

**CRIMSON ENERGY CO., L.C. VS. DOUGLAS MCCALLUM, ET AL.**

**CIVIL ACTION 4:02-CV-888-Y**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
TEXAS, FORT WORTH DIVISION**

**July 10, 2003, Decided**

**July 10, 2003, Filed**

**DISPOSITION:** Crimson's Motion for Reconsideration of Attorneys' Fees and Costs GRANTED.

**COUNSEL:** For Crimson Energy Company LC, Plaintiff: Shayne Daniel Moses, Cantey & Hanger, Fort Worth, TX.

For Douglas McCallum, Richard L Carone, Douglas B McCallum LLC, Republic Drilling Company, Defendants: William Carl Meier, Law Office of William C Meier, Bedford, TX.

**JUDGES:** TERRY R. MEANS, UNITED STATES DISTRICT JUDGE.

**OPINION BY:** TERRY R. MEANS

**OPINION**

**ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION OF ATTORNEYS' FEES**

Pending before the Court is plaintiff Crimson Energy Company, LC's Motion for Reconsideration of Attorneys' Fees and Costs [doc. # 21-1], filed May 5, 2003. Having carefully considered the motion, response, and reply, the Court concludes that it should be GRANTED.

The plaintiff filed suit against the defendants in the 17th Judicial District Court of Tarrant County, Texas, on September 6, 2002. The Texas Secretary of State was served as the defendants' agent on September 16. Consequently, the defendants' answers were due by October 7.<sup>1</sup> When the defendants failed to file an answer, the state court entered a final default judgment on October 14. Subsequently, the defendants removed the cause to this Court on October 28 and filed a motion for a new trial on November 13, over two weeks later. The Court, in an order issued on April 7, 2003, granted the defendants' motion for new trial and ordered that the state-court's final default judgment be set aside.

<sup>1</sup> "When the Secretary of State is served as a defendant's agent, the period for filing an answer

runs from the date the Secretary of State is served." *Bonewitz v. Bonewitz*, 726 S.W.2d 227, 230 (Tex.App.--Austin 1987, writ ref'd n.r.e.). According to Texas Rule of Civil Procedure 99(c), a defendant has until 10:00 a.m. on the Monday next following the expiration of twenty days after being served with the petition to answer or else a default judgment may be entered.

In its motion seeking attorneys' fees, the plaintiff states:

The rationale behind the award of attorneys' fees and costs when vacating a default judgment justifies a recovery in this case; otherwise, Crimson is punished as a result of Defendants' delay and their general attitude of indifference toward the Texas judicial system. Defendants' error, which they have been excused from, caused Crimson to incur attorneys' fees and costs that would not have otherwise been incurred. Not only did Defendants fail to timely file an answer in this lawsuit, but it took them six weeks from the date they were served with process to file any type of pleading. Defendants further delayed by waiting over two weeks to file their Motion for New Trial. Further, Crimson filed a Memorandum in Opposition to Motion for New Trial, which would have been unnecessary had Defendants timely responded to the lawsuit.

(Crimson's Mot. at 3-4.)

When a Court grants vacates a default judgment, it also may order the payment of reasonable and necessary attorneys' fees plaintiff incurred in seeking and taking default judgment. *See, e.g., St. Claire v. Ensurelink*, 2001 U.S. Dist. LEXIS 20108, No. Civ. A. 3:01-CV-1548-G, 2001 WL 1568749, at \*3 (N.D. Tex. Dec. 5, 2001); *McGarrah v. Kmart Corp.*, 1998 U.S. Dist. LEXIS

17118, No. 3:97-CV-2386-G, 1998 WL 760275, at \*3 (N.D. Tex. Oct. 22, 1998). The Court, after reviewing all the evidence, concludes that Crimson is entitled to attorneys' fees that it incurred in seeking and obtaining the default judgment in this case.<sup>2</sup> Even though the defendants claim that their "failure to file an answer prior to, or appear on, their appearance day or file an answer sufficient to place the merits of the Plaintiff's claims in issue was the result of accident or mistake rather than their intentional or conscious indifference," they did not attempt to further minimize the costs to the plaintiff by acting immediately and expeditiously in seeking to get the default judgment set aside.

2 The Court notes that in the defendants' Motion for New Trial they indicated that they "will reimburse the Plaintiff for the costs and expenses incurred in taking the default judgment." (Defs.' Mot. for New Trial at 5.)

Based on the foregoing, it is ORDERED that Crimson's Motion for Reconsideration of Attorneys' Fees and Costs [doc. # 21-1 is GRANTED. The defendants shall pay the reasonable and necessary attorneys' fees the plaintiff incurred in seeking, obtaining, and attempting to collect the default judgment in this case.

The parties' counsel are DIRECTED to make all reasonable efforts to reach an agreement on the amount of attorneys' fees the plaintiff incurred in seeking, obtaining, and attempting to collect the default judgment in this case. If the parties cannot reach an agreement within 30 days of the date of this order, then the plaintiff, within thirty days of the date of this order, shall notify the Court that an agreement cannot be reached, and the Court will determine the appropriate amount.

SIGNED July 10, 2003.

TERRY R. MEANS

UNITED STATES DISTRICT JUDGE