

9-1-2001

Martin Marietta Materials Southwest, Ltd. v. St. Paul Guardian Ins. Co., 145 F. Supp. 2d 794 (N.D. Tex. 2001)

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to adjudicate collectively all of the conflicting water rights claims on a source of water, without being hindered by the United States' invocation of its sovereign immunity." The Commonwealth asserted that the Amendment of 1952 applied retroactively to proceedings surrounding the 1942 and 1944 permits. The Amendment "allow[ed] the United States to be joined as a defendant in any proceeding for the adjudication or administration of water rights 'where it appears that the United States is the owner of or is in the process of acquiring water rights.'" The United States asserted the court could not apply the Amendment retroactively, nor had Congress intended to apply it in such a way.

The court relied on *Landgraf v. USI Film Products* and *E. Enters. v. Apfel* to determine whether the court could apply a statute or amendment retroactively. The general rule called for strict interpretation and application according to the precise terms of such legislation. "The natural extension of this maxim of interpretation was that statutory waivers of sovereign immunity are not to be applied retroactively." The specific rule of *Landgraf* required a court to determine whether a piece of legislation "attaches new legal consequences" to prior events. The court found that in the instant case, application of the Amendment would impair the rights of the Navy allowed by the 1944 permit and would impose additional duties upon the Navy. As the retroactive application would have an effect on the 1944 permit, the court resolved not to retroactively apply the Amendment in this case.

Since the Commonwealth could not prove clear congressional intent favoring the retroactive application of the Amendment, the court held that the Amendment did not apply to the Navy's permits held before 1952. The court granted declaratory relief, allowing the United States to use its sovereign immunity to avoid local administrative proceedings regarding the 1944 permit.

Katharine J. Ellison

Martin Marietta Materials Southwest, Ltd. v. St. Paul Guardian Ins. Co., 145 F. Supp. 2d 794 (N.D. Tex. 2001) (holding a decrease in downstream water was the natural and foreseeable result of diverting a creek that could conceivably harm downstream users, and neither a duty to defend nor indemnify existed on behalf of the insurer).

Martin Marietta Materials Southwest, Ltd. ("Marock") owned a facility near Big Sandy Creek ("Creek"). St. Paul Guardian Ins. Co. ("St. Paul") provided Marock with primary general liability coverage. Trinity Materials, Inc. ("Trinity"), located downstream of Marock and holding senior water rights to the creek, alleged Marock diverted the creek for construction purposes without a valid water permit and, therefore, deprived Trinity of the water it needed to operate. Trinity

sued Marock for negligence. Marock sought a declaratory judgment maintaining St. Paul had a duty both to defend and to indemnify Marock in the suit. Marock and St. Paul both moved for summary judgment.

As the determinative issue in this case, the court looked to whether Trinity's injuries resulted from an accident. The court agreed with Trinity and found foreseeability, not intent, as the threshold at bar. The court maintained Marock intentionally diverted the creek while simultaneously lacking specific intent to cause injury. However, the court did not deem the natural and predictable consequences of such acts accidental. Thus, Trinity's injuries were not the result of an accident.

Furthermore, Trinity argued a decrease in available downstream water was a natural and foreseeable result of diverting the creek. The court agreed and found the very presence of a water permit system reflects the finite nature of water resources, such as this creek. Therefore, although Marock may have lacked knowledge as to the identity of the downstream users, a decrease in downstream water was a natural and foreseeable result of diverting the creek, which harmed downstream users.

In order to indemnify St. Paul, Marock argued Trinity's negligence allegations proved the accidental nature of the harm. The court disagreed, finding that the diversion was intentional, but not negligent. Therefore, St. Paul did not have a duty to defend or indemnify Marock. Finally, Marock argued it did not intend to inflict harm on Trinity, however, the court reiterated it found foreseeability, not intent, as the issue in this case.

Willow Arnold

STATE COURTS

ALABAMA

City of Dothan v. Eighty-Four West, Inc., No. 2991351, 20001 Ala. Civ. App. LEXIS 313 (Ala. Civ. App. June 15, 2001) (holding the "common enemy rule" entitles a property owner to construct a dam on his property to fend off oncoming surface water).

The City of Dothan ("Dothan") appealed a trial court order that found a landowner, Flowers, was authorized to construct a dam on his property pursuant to the "common-enemy" rule. Flowers owned property over which an easement ran to allow drainage of surface water from his property through adjacent property. In 1997, Flowers applied for a permit from Dothan to build an earthen dam on his property to prevent surface water from an upper property not owned