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Groups appeal order in settled Syngenta suit, want more documents unsealed

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By BETHANY KRAJELIS

A pair of environmental groups has appealed a recent federal order calling for dozens of documents in the now-settled class action lawsuit over atrazine to be unsealed.

The Environmental Law and Policy Center (ELPC) and Prairie Rivers Network (PRN) late last week appealed U.S. District Judge J. Phil Gilbert's March 19 order that directs the plaintiffs in the suit to unseal several documents included in their response to the Syngenta defendants' motion to dismiss.



Learner

The suit over atrazine settled this past fall for \$105 million. Attorneys at Korein Tillery in St. Louis and Barron & Budd in Dallas represented the plaintiffs, who claimed that the agricultural herbicide entered their water supplies.

Although Gilbert's March 19 order leans largely in favor of the two groups, which have been working to get documents unsealed ever since they were named intervenors to the suit in 2011, they filed notice of appeal to the 7th Circuit Court of Appeals in hopes of getting another set of documents unsealed.

Howard Learner, ELPC's president and executive director, said the reason behind the groups' appeal is very simple.

"Once documents are submitted into public record, they should be accessible to the public," Learner said, adding that the groups, much like the public, are "shooting in the dark here" as they have not seen the documents they seek to be unsealed.

Regardless of the contents of these documents, he said, "the public has a right of access to judicial records once they are placed in the public realm."

After EPLC and PRN filed their first motion to unseal in 2011, Gilbert divided most of the sealed documents into three categories: 1) documents that should be unsealed because they shouldn't have been designated as "Confidential Information," 2) documents that should be stricken because they were duplicates or not cited, and 3) documents that should remain under seal.

While he ordered some documents to be unsealed, Gilbert held that the documents not directly cited in the plaintiff's briefs should remain under seal, a ruling the two groups' unsuccessfully asked him to reconsider.

They then appealed to the 7th Circuit Court of Appeals, which in 2012 dismissed their appeal for lack of jurisdiction, determining that the orders at issue were not "collateral orders" because they "did not resolve the entirety of the appellants' motion to unseal" and "are not effectively unreviewable on appeal from the final judgment."

In December 2012, Magistrate Judge Philip Frazier, who handled some preliminary matters for Gilbert in the case, ordered several dozen more documents to be unsealed.

The Syngenta defendants appealed Frazier's order in regards to eight of the 86 documents he ordered to be unsealed by April 19, claiming they should remain under seal because they contained "confidential business information" regarding business decisions, financial information and planning strategies.

The ELPC and PRN in January filed their response in opposition to the defendants' appeal and last week, Gilbert affirmed Frazier's December 2012 order.

Gilbert determined that the Syngenta defendants "repeatedly failed to satisfy ... the burden of demonstrating that maintaining the documents under seal is warranted."

Because Gilbert's recent order resolves the two groups' motion to unseal as to the third and final category of documents, they contend in their March 22 docketing statement that the 7th Circuit Court of Appeals now has jurisdiction over the matter.

"An appeal of the order denying, in part, ELPC and PRN's Motion to Unseal is now timely," the groups assert in their docketing statement.

The intervenors' appeal, according to the docketing statement, seeks review of the portion of the district court's past orders denying their motion to unseal in regards to the second category of sealed documents, the ones that were not cited in the plaintiffs' brief.

Learner said while the ELPC and PRN appreciate Gilbert's recent ruling to unseal documents, "we believe that the additional documents that have remained under seal should be unsealed."

Learner, along with his ELPC colleague Jennifer Cassel, submitted the groups' notice of appeal and docketing statement.

This entry was posted in Class Action, Federal Court, Madison County and tagged Environmental Law and Policy Center, Howard Learner, Phillip Frazier, Prairie Rivers Network, Seventh Circuit, Stephen Tillery, Syngenta. Bookmark the permalink.

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