



**November 3, 2004**

## **COURT REJECTS MALICIOUS PROSECUTION CLAIM AGAINST EPA (Riverdale Mills Corporation v. United States)**

On November 1, 2004, the United States District Court for Massachusetts, following a bench trial in July, rejected a claim by Riverdale Mills Corporation (RMC) and its owner, James M. Knott, Sr., against the United States for malicious prosecution. Nevertheless, the court reiterated its ruling issued in March of this year that two Environmental Protection Agency (EPA) agents violated the Fourth Amendment rights of the business and its owner by searching its premises without a warrant to test the company's wastewater. The malicious prosecution decision was issued on the eve of the oral argument before the U.S. Court of Appeals for the First Circuit in Boston of the government's appeal of the March ruling against the two EPA agents.

In its decision, the district court expressly "reproved [the EPA] for its sloppy recording of pH values . . . subsequent heavy-handed treatment of RMC . . . [and causing] taxpayers unnecessary expense." Nevertheless, the court held that the actions of the EPA agents did not rise to the level of malicious prosecution which is an exceedingly high standard for a plaintiff to meet under the Federal Tort Claims Act.

WLF filed the lawsuit in late 2000 in federal court in Worcester, Massachusetts, on behalf of RMC and its owner that made two claims. The first claim was against the United States under the Federal Tort Claims Act for malicious prosecution of RMC and Knott for allegedly violating the Clean Water Act in late 1997. The second claim named two EPA agents who were sued individually in a so-called "Bivens" action for violating RMC's and Knott's constitutional rights under the Fourth Amendment for conducting unlawful searches and seizures on the company's property without a search warrant.

RMC, a small business located in Northbridge, Massachusetts, is an environmental award-winning, energy efficient facility that manufactures galvanized and plastic-coated welded steel wire mesh used for lobster traps, aquaculture, erosion control, and other purposes. The lawsuit recounts EPA's malicious and selective criminal investigation and felony indictment against RMC and Knott for allegedly violating an EPA regulation on October 21, 1997 and November 7, 1997, by discharging rinsewater from RMC's facility with a pH level of less than 5.0 standard units, into the public sewer. The sewer eventually reaches the Town of Northbridge's publicly owned treatment works (POTW).

There were no allegations by the EPA that the POTW was damaged in any way by RMC's rinsewater (which, by volume, is approximately eight percent of the amount RMC is allowed by EPA to discharge, and which accounts for less than two-tenths of one percent of the capacity of the

POTW). Nor were there any allegations that RMC's rinsewater caused the POTW to violate any EPA regulations governing the POTW's discharge of rinsewater into the Blackstone River. Thus, even if there were violations of the pH levels as alleged by the EPA, they were merely harmless technical infractions.

In the course of defending themselves against the unprecedented felony criminal charges for the alleged trivial infractions, Knott and RMC demanded that the government turn over the original log books of the EPA agents who took pH readings on October 21 and November 7, 1997. The log books revealed that a lawful pH reading of 7 taken during the initial raid was altered so that the 7 was made to look like a 4, and that other 7s were altered to look like 2s. The pH readings taken by the EPA during the November 7, 1997 raid on RMC all show pH readings of 5 or above in compliance with EPA regulations where the public sewer line actually connects to RMC's discharge pipe.

Judge Gorton suppressed the evidence of pH readings of rinsewater taken on October 21, 1997, because EPA agents had violated RMC's and Knott's Fourth Amendment rights against unreasonable searches and seizures when it took tests and readings without any RMC employee present to witness the testing, as expressly required by Knott as a condition for the consensual search. A week before the scheduled trial in May 1999, all charges against RMC and Knott were suddenly dropped.

On July 27, 2000, the court granted RMC's and Knott's subsequent motion filed under the Hyde Amendment for reimbursement of attorneys' fees for defending what the court found to be a "vexatious" criminal prosecution. Judge Gorton described the November 7, 1997 raid by EPA agents on RMC as "a virtual `SWAT team' consisting of twenty-one EPA law enforcement officers and agents, many of whom were armed, [who] stormed the RMC facility to conduct pH samplings. They vigorously interrogated and videotaped employees causing them great distress and discomfort." CBS's "60 Minutes" produced a featured segment about this case which was critical of EPA. Unfortunately, the court's fee award was reversed by the First Circuit on appeal in 2001.

After extensive discovery, the court in March 2004 denied motions by the government to dismiss both claims. The court then tried the malicious prosecution claim in July while the EPA agents appealed the denial of their motion in the Bivens action to the First Circuit.

WLF attorneys, along with local counsel Warren G. Miller of Boston, are studying the recent malicious prosecution decision for possible post-trial motions and appeal. The decision by the court of appeals on the Bivens issue is expected later this year.

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