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Indus. Enclosure Corp. v. N. Ins. Co. of N.Y., No. 97 C 6850, 2000 U.S. Dist. LEXIS 11567 (N.D. Ill. July 26, 2000)

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EISs in connection with the proposed projects, the court found the Corps' issuance of FONSI's unsupportable, leaving many relevant environmental questions unanswered. The court also noted the Corps' issuance of the permits disregarded the directions of the Deputy Assistant Secretary of the Army, who, while the permit applications were pending, instructed the Corps not to issue any further permits for floating-casino projects in the counties where the proposed projects were sited before the completion of a Programmatic EIS addressing casino development in the region.

The court examined the Corps' treatment of direct impacts, such as dredging, impacts on water quality, wetlands, aquatic habitat, intake of larvae and eggs, and aquifers, and the effects of scouring and shoaling on the development area. Although the court found the Corps' analysis of several of these direct impacts sufficient, in discussing the projects' effects on aquatic life, intake of larvae and eggs, and impacts on wetlands, the court found the Corps' documentation conclusory and lacking in substantive analysis. The court next reviewed the Corps' analysis of indirect impacts. The court found the Corps' jurisdiction encompassed the "heart of the development projects." Moreover, the Corps expected secondary development to flow from these projects. The Corps' failure to analyze the impacts of these future projects rendered its review of indirect impacts on the development area insufficient. In examining the Corps' consideration of cumulative impacts, the court found the Corps' conclusory analysis dismissing the significance of such impacts inadequate because over twenty casinos had been permitted previously along the Mississippi coast and significant controversy already existed over the cumulative impacts of such development.

Finally, FOE claimed the proposed projects necessitated the preparation of EISs because the foreseeable resulting impacts were "significant" by definition. The court found the "context and intensity" of the foreseeable impacts, including the ecologically critical nature of the project areas and the highly controversial nature of the impacts, qualified the impacts as "significant." The court concluded the Corps must prepare EISs, including adequate analysis of all foreseeable direct, indirect, and cumulative impacts noted in the administrative record, before it may issue any permits for the casino projects. Thus, the court granted summary judgment in favor of FOE.

Lucinda Henriksen

Indus. Enclosure Corp. v. N. Ins. Co. of N.Y., No. 97 C 6850, 2000 U.S. Dist. LEXIS 11567 (N.D. Ill. July 26, 2000) (holding, within the meaning of an insurance policy exclusion, the term flood is unambiguous, and water that flows into an area that is normally dry is a flood even if it is caused artificially).

Industrial Enclosure Corporation ("IEC") filed a claim for breach of contract against Northern Insurance Company of New York ("Northern") for denying coverage when water severely damaged IEC's plant. IEC also claimed that Northern's parent company, Maryland Casualty Company ("Maryland"), committed consumer fraud when one of its agents sold the insurance policy to Northern. IEC moved for summary judgment on the issue of coverage and Maryland moved for summary judgment on the consumer fraud claim. The court denied both motions.

IEC claimed a back-up or overflow from the sewers and drains damaged its plant, and therefore, the policy covered the losses. IEC's insurance policy contained an exemption that it did not cover floods. Northern claimed that flood or surface water caused the damage, and therefore, the policy did not cover the losses. Northern offered the testimony of an expert, Gerald Robinson, who stated the sewer and drain back-up were not the sole cause of the damage. Robinson contended South Tributary ("Tributary") overflowed its banks into the JB building, located east of the Tributary. Robinson stated the wall of the JB building collapsed, releasing a large volume of water, which damaged the IEC plant. IEC argued Robinson's conclusions were unsupported by facts. The court found Robinson's indirect method to show the sewer and drain back-up could not have caused the damage was an acceptable way to reach his conclusion. The court allowed Robinson's testimony.

IEC also contended the damage was not the result of a flood and the definition of flood in the policy was ambiguous. IEC claimed that because the water was redirected, it did not constitute a flood within the meaning of the policy. The court disagreed citing precedent that a term is only ambiguous if it is subject to more than one interpretation. The court concluded that even if the policy did not define the term, the term was not ambiguous.

IEC further claimed the facts in the case proved the damage resulted from water released from the JB building. Although the court agreed that water was released from the JB building, the facts showed that after the water flowed from the JB building it flowed back into the Tributary and proceeded to flood the IEC property. The court concluded the water overflowed from a natural water course, and therefore, fit the policy's flood exemption.

IEC stated the water was diverted from its regular flow, through the JB building, and this diversion caused the damage. IEC supported this contention through various cases defining surface water exclusions. The court refused this construction of the facts. The court ruled that even if the damage followed from the JB building's collapsed wall, the facts did not bar Northern's reliance on the policy exemption.

IEC also claimed Maryland violated the Illinois Consumer Fraud Act. IEC contended Maryland sold them a policy that covered sewer back-up but excluded this problem's most common cause. IEC further

stated the policy had ambiguous, undefined terms. IEC also argued Maryland failed to deliver the policy within a reasonable time.

The court concluded the Northern representative was aware of IEC needs and did not tell IEC of the new provision for a surface water exclusion in the policy. This conclusion, along with the determination that Maryland delayed delivery of the policy to IEC in a reasonable time, created the possibility that IEC was deceived. The court therefore denied both parties' motions for summary judgment.

Lynne Stadjuhar

Sheegog v. Washington, No. 99 C 7283, 2000 U.S. Dist. LEXIS 9863 (N.D. Ill. July 10, 2000) (holding complaint stated a claim on which relief could be based in section 1983 claim for endangering health by virtue of unsafe drinking water at a correctional facility).

Oliver Sheegog ("Sheegog"), an inmate incarcerated in the Stateville Correctional Center ("Stateville"), brought a pro se section 1983 action against several Stateville officials and the Illinois Department of Corrections after exhausting his administrative remedies. He alleged his Eighth Amendment rights were violated due to the drinking water at the prison being contaminated with unacceptable radium levels. In 1992, Stateville received notice that its drinking water exceeded the maximum allowable levels of radium, and of its obligation to post the notice. Test results from 1992 and 1993 showed "gross alpha" and radium levels exceeded the Illinois Pollution Control Board's maximum allowable concentrations.

Sheegog had been a Stateville inmate since 1997. His complaint did not refer to any testing results prior to 1993, and instead, asserted the water was still contaminated at the time his complaint was filed. Sheegog contended he was induced to drink the water without knowledge of the potential health risks caused by doing so. The Stateville officials filed a 12(b)(6) motion to dismiss.

The Eighth Amendment imposes a duty to provide humane conditions for prisoners. These conditions include the right to food, and by logical extension, water, that does not present an immediate danger to the health and well-being of those who consume it. Liability under the Eighth Amendment has an objective and a subjective component.

Under the objective component, the hardship alleged must be objectively, sufficiently serious. An inmate need not show a present physical injury. Thus, Sheegog's complaint satisfied the objective component because, even though he suffered no present injury, he alleged a continuous threat to his health. The threat was Stateville's drinking water continued to contain an excessive level of radium that endangered his health.