

1999 WL 33485559
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United States District Court, W.D. Michigan,
Southern Division.

KALAMAZOO RIVER STUDY GROUP, Plaintiff,
v.
ROCKWELL INTERNATIONAL, et al.,
Defendants.

No. 1:95-CV-838.
|
Feb. 3, 1999.

OPINION

BELL, J.

***1** This CERCLA action for the recovery of response costs incurred in responding to the release of polychlorinated biphenyls (“PCBs”) to the Kalamazoo River is before the Court on two motions filed by Plaintiff Kalamazoo River Study Group (“KRSG”): a motion to certify the Court’s March 6, June 30 and December 7, 1998, orders with respect to Eaton Corporation and Menasha Corporation as final and appealable and a motion to stay proceedings pending resolution of the appeals.

Summary judgment was entered in favor of Defendants Menasha and Upjohn¹ on March 6, 1998. On June 30, 1998, this Court entered partial summary judgment in favor of Eaton as to its Marshall and Kalamazoo facilities. On December 7, 1998, after a trial on the issue of liability, this Court entered judgment in favor of Eaton as to its remaining facility in Battle Creek. This Court also determined after trial that Defendant Rockwell is liable for the release of PCBs to the Kalamazoo River. This liability determination will be followed by a trial on the issue of damages.

Plaintiff KRSG contends that certification of the orders with respect to Defendants Eaton and Menasha as final and appealable would promote judicial economy and the sound administration of justice. Defendant Eaton concurs

with Plaintiff’s motion for certification, and neither Defendant Menasha nor Defendant Rockwell opposes the motion for certification. Defendant Rockwell does, however, oppose Plaintiff’s motion to stay proceedings against Rockwell pending resolution of the appeals.

Rule 54(b) permits the district court to certify a partial judgment for appeal if the district court (1) expressly directs the entry of final judgment as to one or more but fewer than all the claims or parties; and (2) expressly determines that there is no just reason to delay appellate review. FED.R.CIV.P. 54(b); *General Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1026 (6th Cir.1994). The rule “attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties.” *Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58, 60 (6th Cir.1986).

A nonexhaustive list of factors which a district court should consider when making a Rule 54(b) determination includes:

(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Corrosioneering, Inc. v. Thyssen Environmental Systems, Inc., 807 F.2d 1279, 1283 (6th Cir.1986) (quoting *Allis-Chalmers Corp. v. Philadelphia Elec. Co.*, 521 F.2d 360, 364 (3rd Cir.1975)).

***2** It appears to this Court that there is no just reason to delay appellate review of the judgments against Defendants Menasha and Eaton. The question of whether

a particular defendant released PCBs to the Kalamazoo River is a factual inquiry peculiar to each defendant. The Court previously granted Rule 54(b) certification of the judgment with respect to Defendant Benteler Industries, Inc. (Docket # 489). The common legal issue—application of the “threshold of significance” standard of liability—will not be before the court of appeals a second time because liability was established as to Rockwell. Finally, because KRSG and Rockwell contend that additional discovery must be undertaken prior to the damages phase of the trial, if 54(b) certification were not granted, appellate review of the claims against Menasha and Eaton would be delayed for a significant time period. The Court concludes that the balance tips in favor of allowing an immediate appeal of the orders granting judgment in favor of Defendants Menasha and Eaton.

In its companion motion KRSG requests that the damages phase of the trial be stayed pending resolution of the appeals. KRSG contends that a stay would conserve both judicial resources and the parties’ resources by ensuring that only one allocation trial is held. KRSG reasons that if the Court’s orders finding no liability on the part of Menasha and Eaton are reversed by the Sixth Circuit after damages between KRSG and Rockwell have been allocated, it will be necessary to relitigate significant portions of the cost allocation issue.

Despite KRSG’s concern about the possibility of having to try the cost allocation issue a second time, the Court is satisfied that the damages phase of the trial should not be stayed. First, the Court does not share KRSG’s opinion that the judgments in favor of Benteler, Menasha and Eaton are likely to be reversed. Second, both Rockwell and KRSG would be prejudiced by a stay. This case is already old, and it concerns events that occurred many years ago. The ability to locate witnesses and the ability of witnesses to recall events would be adversely affected by a stay. Moreover, a stay would require the attorneys and the court to re-learn the issues and facts of this case.

Finally, while a second allocation trial might require some duplication of proofs with respect to the response costs incurred by KRSG, whether they were necessary and reasonable, and whether they were consistent with the National Contingency Plan, the issues with respect to the contribution of each defendant would be new. Plaintiff’s motion for stay will accordingly be denied.

An order consistent with this opinion will be entered.

ORDER RE MOTIONS FOR CERTIFICATION AND STAY

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that KRSG’s motion to certify the Court’s December 7, 1998, and June 30, 1998, orders with respect to Eaton and the March 6, 1998, order with respect to Menasha as final and appealable (Docket # 854) is GRANTED.

***3** IT IS FURTHER ORDERED that this Court’s December 7, 1998, June 30, 1998, and March 6, 1998, orders granting judgment in favor of Defendants Eaton and Menasha are CERTIFIED as FINAL ORDERS pursuant to Rule 54(b).

IT IS FURTHER ORDERED that KRSG’s motion to stay proceedings pending resolution of appeals (Docket # 855) is DENIED.

All Citations

Not Reported in F.Supp.2d, 1999 WL 33485559

Footnotes

¹ Plaintiff KRSG indicates that it has entered into a settlement with Defendant Upjohn. Accordingly, Plaintiff’s claim against Upjohn will not be addressed in this motion.