

Motiva To Pay \$36.4 Million In Man's Death

Shannon P. Duffy
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In what may be Pennsylvania's largest-ever reported settlement in a single-victim wrongful death case, an oil refinery operator has agreed to pay more than \$36.4 million to the family of a Bucks County man whose body was never found after a July 2001 explosion in which he fell into a tank of sulfuric acid.

Jeffrey C. Davis was a construction worker for a company hired to repair the catwalks on tanks at a refinery in Delaware City, Del., operated by Motiva Enterprises, a Houston-based joint venture of Shell Oil Co. and Saudi Refining Inc.

Davis was killed and eight other workers were injured in the explosion when a spark from welding equipment ignited flammable vapors in a 415,000-gallon sulfuric acid storage tank at the refinery. Rescue workers ultimately concluded that Davis' body was obliterated by the acid, leaving behind only the rubber soles of his boots as evidence of his death.

The surrounding sulfuric acid tank farm was heavily damaged in the blast, and an estimated 1.1 million gallons of the acid were released into the environment, including nearly 100,000 gallons that flowed into the nearby Delaware River, according to investigators.

U.S. District Judge Mary A. McLaughlin yesterday granted final approval of the settlement between the estate of Jeffrey Davis and Motiva.

Court records show that McLaughlin approved a distribution of the settlement in which Jeffrey Davis' widow, Mary Davis, will be paid more than \$12.9 million, and each of the five children, who range in age from 13 to 32, will be paid more than \$2.1 million.

The judge also approved attorney fees of more than \$12.1 million -- one-third of the settlement -- for plaintiffs' attorneys Thomas R. Kline and Matthew A. Casey of Kline & Specter.

Kline told McLaughlin in a recent hearing that his firm spent nearly \$750,000 investigating the case that was subtracted from the settlement before distribution.

The settlement comes less than two months after Motiva avoided a criminal trial by pleading no contest to a charge of criminally negligent homicide and six counts of misdemeanor assault. All charges were lodged against the company.

Judge Peggy Ableman of the New Castle County Superior Court fined the company \$296,000.

Ableman said she imposed the maximum fine on each charge -- \$11,500 for criminally negligent homicide and \$5,750 for each assault charge - and then exercised her power to impose additional "compensating" fines of \$100,000 for the homicide charge and \$25,000 for each of the assault charges.

The settlement of the Davis family's federal lawsuit avoids a trial that was set to begin Sept. 22.

In an interview with The Legal Intelligencer, Kline said his firm conducted an independent investigation that uncovered a cause of the explosion different from the one Motiva found. Like most refineries, Motiva's Delaware City refinery used large amounts of sulfuric acid to convert crude oil into gasoline -- a process known as "alkylation."

After the explosion, Kline said, Motiva told investigators that it was caused by the ignition of airborne hydrocarbons -- oil-related compounds -- set off by sparks from the welding equipment.

But Kline said his investigation showed that the explosion was caused by an ignition of hydrogen gas emitted from leaks in the tanks that resulted from years of neglect.

That finding was significant, Kline said, because hydrogen, which is highly flammable, is produced when sulfuric acid comes into contact with the steel tanks. Only a tank that is corroded and leaking will release hydrogen, he said.

Kline said Motiva's internal documents showed that the company was warned just a few weeks before the accident that the tanks were badly in need of repair.

A June 2001 memo from an inspector recommended an im-mediate shutdown and repair of the tank that later exploded, Kline said.

According to court papers, another inspector's warning, issued just one day later, was more emphatic. He wrote: "This tank farm needs attention now!"

But, the suit said, "these warnings went unheeded," and Motiva officials admitted soon after the accident that the tank had a history of corrosion and leaks and was overdue for inspection.

Kline said he and Casey decided not to rely on the findings of federal and state investigations but in-stead set out to learn on their own what had caused the accident -- and whether Motiva's explanations were true.

In the discovery phase of the suit, Kline said he and Casey reviewed more than 40,000 documents, took 39 depositions, and hired 14 experts, ranging from chemical engineers and metallurgists to an astrophysicist.

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