

Lawyers in West Explosion Strategize After Insurance News

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The focus of lawsuits stemming from the April 17 explosion at the West fertilizer plant may change, after news that Adair Grain Inc., doing business as West Fertilizer Co., holds only a \$1 million liability insurance policy.

"You are going to see focus change from 'How did this explosion occur?' to 'Who could have prevented it?' And why was so much ammonium nitrate at this plant? Who was storing it there?" says Randy Roberts, a partner in Roberts & Roberts in Tyler. He represents two plaintiffs, each of whom has filed a personal-injury lawsuit in the aftermath of the blast.

That could change the defendants named in the lawsuits, says Roberts.

Adair Grain Inc. is "cooperating" with "the attorneys for the victims and property insurance carriers," who are "exploring other avenues of recovery," writes Dan Keeney, a spokesman for Adair Grain Inc., in an emailed statement. He confirms that the company has liability insurance totaling \$1 million.

"[E]veryone associated with West Fertilizer Co. expresses our deepest sympathies to those who have been hurt and to the families of those who were killed in this tragic accident," writes Keeney in the statement.

Seven lawsuits have been filed so far says Karen Matkin, the McLennan County district clerk. But she wonders whether the insurance coverage amount will be enough to cover all the claims.

"We've got lots of people who are still in the process of trying to find a pencil and a piece of paper. They are working on surviving. But with a million dollar liability policy, that isn't going to be much to split," Matkin says.

Jason Gibson of The Gibson Law Firm in Houston says he plans to "explore all possible options."

He represents Bridgett and Roger Bowles, two West residents, who sued Adair Grain Inc. on April 24. In their

petition in *Bridgett and Roger Bowles v. Adair Grain Inc. dba West Fertilizer Co.*, the couple alleges negligence and seeks damages. They allege that Roger Bowles, who was in his house when the plant exploded, witnessed his roof "lift off the walls and then collapse itself."

With news of the \$1 million insurance policy, Gibson says, "Everyone is scrambling for other possible defendants."

He says he is considering the possible liability of the suppliers of the fertilizer at the plant. He also says, if the state investigates the explosion as a crime and establishes a crime victims' fund, as Texas law allows, he plans to seek compensation for his clients from that.

"I believe the state should step in," Gibson says.

An outside possibility exists that the state would be named as a defendant, Gibson says, but only if the circumstances that allow for waiver of its governmental immunity under existing statutes.

Paul Grinke, a shareholder in Dallas' McCathern, represents multiple plaintiffs who have filed lawsuits against Adair, including other insurance companies. He's taking a wait-and-see approach to the news of the \$1 million insurance policy and regarding any new details that might be forthcoming about how the explosion unfolded. He's not yet prepared to comment on his strategy, he says.

"No one has established liability, so we will go where the evidence leads us," Grinke says.

But, he adds, "It does strike me irresponsible to have only that much in coverage. Should there be a requirement that they have more? I don't know what would be the limit for this kind of thing with that kind of carnage."

Grinke says the majority of his clients have filed suits alleging property damage. He recognizes the need will be greatest for those "who are the families of the deceased" and who therefore may get priority in the courts.

Later in the week of May 6, Roberts says he expects a meeting among the plaintiffs' counsel to start establishing a steering committee on the assumption that the fertilizer plant owner will file a motion to consolidate pre-trial discovery.

He does not yet know — nor does



Randy Roberts

he believe anyone does yet — who will be on the steering committee if one is established.

Gibson says he doesn't expect any substantive decisions about a steering committee or the manner in which pre-trial discovery will take place until after Adair and any other defendants named file answers.

Keeney writes that John McCoy, a partner in McCoy Leavitt Laskey, and other lawyers in the Waukesha, Wis.-based firm represent the fertilizer company.

McCoy did not immediately return a call seeking comment.

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