

PG&E says it will challenge liability in wildfire litigation

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SAN FRANCISCO -- The Pacific Gas and Electric Corp. said Monday it would contest liability in proceedings to estimate damages for historically destructive wildfires the last two years despite admitting it caused the blazes.

Whether or not a "particular branch started a particular fire says nothing about legal liability" argued an attorney representing the utility, warning the federal judge overseeing the damages calculation that PG&E would again contest the legal theory holding it responsible for damages regardless of if it was negligent.

Robert Julian, an attorney for the committee representing wildfire plaintiffs, adamantly opposed the utility's decision, calling it "unprecedented."

U.S. District Judge [James Donato](#) emphasized efficiency in the hearing considering how to best approach a process unique to bankruptcy court, estimation, that will gauge PG&E's liability for damages. The matter was referred to Donato for assistance by U.S. Bankruptcy Judge [Dennis Montali](#).

Wildfire plaintiffs alleged PG&E is responsible for damages under inverse condemnation and negligence. *In re: PG&E Corp. and Pacific Gas and Electric Co.*, 19-CV-05257 (N.D. Cal., filed Aug. 22, 2019).

Negligence remains a central dispute given claimants can only recover damages related to personal injury and emotional distress if Donato finds PG&E negligently operated its infrastructure because inverse condemnation only covers property damages.

While maintaining it did not negligently operate its infrastructure, PG&E is also not liable under inverse condemnation because the lines at issue in the fires were developed for private use, argued Kevin Orsini, a Cravath, Swaine & Moore LLP partner who represents PG&E. He added Donato should decide whether to dismiss the plaintiffs' claim based on the defense, the Cantu doctrine, early in the proceedings for the sake of efficiency.

Donato said he is in favor of a "middle way." The "mini trials" PG&E wants for several of the fires will likely take too long and is "far too down the line," he continued, but he said he is "not comfortable simply assuming liability with no questions asked."

The judge asked both sides to discuss a range in which the committee representing wildfire plaintiffs will be willing to "discount" its \$54 billion damages evaluation. In a blow to PG&E's position in settlement discussions, he told both sides to "presume liability."

"Start with the premise that liability is more likely than not," the judge said.

Orsini was skeptical an agreement will be reached.

"Maybe we'll be able to change," he said. "History tells us probably not."

PG&E proposed an approach in which voluminous evidence will be heard on negligence and proving claimants' actual damages since it is conceding causation in all the blazes but the Tubbs fire. While it surrendered its equipment started the blazes, PG&E argued it "does not equate to admitting legal liability," according to court filings.

The Department of Forestry and Fire Protection found PG&E equipment responsible for the 2017 North Bay Fires and 2018 Camp Fire. A San Francisco Superior Court Trial on the 2018 Tubbs fire is scheduled to start on Jan. 7, 2020.

The committee representing wildfire plaintiffs argued no evidence should be heard on whether PG&E was liable and that the court should instead go directly into calculating damages. The utility conceded "probable liability," the standard in estimation proceedings, on multiple occasions in Securities and Exchange Commission filings and in prior court filings, according to Julian.

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