

The Law as it Pertains to Alleged Stray Gas Incidents

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This presentation is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

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?