IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

RECEIVED
Nov 04 2026
S.C. SUPREME COURT

CLYDE MARCUS JONES, II; *on behalf of himself and all others similarly situated*,	§	
Plaintiff,	§	
vs.	§	Civil Action No. 3:24-1281-MGL
Duke Energy Corporation and Duke Energy Carolinas, LLC,	§	
Defendants.	§	

ORDER CERTIFYING QUESTIONS OF LAW TO THE SOUTH CAROLINA SUPREME COURT

I. INTRODUCTION

This case concerns tort claims arising from alleged polychlorinated biphenyl (PCB) contamination of Lake Wateree, a man-made reservoir in South Carolina. Plaintiff Clyde Marcus Jones, II, on behalf of himself and over 2,000 other waterfront property owners on Lake Wateree, initiated this putative class action against Defendants Duke Energy Corporation and Duke Energy Carolinas, LLC (collectively, Defendants). Plaintiff alleges Defendants contaminated Lake Wateree with PCBs through historical mosquito control practices and that such conditions have interfered with Plaintiff's property rights, diminished the value of his property, and interfered with his use and enjoyment of his property.

Plaintiff now asserts three causes of action: strict liability for an ultrahazardous condition, nuisance, and negligence/gross negligence. Plaintiff is no longer pursuing his claim for trespass. Defendants argue Plaintiff's remaining claims fail because his real property has not been

physically invaded by PCBs. Additionally, Defendants argue Plaintiff should not be allowed to recover "stigma damages" for alleged diminution in property value based on market fears.

Defendants moved to certify these two questions to the South Carolina Supreme Court. Plaintiff opposes certification on the grounds under existing South Carolina precedent, a physical invasion of property is unnecessary for claims of strict liability, nuisance, and negligence/gross negligence. Plaintiff also maintains he is seeking damages for diminution in value and loss of use and enjoyment of his alleged waterfront property caused by PCB contamination of Lake Wateree, rather than stigma damages.

Because this Court determines existing South Carolina precedent fails to resolve these questions, and their resolution may be determinative of Plaintiff's claims, the Court previously granted Defendants' Motion to Certify Questions of Law to the South Carolina Supreme Court.

II. LEGAL STANDARD

Certification is governed by Rule 244 of the South Carolina Appellate Court Rules:

> The [South Carolina] Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

Rule 244(a), SCACR.

The certification order must set forth "the questions of law to be answered, all findings of fact relevant to the questions certified, and a statement showing fully the nature of the controversy in which the questions arose." Rule 244(b), SCACR. The order my also include "documents or other evidentiary materials" for the South Carolina Supreme Court's consideration. *Id.*

III. NATURE OF THE CONTROVERSY

Lake Wateree is a man-made reservoir Defendants and their predecessors created in 1919 by damming the Wateree River. It covers more than twenty-one square miles and has more than 181 miles of shoreline. Defendants have owned and operated the lake throughout the relevant period and still do today. Plaintiff is one of over 2,000 residential homeowners who Plaintiff alleges own water-front property on Lake Wateree.

In 1923, Defendants began a mosquito control program on Lake Wateree, which was intended to rid Lake Wateree of nuisance mosquitos, impacting, among other groups, property owners around Lake Wateree. Plaintiff alleges that by no later than 1942, and continuing into the early 1970s, Defendants added waste oils to the mosquito control program's larvicide regimen including transformer oil. Plaintiff also alleges some percentage of the transformer oil was contaminated with PCBs, which are known human carcinogens and persistent chemicals that bioaccumulate in the environment.

Since 2010, the EPA and South Carolina's Department of Health and Environmental Control (now known as the South Carolina Department of Environmental Science (DES)) have annually tested fish tissues and issued fish consumption advisories for Lake Wateree, warning against the regular consumption of certain species of fish due to PCB contamination. The parties strongly dispute whether Defendants are the source of the PCBs found in the fish of Lake Wateree. It is unnecessary, however, to resolve that dispute in order to address the questions presented for certification here.

Plaintiff argues the PCB contamination in Lake Wateree has caused a direct injury to his property and that of alleged fellow waterfront property owners on Lake Wateree. He contends it

interferes with Plaintiff and the property owners' use and enjoyment of their properties and diminishes the values of the properties.

Plaintiff is now pursuing three causes of action: strict liability for an ultrahazardous condition, nuisance, and negligence/gross negligence. Prior to this Order, Plaintiff moved to certify a class of property owners surrounding Lake Wateree, and Defendants moved for summary judgment of Plaintiff's claims. This Court dismissed both motions without prejudice. The factual record has been developed through discovery, which is now closed.

Concerning the certified questions, Defendants first contend there is no evidence PCBs have physically invaded Plaintiff's tangible property. They argue there should be a definitive declaration South Carolina is a physical impact state, requiring the constituents of concern to invade the property to support any claim for strict liability, nuisance, or negligence.

