Common Law Action/PCBs: Federal Court Addresses Lakefront Property Owners Damage Claim



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author Claire Heffley

A federal court in South Carolina addressed in an August 6th Opinion issues arising out of a putative class action filed by lakefront property owners alleging contamination due to the dissemination of motor and transformer oil into the lake. *See Jones v. Duke Energy Corp.*, No. CV 3:24-1281-MGL, 2025 WL 2243769 (D.S.C. Aug. 6, 2025).

The oils are alleged to have contained polychlorinated biphenyls ("PCBs").

Duke Energy Corporation and Duke Energy Carolinas, LLC (collectively, "Duke Energy"), created Lake Wateree in 1919. It encompasses portions of Kershaw, Fairfield, and Lancaster counties in South Carolina.

Duke Energy developed a reservoir mosquito control program ("MCP") in 1923 to abate the threat of malaria presented by the lake. As part of the MCP, Duke Energy is alleged to have disseminated into Lake Wateree a mixture of motor and transformer oil containing PCBs.

The plaintiffs own waterfront properties along the lake's shoreline (collectively, "Property Owners"). They allege Duke Energy continued administering the MCP despite evidence linking PCB exposure to adverse health effects and the United States Environmental Protection Agency's ("EPA") ban on PCB production in 1979. This included an allegation that they hid the use of PCBs and mislead the public into believing contamination was not an issue.

The Property Owners further contended Lake Wateree has been subject to restrictive consumption guidance by the South Carolina Department of Health and Environmental Control since 2009 due to unsafe levels of PCBs found in the lake's fish.

The Property Owners filed a putative class action against Duke Energy alleging the following causes of action due to PCB contamination:

- Strict liability.
- Trespass.
- Private nuisance.
- Negligence.
- Gross negligence.
- Unjust enrichment.

Duke Energy moved to dismiss Property Owners' complaint for failure to state a claim.

Strict Liability, Trespass, & Private Nuisance Claims

Duke Energy argued the Court should dismiss the Property Owners' claims of strict liability, trespass, and private nuisance because the Property Owners failed to allege a tangible invasion of their property rights. The Court found that while strict liability and trespass claims, "require some allegation of physical harm or tangible invasion," the Property Owners had plausibly alleged a tangible invasion in claiming "contaminated water physically invaded the properties over which they hold littoral and/or riparian rights."

The Court distinguished between tangible and intangible property invasions, noting intangible invasions give rise to nuisance or negligence actions, not trespass or strict liability actions. Thus, a tangible invasion was not required for the private nuisance claim. It therefore rejected Duke Energy's argument concluding a tangible invasion was not required for the Property Owners' private nuisance claim, and as required for their strict liability and trespass claims, the Property Owners sufficiently alleged a tangible invasion of their property rights.

The Court also rejected Duke Energy's assertion that South Carolina courts have refused to consider hazardous waste disposal an abnormally dangerous activity triggering strict liability. It explained that "the mere fact South Carolina has yet to recognize the MCP as an abnormally dangerous activity fails to justify dismissal under Rule 12(b)(6)." Whether Duke Energy's actions amounted to an abnormally dangerous activity "must be determined on a case-by-case basis" and would be "best assessed after factual development."

Negligence & Gross Negligence Claims

Duke Energy argued the Property Owners' negligence and gross negligence claims should be dismissed because:

1. No duty of care existed.
2. Their actions did not amount to gross negligence.

The Court found the Property Owners sufficiently alleged Duke Energy "voluntarily undertook a duty to care for Lake Wateree" in executing their licensing agreement. Duke Energy was stated to have promised to be "responsible for the fish and wildlife habitat" and "water quality." Furthermore, the Court found the Property Owners sufficiently asserted Duke Energy knew or should have known the use of harmful oils "contradicted best practices for disposal of PCBs."

Gross negligence is "the failure to exercise slight care," The Court held that the Property Owners' allegations that Duke Energy knowingly concealed the PCB contamination met this standard. Therefore, the Court denied Duke Energy's motion to dismiss the negligence claims, finding the Property Owners plausibly established that Duke Energy owed them a duty of care and failed to exercise slight care in their administration of the MCP.

Unjust Enrichment Claim

The Court granted Duke Energy's motion to dismiss on the unjust enrichment claim. In South Carolina, unjust enrichment requires a plaintiff to have conferred a non-gratuitous benefit on a defendant after being induced by the defendant to do so. The Property Owners asserted Duke Energy benefitted from their development and maintenance of the shoreline. However, the Court found the Property Owners failed to assert Duke Energy induced them to do so. Therefore, the Court granted Duke Energy's motion to dismiss the unjust enrichment claim.

The Court held the Property Owners pled sufficient facts to survive Duke Energy's motion to dismiss their claims of strict liability, trespass, private nuisance, negligence, and gross negligence arising from the PCB contamination.

A copy of the Opinion can be downloaded here.