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Coastal's Crusaders

Feisty corporate counsel fight their own battles.

BY GARY TAYLOR

FOUR YEARS AGO, Reno, Nev.'s Sierra Pacific Power Co. asked to sit down with its largest coal supplier for a "friendly" renegotiation of its contract — an option available every five years.

But instead of friendly renegotiations, however, the supplier slapped Sierra Pacific with a lawsuit, and it requested a declaratory judgment disallowing any Sierra price break. Insiders at Sierra Pacific won't discuss the litigation that dragged on until early this year, other than to concede they were utterly shocked by the speed at which the suit was filed. And they'll only nervously whisper the name of their adversary in this matter: Houston's \$8 billion Coastal Coastal Corp. — an energy company just as famous in the oil patch for its lawsuits as for its natural gas pipeline empire. *Coastal States Energy Co. v. Sierra Pacific Power Co.*, 88-C-219S (C.D. Utah).

Anyone familiar with Coastal's litigious reputation measures his or her words carefully. One source calls the company's 80-lawyer legal department a "hair trigger waiting to explode." Others have joked that within Coastal's corporate structure, the legal department functions as a revenue generator — a charge the company denies. But even Coastal insiders hearing that joke understand why some might chuckle.

The resulting department is one that defies the stereotype traditionally assigned to corporate legal staffs. It's a place where the general counsel, Michael L. Beatty, is better known as a litigator than as an administrator, personally trying at least one important case each year. It's a place where all attorneys are expected to have litigation skills. It's a place more likely than any other — in the opinion of some experts — to tackle big issues in-house. And it's a place that rarely runs from a fight and has plenty of detractors in the oil patch legal community to prove it.

Along the way Coastal's legal crusades have left their mark upon the history of oil and gas law in the 1980s, say several industry analysts and attorneys. "The industry has made a transition from one symbolized by a friendly handshake to one with an avalanche of litigation opportunities. Coastal was early down the curb on litigation," says one prominent oil industry analyst who requested anonymity.

Coastal's Victories

Some may label Coastal an oil patch bully but others defer to its triumphs. "Coastal's victories are notable. We [other gas pipeline litigators] cited the devil out of their cases," says Charles A. Moore, a former general counsel for the Federal Energy Regulatory Commission and now with the Houston office of Dallas-based Akin, Gump, Hauer & Feld, L.L.P. "They gave us ammunition. They have demonstrated in-house capabilities to try cases without outside assistance, and I can't think of any corporation that stands out better in that regard."

Says Carol Freedenthal, an industry consultant and principal with Houston's Jofree Corp.: "Coastal did a good job of minimizing losses and served as an aid to the rest of the industry to hold back and fight. Coastal reaped benefits from having a very tough legal group. Many don't like what they were doing but they were effective."

The other industry analyst agrees: "They are litigious and it has helped the company." And financial analysts credit the company's aggressive legal department — and litigation-oriented philosophy — with making Coastal a profitable darling of investment bankers everywhere.

The Sierra case is just one example of how quickly Coastal seeks results in the courtroom. "With this suit we resolved an uncertainty on a contract that was going to last until the year 2004," explains Mr. Beatty, also a vice president of the company. "We didn't want an argument [on the five-year contract option] every time. Some companies might have said, 'If we litigate, we might lose.' But we won. The contract was upheld."

Mr. Beatty declined to tally the figures on how much revenue his department has generated from lawsuits seeking damages during the past five years. But he does offer a reply to those who believe Coastal uses its lawyers to earn revenues: "The primary function is to protect the company assets. I will do that and as a plaintiff will seek recovery. Management wants to know when there is a cause of action that exists because of a wrong."

Although Mr. Beatty wouldn't provide exact figures, he estimates Coastal currently has about 500 cases pending — with the company initiating suits in perhaps half of these. The company has been known to move as a plaintiff on

everything from a simple contract dispute like the Sierra Pacific case to actions with hostile takeover implications. And it made its mark as a leader in oil industry litigation in the 1980s when it was the first pipeline company to successfully challenge expensive long-term contracts signed with natural gas suppliers during the '70s energy crunch.

'Bad Boy'

Any appreciation of Coastal's impact begins with a look at the company itself and its controversial founder and chairman, Houston's Oscar S. Wyatt Jr. The nation's 12th-largest energy company, Coastal operates in 45 states and overseas. Its 19,000-mile natural gas pipeline system ranks among the nation's six largest. Coastal subsidiaries operate refineries, barge fleets, oil exploration and production enterprises, convenience stores, coal mines and chemical plants.

