

Westar's Fee Delay Request Denied by 10th Circuit

By Anique Gonzalez

In yet another intriguing turn of events in the four-year-long saga involving Westar Energy Inc. and two of its former executives, Westar, the largest electric-energy provider in Kansas, was recently denied a request to delay payment of its former embattled executives' legal fees.

In 2003, Douglas Lake, Westar's former chief strategy officer, and David Wittig, its former chairman of the board, president, and chief executive officer, were indicted on more than 40 counts of conspiracy, fraud, and other criminal charges in relation to alleged embezzlement of company funds and the subsequent destruction of evidence that would prove their guilt. At the time, the federal grand jury found that the two "sought to systematically loot Westar of money and assets."

Since that time, Lake and Wittig have had two trials and are on their way to a third. The original trial ended in a mistrial when the jury deadlocked. The second trial saw the conviction of both men on several counts of wire fraud, money laundering, conspiracy, and circumvention of internal controls. While Lake and Wittig were originally sentenced to 15 and 18 years in prison respectively and ordered to pay millions of dollars in fees, the 10th Circuit Court of Appeals in Denver eventually overturned those convictions in January 2005.

In its ruling, the 10th Circuit said that federal prosecutors did not fully demonstrate that both men made a concerted effort to hide their personal use of corporate aircraft from federal prosecutors. This was a vital component of the case as it demonstrated the intention, or lack thereof, to mislead officials investigating the case.

While the judges did concede that the former executives took part in "a far-reaching scheme to milk the company for all they could through a pattern of fraud and deceit," they said that the case "hung by a thin legal thread." As a result of their ruling, only the conspiracy and circumvention charges can be retried. (Defense attorneys have asked that the new trial be set for January 2009.)

Throughout both previous trials, Lake and Wittig racked up millions of dollars in legal costs. Unfortunately for Westar, when initially employed by the company, both men signed employment agreements that stated that legal costs would be paid for by the company if the men ever went to trial. As a result, in June, Westar was ordered by U.S. District Judge Julie Robinson to pay more than \$3 million to Lake as reimbursement for his legal fees.

continued on back

Westar appealed Robinson's order, claiming that the payments were excessive. The company also asked that payment be postponed until the appeal could be heard. However, in an October 23 ruling, Westar's request was denied. In a short ruling, the court said the company had "not shown all of the required factors" that would warrant a postponement.

In response to the ruling, Larry Irick, Westar's general counsel, said, "We're disappointed in the ruling because we strongly felt our position was correct on the merits. [We] hope for a better outcome when the court rules on the issue on appeal."

On the Net

Westar Energy Inc.

www.westarenergy.com

Westar Must Pay Legal Fees for Wittig, Lake, Judge Rules

www.topix.net/content/kri/2007/06/westar-must-pay-legal-fees-for-wittig-lake-judge-rules

Wittig, Lake Have to Give Up \$53.5M

www2.ljworld.com/news/2006/apr/01/wittig_lake_have_give_535m/?state_regional

Wittig, Lake Convictions Set Aside by Appeals Court

wichita.bizjournals.com/wichita/stories/2007/01/01/daily29.html?jst=s_cn_hl