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High Court Won't Stop Plaintiffs from Using State Court Actions to Flout Federal Rulings

Syngenta Crop Protection, Inc. v. Henson,
___ U.S. ___, 123 S.Ct. 366 (U.S. 11/5/02)

In *Syngenta Crop Protection, Inc. v. Henson,* the United States Supreme Court holds that federal courts may not accept removal of a case from state court on the sole basis that actions taken in the state court are calculated to frustrate the terms of a settlement previously entered into in the federal court. The conflicting rulings of the state court do not of themselves confer jurisdiction on the federal court. In order to remove a case to federal court under 28 U.S.C. §1441, the case must be one that could have been brought originally in federal court.

The plaintiff filed suit against Syngenta Crop Protection, Inc. originally in Louisiana state court (the *Henson* case), asserting a number of tort claims arising from the manufacture and sale of a chlordimeform-based insecticide. A similar case was already pending as a class action in a federal district court in Alabama (the *Price* case). The Louisiana state court stayed proceedings in *Henson* to allow the *Price* federal class action to go forward. The plaintiff intervened and participated in *Price*. The federal case was ultimately settled, with the plaintiff joining in the settlement. As part of the *Price* settlement, the plaintiff agreed to dismiss the *Henson* case.

Following the court approval of the *Price* settlement, instead of dismissing *Henson* as agreed, the plaintiff returned to Louisiana state court and successfully argued to allow the state court action to proceed, convincing the state court that the federal *Price* settlement barred only some of the claims raised in his state court action. Syngenta immediately removed the matter to the Middle District of Louisiana, asserting federal jurisdiction under the All Writs Act and federal supplemental jurisdiction. The case was transferred to the Southern District of Alabama – the original forum of the federal class action – which accepted removal of the *Henson* case and then promptly dismissed the case because it violated the terms of the *Price* settlement. The Alabama district court's order included sanctions against plaintiff's counsel for misrepresentations to the Louisiana state court.

On appeal to the Eleventh Circuit Court of Appeals, the court of appeal held that the *Henson* case was not properly removed to federal court and vacated the dismissal of the case, but affirmed the order of sanctions. The U.S. Supreme Court granted certiorari to review the case and decide whether a case could be removed from state to federal court on the authority of the All Writs Act in order to prevent the frustration of orders the federal court has previously issued.

The All Writs Act, 28 U.S.C. § 1651(a), provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions...." In conflict with the position taken in this case by the Eleventh Circuit, several other circuits had ruled that the All Writs Act endorses removal of state court cases to federal court when the state court action would frustrate rulings made by the federal court.

The Supreme Court agreed with the Eleventh Circuit that the All Writs Act itself does not support removal. The Court began by reiterating the basic tenets that the right of removal is based entirely on statute and that the statutory procedures for removal are strictly construed. The Court reasoned that the defendant could not resort to the All Writs Act to avoid complying with the statutory requirements for removal – the most basic of which is the existence of original subject-matter jurisdiction within the federal courts. Syngenta conceded that the All Writs Act did not provide federal courts with an independent grant of jurisdiction, as it confines federal courts to issuing process in the aid of existing statutory jurisdiction. Thus, the Court held that the All Writs Act could not confer the original jurisdiction required by the removal statute.

Syngenta also argued that a combination of the All Writs Act and the doctrine of ancillary enforcement jurisdiction supported removal jurisdiction. The Court was not impressed with this argument, reasoning that ancillary jurisdiction exists only after the federal court establishes original jurisdiction. Thus, the Court held that ancillary jurisdiction, by its very nature, could not confer the original jurisdiction required for removal.

In passing, the Supreme Court noted that when dealing with removed actions, a suit brought "in a state court must remain there until cause is shown for its transfer under some act of Congress." This could be construed as an invitation for Congress to alter the removal statute to remedy the scenario presented and allow for removal jurisdiction where a party seeks to "effectuate and prevent the frustration of [federal court] orders." *United States v. New York Tel. Co.,* 434 U.S. 159, 172 (1977). As plaintiff attorneys increasingly find ways to circumvent rulings of federal courts by resorting to the state courts we hope that legislative relief is on the way.

- *L. Etienne Balart*

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2nd Cir. Finds Hydraulic Hose Manufacturer Liable to Firefighter Injured by Hose Rupture

Holloway v. Midland Risk Insurance Company,
36262 (La.App. 2 Cir. 10/30/02), ___ So. 2d ___.

