

Atty Fees Chopped By \$1.6M In Energy Newsletter IP Suit

By Mike Curley

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A Texas federal judge has reduced by \$1.6 million attorneys' fees awarded to the publisher of an energy industry newsletter, ruling the publisher was not entitled to the original fee amount after it rejected a settlement offer from an advising firm it accused of distributing the newsletter without permission.

U.S. District Judge Simeon Timothy Lake III cut the fees to Energy Intelligence Group Inc. from \$4.2 million to \$2.6 million in a suit against [Kayne Anderson Capital Advisors LP](#) after the firm offered to settle the case for \$5 million as well as \$300,000 for a copyright infringement ad campaign, which EIG turned down.

Judge Lake also sheared EIG's cost award down from \$75,000 to \$33,000, then down again to \$21,021 after taking into account costs awarded to Kayne Anderson.

EIG sued Kayne Anderson in 2014, claiming that the advising firm had distributed unauthorized copies of its newsletter, Oil Daily, among its employees and other nonsubscribers. Kayne Anderson held one subscription from 2004 to 2013 and forwarded and copied the newsletter without EIG's permission, EIG claimed.

After a four-day trial in 2017, the jury found in EIG's favor, awarding \$585,000 in damages, \$4.2 million in attorneys' fees and \$75,000 in costs.

Kayne Anderson made a motion to reduce the fees, citing an offer it made in February 2017. Citing federal law, it argued the court should reduce EIG's attorneys' fees award and, in addition, award Kayne Anderson \$3.2 million in costs incurred after EIG rejected the settlement proposal.

Judge Lake agreed that EIG's attorneys' fees should be reduced after taking into account the settlement rejection.

As the firm was not the prevailing party in the suit, however, the judge ruled Kayne Anderson was not entitled to any attorneys' fees of its own, but could claim other reasonable costs.

Kayne Anderson included \$2.9 million in attorneys' fees and \$363,580 in other costs in its request, according to court documents. Judge Lake ruled, however, that only \$11,979 of that were reasonable, taxable court costs.

He ruled that the \$235,000 that Kayne Anderson had claimed for jury consulting companies was unreasonable and excessive, as the case was not complex enough to justify the firm hiring four separate companies. Judge Lake also struck \$10,575 for copyright office retrieval and correspondence as unnecessary, while Kayne Anderson admitted that an additional \$311 charge for a victory party should also not be included.

Judge Lake also struck down the remaining \$105,715 the firm requested because Kayne Anderson did not include affidavits to show how it was spent and when, and given the size of the case, the court is not inclined to make the analysis.

Jason Erik Mueller of [Sheppard Mullin Richter & Hampton LLP](#), lead attorney for Kayne Anderson, told Law360 that they were pleased to see the reduction in attorneys' fees awarded to EIG, but disappointed the court did not award fees to the advisory firm.

"Nevertheless, Judge Lake's decision to deny Plaintiffs recovery of significant fees and costs should send a message to others to act reasonably in their settlement negotiations," he said in an email.

Counsel for EIG could not immediately be reached for comment Wednesday.