Friday, May 13, 2011

The Colossus of Rhodes - Part II

Yesterday, we reported on the federalism aspects of Rhodes v. E.I. du Pont de Nemours & Co., 636 F.3d 88 (4th Cir. 2011). We mentioned in that post that another interesting aspect to Rhodes involved the dismissal of the medical monitoring claims. Here's what that's about.

What happened is this:

First, the trial court denied class certification of the plaintiffs' medical monitoring claims. That ruling made those claims well nigh worthless (the polite term would be "negative value"), because the named plaintiffs would spend more time and effort trying to prove them (assuming, probably wrongly, that there was anything to be proven) than their individual monitoring claims could possibly be worth.

Second, the trial court, recognizing the absurdity of no-injury claims generally, dismissed everything else – except medical monitoring – on summary judgment. That left plaintiffs with nothing but their worthless (if there's no class) medical monitoring claims.

But to have an order that can be appealed in federal court, there must be a dismissal of all claims against all parties.

So third, to get an appealable order, the named plaintiffs strategically dismissed their medical monitoring claims.

But then, fourth, the plaintiffs turned around on appeal and tried to argue that the medical monitoring claims – which they no longer had, because they had voluntarily dismissed them – should have been certified as a class. In essence they argued that the medical monitoring claims of the absent class members, which they (that is, the named plaintiffs) no longer possessed, should have been certified, and the trial court had no discretion to deny class certification.

That's a long shot anyway, given the leeway trial courts have under the abuse of discretion

standard, but it was made even longer by these particular plaintiffs purporting to argue on behalf of everybody except themselves.

The court held, in effect, that once a particular plaintiff has given up a claim, that plaintiff no longer has any concrete personal interest in that claim sufficient to give it the right to appeal anything – such as class certification – concerning it. There's no such thing as an "advisory opinion" in federal court.

That's an important issue, because plaintiffs play games with tactical dismissals all the time, and then try to appeal something that they've dismissed. We thought we'd tell you all about this, but we just realized that a partner of ours, Sean Wajert, has already done that on his Mass Torts blog. So since we're lazy, if you're interested in plaintiffs not having standing to appeal issues relating to claims that they, personally, have dismissed, you can read all about it here. Sean points out that Rhodes deepens a preexisting circuit split on the issue. Circuit splits tend to correlate with Supreme Court grants of review, but given what w mentioned about about the appeal being a long shot on the merit, we wouldn't be surprised if the plaintiffs simply folded their tent instead.