

PRESS RELEASE

Baker Donelson Secures Landmark Legionella Defense Win

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Baker Donelson attorneys Adam Green, Amy Champagne, Samuel Gregory and Katriel Statman secured a complete defense victory for NCH Corporation in the dismissal of a multiple fatality lawsuit alleging wrongful death arising from Legionella bacteria. The federal dismissal is believed to be the first reported case in the country involving allegations that a chemical water treater owed a duty to protect the public from Legionella-related illness through chemical water treatment. The lawsuit is also believed to be the first case involving allegations of wrongful death arising from Legionella exposure in Mississippi.

Four of the five plaintiffs in the lawsuit contracted Legionnaire's Disease from the cooling system at the Hotel Chester in Starkville, Mississippi, during their stays at the hotel in the summer of 2010. Two of the plaintiffs tragically died as a result and a third plaintiff was diagnosed with severe sepsis and respiratory failure and Legionella pneumonia. The plaintiffs alleged that NCH Corporation, as a chemical water treater, had a general duty to prevent or control Legionella bacteria and to protect the public from Legionnaire's Disease. The plaintiffs sought damages exceeding \$5 million in actual damages in addition to an undisclosed amount in punitive damages.

On August 30, 2016, United States District Court Judge Daniel P. Jordan III of the Southern District of Mississippi issued an 18-page Order granting NCH's Motion for Summary Judgment dismissing the case in its entirety. Judge Jordan ruled that plaintiffs neither established the reliability of their experts' relevant opinions nor demonstrated the duty and causation elements of their negligence claims.

There was no record evidence that the water treatment service at issue included Legionella prevention, that NCH ever offered those services or that Hotel Chester paid for them. The defense successfully demonstrated that "no statute or regulation establishe[d] a duty of care for water-treatment providers that would include Legionella prevention." The plaintiffs attempted to create these duties through their experts, William McCoy and Linden Witherell, who opined that a chemical water treater "had a duty to prevent or control Legionella growth" and that NCH "failed to timely and properly treat and service the cooling tower so as to prevent the formation of Legionella bacteria." The plaintiffs further alleged that NCH "failed to properly treat the existence of Legionella bacteria in Hotel Chester's cooling tower by providing the proper, industry-standard chemicals."

Citing defense counsel's "significant and detailed attack on both experts" the Court ruled that the reliability of the plaintiffs' experts opinions, which attempted to manufacture these duties, was not established. Judge Jordan noted that certain critical opinions conflicted with "essentially all of the regulatory, trade and scientific reports NCH brought to the Court's attention—including statements from Plaintiffs' own experts."

Adam Green, NCH's lead counsel in the case, is considered among the nation's foremost attorneys in chemical water treatment. Mr. Green noted, "This is a significant ruling in Legionella litigation because it rejects the notion that a chemical water treater can be charged with a general duty to prevent or control Legionella bacteria. There was no evidence that any method of prevention would completely prevent Legionella or realistically guarantee that the system would be Legionella-free. With respect to allegations of Legionella control, there is no known infectious dose level for Legionella. Without a known safe level at which no disease will occur, there is no known metric that could be set as an accepted level of control."

Attorneys in Baker Donelson's [Product Liability & Mass Tort Practice Group](#) have decades of trial experience and frequently serve as national, regional and local counsel in large class actions, multiple-suit and mass tort litigation and high stakes "bet the company" cases involving serious personal injury or death. The Firm has substantial experience defending manufacturers, distributors and service providers, including mining companies, solvent manufacturers, water treatment providers and radioactive waste generators for environmental and toxic tort claims. Baker Donelson is top listed by *Best Lawyers in America*® in the areas of Mass Tort Litigation/Class Actions – Defendants, Personal Injury Litigation – Defendants and Product Liability Litigation – Defendants.