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HOA / bus

Xcel will pay \$640M to settle suit

Trial regarding 2021 wildfire was set to start today



The Marshall fire burns out of control through neighborhoods in Boulder County on Dec. 30, 2021. RJ SANGOSTI — DENVER POST FILE

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Xcel Energy agreed to a \$640 million settlement on the eve of trial with the more than 4,000 people and companies that sued the utility and two telecommunications firms in the wake of the devastating 2021 Marshall fire in Boulder County.

Lawyers in the class-action lawsuit appeared in Boulder County District Court on Wednesday to notify Judge Christopher Zenisek that they had agreed to a settlement, Gerald Singleton of the Singleton Schreiber law firm told The Denver Post.

“The terms of the settlement are going to be confidential,” Singleton said. “There is a settlement that has been reached for all of the groups involved.”

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Xcel confirmed the settlement, announcing that the company would pay the plaintiffs approximately \$640 million, with \$350 million of that funded by its remaining insurance coverage.

The utility will not recoup losses from its customers, and the two telecommunications companies named as co-defendants — Teleport Communications America and Qwest Corporation — will contribute an undisclosed amount toward the settlement, according to an Xcel news release.

The agreement is in principle and remains subject to final documentation and the individual plaintiffs opting in to the negotiated terms. A status conference on the settlement is scheduled for 9 a.m. Nov. 5.

Xcel's announcement of the deal also reiterated the company's insistence that its equipment was not responsible for sparking the most devastating wildfire in Colorado history. The company did not admit any fault, wrongdoing or negligence in connection with the agreement.

"In resolving all liability from the claims, this settlement reinforces our longstanding commitment to supporting the communities we serve," Bob Frenzel, chairman, president and CEO of Xcel Energy, said in the news release. "We recognize that the fire and its aftermath have been difficult and painful for many, and we hope that our and the telecom defendants' contributions in today's settlement can bring some closure for the community."

However, the Boulder County district attorney's office released a statement later Wednesday that revisited the findings of its 18-month investigation, released in June 2023. That investigation, led by the district attorney and the Boulder County Sheriff's Office, concluded that Xcel's power lines ignited a fire near the Marshall Mesa Trailhead. Note

"Thousands of people suffered devastating losses from the Marshall fire. It has been incredible to see the victims and community members rally around each other, rebuild and recover," District Attorney Michael Dougherty said in a statement. "But, for some, the trauma and financial losses remain incredibly difficult. It is our hope that any settlement will allow all those impacted to continue to recover and rebuild."

Lengthy, complex trial averted

The settlement avoids a complicated, two-month trial for all of those involved.

Now the thousands of plaintiffs will receive some compensation, and the utility companies avoid a potentially expensive loss if a hometown jury had sided with the plaintiffs.

Details on how the money will be distributed and when were not disclosed Wednesday.

Jury selection was scheduled to begin Thursday morning, and the trial was expected to last eight weeks as more than 4,000 plaintiffs — including homeowners, 200 insurance companies, the Target Corp. and others — attempted to pin blame for the wildfire on the state's largest utility company.

The trial would have been complex, with witnesses going into intricate detail about the science of fire behavior, electricity generation and telecommunications equipment. Witnesses would have numbered into the hundreds; attorneys for Target and the insurance companies filed a pretrial document that named 110 witnesses, including Xcel employees, members of the Twelve Tribes religious cult and people who lost their homes.

The plaintiffs and defendants planned to file a combined 6,000 pieces of evidence.

Billions of dollars in damages were on the line as Xcel's lawyers hoped to convince the jury that the Twelve Tribes, the Mountain View Fire Protection District, the city of Boulder and Boulder County were partially responsible for the wildfire — although none of those parties was named as a defendant in the lawsuit and couldn't have been found financially liable at trial. Note

The insurance companies had claimed \$1.7 billion damages, according to a trial management order filed in late August.

Two different ignition points

The Marshall fire started the morning of Dec. 30, 2021, during a windstorm in which gusts topped 100 mph, and it tore through neighborhoods in Louisville and Superior, killing two people and, as estimated, more than 1,000 pets, while destroying more than 1,000 homes and businesses.

The investigation by the sheriff's and district attorney's offices determined the fire had two starting points that merged to create the 6,000-acre blaze.

The first ignition point was on the property of the Twelve Tribes, a cult that owns a compound on Eldorado Springs Drive near Marshall Mesa.

Members had burned debris on Dec. 24, prompting a response by Boulder County law enforcement and firefighters. But those officials told Twelve Tribes members to bury the burn debris when they were finished and left the property without issuing citations or dousing the blaze with water, the investigation found.

However, strong winds on Dec. 30 blew the dirt cover off smoldering embers and sent them flying onto dry grasses in the surrounding neighborhood.

A second ignition started nearly 90 minutes later when hot particles sparking from a broken Xcel electrical distribution system and unmoored lines from Teleport Communications and Qwest hit the ground near a trailhead at Marshall Mesa, about 2,000 feet from the Twelve Tribes compound, the investigation found.

That fire took a different path before merging with flames from the Twelve Tribes property.

Note

Ultimately, the district attorney chose not to file criminal charges against Xcel or the Twelve Tribes for causing the blaze.

Pinning blame for starting fire

The civil case aimed to pin blame on Xcel and the two telecommunications companies whose equipment was near the utility company's electrical conductors and wires.

Xcel and the telecom companies denied they were responsible.

Xcel had prepared to argue in court that it was the Twelve Tribes' fire that ravaged through the neighborhoods and that the wildfire was burning through Superior before the utility lines sparked the second fire.

The utility also maintained in legal filings that the Twelve Tribes blaze created a large firebreak by burning all the brush and debris in its path and that any fire started by Xcel equipment would not have had enough fuel to reignite and continue burning.

Xcel's attorneys had said during court hearings and in legal briefs that the utility also intended to pin some blame on the Mountain View Fire Protection District for not forcing the Twelve Tribes to extinguish the Dec. 24 fire with water.

And the company would have argued that the city of Boulder and Boulder County were to blame, too, because the governments, which shared ownership of Marshall Mesa Open Space, did not mow or otherwise control brush growth.

