Statute of Limitations Bars Gross Negligence Claim Against MDEQ Employees

The Michigan court of appeals has upheld the dismissal of a lawsuit filed against two Michigan Department of Environmental Quality (MDEQ) employees, alleging that they had sampled a landfill monitoring well in a grossly negligent manner. The court upheld the trial court's dismissal of the suit because it had been filed more than three years after the plaintiffs knew, or should have known, of their claims.

Bestway Recycling, Inc. (Bestway) and Aaro Disposal, Inc. (Aaro) sued two MDEQ employees, Lawrence Bean and James Sygo, for gross negligence arising out of allegedly fraudulent groundwater sampling conducted at a sanitary landfill located in Waterford Township, Michigan. This landfill had been the subject of a cease and desist order issued by the MDEQ in 1990 that was based, in part, on the results of groundwater sampling conducted by Mr. Bean on a groundwater monitoring well known as "Monitoring Well #19." Bestway and Aaro alleged that this sampling was conducted in a fraudulent and grossly negligent manner and that the resulting cease and desist order caused extensive injury to their respective businesses. The trial court, however, dismissed the lawsuit because the applicable three-year statute of limitations period had expired before Bestway and Aaro filed suit.

On appeal, the court first confirmed that Michigan law provides that the period of limitations is three years for an action alleging gross negligence, and that this period "runs from the time the claim accrues." The claim accrues, the court explained, "at the time the wrong upon which the claim is based was done regardless of the time when damages result." The court then stated that, under the "discovery rule," a claim accrues when "on the basis of objective facts, a plaintiff should have known or been aware of a possible cause of action." Applying these rules to Bestway and Aaro's claims, the court concluded that, because the plaintiffs "concede that they

were aware of an injury in 1992 when [their] assets were sold at a substantially reduced value caused by the state's actions regarding the landfill, [the] dispute focuses on when plaintiffs became aware, or should have become aware, of the cause of the injury, which, alleged here, is the gross negligence of" the MDEQ employees.

Bestway and Aaro claimed that they did not discover Mr. Bean's allegedly fraudulent conduct until June 1997, when his field notes were presented as evidence in a separate lawsuit regarding the 1990 cease and desist order. Accordingly, they claimed that their suit against the MDEQ employees was filed within the three years under the "discovery rule." Without deciding whether the discovery rule applied in this case, however, the court held that Bestway and Aaro were aware of their potential cause of action against Bean and Sygo much earlier than 1997.

The appeals court held that Bestway and Aaro should have known of their potential cause of action against as early as 1991 based on evidence produced in the litigation concerning the 1990 cease and desist order. The court noted that "[t]hroughout the years of the landfill litigation, including the early 1990s, plaintiffs continually and intensely challenged contamination findings by the state, and they asserted that the state's action was illegal and motivated by political pressure." Further, the court noted that the plaintiffs' own expert testified prior to 1992 that the MDEQ's results for Monitoring Well #19 "were so high in comparison to the results from other samplings [that] *any reasonable person familiar with these types of issues knew or should have known that the results were likely flawed and cannot reasonably be used as the basis for an enforcement action.*" (Emphasis added by the court.)

Therefore, the appeals court affirmed the trial court's dismissal of the lawsuit based on the running of the three year limitations period.

Bestway Recycling, Inc. v. Bean, No. 239440 (Mich. Ct. App. May 20, 2003).

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