No. S246669

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
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Deputy

SOUTHERN CALIFORNIA GAS COMPANY,
Respondent to Petition for Review,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent to Petition for Writ of Mandate.

FIRST AMERICAN WHOLESALE
LENDING CORPORATION et al.,
Real Parties in Interest, Petitioners.

After a Decision by the Court of Appeal,
Second Appellate District, Division Five, Case No. B283606

The Superior Court of Los Angeles County,
Judicial Council Coordination Proceeding No. 4861,
The Hon. John Shepard Wiley, Jr., Judge

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INTRODUCTION

The economic-loss rule ("ELR") has been likened to the 1958 B-Movie classic *The Blob*, an "'ever-expanding, all-consuming alien life form' [that could] 'consume much of tort law if left unchecked.'" (*Lesiak v. Central Valley Ag Co-op, Inc.* (Neb. 2012) 808 N.W.2d 67, 80, citations omitted.) The ELR started out innocently enough, but—in a minority of jurisdictions—it has grown into something that threatens to devour vast segments of tort law, leaving tortfeasors undeterred and their victims uncompensated. (See generally *id.* at 80-84.)

Southern California Gas ("SoCalGas") asks this Court to roll out the red carpet for the Blob. Not only does SoCalGas advocate a draconian version of the ELR that has been rejected by many courts, it does so—astonishingly—by portraying *Plaintiffs'* version of the ELR as a "radical," "sweeping new duty." (ABOM 1, 20.)[1]

But SoCalGas has it backwards: it is SoCalGas's version of the ELR that is radical. SoCalGas wants a bright-line no-recovery rule in *all* cases involving purely economic losses, including "stranger" cases where there is no relationship between the parties. This extreme, "Blob-like" version of the ELR is contrary to the black-letter tort law of this State and to California's longstanding tradition, as embodied in California Civil Code

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[1] "ABOM" is Respondent's Answer Brief. "OBOM" is Petitioner's Opening Brief.

§ 1714(a), of holding wrongdoers presumptively liable for *all* "injur[ies] occasioned to another by … want of ordinary skill or care…" (*Id.*)

SoCalGas nonetheless contends that its version of the ELR *must* be the right rule because courts are not equipped to manage the "open-ended liability" that a rule allowing recovery of purely economic losses in the tort context would unleash. But this Court is perfectly capable of erecting limiting principles, where needed, to prevent defendants from "massive and uninsurable burdens." (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1156.)

To adopt the radical rule proposed by SoCalGas—a bright-line no-recovery rule in all cases, including those involving strangers—simply because the victims suffered only economic losses, would be to throw "considerations of degree" out the window, in contravention of teachings of this Court. (*Id.* at 1156, citation omitted.) The Court should reject this extreme position and reverse the decision below.

SUPPLEMENTAL FACTS

To read SoCalGas's brief, this action arises out of a relatively minor incident that resulted in negligible losses to local businesses. (See ABOM 14-15.) In its rose-colored view, the gas leak caused by its gross negligence—an uncontrolled well blowout that lasted four months despite 8 separate "kill" attempts; released a volume of toxic methane gas 220 times

greater than the volume of oil from the 2010 Deepwater Horizon Spill; caused the Governor to declare a State of Emergency; compelled a six-month evacuation of over 15,000 area residents and the closure of local schools; resulted in a 25% increase in California's greenhouse-gas emissions; caused the Federal Aviation Administration to restrict flights for fear planes could ignite fumes from the leak; made the local economy collapse; *and* contributed significantly to global warming—merely caused a "temporar[y] slow[ing]" of the local economy after "some" Porter Ranch residents "chose" to relocate. (*Id.*)

These self-serving characterizations of what actually occurred in this case would be laughable if they were not so offensive to those who actually lived through the massive disruption caused by SoCalGas's malfeasance.[2]

Contrary to SoCalGas's innocent-sounding rendition of events (ABOM 12 [recounting that SoCalGas "discovered[] a gas leak in a remote mountain area"]), this catastrophe was eminently preventable. SoCalGas should have known that the aging well that blew (well-25)—which it

