

Seventh Circuit Affirms Dismissal

The U.S. Court of Appeals for the Seventh Circuit recently affirmed the dismissal of one of the firm's clients, ruling that the district court properly dismissed plaintiffs' public and private nuisance claims. This ruling is a tremendous win for defendants who face claims by plaintiffs attempting to avoid a state's workers' compensation exclusivity provisions by pleading them as environmental claims. The plaintiffs—all-long time employees—asserted non-occupational, environmental public and private nuisance claims in an attempt to circumvent the exclusive remedy provision of Wisconsin's Workers' Compensation Act. The three-judge panel of the Seventh Circuit was not persuaded, and stated that the plaintiffs' "attempt to get around this bar by re-characterizing their injuries as occurring off the job" "are unavailing." The Court ruled that the district court properly rejected plaintiffs' expert testimony and correctly dismissed plaintiffs' public and private nuisance claims. In addition, the Court agreed with Forman Watkins that plaintiffs' private nuisance claims also fail because they are barred by the Wisconsin six-year statute of limitations. Danny Mulholland presented the argument to the Seventh Circuit, and Joshua Metcalf, Tanya Ellis, Mitch McGuffey, Joel Fyke, and Ruth Maron participated in the underlying briefing.