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COVER STORY

Neutrals create streamlined process for resolving natural disaster cases



Alex Drecun/Special to the Daily Journal

JAMS mediators Viggo Boserup and John K. Trotter created a streamlined process for the complex set of cases linked to the San Diego County fire of 2007.

By Henry Meier
Daily Journal Staff Writer

With more than 2,000 lawsuits filed by homeowners in the wake of the fires that ravaged San Diego County in 2007, attorneys for plaintiffs and San Diego Gas & Electric — whose power lines were blamed for starting some of the blazes — were concerned with how best to deal with such a large group of often disparate cases. The lead attorney for the public utility, Kenneth R. Chiate of Quinn Emanuel Urquhart & Sullivan LLP, said it was one of the largest cases he's worked on and he knew that if a class action was filed it could take a decade or more for the litigation to wrap up — not an ideal option for his client and, he thought, for the plaintiffs either.

"All the plaintiffs had more or less legitimate damage claims and suffered legitimate losses that needed to be addressed," he said. "But we felt attaining the best and most just outcome would come from mediation as opposed to class actions, which would have been a long and cumbersome process."

The plaintiffs' attorneys were surprisingly amenable to the situation, but with the courts' resources stretched thin and with such a large number of cases that demanded some semblance of personal attention, how that process would play out was still ambiguous.

Enter retired 4th District Court of Appeal Justice John K. Trotter, now a neutral with JAMS in Orange County, who took on the task of creating a streamlined process to deal with the massive case load. With cooperation from both sides, Trotter

said he was able to get broader authority over the cases than what might be typical, allowing him to focus the scope of the settlement talks.

"We entered into a written agreement with the court that gave me some powers to devise certain rules and certain parameters in the mediation," he said.

Trotter and parties believe the process could ultimately be expanded to other cases involving large natural disasters.

"These are the types of cases that cry out for this type of mediation process," the neutral said. "Dealing with something like a fire or a flood where people have lost pictures and personal valuables — it's really important for them to have their voices heard."

From the beginning Trotter wanted to make sure the plaintiffs received a swift resolution to

their claims, while protecting the defendant from outsized claims and trial exposure — one of the main reasons they had agreed to mediation.

So concessions were made up front on both sides. The utility agreed to accept liability in the cases and to not nickel and dime homeowners, but in exchange plaintiffs had to agree to sacrifice things like double damages for vegetation lost in the fire and interest on the damages.

This got things moving at a quicker pace, but it became clear that plaintiffs' attorneys were falling behind so a special master, Viggo Boserup, was brought in to facilitate the scheduling process.

"When I came in, it was at a point where the cases were coming in very rapidly and because of the huge volume a few of the law firms fell behind on some of the discovery," he said. "Protocols were set up with very finite milestones so no one stumbled along the way."

Terry Singleton, one of the lead lawyers for the plaintiffs, said the results of the process were unique.

"For most purposes, depositions were eliminated," he said. "There was still lots of paper discovery, but we didn't have to sit in on a two-day depo that didn't really advance the ball."

The parties could also take two different tracks — binding or non-binding mediation — on an individual case level, which added additional flexibility to the process.

While both sides agreed the process has been an overwhelming success, some disputes have remained, most notably over if and when a trial date will be set for cases that haven't been able to settle.

"The only way the process could have been improved is if a trial date had been set," Singleton said. "It's been over five years since [the fire] happened. We need a firm date."

Chiate disagreed. He believes the process has been working well and should continue to be allowed to play out.

"We know cases settle 96 percent of the time," he said. "So why spend all the time and money to do discovery, draft motions for summary judgment, get experts and go through mandatory settlement conferences when we know they are going to settle on the eve of trial anyway?"

But with 98 percent of the fire-related cases already settled according to Trotter and the attorneys, it's possible that's where the rest of the cases end up. A hearing on March 21 will determine whether that's the scenario.

For now, all parties agree the 98 percent success rate is something to be proud of.

"The lawyers have been terrific and have strongly advocated for their clients," Trotter said. "They've really embraced it and caused it to work. It's the best settlement procedure I've ever been a part of."