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[2] The facts are described in the Plaintiffs' Second Amended Consolidated Complaint, included in Exhibits to the Petition ("EP") accompanying Petitioner's Writ of Prohibition (1 EP 164-202). The facts are also described in the Superior Court's decision denying SoCalGas's demurrer. (2 EP 390-397.) Additional salient facts are in the First Amended Consolidated Complaint of Porter Ranch Development Co. and Toll Brothers, Inc. in the Coordinated Pre-Trial Proceeding below ("Developers' Complaint"), attached as Exhibit A to Plaintiffs' concurrently filed Request for Judicial Notice ["RJN"]) at 20-24.

operated and maintained—was dangerously corroded, in part because wells at the facility consistently failed safety inspections. (1 EP 176-178.) Yet SoCalGas did not take the well out of service; instead, it actually upped the pressure on this aging well. Perhaps worst of all, it removed the subsurface safety valve and then lied to regulators about having done so, for over three decades. (*Id.*)

SoCalGas also knew that its facilities posed a serious risk to neighboring communities. In its 2013 10-K filing with the U.S. Securities and Exchange Commission, SoCalGas's parent company Sempra Energy—the nation's largest gas company—acknowledged that a "catastrophic accident" to a natural gas storage facility "could result in "catastrophic…leaks[ ] or other significant damage to natural resources or property belonging to third parties…," resulting in "significant claims against us." (2 EP 259.) Although SoCalGas suggests that its wells no longer pose any threat, the reservoir under Porter Ranch remains filled with toxic gas, and countless other wells operated by SoCalGas in the same location suffer from the same safety issues as well-25. To make matters worse, these aging wells are located atop two active fault lines. (1 EP 171, 173-176, 185.)

SoCalGas also ignores that Plaintiffs seek to proceed as a class, which would greatly reduce the burden on the trial court. And, as the trial

court observed, because Plaintiffs' "[b]usiness losses are quantifiable by conventional means [statistical analysis]," their lawsuit is entirely manageable. (2 EP 394.) Indeed, this method of calculating lost profit "is a familiar exercise in a trial court. There is nothing exotic about it." (*Id.*)

Even though there is nothing "exotic" about the management of this case, it is immensely important—and not just to Plaintiffs. This lawsuit involves a human-caused catastrophe of epic proportions. As the trial court observed, tort liability is crucial to ensure that these types of accidents do not happen again. (2 EP 394.)

If SoCalGas has its way, however, that crucial incentive would be eliminated. Not only would many of SoCalGas's victims go uncompensated, but Californians—and, indeed, the global environment—would be at continued risk.

ARGUMENT

I. The Origins of the Economic-Loss Rule ("ELR") Show Why SoCalGas's Approach is Radical.

Before addressing SoCalGas's arguments, it is useful to consider the ELR's origins, which show that SoCalGas is asking this Court to veer straight off the doctrinal map.[3]

[3] For a summary of the ELR's origins, see *David v. Hett* (Kan. 2011) 293 Kan. 679, 683-692.

Like the Blob itself, the ELR started out innocuously enough.[4] In California, the ELR arose in the product context, where this Court reasoned that consumers could "be fairly charged with the risk that [a defective] product will not match his economic expectations unless the manufacturer agrees [in an accompanying warranty] that it will." (*Seely v. White Motor Co.* (1965) 63 Cal.2d 9, 18.)

The ELR then grew to encompass negligence claims in cases where there is a relationship-creating "transaction" between the parties. (*E.g.*, *J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799; see also *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 58.) There too, application of the ELR made sense to courts because it "encourage[s] the party best situated to assess the risk of economic loss, the commercial purchaser, to assume, allocate, or insure against that risk." (Johnson, *The Boundary-Line Function of the Economic Loss Rule* (2009) 66 Wash. & Lee L. Rev. 523, 545, citation omitted ["*Boundary-Line Function*"].)

But even in those negligence cases, many courts (including this Court) began to create exceptions where tort liability between contracting parties furthered some other policy goal. (*See People Express Airlines,*

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[4] See *The Blob* (2018) Wikipedia <https://en.wikipedia.org/wiki/The_Blob> (as of Aug. 1, 2018) (explaining how the Blob began as a "small jelly-like globule" that "grows in size every time it consumes something").

