

# DAILY REPORT

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## Atlanta Lawyer: Big Sky Client Pays Small Price to End Long Case

KATHERYN HAYES TUCKER

AN ATLANTA LAWYER said his client is happy to pay a \$1.45 million settlement he negotiated in a class action lawsuit over property damage in Montana.

That's because it would have cost Montana Power Co. more than that to defend itself at trial, according to Nicholas Panayotopoulos, a partner at Weinberg Wheeler Hudgins Gunn & Dial. He added that the lawsuit had been pending for 16 years and the plaintiffs—about 3,500 of them—had asked for tens of millions of dollars combined.

After they pay 33 percent of the settlement in attorney fees and cover their lawyers' costs, the plaintiffs will get less than \$300 each, if they all file claims, according to Panayotopoulos.

The lawsuit was filed in 1999 over shoreline erosion around the largest freshwater lake west of the Mississippi River. Homeowners around Flathead Lake and the Flathead River alleged that Montana Power improperly managed the operations of Kerr Dam, keeping water levels too high during some parts of several years in the late 1990s.

The lawsuit survived three pre-trial appeals to the Montana Supreme Court and the bankruptcy of Montana Power, once the largest corporation in the state. Even though the company was out of business, it was insured for the time covered by the lawsuit, according to Panayotopoulos, who about four years ago took over the case for Montana Power.

Panayotopoulos said the property owners were able to document their claims of

soil erosion. But the power company denied responsibility. "Damages weren't the issue as much as liability," he said. He added, "We put a lot of obstacles up for them."

In the end, lead plaintiffs' attorney Michael Mulder of Chicago told Flathead County District Court Judge Katherine Curtis that he felt confident he could overcome some of the defenses, but not all of them, according to Panayotopoulos. Mulder expressed concern about his clients losing everything in a trial that would have taken eight weeks. The judge signed the final settlement order on Sept. 16.

Mulder couldn't be reached.

Panayotopoulos said the defense team included David Dial and Joshua Swiger.

Panayotopoulos credited the mediator, former Rogers & Hardin partner Hunter Hughes III of Atlanta, with bringing the parties to agreement after more than a year of work on the case.

"It was a difficult case. It went on for a long time," said Hughes. He noted damages were hard to figure because the shore erosion varied widely among property owners, from a foot to 30 yards.

Hughes was brought in as mediator by the plaintiffs' attorney, with whom Hughes had worked before. Panayotopoulos agreed to the mediation.

The parties had one meeting in New York more than a year ago. "It was me on the phone after that," said Hughes. He added he met with Panayotopoulos a few times in person because they are both in Atlanta.



JOHN DISNEY/DAILY REPORT

NICK PANAYOTOPOULOS

Hughes said he's worked on many cases too complicated to resolve in a daylong mediation session. "Everybody walks out," he said. "You send different messages as you're walking out. One is, 'Don't ever talk to me again.' The other is, 'Gee, these numbers don't work but let's keep trying.' This one was the latter."

The case is *Richard Mattson v. Montana Power Co.*, No. DV-99-548A. 



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