The Law as it Pertains to Alleged Stray Gas Incidents

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Stray Gas Claims – Legal Framework

- Legal Ramifications of Factual Findings
- Investigations and Privilege – Consulting and Testifying Experts
- State Law Claims - The “Restatement” View
- Components of Claims
  - Liability (Actionable Conduct + Causation)
  - Injuries & Remedies
- Steps in the Legal Process
Stray Gas Claims - Liability

Frequently Asserted Claims

- Negligence – Duty and Breach
- Nuisance – Unreasonable Invasion
- Trespass – Intentional Invasion
- Strict Liability – Abnormally Dangerous Activities
- Contract – Water Supply Replacement Clause
Stray Gas Claims – Liability

Negligence & Nuisance – Essential Elements

- Duty of Care (reasonable care, regulations and industry standards)
- Breach of Duty
- Causation (actual and legal)
- Injury
Stray Gas Claims - Liability

Strict Liability – Liability Without Fault

- “Abnormally dangerous” Restatement Factors:
  - Existence of high degree of risk of harm
  - Likelihood that harm will be great
  - Inability to eliminate the risk by exercise of reasonable care
  - Extent to which activity is not a matter of common usage
  - Inappropriateness of activity to the area
  - Extent to which activity’s value to community is outweighed by its dangerous attributes

- Causation
  - Harm of the kind the possibility of which makes activity dangerous – Lions and Credit Cards
Stray Gas Claims - Causation

- Connecting the Dots
  - Actual Cause or “But For”
  - Proximate or Legal Cause

- Burden of Proof – Preponderance of Evidence

- Reality of Circumstantial Evidence and Balancing of Factors

- The Material Facts
  - Geochemistry
  - Manifestation
  - Mechanism
  - Pathways
  - Regulatory Findings and Alternative Explanations
Stray Gas Claims – Injuries & Remedies

- Property Value – Temporary v. Permanent Impact
- Remediation – FMV Limit
- Annoyance and Inconvenience – A Factual Inquiry
- Personal Injury – Methane?
- Emotional Distress – PTSD?
- Punitive Damages – Reckless?
Stray Gas Claims – Legal Process

- Pleadings – Complaint & Answer
- Motions (*Lone Pine*, To Dismiss, Summary Judgment)
- Fact Discovery
- Expert Reports
- Arbitration or Trial
- Appellate Review
Questions?