Inc. v. Consolidated Rail Corp. (N.J. 1985) 495 A.2d 107, 112 [citing cases]; *David,* 293 P.3d at 688-692 [same].)[5]

As a result, many courts, even in cases involving a transactional relationship, successfully confined the ELR, with a few courts rejecting the economic loss rule altogether.[6] Many limited it to cases where losses arise from a web or chain of contracts,[7] with some limiting it to a subset of even those transactional cases.[8] Still others allowed the precise contours of the

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[5] E.g., *Robinson Helicopter Co., Inc.* v. *Dana Corp.* (2004) 34 Cal.4th 979, 991 fn.7 (allowing recovery in case involving "intentional and affirmative misrepresentations"); *Barrera v. State Farm Mutual Automobile Ins. Co.* (1969) 71 Cal.2d 659, 676 (allowing recovery on ground that "[p]ublic policy requires the recognition of this duty"); *Connor v. Great Western Savings & Loan Assn.* (1968) 73 Cal.Rptr. 369 (allowing recovery based on independent duty to purchasers to prevent the construction and sale of defective homes).

[6] *Cedarholley Investment, LLC v. Pitre* (La. App. 2016) 209 So.3d 850; *People Express*, 495 A.2d at 112; *Mattingly v. Sheldon Jackson College* (Alas. 1987) 743 P.2d 356.

[7] *Rogers v. Wright* (Wyo. 2016) 366 P.3d 1264, 1275; *Sullivan v. Pulte Home Corp.* (Ariz. 2013) 306 P.3d 1, 2-3; *Lesiak,* 808 N.W.2d at 83; *David*, 293 Kan. 679 at 688-692, 697-701; *KB Home Ind. Inc. v. Rockville TBD Corp.* (Ind. App. 2010) 928 N.E.2d 297, 304-305; *Assn. of Apartment Owners of Newtown Meadows v. Venture 15, Inc.* (Hawaii 2007) 167 P.3d 225, 295; *A.C. Excavating v. Yacht Club II Homeowners Assn., Inc.* (Colo. 2005) 114 P.3d 862, 865-866; *Quest Diagnostics, Inc. v. MCI WorldCom, Inc.* (Mich. App. 2002) 656 N.W.2d 858, 863-864.

[8] *E.g. Tiara Condominium Assn, Inc. v. Marsh & McLennan Cos, Inc.* (Fla. 2013) 110 So.3d 399, 407 ("reced[ing] from our prior rulings to the extent that they have applied the economic loss rule to cases other than products liability."); *Elcon Construction Inc. v. E. Wash. U.* (Wash. 2012) 273 P.3d 965, 969 ("we have applied the doctrine to a narrow class of cases, primarily limiting its application to claims arising out of construction on real property and real property sales."); *Pascarella v. Swift Transportation*

rule to remain unclear, but forcefully rejected a bright-line rule foreclosing recovery of negligently caused economic injury.[9]

Ultimately, the ELR became so riddled with exceptions that it lost any semblance of coherence, coming under fire as the source of "vast confusion." (*David*, 293 Kan. at 684 [citing authorities].)

Despite the national trend in the case law, a small minority of states have allowed the rule to expand to "stranger" cases, even though there is no opportunity for private risk allocation in that context, and accordingly "no boundary-line function to be performed by the economic-loss rule." (*Boundary-Line Function*, 66 Wash. & Lee L. Rev. at 555.)[10]

This expansion of the ELR outside the transactional context makes little sense, because:

(a) economic losses are routinely recoverable in tort actions where the plaintiff has *also* suffered property damage and/or personal injuries (*J'Aire*, 24 Cal.3d at 803-804 [citing cases]);

Co. (W.D. Tenn. 2010) 694 F.Supp.2d 933, 946 (declining to apply Tennessee ELD outside of contracts governed by UCC).

[9] *See, e.g., LAN/STV v. Martin K. Eby Construction Co.* (Tex. 2014) 435 S.W.3d 234, 241 (noting "absence of a bright-line rule" and that, where the underlying rationales are weak or absent, the ELR should not apply).

[10] *E.g., Sovereign Bank v. BJ's Wholesale Club, Inc.* (3d Cir. 2008) 533 F.3d 162, 176-77, 180; *O'Connell v. Killington, Ltd.* (Vt. 1995) 665 A.2d 39, 42.

(b) economic losses can be just as serious as (or far worse than) other types of physical harm (see *id.*); and

(c) economic losses are often more tangible (and thus easier to measure) than other forms of injury (*e.g.*, emotional distress; pain and suffering).[11]

Yet SoCalGas asks this Court to reject the careful limitations erected by *J'Aire* and its progeny and expand the ELR's reach to *all* negligence cases involving "purely" economic injuries. As explained below, SoCalGas's push to have California join the fringe is contrary to law and public policy.

