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Leonard M. Ring

Karla Wright

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The 1975-1976 term of the Court of Appeals for the Seventh Circuit has produced, as in years past, numerous decisions resting, at least in part, on procedural issues. Few, if any, striking departures from prior law are to be found. Indeed, most of the 1975-1976 cases have simply applied well-settled case law to common factual patterns. In light of the limited scope of this article, such cases have been excluded from consideration.\(^1\) Instead, the authors have tried to focus on significant decisions of the last term of the court, which relate to more timely areas of interest such as class actions, interlocutory appeals, injunctions, third party practice, and statutes of limitation.

**CLASS ACTIONS**

Procedural rulings of the district courts in class actions remain a fertile source of appellate review in the post-*Eisen*\(^2\) era. Last year, the issue of class

\* Leonard M. Ring & Associates; member of the Illinois Bar; J.D., DePaul University.
\** Associate, Leonard M. Ring & Associates; member of the Illinois Bar; J.D., IIT/Chicago Kent College of Law.

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1. *See, e.g.*, Pittsburgh-Des Moines Steel Co. v. Brookhaven Manor Water Co., 532 F.2d 572 (7th Cir. 1976) (a party's failure to move for a directed verdict at the close of all the evidence does not bar his right to move for judgment notwithstanding the verdict, especially when this technical violation of Federal Rule of Civil Procedure 50(b) is raised for the first time on appeal); Sadowski v. Bombardier Ltd., 527 F.2d 1132 (7th Cir. 1975) (Federal Rule of Civil Procedure 59(b) requires only that a motion for a new trial be served (not filed) within ten days after entry of judgment); Blackhawk Heating & Plumbing Co. v. Geeslin, 530 F.2d 154 (7th Cir. 1976) (where federal and state courts seek in rem or quasi in rem jurisdiction over the same property, the court first asserting jurisdiction may maintain jurisdiction to the exclusion of the other court); Janke Constr. Co., v. Vulcan Materials Co., 527 F.2d 772 (7th Cir. 1976) (where a successful party misconstrues his legal theory (breach of warranty), the court nevertheless may properly decide the case on some other theory (promissory estoppel)); Cannon v. U.S. Acoustics Corp., 532 F.2d 1118 (7th Cir. 1976) (claims of procedural error not presented to the district court cannot be urged for the first time on appeal); Fitzsimmons v. Best, 528 F.2d 692 (7th Cir. 1976) (disputed contractual provisions cannot usually be resolved on a motion for summary judgment); Valentino v. Howlett, 528 F.2d 975 (7th Cir. 1976) (plaintiff in a class action has the burden of proving that the class is so numerous that joinder of all members is impracticable, as required by Federal Rule of Civil Procedure 23(a)(1)).

status and the problem of certification under Federal Rule of Civil Procedure
23(c)(1) received the lion's share of the court's attention. That rule provides
that "as soon as practicable" after a class action is filed, the court "shall
determine by order" whether a class action can properly be maintained. In
two parallel lines of cases, the court laid down rules covering, first, the
repercussions of failure to comply with the "as soon as practicable" require-
ment of rule 23(c)(1) and, second, whether the denial of class action status
may be appealed prior to an adjudication of the case on the merits.

The cases most often affected are those involving "common questions of
law and fact." Rule 23(b)(3) requires that in such cases notice of the litigation
must be sent to unnamed members of the class. The failure to obtain an order
in rule 23(b)(3) actions that the class status is proper ("certification" of the
class) prior to trial or a motion for summary judgment may critically affect the
scope of relief jurisdictionally possible.

For example, in Peritz v. Liberty Loan Corp., a rule 23(b)(3) action,
plaintiffs moved for summary judgment prior to a request for certification of
the class. Defendant cross-moved for summary judgment, and thereafter,
moved to disallow class status. The district court denied summary judgment
and deferred a ruling on class certification until after a verdict for plaintiffs.
Only then did the court enter an order permitting the suit to be maintained as a
class action.

