

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Anne Anderson, et al. v. Cryovac, Inc., et al.; Anne Anderson, et al. v. Beatrice Foods Co.

28 ERC 1622 (1st Cir. 1988) · No. Nos. 87-1405, 88-1070 · Decided December 22, 1988

SUMMARY

The First Circuit reviewed consolidated appeals arising from toxic-tort litigation concerning contamination of municipal water wells in Woburn, Massachusetts. The court considered the effect of special interrogatories under Federal Rule of Civil Procedure 49(a), waiver of objections to compound interrogatories, the district court’s authority to make supplemental factual findings, and the clearly erroneous standard of review. It affirmed the use of a Rule 49(a) finding concerning groundwater flow to resolve the plaintiffs’ claims against Beatrice Foods.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Selya; Bownes; Torruella
JURISDICTION	Federal
DECIDED	December 22, 1988
DOCKET	Nos. 87-1405, 88-1070
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment entered for Beatrice Foods Co. following a jury's negative answers to special interrogatories and the district court's findings under Federal Rule of Civil Procedure 49(a). Plaintiffs separately appealed the denial of their Rule 60(b) motion based on Beatrice's nondisclosure of hydrogeologic reports. The First Circuit consolidated the appeals.
STANDARD OF REVIEW	The First Circuit reviewed legal questions concerning omission and materiality under Rule 49(a) plenary, reviewed Rule 49(a) factual findings under the clearly erroneous standard applicable to findings after a bench trial, and reviewed denial of Rule 60(b) relief for abuse of discretion. For Rule 60(b)(3), the court required clear and convincing proof of misconduct and substantial interference with the movant's ability to prepare for and present its case.
PRECEDENTIAL VALUE	published precedential federal appellate opinion

PARTIES

Anne Anderson, et al. v. Cryovac, Inc., et al., Beatrice Foods Co.

TOPICS

civil procedure

appellate procedure

standard of review

preservation of error

environmental law

PRACTICE AREAS

civil procedure

appellate procedure

torts

environmental law

QUESTIONS PRESENTED

1. Whether the district court properly used Federal Rule of Civil Procedure 49(a) to make a factual finding concerning groundwater flow after the jury's compound special interrogatory did not clearly resolve that issue.
2. Whether plaintiffs waived objection to the form of the special interrogatory by affirmatively approving it and failing to object before the jury was discharged.
3. Whether the district court's Rule 49(a) finding that plaintiffs had not proved that contaminants from Beatrice's 15-acre site reached Wells G and H was clearly erroneous.
4. Whether nondisclosure of the hydrogeologic report constituted misconduct under Federal Rule of Civil Procedure 60(b)(3).
5. Whether the district court abused its discretion by refusing to inquire into defense counsel's knowledge and intent concerning the nondisclosure and by denying Rule 60(b)(3) relief without determining whether the nondisclosure substantially interfered with plaintiffs' ability to pursue a tannery-contamination theory.

HOLDINGS

1. When a special verdict omits a material factual issue and the parties acquiesced in the omission, Rule 49(a) permits the district court to make a finding on the omitted issue, provided the court does not resolve an issue withdrawn from the jury by a prior directed verdict.
2. A district court's factual findings under Rule 49(a) are reviewed under the clearly erroneous standard applicable to findings made after a bench trial.
3. The finding that plaintiffs failed to prove that contaminants from Beatrice's 15-acre site reached Wells G and H was sufficient to dispose of plaintiffs' tort claims against Beatrice because migration from the alleged source to the wells was a necessary causal link.
4. Failure to disclose or produce responsive discovery materials may constitute misconduct under Rule 60(b)(3) even without fraudulent or nefarious intent, including in appropriate circumstances an accidental or careless omission.
5. To obtain relief under Rule 60(b)(3) for discovery misconduct, the movant must prove by clear and convincing evidence that misconduct occurred and must show that the misconduct substantially

interfered with the ability to fully and fairly prepare for and present the case; the movant need not prove that the suppressed evidence would probably have changed the verdict.

6. When discovery material is knowingly or deliberately concealed, the court may presume that the concealment substantially interfered with the movant's preparation and presentation; the presumption is rebuttable by clear and convincing evidence that the material was inconsequential.

