

[Products Liability Law Daily Wrap Up, JURISDICTION—CHEMICAL PRODUCTS—S.D. W. Va.: Delaware/New Jersey holding company can't escape liability for W.Va. subsidiary's negligence in water contamination suit, \(Apr. 13, 2015\)](#)

Products Liability Law Daily Wrap Up

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By Pamela C. Maloney, J.D.

The exercise of jurisdiction by West Virginia federal court over an out-of-state parent company of two water companies operating in the state did not violate the parent company's due process rights, a federal district court in West Virginia ruled. The parent company allegedly designed the water treatment plant at issue and exercised control over the West Virginia companies from their inception (*Good v. American Water Works Co., Inc.*, April 9, 2015, Copenhaver, J.).

**Background.** A spill of a coal processing chemical mixture sold and distributed by Eastman Chemical Company into the Elk River caused an interruption in water supply to approximately 300,000 residents in the Charleston and surrounding area when the chemical mixture infiltrated the water treatment plant in Charleston owned and operated by American Water Works Service Company, Inc. and West Virginia-American Water Company (WV American), both of which are subsidiaries of American Water Works Company. The chemical mixture, which consists of 4-methylcyclohexane methanol along with other chemicals, is commonly referred to as "Crude MCHM."

The residents filed a putative class action against the three companies, alleging a number of counts including: strict products liability in tort, negligence, gross negligence, breach of warranties, negligent infliction of emotional distress, public and private nuisance, trespass, breach of contract, and medical monitoring. Specifically, the residents alleged that the water company defendants could have prevented the incident with better precautions, regulatory compliance, and use of reasonable care. Some putative class members operated businesses that lost revenue due to the interruption; other class members claimed physical injuries, asserting that exposure to Crude MCHM in the environment through human pathways caused bodily injury and necessitated that they be medically monitored. Still others alleged that they had incurred costs for water replacement, travel, and other associated expenses.

American Water Works challenged the exercise of personal jurisdiction over it, arguing that as a citizen of Delaware and New Jersey, it had no contacts with West Virginia to provide a basis for general jurisdiction. American Water Works further argued that the class could not impute the West Virginia contacts of the two water companies to it unless the class first alleges facts sufficient to pierce the corporate veil.

**Jurisdiction.** Based on the allegations in the class action complaint, the testimony of the vice-president of American Water Works before the West Virginia Public Service Commission (PSC), and the PSC's order issuing a certificate to construct, operate, and maintain a new integrated water treatment plant that led to a takeover of the water supply for the Charleston and surrounding area by WV American, the court concluded that the class had set forth specific allegations that were sufficient for it to determine, at this stage in the litigation, that American Water had purposefully availed itself of the privilege of conducting activities in West Virginia and that the negligent design claim, at a minimum, arose out of those activities. Specifically, the evidence showed that since American Water took over WV American, it controlled the subsidiaries with an American Waters-dominated board of directors and officers who made detailed assessments and evaluations concerning the design, construction, and future expansion of the water system.

The court also determined that it was constitutionally reasonable for it to exercise personal jurisdiction because American Water had not shown that it would be unfairly disadvantaged in the litigation in comparison to its opponents.

The case is Civil Action No. [2:14-01374](#).

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Companies: Aladdin Restaurant, Inc.; R.G. Gunnoe Farms LLC; Dunbar Plaza, Inc.; American Water Works Company, Inc.; American Water Works Service Company, Inc.; West Virginia-American Water Co.; Eastman Chemical Co.

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