More visible nationally, however, is Mr. Wyatt, best known recently for his trip to Baghdad with former Texas Gov. John Connally to win the release of hostages held by Iraq in the months prior to the Persian Gulf war. He returned as an outspoken critic of that war. But that episode hardly marked the start of Mr. Wyatt's reputation for controversy. When Texas Monthly magazine profiled him last year, it titled the article "Meaner Than a Junkyard Dog" and called him "the 66-year-old bad boy of the Texas oil and gas industry."

BusinessWeek in 1989 identified him as "The Man Who Strikes Fear in the Heart of the Oil Patch." It summarized Mr. Wyatt's courtroom resume, reporting that "in the early 1970s he cut off winter gas supplies to San Antonio and Austin, igniting one of the nastiest legal fights in state history. It was only one of many courtroom tussles. He has sued the federal government, numerous oil companies and even his brother-in-law, fashion retailer Robert Sakowitz."

All the experts seem to agree that Coastal's pugnacious, confrontational spirit springs from the top. And Mr. Beatty, Coastal's top lawyer since 1985, would quickly agree. He's the Sir Lancelot of Mr. Wyatt's legal Round Table.

"This company is aggressive and will not be a pushover," says Mr. Beatty. "This corporation is on the offensive more than others. We are trained to anticipate litigation and know what

it's going to do. A lot is reflective of the personality of Mr. Wyatt."

Another anonymous industry analyst adds in obvious reference to Mr. Wyatt, "There's only one general counsel at Coastal and it's not Mike Beatty." That same source, however, joins others in applauding Mr. Beatty's trial skills and characterizing him as exactly the kind of general counsel an executive like Mr. Wyatt would need.

'Double Advantage'

Indeed, Mr. Beatty — who earns more than \$500,000 per year — laid the cornerstone for his own Coastal career in the plaintiff's role with a 1986 trial in which he persuaded a Cheyenne, Wyo., jury to award \$549 million in antitrust damages to a Coastal subsidiary, Colorado Interstate Gas, from a unit of Occidental Petroleum Co. Besides standing out as the third-largest civil judgment at the time, the verdict attracted attention because it was won by Mr. Beatty's in-house legal team rather than outside counsel. And it set the tone for Coastal's approach throughout the decade. *CIG v. Natural Gas Pipeline of America*, 885 F.2d 683 (10th Cir.).

An unlikely pair leads that in-house team. Often joining Mr. Beatty in the courtroom is Becky H. Noecker, senior vice president of Coastal's ANR Pipeline and General Counsel of CIG. Opponents have been known to underestimate them as litigators in a business still dominated by machismo and prejudice against in-house lawyers.

"We have a double advantage," says Ms. Noecker, who teamed with Mr. Beatty on the \$549 million verdict. "Opponents will see a female in-house attorney and say, 'Piece of cake.' I've heard jokes by outside counsel."

Mr. Beatty has come a long way. In fact, he dodged the 10-year-reunion of his Harvard Law School graduating class in 1982 because he was a lower level in-house attorney for Coastal at the time and did not want his classmates to know. Indeed, he joined Coastal almost by accident after a 2-year stint at Houston's Vinson & Elkins; from 1974-1979 he was a professor at the University of Idaho College of Law and then taught from 1980-1981 at University of Wyoming College of Law. When his wife accepted a position teaching political science in Colorado Springs he came along and agreed to a temporary assignment with CIG.

He cites the fast track taken by both himself and Ms. Noecker as evidence of his contention that Coastal's legal department thrives on a "star system" in which performance means everything. He advanced from that lower level at CIG in 1982 to become general counsel there in 1984 and general counsel of the Houston parent in 1985.

Mr. Beatty recruited Ms. Noecker in 1985 from her husband's Cheyenne, Wyo., firm of Johnson, MacPherson & Noecker after hearing about her academic record at the University of Wyoming College of Law. He then helped her advance to her current post supervising 32 attor-

neys in Colorado Springs, Detroit and Houston who handle the company's mother lode of pipeline litigation.