Plaintiff does not argue there was a physical invasion of his real property. Instead, Plaintiff argues that, under existing precedent, a physical impact is unnecessary for his claims, and that to require physical impact for these torts would result in significant, unresolvable harm to neighboring landowners.

This Court notes the South Carolina Supreme Court's decision in *Babb v. Lee Cnty. Landfill SC, LLC*, 747 S.E.2d 468 (S.C. 2013), offers some guidance on this question, but it fails to entirely resolve the matter. At a minimum, *Babb* lacks any discussion of a strict liability cause of action. *Clark v. Greenville Cnty.*, 437 S.E.2d 117 (S.C. 1993), also fails to answer the question because, in the Court's view, that case more accurately addressed a causation issue rather than one of physical invasion.

If a physical invasion is necessary for a claim of negligence, strict liability, or nuisance, then the issue could be dispositive. It is appropriate to assume for these purposes the remaining elements of those causes of action have been or can be satisfied.

Second, Defendants contend the damages Plaintiff seeks are in the nature of stigma damages and stigma damages are unrecoverable under South Carolina law. Defendants believe Plaintiff seeks stigma damage because of the lack of a physical impact to his property and because the damages arise out of purported market fear, allegedly traceable to the presence of PCBs in Lake Wateree. They reason market fear allegedly caused the reduced property values, longer time on the market, and an inability to sell the property all because of stigma arising from the nearby PCB contamination.

Plaintiff disputes that he is seeking to recover stigma damages, instead arguing his damages are for actual, ongoing diminution in value of his property caused by Lake Wateree's unremediated PCB contamination and for interference with Plaintiff's and the class members' uses of their properties.

The parties produced expert reports in this case which will be submitted with this Order to the South Carolina Supreme Court, along with other relevant materials. One of Plaintiff's experts estimates the loss in value of each putative class member property is 12% based upon the diminished use of the defining characteristic of these properties: unfettered access to the water and its aquatic resources. Defendants argue Plaintiff's damages experts' asserted reduction in market value is caused by buyer knowledge of the PCBs and that this is squarely within the concept of "stigma damages" discussed in *Chestnut v. AVX Corp.*, 776 S.E.2d 82 (S.C. 2015).

The South Carolina Supreme Court in *Chestnut* expressly declined to decide whether South Carolina permits stigma damages, explaining that "[t]he creation of a factual record will allow us

to decide whether to adopt a 'no stigma damages rule;' an 'all stigma damages rule;' or a modified rule." *Id.* at 228. Because the factual record in this case has been developed and discovery has concluded, it presents a suitable opportunity for the South Carolina Supreme Court to now decide this issue.

IV. CERTIFIED QUESTIONS OF LAW

This Court respectfully requests the South Carolina Supreme Court resolve the following questions of law:

1. Is South Carolina a "physical impact" state, meaning that environmental impacts (PCBs in this case) must be physically present on the tangible real property owned by a plaintiff for the plaintiff to be able to assert tort claims for strict liability, nuisance, and negligence?

2. Is South Carolina a "no stigma damage" rule state?

V. CONCLUSION

This Court **CERTIFIES** the questions above to the South Carolina Supreme Court under South Carolina Appellate Court Rule 244.

The Clerk shall forward a copy of this Order to the South Carolina Supreme Court under this Court's official seal, together with the following materials from the record in this case:

- Amended Complaint and attached exhibits
- Amended Answer
- Order Granting in Part and Denying in Part Defendants' Motion to Dismiss the First Amended Complaint
- Plaintiff's Motion for Class Certification, memorandum in support, and attached exhibits;
- Defendants' Memorandum in Opposition to Plaintiff's Motion for Class Certification and attached exhibits;

- Plaintiff's Reply in Support of Motion for Class Certification and attached exhibit;
- Defendants' Motion for Summary Judgment, memorandum in support, and attached exhibits;
- Plaintiff's Response Brief in Opposition to Defendants' Motion for Summary Judgment and attached exhibits;
- Defendants' Amended Reply in Support of Their Motion for Summary Judgment and attached exhibits;
- Defendants' Motion in Limine and Brief in Support to Exclude Evidence and Testimony Referencing Plaintiff's Purported "Riparian and/or Littoral" Rights and "Shoreline" or "Lakefront" Property and attached exhibits;
- Plaintiff's Response in Opposition to Defendants' Motion to Exclude Reference to Plaintiffs' Rights as Lakefront Property Owners and attached exhibits;
- Defendants' Reply in Support of its Motion in Limine to Exclude Evidence and Testimony Referencing Plaintiff's Purported "Riparian and/or Littoral" Rights and "Shoreline" or "Lakefront" Property and attached exhibits.

IT IS SO ORDERED.

Signed this 3rd day of November, 2026, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK
BY: DEPUTY CLERK