

FIRM NEWS

MARCH 25, 2019  CASE HIGHLIGHT

B&D Litigators Secure Five Wins in Putative Nuisance Class Action Lawsuits



AmLaw Litigation Daily selected Principals [Megan Brillault](#) (New York), [Mike Murphy](#) (New York), and [Jimmy Slaughter](#) (Washington, DC) as Runners-Up for "Litigator of the Week" on March 22 for securing five defense decisions on behalf of firm client Waste Connections. On March 14, the Beveridge & Diamond team won dismissal of a putative nuisance class action lawsuit in the U.S. District Court for the Eastern District of Pennsylvania (EDPA) and defeated remand motions in four putative nuisance class action lawsuits in the U.S. District Court for the Eastern District of Louisiana (EDLA). The lawsuits in Pennsylvania and Louisiana alleged that odors from the defendant landfills constituted a nuisance and negligence and sought damages for large putative classes.

Bethlehem Landfill Company, Pennsylvania

[Baptiste v. Bethlehem Landfill Company](#), ___ F.Supp.3d ___, 2019 WL 1219709 (ED PA)

Plaintiffs representing 8,400 homeowners [sued Bethlehem Landfill Company](#) in Bethlehem, Pennsylvania in a putative nuisance class action lawsuit, alleging liability for public and private nuisance and negligence for odors, and seeking punitive damages and injunctive relief.

U.S. District Judge Chad Kenney dismissed the suit, ruling that the plaintiffs failed to state a claim for a public or private nuisance or negligence. --- F.Supp.3d ----, 2019 WL 1219709. The court held:

- The Plaintiffs could not plead a public nuisance regarding the alleged odors because they did not show specific impacts on them beyond the impacts on the public at large;
- The Plaintiffs could not plead a private nuisance because private nuisance is limited to claims by neighboring landowners; and
- The negligence claim failed because the Plaintiffs could not identify a duty of the landfill to prevent offsite odors, and could not rely on allegations of regulatory violations to establish a standard of care for negligence.

Pat Shea, Senior Vice President and General Counsel of Waste Connections, commented that "The company is pleased with the decision dismissing the complaint against Bethlehem Landfill and appreciates the court's close attention to how landfills are thoroughly governed by state law and permits, not private lawsuits," said. "Waste Connections works diligently to run best-in-class landfills with minimal odors and defends aggressively unwarranted allegations that landfills – which are critical public infrastructure – could somehow be a nuisance."

Principal [Mike Murphy](#) (New York) argued the successful motion to dismiss and with him on brief were Principals [Jimmy Slaughter](#) (Washington, DC), [John Paul](#) (New York), and [Nicole Weinstein](#) (New York), as well as Associate [Roy Prather](#) (Baltimore). Robert Donchez of Florio Perrucci Steinhardt & Cappelli was local counsel.

In addition to the Litigator of the Week Runners Up award, *AmLaw Litigation Daily* wrote about the case in its [March 20 edition](#), quoting Jimmy Slaughter. View additional news coverage of this decision in [Waste Dive](#), [Waste360](#), and [Law360](#).

Jefferson Parish Landfill, Louisiana

[Ictech-Bendeck v. Progressive Waste Solutions of Louisiana](#), ___ F.Supp.3d ___, 2019 WL 1199105; [Thompson v. Louisiana Regional Landfill Company](#), ___ F.Supp.3d ___, 2019 WL 1199103; [Landry-Boudreaux v. Progressive Waste Solutions](#), ___ F.Supp.3d ___, 2019 WL 1199104; [Bernard v. Progressive Waste Solutions](#), ___ F.Supp.3d ___, 2019 WL 1199102 (ED LA)

Judge Susie Morgan of the Eastern District of Louisiana denied the Plaintiffs' motions to remand to state court in four separate putative class actions alleging that odors from Jefferson Parish Landfill located in Waggaman, Louisiana, near New Orleans, constituted a nuisance. The Defendants, led by the Waste Connections Defendants, removed the lawsuits to federal court last year pursuant to the Class Action Fairness Act (CAFA). The decisions address complex and important issues regarding CAFA.

The *Ictech-Bendeck v. Progressive Waste Solutions of Louisiana* case -- the first filed class action -- presented a particularly challenging issue of whether the Plaintiffs had sufficiently alleged that in-state defendant Jefferson Parish's conduct, in relation to the conduct of all defendants, formed a significant basis for the claims asserted in the Complaint. Judge Morgan ruled in a [published decision](#) that "the state court petition in this case states merely that the Landfill was owned by Defendant Jefferson Parish and operated pursuant to contracts issued by Jefferson Parish, but does not sufficiently differentiate between its conduct and the conduct of the other Defendants. In light of the narrow construction of the local controversy exception and the burden of proof on Plaintiff to show the exception applies, the Court finds Plaintiff has not met his burden of showing Jefferson Parish's alleged conduct forms a significant basis of the claims asserted. As a result, the local controversy exception does not apply."

Because the *Ictech-Bendeck* case was filed first, the Court ruled in separate published decisions that the three later-filed class actions ([Thompson v. Louisiana Regional Landfill Company](#); [Landry-Bourdreaux v. Progressive Waste Solutions](#); [Bernard v. Progressive Waste Solutions](#)) would remain in federal court. Writing in *Thompson*, Judge Morgan explained that "[t]he defendants, the proposed classes, and the allegations in the cases are nearly identical in the two cases. The local controversy exception does not apply to the instant case because another class action asserting similar allegations was filed against the same defendants on behalf of a largely identical class."

All four of the decisions address and reject additional arguments the Plaintiffs made under CAFA for remand to state court.

The Waste Connections Defendants are represented by [Jimmy Slaughter](#), [Megan Brillault](#), [Mike Murphy](#), and [John Paul](#) of Beveridge & Diamond PC, and David Taggart, Michael Mims, and John Stanton of Bradley, Murchison, Kelly & Shea. Principal [Megan Brillault](#) (New York) led the Defendants in presenting oral arguments against the remand motions.

View additional news coverage of the Jefferson Parish decisions in [Law360](#).

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