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Recent Developments: Willy v. Coastal Corp.: Rule 11 Sanctions Upheld Although the Federal District Court Was Subsequently Found to Lack Jurisdiction

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ations for upholding *Parden* far outweighed the arguments for departure from its original interpretation of FELA in 1964. *Id.* at 564.

The Court interpreted the fact that Congress had not taken any action to alter the Court's decision in the 28 years since *Parden* was decided as meaning that the legislative branch was in agreement with the holding. *Id.* The Court also recognized that many States had acted in reliance upon FELA in drafting their workers' compensation statutes, so that overruling *Parden* would require an extensive legislative response to provide coverage to railroad workers. *Id.* Most importantly, the Court noted that overruling *Parden* would strip all FELA protection from state-employed workers, leaving the plaintiff in this case, Hilton, without a forum to redress his work related injury. *Id.*

In a strongly-worded dissent, Justice O'Connor argued that the majority's overriding concern to leave Hilton a forum to redress his injuries caused the majority to misapply the Court's previous decisions, which would have clearly overruled the holding of *Parden*. *Id.* at 566, 570. The dissent found no distinction to be made between a federal or state forum when a plaintiff brought suit under a federal statute. In both situations, the "clear statement" rule enunciated in *Will* should have been applied. *Id.* at 567.

Thus, based on the holding of *Welch*, that FELA did not contain a clear statement of congressional intent to abrogate State immunity, Justice O'Connor argued that the Court should overturn the remedial provisions of FELA and affirm the state courts' decision in *Hilton*. *Id.* As a result, O'Connor concluded that state legislatures would be compelled to redraft statutes which excluded railroad workers from coverage, in order to provide an alternative remedy, and the plaintiff in this case would be denied a remedy in a court of law. *Id.* at 570.

In *Hilton v. South Carolina Public Railways Commission*, the Supreme

Court held that FELA created a cause of action against state-owned railroads to be enforced in state courts only. The Court's decision left state-employed railroad workers with a forum of recourse to redress work-related injuries. It also avoided the possibility of requiring an extensive legislative redrafting of many state workers' compensation statutes, which exclude these workers from coverage because of the drafters' reliance upon previous Supreme Court decisions.

- Linda M. Googins

***Willy v. Coastal Corp.*: RULE 11 SANCTIONS UPHOLD ALTHOUGH THE FEDERAL DISTRICT COURT WAS SUBSEQUENTLY FOUND TO LACK JURISDICTION.**

In *Willy v. Coastal Corp.*, 112 S. Ct. 1076 (1992), a unanimous Court concluded that Article III of the United States Constitution was not violated when a federal district court that lacked subject matter jurisdiction imposed sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Those sanctions were of a collateral concern to the case because the sanctioned behavior was unrelated to Donald J. Willy's effort to convince the federal district court that it lacked jurisdiction. Accordingly, the Court determined that it did not raise the issue of a district court adjudicating the merits of a "case or controversy" over which it lacked jurisdiction.

Willy filed suit against Coastal Corporation ("Coastal") after he was discharged as in-house counsel. Willy alleged that Coastal violated state and federal environmental laws and that Coastal terminated his employment due to his refusal to participate in these alleged transgressions. Willy asserted that the termination of his employment by Coastal violated state and federal laws, including "whistleblower" provisions.

Although Willy sued in Texas state court, Coastal claimed that there was original federal question jurisdiction

under Title 28, sections 1331 and 1441 of the United States Code. The case was subsequently removed to federal district court. Despite Willy's objections, the district court concluded that it had subject matter jurisdiction. The district court granted Coastal's motion to dismiss for failure to state a claim, and the court also dismissed the pending state claims made by Willy. In addition, the district court allowed Coastal's motion for Rule 11 sanctions. The court awarded Coastal attorney's fees against Willy and his attorney, jointly and severally.

The Court of Appeals for the Fifth Circuit reversed the district court order that dismissed Willy's claims and remanded the case to state court. It concluded that the complaint did not raise claims arising under federal law, and thus, the district court lacked subject matter jurisdiction. The court of appeals, however, upheld the Rule 11 sanctions imposed by the district court, and on remand the district court was ordered to determine the appropriate amount of attorneys' fees to be recovered by Coastal.

On the second appeal, the court affirmed the district court's reassessment of the amount of attorney's fees to be paid by Willy and his attorney. The court of appeals also rejected Willy's objection that the district court did not have constitutional authority to impose Rule 11 sanctions when it lacked subject matter jurisdiction. *Id.* at 1078. The court stated that Rule 11 sanctions were within the inherent powers of all federal courts, and therefore, the district court had appropriately exercised this power.

