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August 2, 1983

The Honorable G. Wix Unthank
District Judge
United States District Court for the
Eastern District of Kentucky
Federal Building
Pikeville, Kentucky

Re: William R. Webb v. Gailes Manufacturing, et al.
C.A. No. 80-168 and
William R. Webb v. Daniel Kuzman, et al.
Circuit Court of Cook County No. 82 L-16423
Our File No. 3989

Dear Judge Unthank:

I am writing regarding a personal injury matter in which I appeared in 1982. The name of the case was William R. Webb v. Gailes Manufacturing Co., et al., No. 80-164. The case was disposed of on Motions for Summary Judgment by all defendants. The Order was entered on October 5, 1982 dismissing the action.

Subsequent to the dismissal, I filed an action in the Circuit Court of Cook County, Illinois alleging legal malpractice by the attorneys for Mr. Webb who preceded me in the action which was dismissed on October 5, 1982. The action filed here is based upon the failure of the prior attorneys to sue the proper parties in the injury action.

We have recently been before the Circuit Court Judge (Brian B. Duff) regarding a motion to compel my deposition. At that time, the attorney representing Mr. Kuzman stated that he tried to obtain copies of all documents of record in the District Court for the Eastern District of Kentucky and most of the documents he seeks were not there, primarily Orders, depositions and Motions. Judge Duff has ordered me to put together a complete set of all documents of record in the injury case and have them certified by you as a complete "dummy" file for the injury case.

While we feel that the documents are irrelevant since our legal malpractice case is based upon the failure to sue companies who were not parties to the injury case, we want to cooperate with the court so that Judge Duff can see for himself that we are not hiding any relevant evidence.

KARLIN AND FLEISHER

The Honorable G. Wix Unthank

August 2, 1983
Page 2

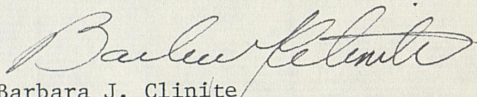
Initially, I question my opponent's statement that there are documents missing from the District Court file, since I know from experience that the Clerk's office has competent, diligent people. Therefore, I would appreciate it if your clerk could check the file and verify what documents are in the court file. Then, if any are missing, my task will be to locate copies of whatever seems to be missing and present them to you for certification.

If everything is in the court file, a certified list would probably be sufficient. If some things appear to be missing, then the best thing is probably for the Clerk to prepare certified copies of everything in the file, which I will then compare with my file to identify the missing documents. I would then bring the copies of missing documents together with the copies certified by the Clerk to you for certification that the "dummy" file is complete. We will, of course, pay for the time and cost of preparing this "dummy" file.

If you can suggest a better method, please do not hesitate to call me collect. Your assistance is most appreciated.

Very truly yours,

KARLIN AND FLEISHER, LTD.


Barbara J. Clinite

BJC:sab

TO: Judge
FROM: Donald
DATE: 10-1-82
RE: 80-164

William R. Webb vs. Gailes Manufacturing Co., et al vs.
Massey Coal Services, Inc., et al

PTC, Monday, 10-4-82, 2:00 p.m.

Synopsis: Plff Webb was using a roof bolting machine in
the mines when a rock fell on him.
Satch's memo is good for details. (Attached).

Pending Motions:

1. Item 99 - 3rd party defendant Peter Cave Coal Co.'s Motion for Summary Judgment on the grounds that plff has failed to develop any evidence to provide a basis of its liability.
2. Item 100 - Defendant Massey Coal Services has renewed its Motion for S/J on the same grounds as above & that the deposition of Rudell Wicker points out that Massey Coal is not a proper party to this suit.
3. Item 101 - Joint Motion to Continue PTC filed 9-30-82.
4. Item 102 - Plff's Response to Massey Coal S/J motion points out that Massey Coal has shown a lack of good faith effort to comply with Court's order of 9-13-82 (compelling discovery). Plff requests Default Judgment against Massey Coal on issue of liability.

Comments:

1. I wonder how serious the parties are about prosecuting this case. The record reeks of non-compliance with the Court's standing orders as well as orders from the previous PTC, to-wit:
 - a. All Motions were to be filed 7 days before the PTC. Non-compliance.
 - b. The Court also ordered the parties to serve opposing counsel a list of their expert witnesses & summaries of their testimony 30 days before the PTC. Apparently undone.
 - c. None of the parties have filed trial memos, or lists of witnesses and expert witnesses and summaries of their testimony; additionally, no stipulations are filed.
 - d. By previous Order, all depositions were to be filed by 9-28-82; Deposition #6 was filed on 9-29-82.

