



## **Class Action Certified Against PGW**

By Amaris Elliott-Engel

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A Philadelphia judge has certified three classes of Philadelphia residents and businesses in a class action that alleges that Philadelphia Gas Works has exposed some of its customers to mercury.

The plaintiffs are alleging they were exposed to mercury spills during the removal of mercury gas regulators and that PGW exposed other customers to mercury because of the continued presence of mercury regulators in their buildings.

Philadelphia Common Pleas Judge Mark I. Bernstein ruled Tuesday that the classes in *Brophy v. Philadelphia Gas Works* should be certified because they had met the five requirements of class action certification under Pennsylvania Rule of Civil Procedure 1702 and the further requirements under Rule 1708.

Certification under Rule 1702 is appropriate because the number of plaintiffs makes it impracticable to pursue individual actions, the judge said. The plaintiffs have common questions of law and fact. The classes' claims and PGW's defense of them are typical across the classes. Class counsel's representation is adequate, and Philadelphia Court of Common Pleas is an appropriate forum for the entirety of the classes, Bernstein concluded.

Certification under Rule 1708 is appropriate because the classes don't present serious managerial difficulties, individual adjudication could result in inconsistent adjudications, and the amounts that could be recovered in individual claims "are insufficient to warrant individual actions unless catastrophic injury occurs," Bernstein said.

"What pleases us most about the decision is that PGW customers will be getting information from the court, from us and from PGW about the threat to their health, and they'll be able to make reasoned decisions about what to do," said plaintiffs' attorney Thomas More Marrone, of Feldman Shepherd Wohlgernter Tanner Weinstock & Dodig.