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PUBLIC UTILITIES - CALIFORNIA

[Perkin v. San Diego Gas & Electric Company](#)

Court of Appeal, Fourth District, Division 1, California - April 11, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 3928 - 2014 Daily Journal D.A.R. 4539

Owners of home damaged by wildfire brought action against electrical utility, which, through its power lines, allegedly had a role in the fire, alleging inverse condemnation, trespass, nuisance, and statutory violations. Utility, which had been the defendant in a master class action regarding the fires, demurred based on the statute of limitations. The Superior Court sustained the demurrer without leave to amend, and homeowners appealed.

The Court of Appeal held that:

- Court could not use fire boundary map from class action complaint against utility to determine whether statute of limitations was tolled;
- Prior class action lawsuits did not place utility on notice of homeowners' potential claim; and
- Tolling would not protect the "class action device."

Court could not use fire boundary map from class action complaint against electrical utility, which allegedly had a role in the fires, to determine whether statute of limitations on homeowners' separate action against utility was tolled while the class action was pending. Map, which was used in the class action to help define the term "geographic area" in the complaint, was not proposed in the class action to narrow the class definition or otherwise intended to define the class beyond the actual words of the complaint, and utility did not rely on the map in challenging the class allegations or otherwise use the map beyond its demurrer to homeowners' complaint.

Two prior class action lawsuits against electrical utility following wildfires did not place utility, whose power lines allegedly contributed to the fires, on notice of homeowners' potential claim as required to toll statute of limitations on homeowners' claims for inverse condemnation, trespass, and nuisance. First class action lawsuit concerned a different fire than the one which damaged homeowners' residence, and plaintiffs in second class action were not limited to a set number from a specific, clearly defined area who claimed a certain type of damage, but rather could be found anywhere in California claiming that their properties were damaged in some way by the fire.

Equities did not favor tolling statute of limitations on homeowners' claim against electrical utility arising out of wildfire damage to their home on basis that separate class action lawsuit against utility provided notice of potential claims. Homeowners had 16 months after the court denied class certification in which to file suit, but failed to do so, and homeowners clearly knew that they suffered damage shortly after the fire, which required them to clean up soot and ash as well as restore and re-stain stained glass windows damaged by the fire.

Tolling of homeowners' claims against electrical utility, which allegedly had role in wildfire which damaged home, on basis of prior class action lawsuit against utility by other residents which purportedly gave utility notice of the claim would not protect the "class action device," such that court would decline to apply the doctrine of class action tolling. Prior court denied class

certification because it found insufficient commonality and the class action was not superior to individual litigation, and more than 1,400 plaintiffs filed individual suits against utility prior to the denial of class certification.

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