Coastal's Reputation Honed

And it's been in pipeline litigation — particularly the "take-or-pay" issues — that Coastal's reputation was honed. The take-or-pay dilemma stemmed from the situation in the late 1970s, when gas supplies were tight and pipeline companies responded by signing long-term contracts. They agreed to buy certain amounts of expensive gas from producers or pay for it anyway even if they didn't need it. By the mid-1980s, supplies increased, demand fell and so did the price. Suddenly pipelines wanted out of these contracts.

"There were some 5,000 disputes that found their way to court," says Richard J. Pierce, the Paul J. Kellner Professor of Law at Columbia University Law School. "Most were resolved by settlement but there were a lot of different provisions in the individual contracts. I once counted 45 different issues in a dozen different cases."

Litigating those cases in state courts usually left the pipeline companies getting "kicked in the butt," according to industry consultant Mr. Freedenthal. As both a producer and pipeline operator, Coastal sometimes found itself arguing opposite positions in different cases. But Coastal's ANR Pipeline became the first to craft a defense victory in a suit filed by producer Atlantic Richfield to enforce a take-or-pay contract. The July 1987 trial had significant implications for the industry, says Mr. Freedenthal. *ARCO V. ANR*, 768 S.W. 2d 777, (Tex. Ct. App., 1989).

"It was the first time a jury had sustained the concept of force majeure in a take-or-pay contract," says Mr. Beatty. "These cases were essential to us. We developed a strategy we used for five or six years."

That first success confused the picture all over the oil patch and forestalled payments to gas producers until Federal Energy Regulatory Commission issued orders in 1988 clarifying take-or-pay. Pipelines eventually paid and settled most cases, but the delays helped them survive. Says Mr. Freedenthal: "Coastal was one of the few pipeline winners. Most got clobbered by the courts. The delays changed to industry."

Says Mr. Beatty: "Take-or-pay is virtually resolved now from our standpoint."

Although Thomas R. McDade, then of Houston's Fullbright & Jaworski, engineered the ARCO case, he worked closely with Mr. Beatty and Ms. Noecker who were handling hundreds of similar cases during this period. Besides its dogged approach, Coastal can also thank the attorneys who originally drafted the initial ANR Pipeline contracts, says Mr. Moore of Akin Gump. Coastal acquired ANR in 1985 and with it came defensible contracts. But, he says, Coastal's attitude and tough staff made the strong language work.

That tough attitude has left its imprint on

the working environment of Coastal lawyers. No observer discusses it with neutrality. One former Coastal attorney alleges he calculated a 50 percent turnover rate during the two years he worked there — "Half of those who left were fired and the other half left on their own. I had never been to a place before where a secretary would leave for lunch on her first day and just never return. But I saw it happen three or four times while I worked at Coastal. They clearly have a different slant on things."

Net Happy?

One Houston legal recruiter experienced with Coastal now says flatly: "We will not represent Coastal. If I put someone there, odds are high they won't be happy. They keep records on everything a new employee does wrong and start building that file the day you arrive."

But he concedes that Coastal still looks attractive to attorneys who "want to do stuff they couldn't do elsewhere. Coastal is always in a big fight with somebody, so that's the place for a fighter to go."

David S. Gamble, of Houston's Beirne, Maynard & Parsons, believes he made the right move joining Coastal in 1975 out of law school. In contrast to most corporate positions, he received real trial experience during his almost six years at Coastal and handled five big cases before turning 30. While others complain about the way Mr. Wyatt meddles in the company's lawsuits, Mr. Gamble saw the Coastal method as a plus.

"Coastal lawyers are accorded a great deal of respect and cooperation by the business people," he says. "We had access to management. Mr. Wyatt respects strength and he likes to be told the straight stuff. He's a tough guy who wants his rights protected and won't accept anything less."

Mr. Beatty accepts the critics as part of the landscape at an aggressive company like Coastal. He won't reveal turnover figures, acknowledging only that it was "substantial" but has "moderated recently." He concedes that Mr. Wyatt monitors trial details to the extent of discussing strategy by telephone during courtroom recesses. He even jokes about the sweat shop image, noting that his family still lives in Colorado Springs where he shuttles on weekends. "I never have to worry about going home to dinner," he says laughing.

"Forget being timid," he says, of the characteristics needed to succeed in Coastal's legal world. But elaborating on the advantages there, he says, "If a case comes up that attracts the attention of the management, the attorney has an opportunity to be a hero."

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