While responding to an accident, plaintiff, a firefighter, injured his hand when a high-pressure hydraulic hose ruptured and blasted hydraulic fluid through his glove. Plaintiff filed suit against the manufacturer of the hydraulic rescue equipment, Holmatro, Inc., under the LPLA for failure to warn and for the defective equipment. The jury assessed Holmatro with 100% fault and awarded plaintiff over $360,000. Holmatro appealed the judgment and appealed the trial court's denial of its summary judgment, in which it alleged plaintiff was barred from recovery under the rescuer's doctrine.

The professional rescuer's doctrine, or the "fireman's rule," provides that a professional rescuer injured in the performance of his duties "assumes the risk" of injury and is precluded from recovering damages. The rule is a consideration in the determination of the risks included in the scope of a defendant's duty and to whom the duty is owed, and is usually applied in claims by a fireman against the person who was responsible for starting the fire. The Second Circuit refused to apply the rescuer's doctrine in this case, holding that the plaintiff was not seeking recovery against the person who created the emergency situation, but was seeking recovery from the manufacturer of the product that failed while plaintiff was performing his duties.

Holmatro also contended there was insufficient evidence to support the verdict that the hose was defective. Plaintiff's expert testified that plaintiff's injury was caused by a design defect of the hose, which rendered the hose more susceptible to fatigue and shortened its life expectancy from eight to five years. The expert testified that, more likely than not, the hose failed because of repetitive flexing or bending of the hose, which caused the fatigue. The expert further testified that had the hose had a bend restrictor – a device that would limit the extent of the flexing of the hose, which was available to manufacturers in 1992 (when the hose at issue first was used) – it would have taken more use of the hose and more force to cause the rupture. Defendant's expert, however, testified that the bend restrictor would have increased the life of the hose only slightly. Nevertheless, defendant's expert stated that the hose failure could have been caused by fatigue and that the bend restrictor would have

contributed to the structural integrity of the hose. The court held that the jury could reasonably have found that the use of the bend restrictor more probably than not would have prevented plaintiff's injury by preserving the integrity of the hose throughout its normal life expectancy. The court further held that the evidence supported a finding that the gravity of the potential damage caused by a rupture of the hose outweighed the small burden on Holmatro to adopt the alternative design of incorporating the bend restrictor.

- Stacie M. Hollis

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La. Fifth Circuit Affirms That Pre-1982 Blood Claims Sound in Product Liability -- Not Med Mal

In re Medical Review Panel of Conerly,
02-485 (La. App. 5 Cir. 11/13/02), ___ So. 2d ___.

Plaintiff received two blood transfusions as an infant in September and October of 1979. Approximately eighteen years later, she was diagnosed with hepatitis C. After being told that her condition was likely due to the blood transfusions, plaintiff filed a claim against the hospital with the Patients' Compensation Review Board in 1997, within one year after the discovery of the condition. The hospital argued that under the medical malpractice statute, plaintiff's claim had prescribed. The trial court agreed with the hospital, but the appellate court agreed with the plaintiff and reversed.

Louisiana's Fifth Circuit found that the trial court failed to consider the Supreme Court decision in *Williams v. Jackson Parish Hospital,* 00-3170 (La. 10/16/01), 798 So.2d 921, and erroneously applied the reasoning of *Sewell v. Doctor's Hospital,* 600 So.2d 577 (La. 1992), which enumerated defective blood as one of the things covered under the Medical Malpractice Act. In making its decision, the trial court seemingly ignored the fact that *Boutte v. Jefferson Parish Hospital Service Dist. No. 1,* 99-2402 (La. 4/11/00), 759 So.2d 45, citing *Sewell* was overruled by the Supreme Court ruling in *Williams.*

The Fifth Circuit reversed the lower court decision, finding that plaintiff's claim, insofar as it encompassed products liability for blood products, was not prescribed and the Louisiana Supreme Court decision in *Williams* was applicable. Plaintiff's medical malpractice cause of action, however, began to run when plaintiff received the tainted transfusion. Consequently, plaintiff's malpractice claim prescribed under the three-year peremptive period delineated by the medical malpractice statute.

This case illustrates the effect of the rule reported in a previous E*Zine article on *Williams v. Jackson Parish Hospital* (see February, 2002 edition) which held that all pre-1982 claims arising out of defective blood transfusions are strict products liability claims and are not traditional medical malpractice claims. As such, the three-year medical malpractice prescriptive period does not apply. Instead, these claims sound in products liability and are viable for one year from the date of discovery.

- Mary Mitchell Felton

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3d. Cir. Strikes Punitives but Affirms Large Compensatory Award to Benzene-exposed Seaman

Warren v. Sabine Towing and Transportation Company, Inc.,
01 0573-CA, ___ So. 2d ___.

