless of whether those fires are caused by arson, hunters, or hikers – would have a chilling effect on private landowners' willingness to allow the members of the public to use nearly 8 million acres of privately owned timberland in California.*

More generally, existing California law must be changed to clarify alleged ambiguities which are now being used by the federal government to scare defendants into resolving fire lawsuits, regardless of their actual cause. This case once again demonstrates that, unless state law is changed, federal prosecutors can continue to seek excessive damage claims against private landowners whenever fires occur. Second, the judge's pretrial ruling that a landowner can be responsible for actions by individuals not under their control will likely force many landowners to reconsider whether they will allow the public on their lands for recreational purposes.

Q: Does this affect Californians directly in any way?

A: *Yes. If a large landowner decides to bar public access to its property, that will limit recreational opportunities such as hunting, fishing, bicycling, and horseback riding. Also, if an electric utility has a fire and is forced to pay excessive federal damage claims which have no relationship to the fair market value of the property then those costs will ultimately be passed on to electric ratepayers.*

Q: Would these rulings hurt working families, small businesses, and the California economy?

A: *Yes, many employees work in the forest products industry in rural California. They and thousands of other families could ultimately be put at risk if overly aggressive prosecutions of fire cases are allowed to proceed unchecked. Similarly, there are many small businesses that*

depend on the forest products industry for their livelihood, and they, too could be adversely impacted.

Here, Sierra Pacific had the resources to defend itself in order to uncover information regarding the investigation which would have otherwise remained hidden from public view, and it believes that these discoveries drove down the ultimate price of this settlement. Unfortunately, however, the federal Moonlight Fire case presents at least one example where the "bounty hunter" mentality associated with modern day forest fire damage collection efforts appears to have had an impact on how the critical question of what caused the fire was investigated. All citizens of California have a right to expect nothing but an unbiased and fair investigation which focuses on discovering the truth, as opposed to an investigation which is looking for defendants that might be able to pay such excessive claims.