

Q 1 Possible Remedies - Greens' remedies from Renew Oil & Gas Co.

Permanent Injunctive relief –not need to identify all of these - but must name minimum of 4 specific enforceable actions a court would order Renew to do:

- Clean up groundwater
 - Supply potable water until groundwater cleaned up
 - Create buffer zone by road between neighbors and Greens- with walls, shrubs, trees to reduce pollution, dust & noise
 - Create new pond or clean up existing pond and restock with fish
 - Provide natural looking potable water sources for animals & birds
 - Cease drilling operations on Greens' property
 - Check well for cracks and repair
 - Limit hours when drilling occurs
 - Limit hours when trucks pass by their home or reroute trucks
- WHY Greens may be entitled to remedy of permanent injunctive relief**
- Irreparable harm: Ongoing harm to land and bodies - health problems
 - Land is unique
 - Ongoing harm - would require multiple suits for damages
 - Renew's actions substantially interfere with Greens' use and enjoyment of the land - nuisance
 - Balance of harms: worse for Greens than on Renew to reduce impact & stop drilling on Greens' land
- Greens have a good chance of getting injunctive relief even though discretionary** given the nature of their harms and public interest in safe groundwater and diverse species in woods.
- Public interested in property rights and personal safety
 - But also public interest favors Renew with jobs, revenue, taxes, source of alternative energy

Preliminary injunctive relief - require Renew to:

- Specifics - see above under Permanent Injunction- may also require Renew to take temporary actions, or limit hours of drilling/transporting until final trial on merits
- WHY Greens may be entitled to remedy of preliminary injunctive relief**
- See above under permanent injunctive relief
 - ALSO: assume that Greens have likelihood of success on the merits for a nuisance, trespass claim
- Greens have some chance of getting preliminary injunctive relief even though discretionary** given the nature of the harms
- Discretionary to preserve status quo
 - Greens may be required to post a bond
 - Greens need to provide Renew with notice and hearing
 - Prelimin. Injunction less likely to be granted than permanent injunction as less time for a court to fully analyze the situation and assess how to use court's extraordinary authority

Temporary restraining order - require Renew to:

- Specifics - see above under Permanent Injunction- may also require Renew to take temporary actions, such as ceasing all drilling, or limit hours of drilling/transporting until hearing for preliminary injunction
- WHY Greens may be entitled to remedy of preliminary injunctive relief**
- See above under permanent injunctive relief
 - ALSO: assume that Greens have likelihood of success on the merits for a nuisance, trespass claim
- Greens have little chance of getting temporary relief**

- Not immediate emergency - have been noticing problems for a while
- Unclear how much more damage would occur by waiting until hearing for preliminary injunction
- Rather than requiring the drilling to stop, may be as effective to have Greens be compensated later for cost of staying in a hotel or move to temporarily live with children, or later pay for the water purchased plus any damages
- TRO less likely to be granted than preliminary or permanent injunction as less time for a court to fully analyze the situation and take action

Damages – to real and personal property

- Loss in value of land, damage to well, pond, land
- OR Cost of cleanup - groundwater, pond, methane containment system, restocking for animals
- Cost of supplying water to home
- Cost of building a new well for Greens' home
- Cost of cleanup for home and personal property damaged by methane - could include painting the home, replacing damaged plumbing, stained/damaged personal property - damages would be calculated on either cost to repair (if not destroyed) or market value or if things like clothes or personal furnishings, based on variety of factors such as market value, cost to replace, wear and tear, purchase price, sentimental value.
- WHY Greens may be entitled to real and personal property damages**
 - If Renew's negligence damaged personal or real property, then Greens may be compensated sufficient to put them back in the position they would have been in before the harm (methane contamination) occurred
- Greens have a decent chance of getting damages for personal and real property** given the nature of the harms
 - May have trouble showing proof - would need experts
 - Could not get both future harms to property and injunctive relief as would overlap
 - Unclear total extent of damages - may be difficult to measure