KEY QUOTATIONS

“Consequently, there is every reason to treat the district court's Rule 49 findings of fact in the same manner as findings of fact made after a bench trial, reviewable under the “clearly erroneous” standard of Fed.R.Civ.P. 52(a).” (at 915)

“The term can cover even accidental omissions--elsewise it would be pleonastic, because “fraud” and “misrepresentation” would likely subsume it.” (at 922)

“The solution, we believe, is that before retrial is mandated under Rule 60(b)(3) in consequence of discovery misconduct, the challenged behavior must substantially have interfered with the aggrieved party's ability fully and fairly to prepare for and proceed at trial.” (at 923)

“In short--presumption or not--the second-stage determination must be whether lack of access to the Report substantially interfered with plaintiffs' efforts to prepare and present a case as to the nexus between the tannery and the pollution of wells G and H.” (at 924)

FACTUAL BACKGROUND

Municipal Wells G and H in Woburn, Massachusetts, were found to contain toxic solvents. Plaintiffs, who lived near the wells, alleged that Beatrice was responsible for contamination originating from a 15-acre wetland formerly associated with the Riley tannery and that the chemicals migrated to the wells and caused their illnesses. During discovery, Beatrice failed to disclose a hydrogeologic report concerning groundwater flow and contamination at the tannery property, although the report fell within plaintiffs' discovery requests and was within Beatrice's actual or constructive control.

PROCEDURAL HISTORY

Plaintiffs sued Beatrice, Cryovac-related defendants, and others in Massachusetts state court for injuries allegedly caused by contaminated municipal wells; the case was removed to federal district court on diversity grounds. After a phased trial, the jury answered negatively to interrogatories concerning post-1968 disposal and migration of chemicals from Beatrice's 15-acre site to Wells G and H, and the district court made a Rule 49(a) finding that plaintiffs had not proved that contaminants from the site reached the wells. The court entered judgment for Beatrice. After plaintiffs discovered previously undisclosed hydrogeologic reports, the district court denied Rule 60(b) relief, prompting the second appeal.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Appeal No. 87-1405 was denied and dismissed. As to Appeal No. 88-1070, the district court was directed to conduct an evidentiary hearing concerning whether Beatrice, alone or with the Riley interests, knowingly or intentionally concealed the hydrogeologic reports; determine whether the nondisclosure substantially interfered with plaintiffs' ability to prepare and present a claim that contamination entered groundwater at the tannery and reached Wells G and H; make subsidiary findings and recommendations concerning any appropriate remedy and sanctions; and forward its findings and recommendations to the First Circuit, which retained jurisdiction.

