Florida Power & Light Company

NEWS

Multimillion-Dollar Settlement Reached in Broward Water Main Break; Liability Trial Set for Holdout Defendant

Now, Broward Circuit Judge Jeffrey R. Levenson will preside over the Dec. 6 liability trial involving Florida Communication Concepts.

October 12, 2021 at 03:53 PM | 4 minute read

Class Actions

Michael A. Mora

What You Need to Know

- Class action counsel certified a liability question, a move most well-known in the big tobacco Engle cases.
- FPL and nearly all contractors involved in the 2019 water main break have reached a settlement with the thousands of businesses affected.
- Florida Communication Concepts will face off against plaintiff counsel in the Dec. 6 liability trial.

Attorneys have reached a class action settlement between most of the companies behind a water main break in Fort Lauderdale and thousands of businesses who suffered damages over two days. However, the case is far from over.

Adam Moskowitz, the managing partner at the Moskowitz Law Firm in Coral Gables and adjunct professor at the University of Miami School of Law, is the lead class action attorney for the 9,200 businesses.

Moskowitz said a takeaway from the case is that class action attorneys should consider moving to certify a liability question but not the remaining parts of the case before trial. He added that litigators have rarely applied the legal maneuver since the Florida Supreme Court certified a liability class for tobacco smokers in *Engle v. R.J. Reynolds Tobacco Co.*

"It enables all victims, whether it's personal injury or economic loss, to have one trial on liability," Moskowitz said. "In the olden days against the drug companies or tobacco companies, each individual had to do a liability trial, and they're were overwhelmed. They're going to be at a disadvantage because the companies have billions of dollars to fight you on liability. This way, we can at least even out the fight a little bit by having one trial with class counsel."

The case dates back to a 2019 water main break in which Florida Power & Light Co. hired contractor Infratech Corp. Infratech subcontracted Florida Communication Concepts, which in turn subcontracted a three-person crew from Geo & Yus Corp., according to court documents.

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Book

Miami Daily Business Review

The Miami Daily Business Review is the official court newspaper of Miami-Dade County

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Moskowitz accused Florida Communication Concepts of incorrectly filling out a ticket to Sunshine State One-Call of Florida Inc., according to court documents. The nonprofit serves as the interface between excavators and underground facilities operators.

And the ticket is a toll-free telephone number that allows excavators to give notification to all utilities in a single phone call of their intent to engage in excavation. But an incorrect ticket presumes that person was negligent, Moskowitz said.

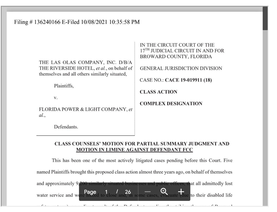
Soon after filing the ticket, the three-person crew bore a six-inch hole into a 42-inch major water main pipe at Fort Lauderdale Executive Airport. As a result, emergency crews had to repair the pipe which necessitated shutting off the water over two days and required the city to issue a boil water notice to thousands of its residents.

Moskowitz said that as part of the multimillion-dollar settlement, reached under the guidance of mediator John S. Freud of Mediation Solutions, Inc., each of the settling companies did not admit liability. However, Florida Communication Concepts chose not to settle the matter and blamed the city for the resulting damages.

Now, Broward Circuit Judge Jeffrey R. Levenson will preside over the Dec. 6 liability trial involving Florida Communication Concepts.

Gary Brown, a partner at Kelley Kronenberg in Fort Lauderdale representing Florida Communication Concepts in the litigation, did not respond to a request seeking comment.

Read the motion:



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THE LAS OLAS COMPANY, INC. D/B/A THE RIVERSIDE HOTEL, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

FLORIDA POWER & LIGHT COMPANY, *et al.*,

Defendants.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: **CACE 19-010911 (18)**

CLASS ACTION

COMPLEX DESIGNATION

CLASS COUNSELS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION IN LIMINE AGAINST BERNSHAW LLC.

This has been one of the most actively litigated cases pending before this Court. Five named Plaintiffs brought this proposed class action almost three years ago, on behalf of themselves and approximately 9[illegible] [illegible] at all admittedly lost water service and [illegible] their disabled life

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Moskowitz and his co-counsel, Cristina M. Pierson, a shareholder at Kelley | Uustal, and William Scherer, a partner at Conrad & Scherer, all of whom are based in Fort Lauderdale, also filed a motion for partial summary judgment.

Among the relief sought in the motion is a request for a finding that because Florida Communication Concepts' "811 locate ticket" contained incorrect information, the company cannot assert that the City of Fort Lauderdale is liable for the water main break.

"If you give an incorrect 811 ticket, you should be precluded from blaming a city for doing anything wrong," Moskowitz said. "And that's a ruling that Levinson will have to make before the trial. So, the judge may cut out their defense before we even start the trial, which would be a very big ruling."

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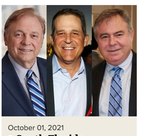

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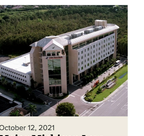

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