

SAN DIEGO BUSINESS JOURNAL

THE COMMUNITY OF BUSINESS™

SEPTEMBER 5, 2016

SAN DIEGO COUNTY'S AWARD-WINNING BUSINESS WEEKLY

WWW.SDBJ.COM

Lawyer Fights for Qualcomm, Under Qualcomm in Varied Career

LAW: Strauss Led Outside Team in Big Contamination Case

■ By BRAD GRAVES

High-tech and low-tech. Steve Strauss considers the contrast and smiles. The issues that cross his desk run the gamut.

Strauss is a trial lawyer, a partner with Cooley LLP, with an office in San Diego.

In the high-tech realm, Strauss has represented San Diego's largest company, Qualcomm Inc., in disputes over intellectual property and wireless communications technology.

In the low-tech arena, he has considered earth, water, pipelines and oil — topics that take in the often thorny issues of real estate and water law.

As head of an outside legal team for Houston-based Kinder Morgan Inc., Strauss was on the receiving end of a landmark San Diego lawsuit that was settled in June.

In August 2007, City Attorney Michael Aguirre sued Kinder Morgan (NYSE: KMI) over contamination from the company's tank farm and fuel terminal at Interstate 15 and Friars Road. All of the gasoline and jet fuel powering San Diegans' vehicles come through the Mission Valley terminal.

During the late 1980s and 1990s, an oil leak from the terminal migrated beneath a famous city property next door: Qualcomm Stadium, home of the San Diego Chargers.

\$20 Million Settlement

It's been a nine-year odyssey, but the legal fight appears to be over.

In June, current City Attorney Jan Goldsmith and Kinder Morgan settled the lawsuit, with the energy company agreeing to pay the city \$20 million. The city had sought as much as \$365 million in damages, according to a Kinder Morgan securities filing.

The pipeline company also agreed to cover additional, incremental costs — if there are any — incurred by the city in the redevelopment of the Qualcomm stadium property or the development of the groundwater beneath it, if there are problems caused by historical releases from the terminal, according to a joint statement from the city and Kinder Morgan.

The trouble with leaks began long before 1998, the year that Kinder Morgan bought Santa Fe Pacific Pipeline Partners LP for approximately \$1 billion in cash and stock. What Kinder Morgan acquired was a 3,300-mile pipeline network spanning six western states and 14 truck loading terminals, including the one in Mission Valley. Kinder Morgan took on responsibility for past troubles when it bought the oil infrastructure. The previous owner's problem was now its own.

Issues Date to 1992

Kinder Morgan recently said that it has spent \$75 million to clean up the Qualcomm Stadium property. The cleanup has been in process since 1992 — the year that an order came down from a state agency. The effort has been one of the most technologically advanced cleanups in California history, Strauss said.

From 1992 to 2007, the city did not sue, Strauss said.

By 2007, the city sought recourse with the courts, saying in court documents that Kinder Morgan had not satisfied



Melissa Jacobs

Steve Strauss of Cooley LLP began working on the Kinder Morgan-City of San Diego lawsuit in August 2012. It involved contamination from the tank farm and fuel terminal at Interstate 15 and Friars Road, adjacent to Qualcomm Stadium. Leaks and contamination predated Kinder Morgan's purchase of the property from Santa Fe Pacific Pipeline Partners LP.

the city with its cleanup. "To date, defendants' activities to remediate and curb the pollution and contamination they created, and continue to create, have been too little, too slow, too unproductive, too sporadic and otherwise too unavailing to be effective," the city's legal team wrote.

The city said it was filing its lawsuit to remediate the Qualcomm Stadium site, to clean the groundwater beneath it, "and to ensure that the public's interests in the property and in the Pueblo groundwater are vindicated and made whole."

The city claimed the contamination hurt its plans to develop the 166-acre Qualcomm Stadium property.

It was a significant problem at a time when the Chargers were very public about their dissatisfaction with Qualcomm Stadium, and were considering alternatives including the redevelopment of the Mission Valley site. (Currently, the Chargers are looking beyond the Mission Valley site and want to build a stadium downtown. Some now view the Qualcomm Stadium property as a possible campus expansion for San Diego State University.)

Aquifer in Question

The city also complained that the oil got into the aquifer, spoiling a potential water source (though in an interesting aside, a judge pointed out that the city had not used the Mission Valley aquifer as a water source since 1936, adding that the city did not have a well-developed plan to use the aquifer).

In defending the lawsuit, the Kinder Morgan legal team worked to exclude the

testimony of a chemical engineer called by the city as an expert witness.

Kinder Morgan got what it wanted from the trial court in 2013. The city appealed to a higher court, which sent the case back to the trial court.

Seven months ago, in its annual securities filing, Kinder Morgan told the financial community that it expected a new trial to begin in April, and that the stakes were \$160 million.

That trial, however, never happened.

Redevelopment Costs

The two parties announced a settlement in June. In the joint statement, City Attorney Goldsmith thanked Kinder Morgan for the time and money the company had put into the cleanup, and for its commitment to cover certain additional redevelopment costs, if there are any.

"The city recognizes Kinder Morgan as an important past and future corporate partner in the city of San Diego and is pleased to put this behind us," Goldsmith said in the joint statement.

Asked about the lifespan of the case, Strauss said that nine years is a long time.

Kinder Morgan reported 2015 revenue of \$14.4 billion and had 11,290 full-time employees at the end of the year.

19th Century Case

The Mission Valley terminal issue is not the only work Strauss has done for Kinder Morgan. A separate case involving the oil services company got Strauss digging around the world of 19th century law, and topics more often addressed in history books.

The case was Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines Inc. At issue was how much rent Kinder Morgan (doing business as Santa Fe Pacific) had to pay for pipelines laid in the right of way of Union Pacific railroad tracks. Rail routes often have pipelines, utility lines and fiber optic telecommunications lines traveling through the same corridor of land.

Strauss and his team established that Union Pacific should not have been charging rent, because when Congress gave out land to establish rail routes in the 1800s, it only provided what was on the surface — not what was beneath the surface.

The case, tried in the 2nd District Court of Appeal, was cited by the *Daily Journal* legal news publication as one of the top appellate reversals of 2014.

Seau Family Case

Strauss has been a trial lawyer for 35 years. During his varied career, he has advised the family of Junior Seau over whether to settle a case with the National Football League over the football player's head injuries. At another time he represented businessman Ernest Rady in a case alleging breach of fiduciary duty — and he won the jury over. Strauss recalled jurors hugging Rady after the trial was over.

Looking at his practice, Strauss concludes that he is lucky. Most lawyers get "pigeonholed," but he has tried a broad range of cases.

He says he loves it.

"I learn so much," he said.