

## **David Beats Goliath: Court Orders State to Pay Defendants' Attorneys Fees**

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When environmental cases hit the news, the size of the penalty paid by the business to the state or federal government most often captures the headlines. Recently, in one of the largest awards of its kind, Douglas County District Court Judge Paul L. Ballard turned the tables and ordered the State of Minnesota to pay \$66,000 in attorneys fees to the defendants in an environmental case.

### **Background**

The case arose out of a June 1992 Minnesota Pollution Control Agency (MPCA) inspection at Rollies Sales & Service (Rollies), an Osakis, Minnesota petroleum services firm. When inspected, Rollies' services included salvaging tanks and recycling petroleum. After the MPCA inspection alleged nine hazardous waste violations, Rollies quit this part of their business.

Following a growing trend, the State not only charged the company but also named the president, Dale Walsh, and a former shareholder in the company, Roland Walsh. The MPCA initially sought a \$59,000 penalty from Rollies and both individuals in an administrative settlement. Rollies and the individuals found the State's penalty unreasonable and declined to pay.

In 1995 after negotiations broke down, the State of Minnesota filed a complaint in Douglas County District Court. The State alleged that Rollies, Dale Walsh, and Roland Walsh had each violated state environmental laws. The State's complaint asked the Court to impose penalties of \$25,000 per day per violation or over \$250,000 on the defendants. The State also sought an unspecified amount of attorneys fees from each of the defendants.

### **Equal Access to Justice Act**

In response to the State's 1995 lawsuit, Rollies and the individual defendants sought an award of attorneys fees under the Minnesota Equal Access to Justice Act (MEAJA). The Minnesota Legislature enacted MEAJA in 1986 to allow eligible small businesses and their owners to seek an award of fees and costs in cases where they prevail against the State. MEAJA is designed to provide relief in cases where the State unfairly uses its substantial litigating resources against smaller parties.

Parties eligible for a MEAJA award include businesses and partnerships that meet certain eligibility requirements. MEAJA also entitles officers and shareholders of eligible companies, such as the Walshes, to seek an award. Parties may seek an award of fees in contested case proceedings, such as enforcement or licensure proceedings involving the Department of Commerce and other state agencies, and in actions filed in district court.

Although the Court found that Rollies had violated several state environmental regulations, the Court viewed these violations as "minor." Judge Ballard concluded that it is in the State's best interests to encourage the recycling efforts of petroleum tank salvagers such as the Rollies operation. The Court noted that:

“There was limited potential to harm the environment from these violations and no actual harm to the environment occurred as a result of these violations. There were no prior violations by Rollies and its non-compliance was of short duration. Rollies invested \$500,000 into its petroleum recycling operations branch of its business, which Rollies abandoned as a result of this action by the State.”

MEAJA entitles small businesses, their owners and officers to an award of attorneys fees when they can convince the Court that the State’s case against them was not “substantially justified.” “Substantially justified” means that the State’s position had a reasonable basis in law and fact, based on the totality of the circumstances before and during the litigation. Minn. Stat. § 15.471, subd. 8 (1998).

Judge Ballard concluded that an award was appropriate because “the State’s position against both Dale and Roland Walsh did not have a reasonable basis in law and fact before and during the litigation.” The State had failed to prove that Roland and Dale Walsh were personally liable for any of the alleged violations.

In a December 30, 1998 order Judge Ballard awarded Dale and Roland Walsh each \$31,469.16 in attorneys fees. The Court also awarded Rollies \$3,041.85 for expenses it incurred defending the individuals in a lawsuit brought by the State. The Court ordered the MPCA and the Attorney General’s Office to pay the fees and expenses directly to the individuals and to Rollies. The State decided not to appeal the case. The award represents the largest sum ever paid to private parties under MEAJA.

In April 2000 the Minnesota Legislature reaffirmed its commitment to protecting the interests of small businesses and others who may face unreasonable demands from the State. The Legislature amended MEAJA and expanded the law’s eligibility requirements and fee recovery provisions. The old version of the law limited recoveries to businesses to no more than 50 employees and \$4 million in annual revenues and the amount of attorney’s fees to \$100 an hour. The new law, which took effect on August 1, 2000, boosts those eligibility criteria up to 500 employees and \$7 million in annual revenues, and allows \$125 an hour for fees.

Hessian & McKasy’s Joseph G. Maternowski represented Rollies Sales & Service, Inc., Roland Walsh and Dale Walsh.

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