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Sheegog v. Washington, N. 99 C 7283, 2000 U.S. Dist. LEXIS 9869 (N.D. Ill. July 10, 2000)

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stated the policy had ambiguous, undefined terms. IEC also argued Maryland failed to deliver the policy within a reasonable time.

The court concluded the Northern representative was aware of IEC needs and did not tell IEC of the new provision for a surface water exclusion in the policy. This conclusion, along with the determination that Maryland delayed delivery of the policy to IEC in a reasonable time, created the possibility that IEC was deceived. The court therefore denied both parties' motions for summary judgment.

Lynne Stadjuhar

Sheegog v. Washington, No. 99 C 7283, 2000 U.S. Dist. LEXIS 9863 (N.D. Ill. July 10, 2000) (holding complaint stated a claim on which relief could be based in section 1983 claim for endangering health by virtue of unsafe drinking water at a correctional facility).

Oliver Sheegog ("Sheegog"), an inmate incarcerated in the Stateville Correctional Center ("Stateville"), brought a pro se section 1983 action against several Stateville officials and the Illinois Department of Corrections after exhausting his administrative remedies. He alleged his Eighth Amendment rights were violated due to the drinking water at the prison being contaminated with unacceptable radium levels. In 1992, Stateville received notice that its drinking water exceeded the maximum allowable levels of radium, and of its obligation to post the notice. Test results from 1992 and 1993 showed "gross alpha" and radium levels exceeded the Illinois Pollution Control Board's maximum allowable concentrations.

Sheegog had been a Stateville inmate since 1997. His complaint did not refer to any testing results prior to 1993, and instead, asserted the water was still contaminated at the time his complaint was filed. Sheegog contended he was induced to drink the water without knowledge of the potential health risks caused by doing so. The Stateville officials filed a 12(b)(6) motion to dismiss.

The Eighth Amendment imposes a duty to provide humane conditions for prisoners. These conditions include the right to food, and by logical extension, water, that does not present an immediate danger to the health and well-being of those who consume it. Liability under the Eighth Amendment has an objective and a subjective component.

Under the objective component, the hardship alleged must be objectively, sufficiently serious. An inmate need not show a present physical injury. Thus, Sheegog's complaint satisfied the objective component because, even though he suffered no present injury, he alleged a continuous threat to his health. The threat was Stateville's drinking water continued to contain an excessive level of radium that endangered his health.

To satisfy the subjective component, the complaint must allege that the officials were deliberately indifferent to the confinement conditions. Here, the court found the subjective component satisfied because Sheegog alleged the prison officials knowingly permitted a hazardous condition to exist, did nothing about it, and failed to warn inmates of the danger. Therefore, the court denied the motion to dismiss with regard to all but three defendants, because those claims did not address the maintenance of the prison's drinking water.

Adam B. Kehrtli

Hoosier Envtl. Council, Inc. v. U.S. Army Corps of Eng'rs, 105 F. Supp. 2d 953 (D.C. Ind. 2000) (upholding U.S. Army Corps of Engineers' issuance of permits for riverboat gambling operation under the Clean Water Act and Rivers and Harbors Act as a rational decision within the Corps' discretion where Environmental Assessment evidenced the Corps' awareness and acknowledgment of the conflicting views of other federal agencies, yet Corps had reasonable basis to disagree).

By referendum vote in 1994, the citizens of Harrison County, Indiana, authorized a riverboat gaming operation, the only form of legal gambling in Indiana, on the county's border along the Ohio River. Shortly thereafter, Caesars Riverboat Casino, L.L.C. ("Caesars") applied to the Indiana Gaming Commission ("IGC") for a license to operate a riverboat gambling facility. In accordance with state and federal law, Caesars also applied to the United States Army Corps of Engineers ("Corps") for permits under sections 403 and 404 of the Clean Water Act ("CWA") and section 10 of the Rivers and Harbors Act ("RHA").

Through the preparation of an environmental assessment ("EA") and the accompanying consultation and commenting process, the Corps determined the proposed project would not have a significant impact on the environment (formally referred to as a "finding of no significant impact" or "FONSI") and issued the requisite permits. The IGC then issued Caesars a site-specific "Certificate of Suitability" to construct and operate a licensed riverboat gambling operation, including a permanent mooring facility for the riverboat, an on-site pavilion and hotel, parking and utility facilities, and a golf course.

Six months after construction began, three environmental groups, including Hoosier Environmental Council, Inc. ("HEC"), initiated an action challenging the Corps' decision to issue the permits. Specifically, HEC alleged the Corps' decision to issue the permits without preparing an environmental impact statement ("EIS"), or conducting a sufficient public interest review, violated the Administrative Procedure Act, the National Environmental Policy Act