The United States Supreme Court agreed with Willy's argument that in the Rules Enabling Act and in the Federal Rules of Civil Procedure, the "implicit premise . . . [is] that rules of practice and procedure are not necessary of disputes beyond the judicial power conferred by Article III." *Id.* at 1078-79 (quoting Brief for Petitioner at 28). Notwithstanding that premise, the Court responded that this does not

resolve the case at hand. In *Sibbach v. Wilson*, 312 U.S. 1 (1941), the Court “observed that federal courts, in adopting rules were not free to extend or restrict the jurisdiction conferred by a statute.” *Willy*, 112 S. Ct. at 1079. Federal courts, therefore, cannot adopt rules which modify the judicial power granted by Article III of the United States Constitution.

Willy argued that the district court had overreached the judicial power granted by Article III by imposing Rule 11 sanctions in a case absent subject matter jurisdiction. “Thus, according to petitioner, even had Congress attempted to grant the courts authority to impose sanctions in a case such as this, the grant would run afoul of Article III.” *Willy*, 112 S. Ct. at 1079. Willy conceded that there are circumstances in which federal courts without subject matter jurisdiction may impose sanctions. Nevertheless, he contended that federal courts may not take such action “against a party who has successfully contested jurisdiction.” *Id.* at 1079. The Court, however, reasoned that “in acknowledging the many circumstances in which sanctions can be imposed, several which have a statutory basis, petitioner effectively concedes both Congress’ general power to regulate the courts and its specific power to authorize the imposition of sanctions.” *Id.* at 1080.

The Court stated that a federal court found lacking subject matter jurisdiction would be precluded from further adjudication of the case; “but such a determination does not automatically wipe out all proceedings had in the district court at a time when the district court operated under the misapprehension that it had jurisdiction.” *Id.* After reviewing other cases, the Court declared that in the interest of maintaining orderly procedure, sanctions should be upheld despite a later determination that the federal court was without jurisdiction. *Id.* Furthermore, Rule 11 sanctions were of collateral concern and such sanctions were not an assessment of the legal merits of a case. *Id.*

Relying on *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990), the Court state that “it is well established that a federal court may consider collateral issues after an action is no longer pending.” *Willy*, 112 S. Ct. at 1080 (quoting *Cooter & Gell*, 496 U.S. 384).

Willy supported his claim by citing *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988), in which the Court concluded that if on remand, the district court is found to be deficient in subject matter jurisdiction, the contempt orders enacted by the district court must collapse. *Willy*, 112 S. Ct. at 1089. Based on this decision, Willy asserted that Rule 11 sanctions imposed by a district court without subject matter jurisdiction must fall. The Court rejected Willy’s liberal application of *Catholic Conference* and emphasized the differences in the purpose of a civil contempt order and Rule 11 sanctions.

Since Rule 11 sanctions do not involve the merits of a “case or controversy,” a federal court without subject matter jurisdiction over a case may constitutionally impose procedural rules which are collateral to the case at hand. Accordingly, parties must observe procedural rules, such as Rule 11, when practicing before federal courts, whether or not they agree with the jurisdiction of that court.

- Carol Nakhuda Cohen

***Rubin v. State*: PROTECTION OF ATTORNEY-CLIENT PRIVILEGE DOES NOT APPLY TO LOCATION AND CONDITION OF TANGIBLE EVIDENCE REMOVED OR ALTERED BY DEFENSE COUNSEL EVEN IF IT IMPLICATES THE DEFENDANT.**

In a six to one decision, the Court of Appeals of Maryland held that statements made by a defendant in a criminal case to investigators she had hired in a related domestic matter were not protected by attorney-client privilege until her attorney specifically retained

the investigators in the criminal matter. In *Rubin v. State*, 602 A.2d 677 (Md. 1992), the court of appeals held a private investigator’s testimony about statements made by the defendant before her attorney arrived at the murder scene did not violate attorney-client privilege. However, the court found that the investigator’s testimony concerning events occurring later violated her attorney-client privilege, but was harmless error. The court, although not explicitly doing so, appeared to adopt an exception to the attorney-client privilege for evidence removed or altered by defense counsel.

Lisa Rubin and Timothy Warner’s 10-year marriage was turbulent. It was marked by numerous affairs and the alleged attempted murder of Rubin’s ex-lover. In March 1990, Warner moved out of the couple’s home. Several days later, Rubin engaged the services of Prudential Associates, Inc., a private investigating agency, to prove that Warner was committing adultery. During the course of the investigation, Rubin developed a close relationship with Robert Miller, Prudential’s president, and told Miller that Warner had admitted to her that he had tried to kill her former lover. Miller recommended that Rubin consult with Prudential’s attorney, Darrel Longest, about a possible accessoryship problem. Rubin subsequently met with Longest and retained him to represent her.

On April 23, 1990, Warner telephoned Rubin concerning their dog. They agreed to meet at the veterinarian’s office the following evening. After meeting at a parking lot, Rubin and Warner walked down a path through a wooded area. There, Rubin shot Warner nine times with a .38 caliber pistol, reloading twice in the process. Rubin then called Miller and arranged to meet him, without telling him the purpose of the meeting. Miller, along with an associate, Leopold, met Rubin and she subsequently led them to the murder site. Only after talking to Rubin and examining the scene did Miller call attorney