

Court Dismisses All Drinking Water Providers from Mass Toxic Tort Suit

August 4, 2004

Hatch & Parent's Environmental Quality Group is continuing to monitor an important court case of interest to drinking water providers. The case concerns claims for compensation by over 2500 California residents against various industrial companies and private and public drinking water suppliers. The claims assert that the plaintiffs suffered various forms of personal injury (and death) resulting from the delivery of allegedly contaminated drinking water since the 1970's. The cases are the first mass tort cases involving drinking water in California and are being closely watched by local governments and utilities in the rest of the country.

The first major milestone in the case occurred two years ago when the California Supreme Court issued its opinion in *Hartwell v. Superior Court* (2002) 27 Cal. 4th 256. In that decision, the Court stated that a PUC-regulated water utility could not be sued for personal injury allegedly caused by ingesting the utility's drinking water provided the water complied with all state and federal quality standards.

Over the last two years, the meaning of this decision and its applicability to municipal suppliers has been the subject of hard-fought litigation before Los Angeles Superior Court Judge Carl West (Coordination Proceeding, Special Title - Rule 1550(b)- *In re Groundwater Cases*, Judicial Council Coordination Proceeding No. 4135).

On August 4, 2004, Judge West dismissed the public agencies and investor owned water utilities from the lawsuit. The case is proceeding against the industrial companies that are alleged to have caused contamination of the drinking water.

Judge West's reasoning is instructive. He found that the court lacked jurisdiction to proceed against the water suppliers because the plaintiffs admitted that they were unable to allege or prove that the drinking water violated federal or state water quality standards.

The Court stated that the court was obliged to accept the Maximum Contaminant Levels (MCLs) set by federal and state water quality regulators as the legal standard to be applied by the courts. He further stated that a lawsuit against publicly-regulated drinking water utilities could only proceed if they failed to discharge their mandatory duty to comply with those MCL's. Judge West applied the same standard to the public agency defendants.

The plaintiffs had told the court that they could only allege that the water suppliers had occasionally delivered water that temporarily exceeded applicable MCL's, and that those temporary exceedances were so brief and isolated that they did not rise to the level of a water quality standard violation. The plaintiffs also stated that they intended to assert liability for delivering water containing contaminants in years prior to the date that water quality standards for those contaminants were in effect. Judge West stated that neither allegation would support a finding of liability against the water suppliers.

It is expected that this important ruling will be appealed to the Supreme Court. In our view, while Judge West's decision is not binding on any other court, its logic and conclusions are entirely supportable and consistent with the Supreme Court's *Hartwell* opinion.

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