

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	DATE FILED: September 5, 2023 3:18 PM CASE NUMBER: 2022CV30195
Plaintiffs: GEORGE KUPFNER and LISA KUPFNER, a married couple; ELDORADO ENTERPRISES, INC.; and ELDORADO LIQUOR, INC.; individually and on behalf of all other persons similarly situated, v. Defendants: PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY.	<hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 22CV30195 Division: 06 Courtroom: 520
ORDER OF CONSOLIDATION	

I. INTRODUCTION

On December 30, 2021, a devastating fire caused extreme damage and destroyed more than one thousand structures (the “Marshall Fire”). Plaintiffs allege that Defendants’ powerlines and equipment were a substantial factor in causing the blaze. They bring a complaint to assert claims for Inverse Condemnation, Negligence, Premises Liability, Trespass, Public Nuisance, Private Nuisance, and Loss of Consortium.

Public Service Company of Colorado d/b/a Xcel Energy (“PSCo”) moves to consolidate this case with other similar cases¹ that likewise seek damages against PSCo arising out of the same event. The time for response has passed. C.R.C.P. 121, Section 1-15(1). Plaintiffs in this case and in the related matters have not responded in opposition.² This order follows.

II. CONSOLIDATION IS WARRANTED

Each lawsuit under consideration alleges that PSCo is liable because it contributed to causing the Marshall Fire. Homeowners impacted by the Marshall Fire compose the plaintiffs for

¹ The cases for which PSCo seeks consolidation are each brought against PSCo: Boulder County cases 23CV30486 (“Uridil”); 23CV67 (“Sellers”); 23CV30427 (“Bittner”); 23CV30488 (“Wallace”); 23CV30483 (“Allstate”); 23CV30515 (“Hauke”); and 23CV30516 (“Mandal”) (the “Lawsuits”).

² Plaintiffs in some cases did not respond. In other cases, Plaintiffs have responded with a joinder or non-objection and a “conditional agreement.” In the proposed agreement, Plaintiffs seek a right to immediate discovery regarding Defendants’ non-parties at fault. The Court declines Plaintiffs’ invitation to barter. Because their issue does not relate to consolidation, and because Plaintiffs did not raise the issue by independent motion, the Court will decline to consider the request. See C.R.C.P. 121, Section 1-15(1).

many of the Lawsuits. In one case, Allstate, insurance companies bring subrogation claims to recover insurance payments they have made to homeowners.

Pursuant to C.R.C.P. 42(a), when

actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.

Of primary importance, each of the Lawsuits involves contested factual and legal issues regarding whether PSCo and Xcel Energy Inc.³ caused the Marshall Fire and are legally liable for it. If so, each case likewise shares common questions of law and fact regarding the entities' degree of liability compared with any others designated as a third-party at fault.

III. CONCLUSION

For the reasons discussed above, PSCo's Motion to Consolidate for pre-trial purposes is GRANTED.

The following Boulder County cases are consolidated into this matter:

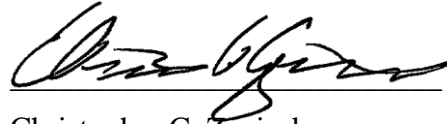
1. 23CV30486, Uridil et al. v. Xcel Energy Inc. et al.
2. 23CV67, Sellers et al. v. Xcel Energy Inc. et al.
3. 23CV30427, Bittner et al. v. Public Service Co. of Colorado
4. 23CV30488, Wallace et al. v. Public Service Co. of Colorado
5. 23CV30483, Allstate Fire & Casualty Ins. Co. et al. v. Public Service Co. of Colorado et al.
6. 23CV30515, Hauke et al. v. Xcel Energy Inc. et al.
7. 23CV30516, Mandal et al. v. Xcel Energy Inc. et al.

This matter remains set for a status conference to be held September 21, 2023 at 1:00 p.m. in Jefferson County, Colorado, Courtroom 520. Attorneys may appear via Webex. Others may observe by livestreaming.

³ Xcel Energy Inc. is no longer a party to this lawsuit. It is a named party in some of the other lawsuits now consolidated.

Done in Golden, Colorado this 5th day of September, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Christopher C. Zenisek", written over a horizontal line.

Christopher C. Zenisek
District Court Judge