

Federal Court Allows Contribution and Indemnity Claims Against Drainage & Levee District to Proceed

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The U.S. District Court for the Central District of Illinois recently issued an opinion in *Wilder Corp. v. Thompson Drainage and Levee District, Case No. 09-1322*. I first reported on this case when the Court dismissed the plaintiff's original complaint in May 2010 (click [here](#)).

In this case, Wilder seeks contribution and indemnification from Thompson Drainage and Levee District, to the extent that Wilder is found liable in a different case brought by the Nature Conservancy for breaches of various agreements related to the Conservancy's purchase of certain land in Fulton County, Illinois from Wilder.

The District filed a motion to dismiss Wilder's Second Amended Complaint. The Court denied the motion.

Count I of the Second Amended Complaint alleged a claim for contribution based on the District's contamination of the property, to the extent that Wilder is held liable to the Conservancy for damages related to the contamination. The Court held that Count I properly "put the District on notice of its allegation that it could have been liable to Wilder for its role in the pollution of the Property according to the Illinois Tortfeasor Act. Wilder alleges for that at the time of the first suit, the Conservancy could have also claimed that Wilder was liable in tort for negligence and lack of due care in allowing the damage caused by the pollution. This is marginally sufficient to promote a reasonable inference of a joint tortfeasor relationship at this stage of the proceedings."

Count II contains the more interesting claim. It alleged a claim for indemnity based on an implied warranty made by the District to Wilder. Wilder "alleges the existence of a pre-tort relationship based on the District's use of its property daily since 1918 pursuant to a right of way." Specifically, Wilder claimed that "by running a petroleum pipe across its property, the District impliedly promised to indemnify Wilder from any and all damages that occurred as a result of the District's actions or inactions. Wilder further alleges that as a result, they should be indemnified and held harmless by the District against the prior judgment [against Wilder] regarding the contamination. . . . Through its Complaint, Wilder has pled sufficient facts to put the District on notice of its allegation that Wilder should be indemnified against the prior judgment."

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