Headline News

Andrews & Kurth Secures Second Multi-Million Dollar Arbitration Award for Mobile Energy Services Company, L.L.C.

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HOUSTON -- Andrews & Kurth secured an arbitration award for its client Mobile Energy Services Company, L.L.C. (MESC) against Kimberly-Clark Corporation (K-C) for at least $27 million, which is the second in as many weeks for MESC against K-C. The award for the disputed demand charges due for K-C's closure of its Pulp Mill exceed by more than $25 million the amount K-C contended it should pay in the arbitration, according to John Lee, a partner with Andrews & Kurth and MESC's lead trial counsel in the arbitrations. This decision, which the American Arbitration Association (AAA) announced in Dallas on January 31, 2002, together with an award involving the same site issued by the AAA on January 21, 2002, require K-C to pay MESC more than $53 million.

The two awards stem from K-C's September 1, 1999 closure of its Pulp Mill in Mobile, Alabama and replacement of the Pulp Mill's pulp-making operations with a dry fiber operation. MESC has contracts to provide the energy services required by K-C's Pulp Mill and its Tissue Mill, which are located at the same mill complex in Mobile. The contracts obligate K-C to pay MESC demand charges for its continued activities on the Pulp Mill property," says Lee. The most recent announced arbitration award resolves the parties' dispute over the Pulp Mill's demand charges due since the September 1, 1999 closure.

"While this second award does not provide MESC the full amount of Pulp Mill demand charges we were seeking from K-C, it does deny K-C's position that it only owed Pulp Mill demand charges based on the mill's very limited prospective usage of MESC's energy services at the mill. Instead it established a Pulp Mill demand charge due for the entire two-year period following the closure based on a return of investment theory we alternatively urged," Lee says. While the award set the demand rate to provide a lower return than we believed was justly merited, $27 million still far exceeds the $2 million K-C was willing to pay based on its prospective energy usage," Lee says.

"For the second time in two weeks I find myself praising the Andrews & Kurth team that represented MESC in two very complex arbitration cases. The cumulative cash awards in excess of $53 million are a major component of MESC's recovery program. Hopefully, with these major disputes behind us, MESC can now focus more on the future, as we expect to continue to be the primary energy supplier to Kimberly-Clark's very important Tissue Mill in Mobile, for years to come," says Jim Stewart, chief executive officer of MESC.

The Andrews & Kurth team representing MESC included partners Lee, Scott Locher, and David Zdunkewicz, of counsel Neil Kelly, and associate Liz Wiley, the same team who represented MESC in the first successful arbitration. The demand charge claims arose under a very complex and technical energy service agreement for the Pulp Mill and a master operating agreement for the whole mill complex, both of which were entered in connection with the 1994 sale of the complex's energy-production assets to MESC. K-C was represented in this arbitration by a team of former Sidley & Austin lawyers from Chicago.

Andrews & Kurth L.L.P., founded in 1902, is based in Houston, has 360 lawyers and offices in Austin, Dallas, Los Angeles, London, New York and Washington D.C. The firm's practice areas include appellate, bankruptcy, business transactions, energy, environmental, corporate and securities, labor and employment, litigation, intellectual property, public law, project finance, real estate, structured finance, asset securitization, technology and tax law for U.S. and international clients.

MESC is an unregulated subsidiary of the Southern Company formed in 1994 to acquire the energy production assets situated in the Mobile mill complex. K-C, which merged with Scott Paper Company in 1995, is a $14 billion global consumer products company that manufactures tissue, personal care and health care products under various brand names.