

**SUPERIOR COURT OF CALIFORNIA**

**County of San Diego**

DATE: **November 22, 2005**      DEPT. **71**      REPORTER A:      CSR#  
PRESENT HON. **RONALD S. PRAGER**      REPORTER B:      CSR#  
JUDGE

CLERK: **K. Sandoval**

BAILIFF:      REPORTER'S ADDRESS: **P.O. BOX 120128**  
SAN DIEGO, CA **92112-4104**

---

JUDICIAL COUNSEL  
COORDINATION PROCEEDINGS  
NO. JCCP 4221  
1,11,111, AND 1V

TITLE [Rule 1550(b)]  
NATURAL GAS CASES

---

**PRICE INDEXING  
BUSTAMONTE VS. THE McGRAW HILL CO., INC.  
FINAL RULING**

This matter was heard and taken under submission on November 22, 2005. The Court has reviewed the parties' papers and the applicable law in light of the arguments presented and rules as follows.

The Petition of the JCCP Natural Gas Indexing Class Plaintiffs' to Coordinate *Bustamante v. The McGraw-Hill Companies, Inc., et. al.* into the coordinated Indexing cases is **GRANTED**. (CCP section 404.1, 404.4; California Rules of Court, Rule 1544; *Trotsky v. Los Angeles Fed. Sav. & Loan Ass'n* (1975) 48 Cal.App.3d 134)

The prior *Bustamante* coordination petition denied by Judge Haden was denied because the Indexing cases as known today did not exist at that time. In the beginning of 2005, when add-on coordination was before this Court, the *Bustamante* action was not remotely similar to the other Indexing cases which were seeking coordination. It was not then essential that *Bustamante* be included in the coordination proceedings.

However, the threat of amendment to bring the Indexing issues into the *Bustamante* case to facilitate settlement and release for the *Bustamante* defendants will render the *Bustamante* action a critical component of the coordinated Indexing cases. The Court

notes neither Bustamante nor the Bustamante defendants dispute the Indexing case plaintiffs' contention in this regard. The settlement in *Bustamante* will effectively foreclose meaningful adjudication of the class claims in the Indexing matters.

This case is similar to the *Trotsky* case. If, as anticipated, the *Bustamante* action is amended to include the scope of claims alleged in the Indexing cases in order to facilitate a waiver of all defense liability for those claims, such a settlement would be void. Without making a factual finding at this time the Court notes, it seems "apparent that the intended effect . . . of including [the Index class claims] in the [*Bustamante*] settlement [is] to foreclose the [Index class action] by binding the [Index class claims] to the terms of the [*Bustamante*] settlement." (*Trotsky v. Los Angeles Fed. Sav. & Loan Ass'n* (1975) 48 Cal.App.3d 134, 145)

Finally, the Court notes the Indexing class had no reasonable opportunity to participate in the settlement negotiations in *Bustamante*.

Accordingly, the Court finds the Indexing cases and *Bustamante* share common questions of fact and law such that coordination of the *Bustamante* action with the currently coordinated Indexing cases will promote the ends of justice.

Moving plaintiffs are to prepare an order of coordination.