On appeal, the Seventh Circuit reversed and remanded with directions to
the district court not only to vacate the class certification order, but to proceed
solely with the individual claims of the named plaintiffs. The court reasoned
that plaintiffs, by seeking a disposition on the merits prior to certification, had
waived their right to class representation. This was especially so, said the
court, where the defendant had objected to class adjudication.

Peritz is not an isolated case. Three months later, the court of appeals
applied the same ruling in Roberts v. American Airlines, Inc. In that case,
also a rule 23(b)(3) action, neither plaintiffs nor defendants raised the issue of
class status prior to a decision on the merits. In Roberts, however, unlike

3. FED. R. CIV. P. 23(c)(1). A Federal Rule of Civil Procedure will be hereinafter referred
to in the text as the rule.
4. Actions are brought under rule 23(b)(3) where "questions of law or fact common to the
members of the class predominate over any questions affecting only individual members, and
... a class action is superior to other available methods...." FED. R. CIV. P. 23(b)(3).
Rule 23(c)(2) provides that in "any class action maintained" under rule 23(b)(3), "the court
shall direct to the members of the class the best notice practicable under the circumstances,...
The notice shall advise each member that (A) the court will exclude him from the class if he so
requests by a specified date." FED. R. CIV. P. 23(c)(2).
5. 523 F.2d 349 (7th Cir. 1975).
6. Id. at 355.
7. Id. at 354.
8. 526 F.2d 757 (7th Cir. 1975).
Peritz, the defendants prevailed. Although the court’s refusal to entertain class status limited the adverse effect of its ruling to the individually named plaintiffs in that case, it nevertheless indicated, by dicta, that while res judicata might not bar an unnamed plaintiff’s claim against the same defendants, stare decisis probably would. The danger to plaintiffs that looms in failure to obtain class certification in advance should be obvious.

The rule articulated in Peritz and Roberts should not, in any event, be extended to rule 23(b)(1) and (b)(2) types of class actions. In Jiminez v. Weinberger, a rule 23(b)(2) action, class certification was likewise delayed until after a decision on the merits. The trial court found for defendants and plaintiffs appealed. Upon reversal and remand, the district court entered an order certifying the class and simultaneously entered judgment for plaintiffs. This time the defendants appealed. On this appeal, the Seventh Circuit affirmed. It held that the district court’s jurisdictional power to entertain the case as a class action survived its first, erroneous, decision for defendants on the merits, and that certification was timely. It should be noted that the court of appeals limited its ruling to rule 23(b)(1) and (b)(2) types of class actions, where notice need not be served upon unnamed class members who, unlike unnamed members in rule 23(b)(3) actions, have no right to “opt out” of the litigation.

The court’s reasoning in Peritz, Roberts and Jiminez is instructive. The necessity under rule 23(b)(3) for serving notice on the unnamed class members, affording them the opportunity to opt out, is jurisdictional in nature. Failure to certify the class carries with it a corresponding failure to notify the class. And it follows that the court cannot exercise jurisdiction over unnamed parties who are not properly before it.

While this rationale has surface appeal and is logical where the decision on the merits has been for defendants, it can lead to harsh results in cases such as Peritz, where the plaintiffs prevail. In such instances, the ends of justice might be better served if notice were permitted to be served after judgment and could relate back to the date when class certification should have been granted. Indulgence in this legal fiction could be justified on the ground that the defendant would be barred by collateral estoppel from litigating the issue

9. Actions can be maintained under rule 23(b)(1) where “prosecution of separate actions... would create a risk of inconsistent or varying adjudications” or individual adjudications “would as a practical matter be dispositive of the interests of other members not parties to the adjudications....” In contrast, rule 23(b)(2) actions are where “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate... relief with respect to the class as a whole....” FED. R. CIV. P. 23(b)(1).
10. 523 F.2d 689 (7th Cir. 1975).
11. Id. at 694.
12. Id. at 704.
13. See FED. R. CIV. P. 23(c)(2).
of liability with other members of the class anyway, and had the class been "notified," it presumably would have taken the proper procedural steps to protect its rights. This approach would avoid a multiplicity of individual actions or an attempted class action by other members of the class and, under some circumstances, an unjust bar to the action because of the statute of limitations.

