UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 86-77

B.M.C. COMPANY, INC., ET AL., PLAINTIFFS,

VS:

T.C.H. COAL COMPANY, DEFENDANT.

and

CIVIL ACTION NO. 86-97

B.M.C. COMPANY, INC., ET AL., PLAINTIFFS,

VS:

T.C.H. COAL COMPANY, DEFENDANT.

REPORT AND RECOMMENDATION

By these consolidated actions, the plaintiffs seek indemnification for any and all liability that they are adjudged to owe United Mine Workers of America (UMWA) pension plan trustees under the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA). Currently pending , in one of the cases, is the defendant's motion for summary judgment; in the other case, a determination of the propriety of removal from state court must be made. As resolution of these matters concerns the same issues, a single Report and Recommendation is issued.

FACTS

During the period from 1978 to March, 1981 the plaintiff BMC contracted with the defendant TCH to mine a certain site at Hopkins Creek in Pike

County, Kentucky. The contract mining agreement provided that BMC would pay a royalty on the coal mined, in exchange for which TCH would allow the use of the property and pay certain expenses. According to the complaints, TCH agreed to "make all payments to the Pension Plans required as a result of work performed by B.M.C" under the agreement.

In May of 1985, the UMWA pension plan trustees brought an action under ERISA, as amended by the MPPAA, to collect the penalty for withdrawal from the multiemployer pension plan which occurred when BMC ceased mining at the Hopkins Creek site. By final judgment entered by the District Court for the District of Columbia after these actions were initiated, BMC found liable for in excess of $300,000; the present co-plaintiff, Mitchie Coleman, was adjudged to have no personal liability.

The defendant TCH asserts that there is no federal question jurisdiction and, moreover, that indemnification for "withdrawal liability" (in contrast to routine payments to the pension plan) was not encompassed by the terms of the agreement.

FEDERAL QUESTION JURISDICTION

The central issue to be decided, then, is whether federal question jurisdiction exists in either case.[1]

A recent Supreme Court case fleshed out the meaning of the pertinent statutory provision:

> Article III of the Constitution gives the federal courts power to hear cases "arising under" federal statutes. That grant of power, however, is not self-executing, and it was not until the Judiciary Act of 1875 that Congress gave the federal courts general federal question jurisdiction (in 28 U.S.C. Section 1331). Although the constitutional meaning of "arising under" may extend to all cases in which a federal question is "an ingredient" of the action. . .we have long construed the statutory grant of federal-question jurisdiction as conferring a more limited power. . .
>
> Under our longstanding interpretation of the current statutory scheme, the question whether a claim "arises under" federal law must be

> determined by reference to the "well pleaded complaint." . . .A defense that raises a federal question is inadequate to confer federal jurisdiction. . .
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> . . .(T)he propriety of the removal in this case thus turns on whether the case falls within the original "federal question" jurisdiction of the federal courts. There is no "single, precise definition " of that concept; rather, "the phrase 'arising under' masks a welter of issues regarding the interrelation of federal and state authority and the proper management of the federal judicial system.". . .
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> . . .The "vast majority" of cases that come within this grant of jurisdiction are covered by Justice Holmes' statement that a "suit arises under the law that creates the cause of action.' ". . .Thus, the vast majority of cases brought under the general federal-question jurisdiction of the federal courts are those in which federal law creates the cause of action.
>
> We have, however, also noted that a case may arise under federal law "where the vindication of a right under state law necessarily turned on some construction of federal law.". . .Our actual holding in Franchise Tax Board (463 U.S.)demonstrates that this statement must be read with caution; the central issue presented in that case turned on the meaning of the (ERISA). . ., but we nevertheless concluded that federal jurisdiction was lacking.
>
> . . (There is a) long-settled understanding that the mere presence of a federal issue in a state cause of action does not automatically confer federal question jurisdiction.. .(It) candidly recognized the need for careful judgments about the exercise of federal judicial power in an area of uncertain jurisdiction.

Merrell Dow Pharmaceuticals, Inc. v. Thompson, No. 85-619, slip op. at 3-10 _____ U.S. _____ (1986).