CASES CITED

- Anderson v. Cryovac, Inc., 96 F.R.D. 431 (D. Mass. 1983)
- Anderson v. W.R. Grace & Co., 628 F. Supp. 1219 (D. Mass. 1986)
- Graphic Products Distributors, Inc. v. ITEK Corp., 717 F.2d 1560, 1569 (11th Cir. 1983)
- Guidry v. Kem Manufacturing Co., 598 F.2d 402, 406 (5th Cir. 1979)
- Goeken v. Kay, 751 F.2d 469, 472, 474 (1st Cir. 1985)
- Payton v. Abbott Labs, 780 F.2d 147, 154 (1st Cir. 1985)
- Reo Industries, Inc. v. Pangaea Resource Corp., 800 F.2d 498, 500 (5th Cir. 1986)
- Cote v. Estate of Butler, 518 F.2d 157, 160 (2d Cir. 1975)
- J.C. Motor Lines, Inc. v. Trailways Bus System, 689 F.2d 599, 602-03 (5th Cir. 1982)
- Frankel v. Burke's Excavating, Inc., 397 F.2d 167, 169-70 (3d Cir. 1968)
- Wyoming Construction Co. v. Western Casualty and Surety Co., 275 F.2d 97, 104 (10th Cir. 1960)
- Nimrod v. Sylvester, 369 F.2d 870, 873 (1st Cir. 1966)
- Central Progressive Bank v. Fireman's Fund Insurance Co., 658 F.2d 377, 381-82 (5th Cir. 1981)
- Merchant v. Ruhle, 740 F.2d 86, 92 (1st Cir. 1984)
- In re Randall, 712 F.2d 1275, 1277 (8th Cir. 1983)
- Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985)
- Allied International, Inc. v. International Longshoremen's Association, 814 F.2d 32, 40 (1st Cir. 1987)
- Irons v. FBI, 811 F.2d 681, 684 (1st Cir. 1987)
- Keyes v. Secretary of the Navy, 853 F.2d 1016, 1027 (1st Cir. 1988)
- Dedham Water Co. v. Cumberland Farms, Inc., 689 F. Supp. 1223, 1224-27 (D. Mass. 1988)
- Clark-Aiken Co. v. Cromwell-Wright Co., 367 Mass. 70, 323 N.E.2d 876, 887 n.21 (1975)
- Carrier v. Riddell, Inc., 721 F.2d 867, 868 (1st Cir. 1983)
- United States v. Ayer, 857 F.2d 881, 886 (1st Cir. 1988)
- Rivera v. M/T Fossarina, 840 F.2d 152, 156 (1st Cir. 1988)
- Pagan v. American Airlines, Inc., 534 F.2d 990, 993 (1st Cir. 1976)
- In re San Juan Dupont Plaza Hotel Fire Litigation, 859 F.2d 1007, 1019 (1st Cir. 1988)
- Rozier v. Ford Motor Co., 573 F.2d 1332, 1339 (5th Cir. 1978)
- Bros. Inc. v. W.E. Grace Manufacturing Co., 351 F.2d 208, 211 (5th Cir. 1965)
- In re M/V Peacock, 809 F.2d 1403, 1404-05 (9th Cir. 1987)

- Harre v. A.H. Robins Co., 750 F.2d 1501, 1503 (11th Cir. 1985)
- Stridiron v. Stridiron, 698 F.2d 204, 207 (3d Cir. 1983)
- Square Construction Co. v. Washington Metropolitan Area Transit Authority, 657 F.2d 68, 71 (4th Cir. 1981)
- Wilson v. Thompson, 638 F.2d 801, 804 (5th Cir. 1981)
- Bunch v. United States, 680 F.2d 1271, 1283 (9th Cir. 1982)
- Minneapolis, St. Paul, & Sault Ste. Marie Ry. Co. v. Moquin, 283 U.S. 520, 521-22 (1931)
- Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982)
- Wilson v. Volkswagen of America, Inc., 561 F.2d 494, 504 (4th Cir. 1977)
- Nation-Wide Check Corp. v. Forest Hills Distributors, Inc., 692 F.2d 214, 217-19 (1st Cir. 1982)
- Marquis Theatre Corp. v. Condado Mini Cinema, 846 F.2d 86, 89-90 (1st Cir. 1988)
- Knightsbridge Marketing v. Promociones y Proyectos, 728 F.2d 572, 575 (1st Cir. 1984)
- Commercial Insurance Co. v. Gonzalez, 512 F.2d 1307, 1314 (1st Cir. 1975)
- Alexander v. National Farmers Organization, 687 F.2d 1173, 1205-06 (8th Cir. 1982)
- Allen Pen Co. v. Springfield Photo Mount, 653 F.2d 17, 24 (1st Cir. 1981)
- Coates v. Johnson & Johnson, 756 F.2d 524, 551 (7th Cir. 1985)
- Soria v. Ozinga Bros., Inc., 704 F.2d 990, 996 n.7 (7th Cir. 1983)
- Vick v. Texas Employment Commission, 514 F.2d 734, 737 (5th Cir. 1975)
- Ina Aviation Corp. v. United States, 468 F. Supp. 695, 700 (E.D.N.Y. 1979)
- United States v. Mora, 821 F.2d 860, 869-70 (1st Cir. 1987)
- United States v. Procter & Gamble, 356 U.S. 677, 682 (1958)
- Metlyn Realty Co. v. Esmark, Inc., 763 F.2d 826, 832 (7th Cir. 1985)
- National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642-43 (1976)
- Federal Deposit Insurance Corp. v. La Rambla Shopping Center, 791 F.2d 215, 223-24 (1st Cir. 1986)