

Basement Flooding Cases Remain in Federal Court

The federal district court for the Eastern District of Michigan (Court) refused to transfer to state court a series of cases brought by homeowners and their insurers against local sewage authorities and governments for damages caused by sewer system backups in September 2000.

A brief review of the history is necessary before proceeding with a discussion of the Court's decision to retain jurisdiction over the cases.

In 1977 and again in 1987, the United States Environmental Protection Agency brought two major cases against both the Detroit Water and Sewerage Department (DWSD) and the communities it serves, and Wayne County and the Downriver communities it serves through the Wyandotte Wastewater Treatment Plant. The actions, which alleged violations of water quality standards and wastewater treatment requirements, were settled by consent judgments entered by the Court. One of the pervasive problems addressed by the consent judgments related to wet weather problems – specifically, combined sewer overflows (CSOs).

CSOs occur during storm events when a sewer system allows sanitary sewage and storm water runoff to combine in the same conveyances and the excessive flow threatens to overwhelm the sewage treatment plant. To protect the plant, the operator may divert some of the incoming flow directly to surface waters without treatment – a CSO.

Among other things, the 1987 consent judgment required Wayne County and the downriver communities to create a means to balance the flow of wastewater, a process that is particularly important in wet weather events. Wayne County and the Downriver communities were allowed to bypass the system, however, and open gates to release excess flows from the system into the Detroit and Rouge Rivers during “emergency wet weather events” until September 2002.

The Court retained jurisdiction over the 1987 consent judgment for the purpose of ruling on any motion by any party to enforce the terms and conditions of the consent judgment.

In September 2000, a reported 100-year rainstorm struck the Downriver area of suburban Detroit. The basements of approximately 13,000 homes became flooded in the Downriver area as a result of sewer system backups caused by an overwhelming flow of storm water into the sewer system. The affected homeowners and, in some cases, their insurers, sued their respective municipalities, Wayne County or both in state court for this flooding event in thirty-four proposed class action suits, claiming that the improper operation of the sewer system by the defendants caused damage to their property.

Some of the municipal defendants cross-claimed or filed third-party complaints against Wayne County claiming that the County was responsible for the flooding and should indemnify them or contribute to any damages that they may be forced to pay the plaintiffs.

Wayne County had the cases to the federal court, alleging that the claims of the municipalities against it gave rise to federal subject matter jurisdiction under the 1987 consent judgment. In turn, the plaintiffs filed motions for remand, contending that the Court lacked federal subject matter jurisdiction. The Court rejected the motions, finding that the federal court has jurisdiction over the claims against Wayne County. The plaintiffs appealed to the U.S. Court of Appeals for the Sixth Circuit, which denied their petition, holding that the complaint against Wayne County by one of the municipal defendants “arises from obligations established in a consent decree entered in a case initiated under federal statute.”

The plaintiffs then filed renewed motions to transfer of the cases back to state court, arguing that recent decisions by the U.S. Supreme Court and the U.S. Court of Appeals for the Sixth Circuit had raised new questions regarding the Court’s prior decision that it had subject

matter jurisdiction. The Court, however, held that, for two reasons, it had subject matter jurisdiction over all of the cases related to the basement flooding.

First, the Court noted that the plaintiffs claimed, among other things, that the defendants' actions caused a trespass and a nuisance. Under Michigan law, the Court observed, trespass/nuisance by a governmental entity is "a direct trespass upon, or the interference with the use or enjoyment of [property], and that results from a physical intrusion caused by, or under the control of, a governmental entity." To prevail on a trespass/nuisance claim, "a plaintiff must show: (1) condition (nuisance or trespass); (2) cause (physical intrusion); and (3) causation or control (by the government)." The Court found that determination of the "causation or control" element of the plaintiffs' cases "turns necessarily on the interpretation of the two federal court Consent Judgments." As the Court explained, "plaintiffs must establish that 'but for' the defendant's acts, their injuries would not have occurred. This can only be answered by recourse to the Consent Judgments. The Consent Judgments delegate specific duties to both DWSD and Wayne County and each of the Downriver communities, and once plaintiffs identify the condition of trespass/nuisance, they must then prove who was responsible for that act. Given the complex web of duties and relationships under the Consent Judgments, plaintiffs cannot bypass this issue." Accordingly, "since the resolution of the 'cause and control' elements turn on the resolution of federal law, as mandated by the Consent Judgments, a federal question appears on the face of the complaint and this court has original jurisdiction over those claims."

The Court also held that it had "supplemental jurisdiction" over other claims, such as the plaintiffs' claim of unconstitutional takings from the flooding, "that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy."

For its second reason of finding that it had jurisdiction over the cases, the Court noted that various parties in the 1987 and 1977 litigation matters had filed motions for declaratory judgment regarding the parties' rights, responsibilities, liabilities and legal relationships under the consent judgments "with regard to sewer backups which have periodically caused basement flooding in the downriver communities." The Court held that, because it had "original jurisdiction over the declaratory judgment actions," and because the state law claims of the basement flooding plaintiffs would rely, in part, on the Court's decisions involving the Consent Judgments, it was appropriate for the Court to exercise its supplemental jurisdiction over the basement flooding plaintiffs' state law claims.

Lessard v Allen Park, Civ. No. 00-74306, F.D. Mich (Feb. 25, 2003).

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