Damages – for bodily/personal injury

- Medical monitoring costs to continue to ascertain levels of toxins in the blood
- Past and future medical and related expenses for ground water contamination - causing headaches, dizziness, blackouts, nosebleeds, nausea, and muscle contractions.
- Damages for pain and suffering, stress, anxiety (depends on severity)
- Loss of consortium
- Loss of enjoyment of life
- WHY Greens may be entitled to damages for personal injury**
 - If Renew's negligence caused their bodily injuries, then Greens may be compensated sufficient to put them back in the position they would have been in before the harm (methane contamination) occurred
 - Also entitled to any personal injury damages coming from having the noise and pollution of trucks associated with Renew's drilling operation on neighbors' property
- Greens have a decent chance of getting damages for bodily injury** given the nature of the harms
 - May have trouble showing proof - connection between methane poisoning/contamination and nuisance and their injuries and associated pain, suffering, loss of enjoyment of life, consortium - need experts
 - Could not get both damages for future actions - e.g. ongoing medical monitoring - and injunctive relief unless can prove levels of toxic exposure significant enough to warrant ongoing treatment

- Given that only a few weeks/months have gone by, unclear what damages available and for what amount

Declaratory Relief - ask a court to declare that Renew's drilling operation occurs on the Greens' land

- WHY Greens may be entitled to a declaratory judgment**
 - If Renew claims that its drilling operation occurs on the neighbors' land, then Renew and Greens have adverse interests - actual disagreement - that needs to be resolved because the rights to the land are currently being affected
- Greens have a chance of getting a declaratory judgment depending on the facts**
 - Renew was negligent in drilling under the Greens' land and may agree that its operation occurs on their property - in which case no DJ needed

Restitution - require Renew to compensate the Greens for obtaining the natural gas below their property:

- The Greens are entitled to restitutionary damages measured by the amount Renew gained from drilling under their property - the profit from the drilling
- WHY Greens may be entitled to restitution**
 - Renew is unfairly advantaged by taking the natural gas under the Greens' property without paying them for the \$10,000 leasing rights or any royalties - no contract with Greens
- Greens have a good chance of getting restitution**
 - Renew intended to pay for mineral rights and royalties if natural gas found
 - Renew received and benefited from the natural gas found
 - Because the natural gas is on the Greens' property, they, and not Renew, should be compensated for it -they did not give the natural gas to renew; it would be unfair for Renew to keep the gas without paying the Greens for it.
 - May be difficult to measure which natural gas is from Greens, which from neighbors' land
 - Discretionary remedy, which always leaves court with other options

Equitable Lien - ask a court to place an equitable lien on Renew's assets, such as a bank account

- WHY** : if Greens are entitled to restitution, court may order an equitable lien for the amount owed to them in restitutionary damages, assuming that the Greens can trace profits to specific property like a bank account
- Greens would be unlikely to get an equitable lien**
 - Renew appears to have plenty of liquid assets - e.g. offers \$10,000 to property owners for leases to mineral rights, along with royalties.
 - Given that this is extraordinary equitable relief, court may be unlikely to use its power to order

Notes: no points for specific performance or any contract damages (not part of exam analysis).

Points lost for lack of coherence and organization, failure to respond clearly to assigned task

Q 2 Remedies - Greens' best remedy for meeting their goals

Permanent Injunctive relief –not need to identify all of these actions - but must name minimum of 4 specific enforceable actions a court would order Renew to do:

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WHY permanent injunctive relief is the best remedy for the Greens

- Meets their goals of staying on the land - they may need money, but mostly they want to have their paradise returned to them
- Discretionary relief is flexible, and could get a court order a number of creative actions that would help them reach their goals
- The other remedies - damages, declaratory judgment, restitution - afford some of the relief they seek but none are as comprehensive as having injunctive relief. Having the drilling stopped or at least limited or offset with other actions (e.g. having Renew build a buffer zone of trees and fence/wall between Greens and neighbors) helps them enjoy the land as they had in the past

Greens have a good chance of getting injunctive relief even though discretionary given the nature of their harms and public interest in safe groundwater and diverse species in woods.

- Public interested in property rights and personal safety
- But also public interest favors Renew with jobs, revenue, taxes, source of alternative energy

Arguments to reduce injunctive relief -

- **Limit scope of relief** - depending on specifics above, College could argue against permanent relief that presented a large burden, such as hiring staff to supervise fans and students during practices and events on the field