

Oil Companies Settle Lawsuit Over MTBE In Lake Tahoe -- The long-running case will not mark a legal precedent because of the deal, but will surely have a wide impact.

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SAN FRANCISCO - Four big oil companies agreed Monday to pay \$28 million to settle a landmark trial concerning the controversial gas additive MTBE.

The deal ends a 10-month jury trial. In total, more than 30 defendants agreed to pay about \$69 million to clean contaminated wells near Lake Tahoe.

The case was widely expected to have wide-reaching repercussions. It marked the first time a jury declared MTBE-laced gasoline a defective product, and lawyers say the case may signal increased liability for oil companies.

San Francisco Superior Court Judge Carlos Bea approved the settlement Monday between the remaining defendants - Shell Oil Co., Shell Products Co., Equilon Enterprises LLC and Texaco Inc. - and the plaintiff, the South Tahoe Public Utility District.

Monday also marked the first time lawyers in the case could speak publicly about the jury's findings, as Bea lifted a gag order issued in April when the jury returned a verdict on liability issues.

Lawyers on both sides said the case would have no legally binding effect on future cases because jurors never reached the issue of damages. But they disagreed about the verdict's persuasive power during negotiations in similar cases.

Plaintiffs lawyer Victor Sher said the verdict should encourage oil companies to clean up MTBE-contaminated sites rather than fight in court.

"[The verdict] sent a pretty clear message as to how juries anywhere would view this issue," he said. "We got where we are today because the oil industry didn't believe that protecting drinking water was their responsibility. This case, and the others that are coming, make it clear they are."

Sher's firm, Sacramento's Miller Sher & Sawyer, took the case on contingency and will get a percentage of the settlement. Sher declined to say how much, although materials released by the district suggest that between \$33 million and \$38 million will go to attorneys and court costs.

Lawyers whisked away jurors immediately after Bea discharged them. Laurence F. Janssen, a lawyer with Steptoe & Johnson who represented MTBE-maker Lyondell Chemical Co., said he needed to analyze their responses before he can determine the long-term effects of the trial.

"There seemed to be a notion that because we continue to manufacture MTBE we had some responsibility," he said. "But that's not the law. We're trying to see if there's some take-away message that is useful in trying to figure out how this [finding] will apply to other cases."

Craig de Recat, a Manatt, Phelps & Phillips lawyer who represented oil company defendant Ultramar Inc., which settled earlier, said he was glad to have gotten out of the case when he did.

"All of the parties are going to consider and give weight to lessons learned in the *Tahoe* case," he said. "Depending on who the party is and where they were in the case, they will have differing views on what those lessons were."

Evidence that MTBE was very likely to find its way from gasoline to ground water carried great weight with the jurors, plaintiffs attorney Duane C. Miller said after he debriefed them Monday. They felt the case against Shell Oil Co. was particularly strong, Miller said, because the company ignored studies about the chemical's problems.

He said jurors, who had been admonished not to read newspaper articles about the chemical, were surprised to hear that Gov. Gray Davis had extended the deadline for gas companies to phase out MTBE through 2003. But several companies have agreed to phase out MTBE even sooner than required, Miller said, perhaps in response to the verdict.

A juror who agreed to a hallway interview said the panel had a sense of the importance of the case and that deliberations were intense and argumentative.

"We knew it was big," said juror Blanca Contreras, a 36-year-old Muni bus driver. "We wanted them to settle, and we're pleased that they did, because we didn't want to come up with a number."

As in all agreements struck during the case, the oil company defendants explicitly denied any wrongdoing, saying the district never proved that their gasoline actually contaminated a Tahoe well.

Defense lawyers also argued during the case that they were forced to use MTBE when Congress passed the 1990 Clean Air Act, which requires companies to use specially formulated gas in some areas.

MTBE, or methyl tertiary-butyl ether, is a chemical added to gasoline to help it burn more cleanly. But it is extremely soluble in water, and small amounts of it disperse through ground water quickly. The chemical changes the taste and smell of water, and some claim it's a carcinogen. At least two medical research groups have declined to list it as such.

The lawsuit originated in South Lake Tahoe, where MTBE leaked out of underground gas tanks and into public water wells. The utility district sued to recover cleanup costs. *South Tahoe Public Utility District v. Atlantic Richfield Co.*, 999128.

The district was forced to close 13 wells. Miller said it might be decades before the problem is cleaned entirely.

Miller predicted an increasing number of MTBE-contaminated wells, resulting in more MTBE-related lawsuits. The *Tahoe* verdict could help push those cases to settle before they reach another jury, he said.

"It's like I told the jury," he said. "For a long time we've had air we can see. We don't want water we can taste."