



Scott Sexton surrounded by the team (from left) Greg Haley, Travis Graham, Trey Smith, Matt Broughton, Kathy Wright (Monica Monday is not pictured).

Greg Vaughn

Settlement after an epic battle >

Executive Summary:

Despite the biggest fee in the history of his law firm, Gentry Locke Rakes & Moore, Scott Sexton says he wouldn't want to fight this fight again.

By Rob Johnson

After six years of endlessly filing motions to foil attorney Scott Sexton's lawsuit that alleged massive pollution, Consol Energy Inc., a huge coal company based near Pittsburgh, sent him a surprising conciliatory e-mail in May.

"Basically, it said, 'Let's put down our swords,'" says Sexton, 48, a partner in the Roanoke law firm of Gentry Locke Rakes & Moore.

Disarmament led to a settlement of \$75 million in the case, and what Sexton calls "the largest fee ever" in the 100-year-old Gentry Locke's history, although he wouldn't disclose its exact amount.

Yet despite the hefty payday, Sexton says, because of the thousands of hours he toiled getting ready for a trial that didn't happen in Buchanan County Circuit Court: "It wasn't worth it. I wouldn't do it again."

The story of his pretrial labors is reminiscent

of tedious legal details that John Grisham manages to write around in his dramatic legal novels. Interviewed for this article in mid-August, Sexton had been on a fly-fishing vacation since June in Idaho, Wyoming and Montana, trying to shake off the effects of laborious research, preparing for and taking depositions and responding in kind to the volleys of paperwork fired off by the three law firms hired by Consol Energy.

"They battled us every step of the way," Sexton says.

But the result was a bit like a Grisham tale's pivotal moment. The surrendering e-mail came not from the opposing attorneys, but from a Consol executive—and just a week before the trial was to begin. Consol's personal olive branch preceded the company's offer of a settlement that wasn't satisfactory to Sexton. Gentry Locke countered by suggesting \$100 million and after more negotiations—mainly with Matthew Broughton, another partner in the firm—Consol agreed to \$75 million.

The deal left Sexton with a certain empty feeling. "When you settle something like that at the last moment that's good for you and your client. But you feel like you have trained for the Olympics, and then get sent home with a silver medal without getting to compete."

Filed in 2004, the Gentry Locke suit against Consol requested damages on behalf of three Virginia coal-owning families whose properties include 27,000 acres in Buchanan County. The families had leased some of the land to Consol,

which was mining it. The allegations arose when Consol was discovered to have been dumping wastewater containing chloride and other contaminants from its mining operation into neighboring mines that it didn't lease.


Piping the wastewater by the millions of gallons into dormant mines saved Consol the expense of such legally acceptable disposal means as building a treatment plant—which Gentry Locke estimated might cost \$100 million.

The prospective cost to Consol of an alternative disposal method played a role in the settlement amount—most of which was based on a Virginia law that allows wronged civil plaintiffs to claim part of corporate defendants' profits that have been buoyed by illegal acts.

"That was the big club—the benefit to Consol that we were going to present (in court) as

hundreds of millions of dollars," says Sexton. He estimates that the actual damages to his clients because of Consol's actions—in the form of lost mining operations and cleanup costs—were about \$20 million. So the "real pressure point" that boosted the settlement amount was what he calls the "artificial" level of profit enjoyed by Consol for several years.

Preparing to prove the allegations against Consol occupied Sexton for "thousands of hours," he estimates. For about five months before the settlement in May, the father of five says, he "hardly saw" his wife "other than lunch after church."

The workload spread far and wide within Gentry Locke. "At one point or another I probably asked every partner there for help," Sexton says. That's saying a lot in that firm, which has more than 50 attorneys. In the end, though, the biggest fee comes from a shared effort. 



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