PRE-TRIAL CONFERENCE: WILLIAM WEBB v. GAILLES MANUF. CO., ET AL

Pre-trial memoranda have not been filed, nor have the witness lists, stipulated statement of facts, exhibit lists, etc. It appears that the parties think you will continue the trial in this matter. (trial is set for March 16). You expressly told the parties in your last order (Feb. 5, 1982) that the fact that you passed on the motion to continue the trial until the pre-trial conference, did not relieve them of the duty to file the required lists, memos, etc.

At this pre-trial conference, you need to rule on the motion for extension of time: Step docket No. 30.

Facts: Plaintiff was using roof bolting machine in mines and while using it, a rock fell on him. He alleges in his Amended Complaint the following (Plaintiff had to amend complaint to give Massey notice of claims against it):

1. machine was defective and dangerous;
2. Massey knew or should have known of condition;
3. Massey owed duty to plaintiff to provide safe place to work;
4. Massey should have told him of hazards of machine;
5. These failures were direct and proximate cause of injuries.

In Original Complaint, plaintiff alleged:

1. Strict Liability Theory
 - a) defective & unreasonably dangerous condition known of by defendants;
 - b) no inspection or testing by defendants;
 - c) no proper safety devices.
2. Negligence Theory
 - a) same as a) above
 - b) same as b) above
 - c) same as c) above
 - d) failure to warn;
 - e) unfit for usual purposes. (this looks like warranty)
3. Breach of Warranty Theory
 - a) merchantability and fitness for particular purpose; (plaintiff alleges he used machine in manner and for purpose intended)/

Other than this, I can't really say much. The parties have neglected to file the relevant pre-trial paraphernalia.

Satch

9-2-80

1980 - Chad Perry.

1981 - May - Preliminary Conference

1982 - Patrick 2 March

Enjoy 29 Aug 79

Bill 2 Sept 80

1982 - 3 Feb @ As Counsel.

1982 - 22 May Extension

See affidavit item #158

1982 - 2 March - ~~Motion for~~ -
Preliminary Conference.

PTC. 4 Oct 82

1982 - 15 March - Interrogatories

68

1982 - 24 June Order for IT & answer due

80

#95 amended Complaint

1982 - August.

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Satch

MAY 22, 1981

AT PIKEVILLE

JUDGE UNTHANK

11:30 A.M.

PIKEVILLE CIVIL NO. 80-164

WILLIAM R. WEBB

G. C. Perry, III

Preston

vs:

GAILLES MANUFACTURING CO.,
A.M. BYERS CO.;
FMC CORPORATION;
MASSEY COAL SERVICES, INC. and
GENERAL TIRE & RUBBER CO.

John A. Fulton-FMC Corp.
Jack Horn-Massey Coal Serv.
Eugene Rice-General Tire & A.M.
Byers
D. B. Kazee-Massey Coal Serv.

Kazee

PRELIMINARY CONFERENCE

- # 5 MOTION of deft, Massey Coal Services to dismiss ✓
- # 7 RESPONSE of plff to motion to dismiss ✓
- #13 MEMORANDUM of deft, Massey, in support of motion to dismiss
- #14 MEMORANDUM of plff in opposition to deft's motion to dismiss
- #18 AMENDED COMPLAINT of plff —

60 days
22 July
22 Aug 30
22 Feb 12

William R. Webb v. GAiles Manufacturing, et al

This is a mining accident in which a roof bolting machine failed and a miner was injured resulting in paralysis.

The plaintiff has "shotgunned" a complaint against every party who is even slightly connected with this case. Curiously, the mine in which plaintiff was injured is not named as a party, only the owning mining company. This is in essence a products liability case. However plaintiff was granted leave to file an amended complaint in order to state a claim against the senior/controlling mine company. No answer has yet been filed, but time has not passed.

Recommend:

1. Statement of agreed facts/disputed facts within a set time.
2. Cut off of discovery (will probably require some extensive period of time as these normally require considerable expert evaluation.)
3. Pre-trial date.

Suggest that we prepare a pre-trial order similar to the one in Blue Diamond. If this is your wish please let me know and I will prepare.

RKJ