II. SoCalGas's Radical Version of the ELR Finds No Support in this Court's Precedents.

A. <u>*J'Aire* Expressly "Disapproved" of SoCalGas's Version of the ELR.</u>

Civil Code §1714(a) "establishes the general duty of each person to exercise, in his or her activities, reasonable care for the safety of others." (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 768.) This Court recognizes exceptions to this general rule only where "*clearly supported* by public policy." (*Rowland v. Christian* (1968) 69 Cal.2d 108, 112, emphasis added.)

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[11] For example, the predominant physical injuries suffered by Porter Ranch residents are nosebleeds and headaches. Any claim that these injuries are somehow more "tangible" or more easily valued than economic losses to local businesses is not tenable.

These exceptions merely highlight what this Court has *never* done: outside of the transactional context, it has never recognized a bright-line no-recovery rule for economic loss. Indeed, nearly the opposite is true. While this Court has not squarely addressed a case where negligently inflicted economic injury has arisen outside the transactional context, it *has* stated that economic injury should not be treated differently from other negligently inflicted injury under Civil Code § 1714(a).

Thus, *J'Aire* itself took pains to note that § 1714(a) does not distinguish among injury to person, property, or financial interests. (24 Cal.3d at 806.) *J'Aire* went on to expressly *disapprove Adams v. Southern Pacific Transportation Co.* (1975) 50 Cal.App.3d 37, where a train explosion destroyed a nearby factory, causing plaintiffs lost employment. After discussing the ELR at length, *Adams* reluctantly held that the plaintiffs could not recover based on the "principle of *stare decisis*..." (*Id.* at 40.) In *J'Aire,* this Court went out of its way to state that *Adams* was "disapproved." (24 Cal.3d at 807.)

It is impossible to make sense of *J'Aire*'s discussion as anything other than a rejection of both *Adams*' reasoning and its result. Even under the most limited reading of *J'Aire*, the decision makes clear that nothing categorically precludes claims, like those advanced here or in *Adams*, for negligently inflicted economic losses.

B. None of SoCalGas's cases recognizes a bright-line no-recovery rule.

SoCalGas nonetheless claims that this Court has *already* embraced a bright-line no-recovery rule that applies whenever a plaintiff suffers only economic injury as a result of a defendant's negligence. Not so.

Thus, in *Fifield Manor v. Finston* (1960) 54 Cal.2d 632, a paradigmatic contractual case cited on *nine* different pages of SoCalGas's brief, a nursing home contracted to provide a man with lifetime medical care. The defendant driver negligently hit and killed the man, and the nursing home sued to recovery his medical-care costs.

This Court refused the nursing home's claim, reasoning that the driver had voluntarily assumed obligations by contract. (*Id.* at 636-37.) *Fifield* had nothing to say about the recoverability of economic losses in general. Nor did *Fifield* indicate that it was adopting *Stevenson v. East Ohio Gas Co.* (Ohio App. 1946) 73 N.E.2d 200 (ABOM 25), rather than simply quoting its language. (54 Cal.2d at 636.)

Bily and *Quelimane*, too, were contract/transactional cases, as Plaintiffs have explained. (OBOM 23-24.) The Court rejected the plaintiffs' claims in both cases. *Bily* did not even hint that economic loss is not recoverable (*Bily* v. *Arthur Young & Co.* (1992) 3 Cal.4th 370, 400), and *Quelimane* merely observed that duty "is the exception, not the rule," when a breach of contract causes "purely economic loss to third parties."

(*Quelimane*, 19 Cal.4th at 58.) That is a highly qualified statement, and provides no support for SoCalGas's bright-line no-recovery rule.

Finally, and most bafflingly, SoCalGas relies on *Adams*. While *Adams* was not a transactional case of the *Fifield*, *Bily*, and *Quelimane* kind, it did not hold that economic loss as such is unrecoverable. It simply held (wrongly, as it turned out, because the case was later "disapproved" by *J'Aire,* 24 Cal.3d at 807) that California law does not recognize the tort of negligent interference with contractual relations. (*Adams*, 50 Cal.App.3d at 40.)

