

Most PG&E Fire Victims Won't Be Able to Appeal Claim Decisions in Court ... With Some Exceptions

KQED

When the trustee overseeing the compensation fund for PG&E fire victims determines the values of some 80,000 claims, the vast majority of claimants won't have the opportunity to appeal the decision in court. But the judge overseeing the utility's bankruptcy case has granted exceptions to a handful of local government agencies, corporations and individuals. They include Comcast, Adventist Health, Paradise Unified School District and five individual fire victims, who will have the right to what's known as "judicial review" if they are dissatisfied with their awards.

The ability to contest decisions could take on relevance soon, as the disgraced utility is set to emerge from bankruptcy protection as early as today, and begin funding the trust. The company filed for Chapter 11 bankruptcy protection in January 2019, citing billions in wildfire liabilities.

In a deal reached in December, fire survivors were promised approximately \$13.5 billion paid out in a combination of cash and PG&E stock. But the lackluster performance of PG&E shares means the deal is now worth closer to \$11.2 billion.

On Monday, retired Justice John Trotter, the fund trustee, announced the names of those chosen to be on the committee overseeing the trust, a group comprised almost exclusively of mass tort lawyers representing PG&E fire victims.

Among them is attorney Doug Boxer — the son of former California Sen. Barbara Boxer — whose firm has partnered with the Watts Guerra law group. Amy Bach of the consumer group United Policyholders is the only advocate on the list.

The trust will begin accepting claims information from fire victims this week.

Experts say access to judicial review can be a valuable bargaining chip.

"The advantage of judicial review is that it's a second bite at the apple. You get another chance to make your case that the administrator made a mistake. The carve-out for those people gives them an

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advantage that nobody else has,” said Kenneth Feinberg, an attorney who has administered major trusts, including those stemming from the BP oil spill and the 9/11 attacks.

Feinberg said he’s never seen exceptions like the ones granted in the PG&E case.

“It’s very unusual,” he said. “There may be a very good reason. But the idea that a very small number can get judicial review, but everybody else is bound by the administrator’s determination, is rare.”

Court appeals in this type of bankruptcy case are often restricted to allow the trustee to process claims more efficiently, said Jared Elias, a bankruptcy law professor at UC Hastings.

“If you have lots of appeals, that can slow everything down to a crawl, and people can end up waiting years to get paid,” Elias said. But, he added, “The setup procedures should be the same for everybody, not just the people who are sophisticated enough to represent their own interests.”

Judicial review is rarely used, Elias noted. But, he said, having the right to appeal does offer claimants more leverage.

“My strong hope is that it won’t matter. If it does matter, it probably works in favor of the VIP fire survivors.”

The very small group of individuals granted the right to appeal — largely because they raised concerns about the process — includes Debra Grassgreen, a bankruptcy attorney, and her husband, who lost their home in the 2017 Atlas Fire. Grassgreen has served on the team representing The Baupost Group, a hedge fund, which is set to reap a large profit from PG&E’s bankruptcy.

Eric and Julie Carlson, who lost their home in the 2017 Tubbs Fire, and Camp Fire survivor Mary Kim Wallace are the only other individuals granted the right to seek a court review.

“The only thing that makes you different from 70-some-odd or 80,000 other victims ... is that you complained that there was no access to a court if you were not satisfied with what the trustee determines,” Judge Dennis Montali told Wallace in a hearing last week.

Under the terms of the fire victims’ trust agreement, unsatisfied claimants can ask mediators to review award determinations. But the trustee has the power to override those decisions. Aside from those granted the court review exception, most fire victims will not be able to appeal to an outside court. For months, some claimants have lobbied the Tort Claimants Committee (TCC), the group representing fire survivors in the case, to push for judicial review for all victims or, at the very least, to ensure that claimants are fully aware they won’t have the right to appeal.

When KQED asked why the group did not advocate for this, a TCC attorney declined to comment.

One fire survivor is now attempting to secure the right to judicial review for all of the approximately 6,000 survivors who rejected the deal when they voted on it this spring. The vote to reject, argues Camp

Fire survivor Theresa Ann McDonald, constitutes an objection similar to those brought by the parties who now have access to a court appeal.

The judge has asked PG&E, the TCC and the trustee to weigh in on McDonald's request.