

Pennsylvania Federal Court Strikes Class Allegations in Air Pollution Suit

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Underscoring the requirement that class action plaintiffs clearly and objectively define the putative class without reference to the underlying merits of plaintiffs' claims, a federal district court in **Pennsylvania** struck class allegations from a complaint in a suit against a power plant. See ***Bell v. Cheswick Generating Station***, No. 12-929, (W.D. Pa. Jan. 28, 2015). The case was back in district court after the Third Circuit reversed the trial court's dismissal, ruling that the Clean Air Act did not preempt Plaintiffs' claims. See *Bell v. Cheswick Generating Station*, 734 F.3d 199 (3d Cir. 2013).

Plaintiffs filed a class action complaint asserting nuisance, negligence, trespass and strict liability claims arising from the plant's emissions. Plaintiffs defined the putative class as those living within a one-mile radius of the power plant "who have suffered similar damages to their property by the invasion of particulates, chemicals, and gases from defendant's facility which thereby caused damages to their real property." *Bell*, Slip Op. at 2.

The district court struck the class allegations because the class definition contained two fatal flaws. First, the Court held Plaintiffs had proposed a prohibited "fail-safe" class, meaning that determining whether individuals fall within the class would turn on resolving "ultimate issues of liability – damage and causation." *Id.* at 5. Here, class membership would have turned on whether (1) that person was injured and (2) Defendant's emissions caused the injury. Second, the Court concluded that requiring class members' injuries to be "similar" to Plaintiffs' was too subjective a standard to apply, therefore falling short of the class "definiteness" requirement courts have found implicit in the Federal Rules of Civil Procedure. See *id.* at 5-6.

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