Seventh Circuit Allows Claims Splitting in Downers Grove Environmental Case

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The U.S. Court of Appeals for the Seventh Circuit recently issued an opinion reversing the trial court's dismissal of *Arrow Gear Co. v. Downers Grove Sanitary District*, Nos. 90-1509 & 09-4030, which concerned the Ellsworth Industrial Park Superfund Site in Downers Grove, Illinois.

In 2004, a class action lawsuit (*Muniz v. Rexnord*) was filed on behalf of area residents alleging that their groundwater had been contaminated by companies in the Ellsworth Industrial Park. The *Muniz* lawsuit asked for damages, mainly for impairment of property values. The defendants agreed with the plaintiff class to a settlement of approximately $16 million, and the defendants agreed to settle contribution actions that they had against each other.

While the *Muniz* case was pending, Arrow Gear filed a separate action for contribution under the Superfund statute against several companies for, among other things, payment of hooking up Downers Grove residents to Lake Michigan water. Some of those companies were also defendants in the *Muniz* class action case.

Once the *Muniz* case was dismissed with prejudice as a result of the class action settlement, the defendants in the *Arrow Gear* case argued that the *Muniz* dismissal was *res judicata* because *Arrow Gear* arose out of the same facts as *Muniz* (the groundwater contamination caused by the leakage of industrial solvents at the Ellsworth Industrial Park). The district court agreed and dismissed the case. The Seventh Circuit reversed and ruled that the *Muniz* dismissal was not *res judicata*:

"Coming finally to the merits, we face the adamant insistence by the defendants that a dismissal with prejudice bars, by principles of res judicata, a further suit arising from the same set of facts, regardless of what the parties intended. This is false. Litigants who want to split a claim among different suits can do so (subject to a qualification about to be noted). . . .

"When the Muniz case was settled, the EPA, moving with the majestic deliberateness characteristic of government agencies, was still investigating contamination by the firms that had been defendants in that case (which include Arrow and Precision) and was expected to impose additional costs on them, and may continue doing so because its investigative activities have not concluded. Already it is seeking $1 million to reimburse it for the cost of investigating. And because the Muniz settlement did not address the contamination of the class members' water supply, the defendants in that suit have, separately from the $16 million settlement of the Muniz suit, agreed to connect the houses of the class members to another water-supply system at a cost of some $4 million.

"It would have been difficult to settle all possible claims by the cross-claiming defendants before their total liability was determined. So claim splitting-allocation of the $16 million first, and of the additional $5 million (which will doubtless grow) second-made sense, and the district court should not have forbidden it. True, the order dismissing Muniz had not mentioned the settlements, and some of them had postdated the dismissal. But as parties to the settlements the defendants were bound by them regardless of when they were made and whether they were mentioned in a judicial order."

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