

Judge considers class of trespass claimants against SoCalGas

By Gina Kim

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The judge overseeing litigation from the massive gas leak in 2015 in Ali-so Canyon north of Los Angeles appeared uncertain as to whether to certify a group of residents living within 5 miles of the Southern California Gas Co. facility who are pursuing trespass claims.

Superior Court Judge Daniel J. Buckley on Tuesday asked attorneys for the proposed class of property owners and SoCalGas to submit further briefing after hearing arguments that raised questions as to what constitutes as tangible versus intangible intrusions and whether those intrusions resulted in physical damage and loss of property for more than 100 days following the blowout of a well in October 2015.

Superior Court Judge Daniel Buckley previously ruled tentatively that he was leaning toward certification.

The plaintiffs argued their trespass claims show that every property within the 5-mile radius suffered trespass due to particulate matter

spewing from the blowout onto their homes. The spillage came from oil droplets, particulate matter and well-kill fluid, the plaintiffs argued. Certification and success in the case would redress injuries sufficiently for approximately 20,000 affected properties, the residents argued.

Buckley first denied class certification last month. He proposed adjudicating the case by breaking it into pieces, trying some parts as a class action and others as individual cases. The judge reasoned there was a disparity between putative class members who retained use of their property after the leak and others who were completely displaced.

Before Tuesday's arguments, Buckley had tentatively ruled he was leaning toward certification, finding

that the proposed class was numerous and the trespass claims were predominated by common questions, "and, for the purposes of determin-

ing liability for nominal and punitive damages, manageable."

SoCalGas' lawyer David L. Schrader of Morgan Lewis & Bockius LLP contended there is no evidence of tangible intrusion, thus no common proof of physical damage to a property which is required to pursue a trespass claim. Airborne particles from the leak were invisible, therefore don't rise to trespass, Schrader told the judge. To succeed trespass claims with intangible intrusion requires proof of physical property damage, which can't be adjudicated on a class-wide basis, Schrader argued.

He also opposed plaintiffs seeking nominal damages which they didn't seek before. Nominal damages aren't available for intangible intrusion without proof that physical damage occurred, nor do plaintiffs prove they suffered intrusion, he said.

"We have due process rights to fight property specific evidence related claims," Schrader argued. "There is a huge range of disparities between the proposed class with trespass claims."

Raymond P. Boucher of Boucher LLP and Robert Nelson of Lieff Cabraser contended the well-kill attempts by SoCalGas involved more than 5,000 barrels of additional toxic materials that rained on the properties continuously for months after the initial blowout. The issues of liability ranging from what the company knew of matter that emanated from the leak, and whether

it was negligent in causing trespass and whether punitive damages are warranted could be litigated in a single trial, Nelson said.

Prior rulings have held the deposit of particulate matter on property constitutes a trespass, even in

the absence of physical damage, Nelson contended.

"Bottom line, California law is clear and unequivocal and unwavering on this very basic point: if that particulate matter is deposited onto your property, you can make

an actionable claim for trespass even for actual physical damage," Nelson told the judge.

Buckley set another hearing on the issue for March 29.

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