Reviewing the facts of the present case, it is clear that the suits are not ones in which federal law has created the cause of action. Further examination of the essential facts reveals that the only determination to be made is a matter of construction of the mining contract under the state law--i.e., whether the language of the contract pertaining to indemnification may be said to include a reference to a penalty assessed under federal law not specifically referred to in the agreement. Construction of federal law, then, is only indirectly necessary.

The undersigned is of the opinion that no federal question jurisdiction exists.

CONCLUSION

IT IS HEREBY RECOMMENDED that: (1) Civil Action No. 86-77 be DISMISSED for lack of subject matter jurisdiction; and (2) Civil Action No. 86-97 be REMANDED to the state court system.

Particularized objections to this Report and Recommendation must be filed within ten days of the date of service of ths same or further appeal is waived. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), aff'd 474 U.S. _____, 38 Cr. L. 3031 (December 4, 1985); Wright v. Holbrook, 794 F.2d 1152, 1154-1155 (6th Cir. 1986). A party may file a response to another party's objections within ten days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

This the _____ day of September, 1987.

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JOSEPH M. HOOD,
UNITED STATES MAGISTRATE

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[1]The plaintiffs originally sought indemnification for sums which they "might be adjudged" to own. Subsequent developments have made clear that the plaintiff Mitchie Coleman no longer has standing to pursue this claim. However, in view of the recommendation, infra, that these actions be dismissed for lack of federal question jurisdiction, however, the issue is moot.

JOE--

Here are some questions:

1. Thumbing quickly through the record, I can find no order which officially consolidates the cases, although the clerks are treating it as consolidated. Did I miss something (probably so), so do you want me to draft an order?

2. If the cases are consolidated, and there is no federal question juridiction, do they both go back to state court--i.e., one of them was removed from state court?

3. Do you even want to get into the Mitchie Coleman issue, if there is no federal question jurisdiction?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 86-77, 86-97

B.M.C. COMPANY, INC., ET AL., PLAINTIFFS,

VS: REPORT AND RECOMMENDATION

T.C.H. COCAL COMPANY, DEFENDANT.

INTRODUCTION

By these consolidated actions, the plaintiffs seek indemnification for any and all liability that they are adjudged to owe United Mine Workers of America (UMWA) pension plan trustees under the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA). Currently pending , in one of the cases, is the defendant's motion for summary judgment; in the other case, a determination of the properiety of removal from state court must be made. As resolution of these matters concerns the same issues, a single Report and Recommendation is issued.

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from the multiemployer pension plan which occurred when BMC ceased mining at the Hopkins Creek site. By final judgment entered by the District Court for the District of Columbia after these actions were initiated, BMC found liable for in excess of $300,000; the present co-plaintiff, Mitchie Coleman, was adjudged to have no personal liability.

The defendant TCH asserts that there is no federal question jurisdiction and, moreover, that indemnification for "withdrawal liability" (in contrast to routine payments to the pension plan) was no encompassed by the terms of the agreement.

PLAINTIFF COLEMAN

The plaintiffs originally sought indemnification for sums which they "might be adjudged" to own. Subsequent developments have made clear that the plaintiff Mitchie Coleman no longer has standing to pursue this claim. Thus, he should be dismissed.

FEDERAL QUESTION JURISDICTION

The central issue to be decided, then, is whether federal question jurisdiction exists in either case.

A recent Suprem Court case fleshed out the meaning of the pertinent statutory provision:

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Reviewing the facts of the present case, it is clear that the suits are not ones in which federal law has created the cause of action. Further examination of the essential facts reveals that the only determination to be made is a matter of construction of the mining contract under the state law--i.e., whether the language of the contract pertaining to indemnification may be said to include a reference to a penalty assessed under federal law not specifically referred to in the agreement. Construction of federal law, then, is only indirectly necessary.

The undersigned is of the opinion that no federal question jurisdiction exists.

CONCLUSION

IT IS HEREBY RECOMMENDED that: (1) the plaintiff Mitchie Coleman be DISMISSED; and (2) the above-styled action be DISMISSED from the docket of

this Court and REMANDED to the state court system.

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This the _____ day of September, 1987.

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JOSEPH M. HOOD,
UNITED STATES MAGISTRATE