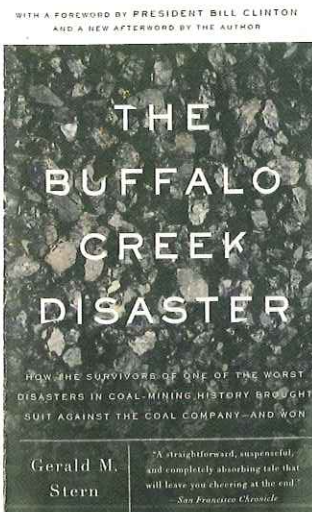


The Buffalo Creek Disaster



The Buffalo Creek Disaster
 By Gerald M. Stern
 Vintage, 2008
 \$11.95, 304 pages

accusation that God had brought this upon them. Rather than accept the small settlements proposed by Pittston, many survivors hired counsel and instituted a lawsuit against the company. In *The Buffalo Creek Disaster: How the Survivors of One of the Worst Disasters in Coal-Mining History Brought Suit against the Coal Company—and Won*, author Gerald Stern writes about the legal battle the survivors waged, with him as their attorney, against Pittston.

Although the book focuses on the lawsuit that followed the devastation, Stern's accounts of the victim's stories are poignant. The black sludge reached a speed of 30 miles per hour as it swept into the 16 coal mining towns in the valley. The sludge engulfed the townspeople before they recognized what had happened. Parents struggled to hold onto children and husbands grasped for their wives as they searched for something to hold. One such husband, whose wife, in parting moments, told him to take care of their baby, survived the flood but explained later, "Somewhere along there I lost that boy of mine. I don't know where." Ultimately, 125 people died, thousands others were injured, and numerous homes were destroyed.

Unsurprisingly, the survivors of this tragedy suffered severe psychological effects. Experts diagnosed the survivors with a then cutting-edge diagnosis of "psychic impairment," which later would become known as post traumatic stress disorder. PTSD is now a recognized psychiatric diagnosis, but at the time of the flood in Buffalo Creek, the condition was not well understood, and Pittston attorneys wrote off the claims of psychic impairment as "mere puff and blow."

In *The Buffalo Creek Disaster*, Stern moves beyond the tragedy

and focuses on the legal process. The reader learns that Pittston filed a motion to dismiss the weakest psychic impairment claims, those brought by individuals who suffered loss but were not themselves present at the time of the flood. Stern's concern at the time was that following a ruling on the absentee plaintiff's motion, Pittston would then file a motion to dismiss claims brought by those who were present for the flood but did not suffer physical injury. In this way, Pittston would attempt to "slice up our case bit by bit." Pittston's counsel personally served the motion to limit the amount of time for an opposition, but the judge granted the plaintiffs' request for an extension. This extension gave the plaintiffs sufficient time to provide a thoughtful opposition and prevented Pittston's efforts at a piecemeal attack on the psychic impairment claims.

Stern also delves into the realities and practicalities of litigation. Stern and his colleagues decided to postpone the psychological examinations of their clients due to the excessive cost of the testing. Ultimately, however, the testing had to be conducted, because the court set a date for an exchange of the medical reports. The plaintiffs brought in teams of psychiatrists to conduct the testing, who found that a vast majority of the victims were suffering from severe psychological effects of the disaster.

The Pittston statement was intended as an argument to escape liability for the devastation, but it also succeeded in emboldening the survivors—religious individuals outraged at the

Pittston also had the plaintiffs examined by a doctor of its own choosing. The Pittston doctor confirmed the victims' suffering but characterized it as a transient disturbance. However, many of the plaintiffs were still suffering from symptoms well over a year after the flood. The Pittston doctor concocted an explanation: The individuals who continued to suffer from psychological effects from the trauma must have suffered from a preexisting vulnerability.

In addition to describing the positions taken by both sides during the litigation, Stern also recounts the strategic considerations underlying many of the actions that the parties took. Strategy decisions had to be made from the initial filing of suit in federal court to the settlement discussions, which finally resolved the matter. Concerned that his Washington-based firm would have difficulty with local state judges in Logan County, Stern filed suit in federal court and overcame Pittston's unsuccessful challenge to diversity jurisdiction. Nevertheless, the hometown prejudice raised its head in an unexpected fashion. The local bar committee decided to investigate Stern's firm for ambulance chasing.

Strategy, too, was critical to the settlement discussions between the townspeople and Pittston. As with most litigation, the most productive settlement talks only occurred after the court set a firm trial date. Stern and his cocounsel had to convey to Pittston that they had faith in their case but were still flexible. The posturing even included bringing defense counsel through Stern's law offices to show the extent to which they were preparing for trial.

Jeffrey D. Wolf is a trial attorney and a partner at Pocrass, Heimanson & Wolf, representing individuals injured in severe personal injury, product liability, aviation, and medical malpractice cases.