SoCalGas struggles to minimize this fact, but even the court of appeal below did not treat *Adams* as good law. Indeed, the lower court assumed that *Adams* was decided *wrongly*, saying that "[w]ith the benefit of hindsight, we agree" with the plaintiffs in *Adams*. (*So. Cal. Gas. Leak Cases* (2017) 18 Cal.App.5th 581, 593.) In any event, neither *Adams* nor any California decision other than the decision below has applied a bright-line no-recovery rule for economic injury. No such rule exists in California.[12]

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[12] Nor, contrary to SoCalGas's legerdemain, does any such *doctrine* exist. (ABOM 32.) SoCalGas's distinction between "economic-loss rule" and "economic-loss doctrine" is imaginary. Both Dean Farnsworth and *Robinson Helicopter* use the terms synonymously. (Farnsworth, *The Economic Loss Rule* (2016) 50 Valparaiso Univ. L. Rev. 545, 49-550; *Robinson Helicopter*, 34 Cal.4th at 988, citation omitted.)

III. SoCalGas's Policy Arguments Lack Merit.

A. The specter of "unlimited" liability does not justify a no-recovery rule for purely economic losses.

SoCalGas's primary refrain on the policy front—that allowing recovery for purely economic losses will unleash a tsunami of claims—fails for three reasons.

First, the floodgates rationale does not provide any basis for carving out purely economic losses for special disfavored treatment in the non-contractual setting. (See *People Express*, 100 N.J. at 252 [observing that "[t]he assertion of unbounded liability is not unique to cases involving negligently caused economic loss without physical harm."].) Indeed, the idea that torts causing physical injuries (as opposed to economic harm), are somehow less likely to open the liability floodgates, makes no sense in the modern era of mass torts.

Second, that allowing recovery for economic losses might create problems of "indeterminate liability" in *some* cases does not justify a no-recovery rule in *all* cases. As *People Express* observed, "[t]he answer to the allegation of unchecked liability is not the judicial obstruction of a fairly grounded claim for redress. Rather, it must be a more sedulous

application of traditional concepts of duty and proximate causation to the facts of each case." (100 N.J. at 254.)[13]

Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc. (2016) 1 Cal. 5th 994, illustrates this concept in practice. There, emergency room doctors sued health care plans for negligent delegation of financial responsibility. (*Id.* at 1001.) The plans argued that requiring them to compensate the doctors for economic losses would lead to "a vast number of suits and limitless financial liability..." (*Id.* at 1018.) *Centinela* rejected this floodgates argument, noting that the doctors "are a limited and identifiable class of potential plaintiffs, whose services can be anticipated and likely statistically estimated." (*Id.* at 1017.).

The same is true here: the class is a "limited and identifiable" group of businesses—those within the 5-mile evacuation zone—and, just as in *Centinela*, their damages can be "statistically estimated." (*Ibid.* See also *Wyman v. Ayer Properties, LLC* (Mass. 2014) 11 N.E.3d 1074, 1081 [noting that "[t]he rationale for applying the [ELR] is made even weaker where the [plaintiffs] seek damages that are finite and foreseeable"].)

Third, to the extent recognition of a duty of care in a particular context would unleash an unworkable amount of liability, this Court is

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[13] *See Boundary-Line Function,* 66 Wash. & Lee L. Rev. at 543-544 (floodgate considerations "offer dubious justification for...a general economic-loss rule" because "rules are in place to guard against liability for speculative, excessive, or unforeseeable losses." [footnotes omitted]).

quite capable of erecting limiting principles. In *Kesner*, for example, the defendant argued that requiring employers to compensate *all* foreseeable victims of secondary-exposure to asbestos on workers' clothing would create "enormous costs for the courts and community." (1 Cal.5th at 1152). This Court responded by limiting the duty to members of workers' *households*. (*Id.* at 1154-1155.)

Kesner observed that "any duty rule will necessarily exclude some individuals who, as a causal matter, were harmed by the conduct of potential defendants. By drawing the line at members of a household, we limit potential plaintiffs to an *identifiable category of persons who, as a class, are most likely to have suffered a legitimate, compensable harm.*" (*Id.* at 1155, emphasis added.)

