

Calif. Nabs \$13.9M In Interest From Insurer In Stringfellow Fight

By Jeff Sistrunk

Law360, Los Angeles (August 14, 2015, 7:38 PM ET) -- Two CNA Financial Corp. insurers must pay the state of California nearly \$14 million in prejudgment interest after they agreed to shell out their \$12 million in policy limits toward the state's cleanup costs at the Stringfellow waste site, a California state judge has ruled.

Riverside Superior Court Judge Sharon J. Waters held on Aug. 11 that the state is entitled to a mandatory award of \$13.9 million in prejudgment interest from CNA, calculated at a rate of 7 percent annually from the date of a federal court's September 1998 judgment finding the state 100 percent liable for environmental contamination at the site.

If that sum is reversed on appeal, the state may still be awarded \$10.6 million in discretionary prejudgment interest, calculated from the date it filed suit against CNA and other insurers in September 2002, Judge Waters found.

The decision follows the parties' stipulation in February that CNA would pay \$12 million in policy limits.

Judge Waters rejected CNA's various arguments that the amount owed the state was not certain, where certainty is a requirement for mandatory prejudgment interest. Questions such as whether horizontal or vertical exhaustion applied in the case were legal issues affecting liability — that is, whether and when payment was due under the insurance policies — and not the state's damages and how much was due under the policies, according to the decision.

The state's damages have always been known: the amount the state was ordered to pay in restitution, plus any additional cleanup costs, up to the policy limits, Judge Waters said.

"Here if there was some uncertainty about the total amount of the state's damages, there is something 'not right' about delaying an insured policyholder's collection of money owed under its policies because various insurers cannot agree among themselves about how to allocate a loss that must be covered by one policy or another," Judge Waters wrote.

Essentially, the judge said, CNA has had a \$12 million loan from the state for nearly 13 years, while the state "has been deprived of the use of" that money.

Judge Waters' decision was the latest holding in long-running litigation over the cleanup of the Stringfellow waste site. California brought suit to win coverage from CNA, Yosemite Insurance Co.,

Stonebridge Life Insurance Co. and others for the cleanup after a federal court's ruling in 1998 that the state was 100 percent liable for contamination at the site.

A jury found in 2005 that seven of the nine insurers breached their contracts. The two insurers that successfully argued that their pollution exclusions barred coverage were returned to the suit when the California Supreme Court reversed their win.

The dispute pushed the California high court to weigh in on crucial issues in long-tail claims involving property damage and injuries that occur gradually across several policy periods.

In 2012, the high court ruled that policyholders can force carriers to cover damages occurring outside their policy period and also stack coverage limits from policies spanning multiple years in order to maximize recovery.

In July 2013, the trial court found that the state government's \$99.4 million payment to the U.S. Environmental Protection Agency for the cleanup costs counted as damages covered under the relevant policies.

California is represented by Kamala Harris, Darryl Doke and Peter Meshot of the California Attorney General's Office, Robert Horkovich of Anderson Kill PC, Roger Simpson and Daniel Schultz.

CNA is represented by Steven Crane and Barbara Hodous of Berkes Crane Robinson & Seal LLP.

The case is California v. Underwriters at Lloyd's et al., case number 239784, in the Superior Court of the State of California, County of Riverside.

--Editing by Brian Baresch.