

NEWS

Drowning lawsuit proceeding set

Tim Hrenchir

Published 3:33 p.m. CT Aug. 25, 2010

Three years ago, Joshua Bryant and Richard Heyroth drowned when their canoe capsized in the Kansas River in Topeka.

Last week, a final pretrial conference was scheduled in a wrongful death and survivorship lawsuit that Bryant's father, Jim Bryant, is pursuing against the city of Topeka and the state of Kansas.

Shawnee County District Court Judge Larry Hendricks, after initially setting the final pretrial conference for Dec. 17, 2010, issued a court order Aug. 16 rescheduling it for May 24, 2011. Hendricks indicated he planned at the time of the conference to set a jury trial date.

Bryant, 25, and Heyroth, 30, both of Topeka, drowned late Aug. 5, 2007, when the canoe they were in capsized after it went over a spillway at the south end of a low-water weir located just north of the Topeka Water Department's water treatment plant, 3245 N.W. Waterworks Drive. Bryant and Heyroth had been employed at Timberline Steak House and Grill, which has since gone out of business on S.W. Wanamaker.

The men had been taking a float trip with Topekans Brandon Colcher and Daniel Wiggs, who both survived. The Topeka Capital-Journal reported Colcher and Wiggs had been in a raft, though the lawsuit petition said they were in a canoe. The Capital-Journal reported the canoe, the raft and the life preservers of Bryant and Heyroth were recovered the following morning.

Court records show that William J. Pauzauskie, an attorney representing Jim Bryant, in February 2009 sent a demand letter to Topeka city clerk Brenda Younger seeking payment from the city of about \$1.4 million.

That included about \$500,000 for pre-death pain and suffering, fright, fear and mental anguish; about \$400,000 for wrongful death non-economic losses; about \$500,000 for economic losses; and \$15,000 for funeral expenses.

After the city chose not to pay, Pauzauskie in July 2009 filed suit against the city and the state on behalf of Jim Bryant, the administrator of his son's estate. The lawsuit petition didn't state a specific amount being sought.

That petition said the state of Kansas in 1987 granted the city an easement to build the low-water weir to funnel the river's flow toward the mouth of the water treatment plant in times of low stream flow. It contended the city at the time of the August 2007 drownings was aware it was failing to comply with conditions set forth in a U.S. Army Corps of Engineers permit requiring it to:

Build a public boat ramp upstream from the weir. The city subsequently put in ramps earlier this year just upstream and downstream from the weir on the north riverbank.

Provide an adequate portage route. Portage is the practice of carrying watercraft or cargo over land to avoid water obstacles.

"Place highly visible signs above, below and at the weir, warning of possible hazards associated with boat passage over and through the weir structure during certain river flow states."

The lawsuit contended the city at the time of the drownings — which occurred about 11:10 p.m. — had one warning sign at the location. It said the sign wasn't illuminated and didn't comply with Army Corps of Engineers' conditions.

The petition quoted Colcher and Wiggs as saying they saw no warning signs and "had no other warning of the approaching danger of the weir."

When Bryant, Heyroth, Wiggs and Colcher arrived at the weir, the petition said, "Both canoes were caught in the fast-flowing water rushing through the low water notch, where both canoes then swiftly overturned, at which time the extreme force and pull of the undertow, all four men were sucked underwater and caught in the circular underwater turbulence."