

Daily Journal

Mar. 22, 2023

Edison's Thomas Fire demurrers sustained, plaintiffs can amend

Edison demurred to the class action claims on the grounds that a utility cannot be held liable to third parties for purely economic loss resulting from a public disaster, according to a 2019 ruling in Southern California Gas Leak Cases. Highberger on Tuesday overruled the demurrer as to claims of inverse condemnation, private nuisance and trespass, while sustaining with leave to amend with regard to a negligence cause of action.

A Los Angeles judge sustained demurrers from Southern California Edison in coordinated proceedings arising from the 2017 Thomas Fire and ensuing debris flow, but gave an individual filer and a separate class of plaintiffs leave to amend to resolve issues of class representation and the statute of limitations.

Judge William F. Highberger addressed demurrers and motions to strike brought by Edison with regard to two individual claims, as well as a class action on behalf of Ventura and San Bernardino residents whose property was blanketed in smoke and ash resulting from the blaze. Thomas Fire and Debris Flow Cases, JCCP4965 (L.A. Sup. Ct., filed Apr. 30, 2018).

"This is a very positive ruling for us," Leila J. Noël of Cappello & Noël, LLP, who represents the class plaintiffs, said in a phone call on Tuesday. "The entire case is intact, the plaintiffs are in, all four causes of action remain in," the Santa Barbara attorney continued. "The claims remain in, in full."

Edison demurred to the class action claims on the grounds that a utility cannot be held liable to third parties for purely economic loss resulting from a public disaster, according to a 2019 ruling in Southern California Gas Leak Cases. Highberger on Tuesday overruled the demurrer as to claims of inverse condemnation, private nuisance and trespass, while sustaining with leave to amend with regard to a negligence cause of action. Frost v. Southern California Edison Co., BC691146 (L.A. Sup. Ct., filed Jan. 24, 2018).

The court also granted a motion by Edison to strike individual claims of eight class members, although Noël said after the ruling that it was never her team's intention to bring such claims.

"Our intention was adding them as class representatives, and the court agreed with us that that is certainly something we're allowed to do, so all of the new class representatives that were named in the complaint will stay in the complaint," she said.

Highberger further granted the class plaintiffs leave to amend the class definition.

"With the passage of time, in a case like this, as you work with expert witnesses, class definitions always can be clarified and tightened and the judge agreed with us, and is allowing us to amend our class definition," Noël explained.

As to the individual claims, the court granted Edison's motion to strike against plaintiff Kena Efraim, finding that an amended complaint filed in December 2021 was not timely and expressing doubt that damage to the plaintiff's property occurred during the fire. However, Highberger granted leave to amend and clarify the timeline of events, while warning that the claim may still be determined to fall outside of the statute of limitations at a later date, according to a minute order of the hearing. *Efraim v. Southern California Edison Co.*, 21STCV21086 (L.A. Sup. Ct., filed June 4, 2021).

Efraim was represented at the hearing by Brett L. Rosenthal of McNulty Law Firm of Los Angeles, who could not be reached for comment via phone or email by press time.

A demurrer against another individual claim was sustained without leave to amend, discounting plaintiff Constantine Papanicolaou's claims of continuing nuisance and class-tolling related to the parallel class action. *Papanicolaou v. Southern California Edison Co.*, 22STCV17880 (L.A. Sup. Ct., filed June 1, 2022).

Gregory P. Waters of Engstrom, Lipscomb & Lack in Los Angeles represented Papanicolaou at the hearing, but could not be reached by phone or email for comment.

A spokesman for Southern California Edison said it would not be appropriate to discuss ongoing court activities in the media in a phone call on Tuesday. "Our thoughts remain with the people who were impacted by the Thomas Fire," he said.

Skyler Romero

Daily Journal Staff Writer
skyler_romero@dailyjournal.com

<https://www.dailyjournal.com/articles/371746-edison-s-thomas-fire-demurrers-sustained-plaintiffs-can-amend>