



COMBATING CREATIVE LEGAL THEORIES

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April 24, 2019 In-House Counsel Conference

What words come to mind after hearing about this program?

Presenters:

- Robert Fox, Esq. - *Partner*
- Kathleen “Kate” Campbell, Esq. - *Partner*
 - Manko, Gold, Katcher & Fox, LLP

MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

HALLIBURTON

- David Martin, Esq. – *Senior Counsel, Litigation and HSE Law Practice Groups*
 - Halliburton Energy Services

What industry does your organization represent?

- Bio Tech
- Energy
- Environment
- Healthcare/Pharma
- Real Estate
- Transportation
- Other

Hypothetical

- Westeros Water Company, a Pennsylvania company, supplies public water to the residents of Winterfell Township in Pennsylvania. Westeros is considered a public utility regulated by the Pennsylvania Public Utilities Commission (PUC). For years, Westeros used chlorine to disinfect its water supply. Based on recent studies, Westeros became concerned that using chlorine as a disinfectant could create toxic byproducts. So, Westeros decided to switch from using chlorine to chloramine.



Hypothetical

- Dorne Chemical Company, a Delaware company, manufactures and supplies chloramine for use as a disinfectant for water supplies. Dorne supplied Westeros with detailed product specifications for the use of chloramines and advised Westeros that additional information is available on the internet. The information Dorne supplied to Westeros did not contain any warnings that chloramines have the possibility of accelerating the leaching of lead from older pipes and solder into drinking water supplies. However, there are studies on the internet that suggest that occurs.



Hypothetical (cont'd)



- Shortly after switching to the use of chloramines, Winterfell residents living in the Kings Landing Development (which has about 200 residents) began complaining about the taste of the water. One of the residents, Jon Snow, had the water tested. Prior to the switch to chloramines, lead levels in the Westeros water supply was 2 ppb. Snow's sample showed 15 ppb, just at the safe drinking water standard. Snow fears that even if Westeros stops using chloramines now, the chloramine already in the system will contribute to further lead leaching, rendering the water unsafe.

Hypothetical (cont'd)

- Snow and several of his neighbors took the following steps. They began buying and using bottled water. They also contacted the state representative for Winterfell Township, Ned Stark, to see what he could do.
- Stark lives in Winterfell, but not in Kings Landing. Stark stated that he would like to bring an action before the PUC to shut down the water supply system temporarily, require Westeros to provide bottled water, and ultimately to replace all lead pipes in Westeros.



Hypothetical (cont'd)



- Stark says that the PUC's rules allow for such interim emergency relief after a hearing takes place before an administrative law judge if Stark can prove that the water supplies are "unsafe, inadequate or insufficient." Under PUC rules, the judge must issue a ruling within 15 days of plaintiffs initiating the action. Stark agreed that he would bring the action in his capacity as a member of the legislature (he sits on the Safe Drinking Water Sub-Committee) and Snow agreed to be a party as well.

Hypothetical (cont'd)

- Snow and his neighbors also want to bring a class action against Westeros and Dorne seeking (a) an injunction to stop the use of chloramines and replace all the lead pipes, and (b) damages for (i) annoyance and inconvenience caused by the need to use bottled water and traffic during construction to perform the pipe replacement, and (ii) diminution of property values.



Put your plaintiff's hat on. What causes of action would you assert against Westeros and Dorne?

Do the Kings Landing residents have standing to bring a claim based on Dorne's alleged failure to warn Westeros?

No, not at all

What do you think?

Absolutely

Do you think plaintiffs can get injunctive relief without an exceedance of the lead standard?

- Yes
- No
- Unsure

As a defendant, would you want to be in federal or state court?

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Federal Court

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State Court

Do you think you can get class certification for the following?



If Ds settle by agreeing to stop use of chloramines and flushing the system, but not paying damages or replacing pipes can Ps recover attorney's fees?

- Yes
- No
- Unsure

Does Stark have standing to bring his PUC action?

No, not at all

What do you think?

Absolutely

If you are counsel for Westeros, do you want a joint defense agreement with Dorne?

- Yes
- No
- Unsure

Do you have any questions for the speakers?

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questions

0 upvotes

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