

GE Says US Is No Place For Fukushima Meltdown Suit

By **Chris Villani**

Law360, Boston (December 17, 2018, 3:20 PM EST) -- General Electric Co. told a federal judge Monday that a proposed class action brought by as many as 150,000 Japanese residents and businesses impacted by the 2011 nuclear plant meltdown in Fukushima can and should be handled in Japan, not on the other side of the world in Massachusetts.

The plaintiffs claim a shoddy design by GE in its coastal nuclear reactors left them vulnerable to disaster when a hurricane and subsequent tsunami hit in 2011. The 150,000 potential class members were forced from the uninhabitable area, causing massive economic losses, they say. But GE pushed back in federal court Monday, arguing the plant's operator, Tokyo Electric Power Co., has already paid out more than \$75 billion to those affected and the residents would have both administrative and legal methods in Japan to be made whole after the catastrophic meltdown.

"What is a case brought by Japanese citizens, on behalf of a proposed class of more than 150,000 Japanese citizens and businesses all who all seek economic loss damages related to Fukushima, doing in a U.S. court?" asked GE lawyer David J. Weiner of Arnold & Porter. "It's because, by filing in the U.S., they can leave behind them the substantive Japanese law they don't like ... bringing with them the parts of Japanese substantive law they do like."

Weiner said either GE or the plant operator, known as TEPCO for short, can be served with a suit in Japanese courts. TEPCO has already been sued under the 1961 Japanese Act on Compensation for Nuclear Damage and payouts have been as much as thousands or tens of thousands of dollars per person, Weiner argued. Allowing the matter to proceed in Massachusetts would also place GE in a difficult position of having to defend a suit in which other, possibly culpable third parties in Japan could not be compelled to join the case an ocean and a continent away, the lawyer added.

"What you're going to have is GE left defending itself, pointing at empty chairs, saying to the jury, 'It's their fault,'" Weiner said.

Chief U.S. District Judge Patti B. Saris did not make a ruling from the bench, but grilled both sides on whether TEPCO and the Japanese courts were doing enough to remedy a situation the judge called "as sad as it gets." Faith R. Greenfield, an attorney for the proposed class, said TEPCO has compensated some potential class members but that the payouts are often inadequate and some people haven't been compensated at all.

Greenfield said the residents chose a venue they feel is convenient for GE, given that Boston is the company's headquarters and they would be able to access witnesses and documents that can speak to why the reactors were designed the way they were. Still, the judge seemed skeptical that her courtroom was a workable place for a class action like the one proposed.

"I have a huge amount of experience with class actions. Let's assume I agree with you, you can't

get a remedy against GE [in Japan], you can get it against TEPCO, but that's not adequate," Judge Saris said to Greenfield. "How could I do this? It's 150,000 people. ... Let's assume there is a common question of liability. How do the individual issues not swamp what I could possibly do here?"

Greenfield said the legal issues for the individuals would all be the same and the plaintiffs could work with GE at a "variety" of hearings to figure out damages calculations. Judge Saris replied by asking whether they planned to fly 150,000 people to Massachusetts, again harping on the wide range of possible damages claims.

"You're talking about people's homes," Judge Saris said. "It could be a beautiful mansion or a hut, a big business or a little business; it would be a very different kind of situation."

Experts could be brought in to help work through damages claims, Greenfield argued, but the case should still turn on GE's alleged liability.

"GE defectively and negligently created the reactors and component parts of the Fukushima nuclear power plant and, at the time they were created, GE knew they were defective," Greenfield said. "GE, for years, was involved in maintenance of those various parts of the equipment and GE, knowing there were these defects, did not warn any of the people that were in the surrounding area that, if there was a foreseeable tsunami, there could be the kind of disaster that there was."

In their **2017 complaint**, the residents cited various alleged errors in GE's design, including a 60-foot lowering of a protective coastal cliff, defectively designed cooling systems and key meltdown-mitigating equipment being located in basements that predictably flooded. According to the suit, GE took a cost-saving shortcut while building three reactors and overseeing construction of the rest by including smaller, less-safe containment vessels.

A 9.0-magnitude earthquake struck on March 11, 2011, off the coast of Japan's Honshu Island, causing a massive tsunami that reached heights up to 130 feet and as far as 6 miles inland. Power and thus cooling capacity for four of the six boiling water reactors of the Fukushima Daiichi Nuclear Power Plant complex failed, resulting in explosions in three and overheating in another. Massive quantities of radioactive materials were released into the ground, Pacific Ocean and air and continued to be released for years.

TEPCO is also **being sued** by U.S. Navy rescue personnel over radiation exposure, but no one has held the company that built the reactors accountable, the plaintiffs say.

The proposed class is represented by Faith R. Greenfield, Bonnie L. Dixon of Atsumi & Sakai, and Timothy P. Frawley of The Law Offices of Timothy P. Frawley.

GE is represented by Sally Pei, David J. Weiner and Michael D. Schissel of Arnold & Porter, and Yalonda T. Howze and John B. Koss of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

The case is *Imamura et al. v. General Electric Co. et al.*, case number 1:17-cv-12278, in the U.S. District Court for the District of Massachusetts.

--Editing by Aaron Pelc.