



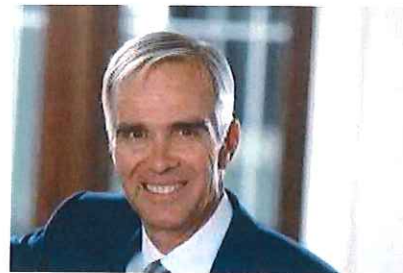
OBX power outage class action settles for \$10.35M

By: David Donovan ☉ May 10, 2018

Businesses that were devastated by the nine-day power outage that plunged the Outer Banks into darkness last summer will be able to collect restitution in time for this year's tourist season after a federal judge gave preliminary approval to a \$10.35 million class action settlement.

The law firms of Whitfield Bryson & Mason in Raleigh, Zaytoun Law Firm in Raleigh and Wallace & Graham in Salisbury served as lead counsel for the class, which consisted of more than 1,400 businesses and 4,100 residents and property owners. The settlement agreement earmarks \$8.1 million for businesses that were affected by the power outage, with the rest reserved for residents, renters and vacationers.

The defendant, PCL Construction, had received a contract to replace the Herbert C. Bonner Bridge, the only point of road access connecting the Outer Banks islands to the rest of the state. On July 27 of last year, its workers accidentally drove a steel casing through underground power cables near the south end of the bridge, severing the cables and cutting the islands' power at the height of the tourist season. Gov. Roy Cooper declared a state of emergency and mandatory evacuations were issued.



Bryson

Dan Bryson, an attorney with Whitfield Bryson & Mason, said that the calamitous effects on local businesses impacted "every type of business you could think of," from art galleries to ice cream parlors, and lasted much longer than the nine days that the island was without power.

"For these businesses it was devastating because they depend on this very short period of time to get the money that's going to sustain them for the entire year," Bryson said. "People who were on the island left and people who had planned to come started making alternative arrangements. Even though the power was only off for nine days, it had a residual impact. It took a long time for the business to come back."

The six separate class action lawsuits filed against PCL were consolidated into a single case. Liability was not a major issue—PCL's contract provided that it owed a duty to prevent foreseeable harm that could occur if it damaged the power cables that supply the islands with electricity—so a three-day mediation focused on the appropriate level of damages.



Wallace

To show the full extent of the economic loss, the plaintiffs' attorneys hired an economist to create an analysis comparing business in 2017 with business in the previous season. Because many small businesses may not be able to fully document their individual losses, class members can receive up to \$2,500 in stipulated damages by showing that they were a viable business.

Judge James Dever gave the agreement preliminary approval on May 2, and a final approval hearing is set for Sept. 14, after the end of this year's tourist season. Ordinarily, plaintiffs in a class action lawsuit cannot start actually collecting payment until a settlement has received final approval, but under the deal's terms, plaintiffs can begin collecting money right away so they can be ready for the season.

After all claims are processed, class members will be eligible to receive as much as an extra 20 percent of their recovery to compensate them for non-economic damages.

Any settlement funds remaining after those damages are paid out can be spent on remedial efforts to promote tourism in the Outer Banks.

The plaintiffs' attorneys said that the size and specific terms of the settlement provides a clear example of how the oft-maligned class action lawsuit can help injured parties obtain meaningful relief that they couldn't secure through individual lawsuits.

"Sometimes class action lawsuits get a bad reputation, but here's an example of a class action that has worked, and worked well," Bryson said.

Rod Pettey, David Fothergill and Alex Couch of Yates, McLamb & Weyher in Raleigh represented PCL Construction. Pettey said that he was pleased that the court had provided preliminary approval for the settlement but declined to comment further.

Follow David Donovan on Twitter @NCLWDonovan

SETTLEMENT REPORT – CLASS ACTION

Amount: \$10,350,000

Injuries alleged: Economic loss due to negligence

Case name: *In re: Outer Banks Power Outage Litigation*

Court: U.S. District Court of the Eastern District of North Carolina

Case number: 4:17-cv-141-D

Judge: James Dever

Date of settlement: Preliminary approval granted May 2

Most helpful experts: Mark Ewen of Industrial Economics, Incorporated in Cambridge, Massachusetts

Lead counsel for the class: Whitfield Bryson & Mason in Raleigh, Zaytoun Law Firm in Raleigh and Wallace & Graham in Salisbury

Attorneys for defendant: Rod Pettey, David Fothergill and Alex Couch of Yates, McLamb & Weyher in Raleigh



Zaytoun

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