Kesner fits here like a glove: "By drawing the line [at the five-mile evacuation boundary]....plaintiffs [have limited themselves] to an identifiable category of [businesses] who, as a class, are most likely to have suffered legitimate, compensable harm." (*Ibid.*)

Further limiting principles can be found in the *Rowland* factors themselves, which allow courts to prohibit liability for economic loss when such loss would be disproportionate or indeterminate. If a driver's negligence shuts down a bridge, for example, and nearby businesses lose income, see *Aikens v. Debow* (W. Va. 2000) 541 S.E.2d 576, *Rowland*

permits courts to consider the tenuous connection between economic losses and the driver's negligence, the lack of moral blameworthiness, the crushing burden of liability on a single driver, and the fact that individual drivers likely cannot obtain affordable insurance for such massive losses.[14]

B. Over-deterrence is no reason to prohibit recovery of purely economic losses.

SoCalGas's no-recovery rule cannot be defended on the ground that allowing recovery for purely economic losses would "over-deter[]" socially desirable, non-negligent conduct. (ABOM 74.) First, as with all SoCalGas's policy arguments, potential over-deterrence does not justify singling out stand-alone economic losses for a no-recovery rule. (*Boundary Line-Function*, 66 Wash. & Lee L. Rev. at 544, fn. omitted.)

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[14] Because *Aikens* would likely have come out the same way under *Rowland*, it does not support SoCalGas's bright-line rule. (ABOM 64.) SoCalGas's reliance on *532 Madison Avenue Gourmet Foods, Inc. v. Finlandia Center, Inc.* (N.Y. 2001) 750 N.E.2d 1097, is similarly misplaced. (ABOM 62-63.) Not only does New York lack a presumptive duty of care like Civil Code §1714(a), but *532 Madison Avenue* is distinguishable on its facts because it is more freakish than foreseeable for negligence at a construction site to cause one of the busiest, most densely populated areas in the nation to shut down. As a result, the court's decision to disallow liability for plaintiffs' purely economic losses was understandable. But where—as here—massive amounts of a volatile gas are stored underground under crushing pressure, negligence is unlikely to lead to anything other than a catastrophic event that injures "surrounding communities." (2 EP 259 [SoCalGas 10-K filing].) In that respect, a gas leak from a storage facility is more like an oil spill than a construction accident. (*Union Oil Co. v. Oppen* (9th Cir. 1974) 501 F.2d 558 [allowing recovery of economic losses from oil spill].)

Second, the over-deterrence argument "could lead unprotected plaintiffs to take excessive precautions that are far costlier than substitute precautions available to the negligent defendant tortfeasor." (Sharkey *In Search of the Cheapest Cost Avoider* (2018) 85 U. Cinn. L. Rev. 1017, 1042.)

Third, SoGalGas's over-deterrence argument ignores that the company was not the least bit deterred by the risk of liability for physical injuries and property damage. Given that, it is hard to see how the specter of additional liability could "over-deter" this kind of negligent behavior in the future.

C. **<u>The potential availability of insurance does not justify SoCalGas's no-recovery rule.</u>**

Nor does the potential availability of insurance justify a no-recovery rule for economic losses. This argument is overbroad because "it is not always the case that negligently caused economic loss is more insurable by the plaintiff than the defendant." (*Boundary-Line Function*, 66 Wash. & Lee L. Rev. at 544, fn. omitted.)

In addition, the Plaintiff class includes many small businesses, such as Polonsky Day Care, that operate on a shoe string. (2 EP 178.) For a business like Polonsky, that accommodates only twelve children, the loss of business from several families can be devastating. The idea that small

business entities are somehow better able to insure against business interruptions than SoCalGas strains credulity.

Moreover, even if some Plaintiffs *were* in a position to insure against potential losses that SoCalGas never warned them about, requiring Plaintiffs to insure against their own losses would diminish the deterrent force of the tort system, as the trial court recognized. (2 EP 395 ["Companies must face the full cost of accidents they can create, or from a societal perspective they will underinvest in precautions."].)

Finally, Plaintiffs are certainly not in a better position than SoCalGas to insure against liability for economic losses. SoCalGas's parent, Sempra Energy, is publicly traded on the New York Stock Exchange with $1.2 to $1.4 *billion* in liability insurance, and (needless to say) is in a better economic position than Polonsky Day Care to insure against SoCalGas's negligence.[15] (*Compare T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal. 5th 145, 174 ["Novartis offers no reason why a brand-name drug manufacturer would be unable to insure against the risk of warning label liability"].)

D. The potential strain on judicial resources does not justify SoCalGas's no-recovery rule.

SoCalGas's judicial-resources argument (ABOM 20) fails for the same reason as the "floodgates" rationale: it provides no basis for

[15] See Sempra Energy's 2016 10-K, at 35 (Plaintiffs' RJN Exhibit E).