James Warren worked for Sabine Towing from 1944 to 1983, during which time he was exposed to benzene and benzene-containing products both during the shipping of these products and during the loading and unloading of the products at facilities operated by various oil companies. In 1998 he was diagnosed with myeloproliferative disorder (a blood disease) which subsequently evolved into acute myelogenous leukemia (AML) leading to his death on March 23, 2000.

Warren brought suit against his employer Sabine and 25 other defendants claiming benzene exposure caused his AML. His widow continued the suit after his death. Most of the original defendants settled before trial. The case ultimately went to trial with only the following defendants remaining: Chevron, Gulf, Conoco, Marathon, and Dow. After a bench trial in Calcasieu Parish Judge Lyons found against the defendants and awarded plaintiffs almost $3,500,000 in compensatory damages and $2,500,000 in punitive damages.

Three aspects of this opinion make this case noteworthy. The first interesting point involved the defendants' contentions that they should not have been held liable for failure to warn Warren of the dangers of benzene because his employer Sabine Towing was a sophisticated entity with its own knowledge of such dangers and stood as an intermediary between the defendants and Warren. The defendants relied upon two Fourth Circuit cases in which that court found that the supplier of a product used by a sophisticated employer was excused from directly warning employees when a) it gave an adequate warning to the employer itself; and b) it had no control over how the employer would conduct its operations and therefore could not as a practical matter give warnings to the employees.

The Third Circuit acknowledged the logic of the Fourth Circuit's approach, but found that since much of Warren's exposure occurred at the defendants' facilities during loading and unloading, these defendants maintained some control over the operations during which Warren was exposed and therefore had a duty to directly warn Warren.

Second, the Third Circuit with little ado reversed the $2,500,000 award of punitive damages. The court found that the evidence did not establish that the defendants' failure to warn was intentional or wanton and reckless: "Although the defendants failed in their duty to warn Mr. Warren of the dangers in exposure to benzene, they did not attempt to hide the information or mislead Mr. Warren to his detriment."

Third and last, the Third Circuit found the trial court erred in failing to consider the fault of the many defendants who settled out of the case before trial. The court found that under either state or federal law, the liability of the remaining defendants should have been calculated by giving a proportionate credit for any fault found on the part of the settling defendants. Taking the fault of those who settled into account, the Third Circuit reallocated percentages of fault among the remaining defendants, thus substantially reducing the amount of each's ultimate liability.

- Madeleine Fischer

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La. Supreme Court Leaves Issue of Comparative Fault in Tobacco Case Hanging

Scott v. American Tobacco Co., Inc.,
2002-2449 (La. 11/15/02), ___ So.2d ___.

In the ongoing tobacco class action medical monitoring suit the Louisiana Supreme Court has ruled that the issue of comparative fault of the plaintiffs should not be addressed until after the liability of the defendants has been determined.

In this case filed in 1996 the plaintiffs seek the establishment of a court-supervised medical monitoring and/or cessation program on behalf of all Louisiana residents who are or were smokers before 1996 and who desire to participate in such programs. In pretrial rulings the trial court held that comparative fault is inapplicable to plaintiffs' theories of recovery. The court of appeal reversed and

held that the comparative fault of all the parties should be considered in the first phase of the trial.

The Louisiana Supreme Court declared that the issues in “this unique and difficult case” had become “intertwined and confused”. It found that both the trial court and the appellate court were too hasty in reaching their conclusions on the question of comparative fault. The Supreme Court found instead that, “Whether principles of comparative fault are applicable to this claim for medical monitoring and/or cessation programs and whether individual claimants’ injuries were caused in part by their own conduct need not be determined until defendants’ liability has been established.” The Supreme Court directed that Phase I of the trial should go forward only to determine the defendants’ liability and that during that phase the defendants would have the opportunity to present any class-wide affirmative defenses. However, comparative fault and prescription – individual, rather than class-wide issues – would not be tried during this phase. The Court reserved for another day “the important issue of whether comparative fault can be assessed” in a case such as this one.

Justices Victory and Calogero issued opposing concurrences. Both agreed that the issue of the defendants’ liability should be tried during the first phase of the trial. However, Justice Victory thought the Court should have gone further to rule that comparative fault was an applicable defense which should be allowed during Phase II of the trial. Justice Calogero, on the other hand, felt the Court should have confronted the issue of comparative fault and ruled that comparative negligence was not applicable to the case.

- Madeleine Fischer back to top

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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