

THOUGHT LEADERSHIP

News

HOUSTON FEDERAL COURT ORDERS INSURER TO PAY \$4 MILLION IN ATTORNEY FEES TO ITS INSURED

Newsbrief

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In what is surely not the last phase of a highly contentious three-year coverage battle between OneBeacon Insurance Company and its insured, Houston Federal District Court Judge Gray Miller recently awarded \$4 million in attorney fees on a \$30 million judgment previously rendered against OneBeacon in March of this year. The judgment was the result of a jury trial conducted in October 2014 after which the jury found OneBeacon breached its contract, violated its common-law and statutory duties under *Stowers*, violated the Texas Insurance Code, and committed a knowing violation of the Insurance Code.

In *OneBeacon Ins. Co. v. T. Wade Welch & Associates*, No. CIV.A. H-11-3061, 2015 WL 5021954 (S.D. Tex. Aug. 24, 2015), the Welch law firm, who represented itself through much of the coverage suit but hired outside counsel prior to trial, sought \$9.3 million in attorney fees on a 36% contingent fee basis, or alternatively based on the Lodestar method authorized by Texas law, with a multiplier applied due to the complexity of the case. OneBeacon argued Welch should not be allowed to recover a contingent fee for representing itself but the fees should instead be awarded based on the Lodestar method with no enhanced multiplier. It also argued the lodestar amount should be reduced because Welch improperly billed some of its time and because outside counsel duplicated much of Welch's own work.

After a thorough review and consideration of controlling Texas law pertaining to attorney fee awards, including *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757 (Tex. 2012) and *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812 (Tex. 1997), the Court refused to award fees based on a straight contingency amount but instead applied the Lodestar method. After considering the *Arthur Andersen* factors which determine the reasonableness of a fee, the court applied a multiplier of 3.0 to the fees of outside counsel to account for the risk of taking on a difficult case on a contingent fee basis, but did not apply a similar multiplier to Welch's costs incurred in its own defense. The court also applied several reductions based on OneBeacon's complaints regarding the attorneys' billing methods, most notably applying a global reduction of Welch's fee by 5% because it concluded Welch had unduly inflated certain aspects of its billing.

Editor's Note: Although this ruling does not break any new legal ground on attorney fees, the court's thorough and detailed opinion serves as a good primer for calculating and litigating attorney fee awards under Texas law and is a

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reminder of the many complexities that can arise in the context of attorney fee awards.