Another important class action question which came up at least three times last term was whether denial of a timely motion for class certification is appealable prior to the time the trial proceedings are concluded. *Weit v. Continental Illinois National Bank & Trust Co.* involved such an interlocutory appeal under 28 U.S.C. § 1292(a)(1). There plaintiffs presented the rather innovative argument that refusal to certify the class so directly affected the scope of potential injunctive relief, that it came within the ambit of section 1292(a)(1). The court of appeals rejected this out of hand, and held squarely that denial of class status was not the denial of an injunction, and was therefore not appealable under that section of the Code.

*Weit* should be contrasted with *Jenkins v. Blue Cross Mutual Hospital Insurance, Inc.*, a sex discrimination in employment case. After refusing class certification on the ground that plaintiff was not a proper class representative, the district court also denied her motion for preliminary injunction on the apparent ground that irreparable harm could only befall those persons still employed by the defendant. Because the named plaintiff's employment had already been terminated, she was not a proper class member. Plaintiff filed a section 1292(a)(1) appeal. She argued that the real issue was not so much whether denial of a preliminary injunction was proper, but whether the case was maintainable as a class action so that the injunctive relief she sought could, in fact, protect the unnamed members of the class. The Seventh Circuit found plaintiff's argument convincing. It reversed and remanded the case with directions to the district court to reconsider whether plaintiff was, indeed, a proper class representative.

Read together, *Jenkins* and *Weit* reflect a clear triumph of form over substance. If plaintiff uses section 1292(a)(1) to appeal denial of class status before a motion for a preliminary injunction is denied, no right exists to

14. 535 F.2d 1010 (7th Cir. 1976).
16. The *Weit* court also held that the district court's decision to adopt defendant's proposed notice to the class instead of plaintiff's was not appealable under 28 U.S.C. § 1291 (1970) ("final judgment rule"), or *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949) ("collateral order" doctrine), discussed in the text following note 22 infra. 535 F.2d at 1014.
17. 522 F.2d 1235 (7th Cir. 1975).
18. Id. at 1237. It clearly was proper given the fact that the district court was treating the case as an individual and not a class action.
19. Id. at 1242.
interlocutory review of the court's denial of class certification. But once a preliminary injunction is denied, a plaintiff may resort to section 1292(a)(1) for immediate review of the order denying class status. Such a distinction seems to serve no logical purpose, and does no more than furnish literal adherence to the bare language of section 1292(a)(1). All it would seem to accomplish is to promote the filing of motions for preliminary injunctions with the concomitant waste of judicial time, and needless expense for the litigants.

*Anschul v. Sitmar Cruises, Inc.*,20 handed down the same day as *Weit*, treated the problem much more broadly. In *Anschul*, plaintiffs apparently did not rely on section 1292(a)(1), as they had in *Weit* and *Jenkins*, but rather, on two common law doctrines permitting interlocutory appeals in certain circumstances.

The first such doctrine was enunciated in *Eisen v. Carlisle & Jacquelin*.21 The doctrine there cited permits appeals from interlocutory orders which, by their very terms, would effectively sound the "death knell" of the litigation. This doctrine was flatly rejected in *Anschul*. Finding no compulsion to adhere to the mandates of *Eisen I*, the Seventh Circuit opted instead for the "collateral order" doctrine, formulated in *Cohen v. Beneficial Industrial Loan Corp.*22 Simply stated, the latter doctrine permits interlocutory appeals from orders affecting claims which are collateral to the main right of action, where such claims are too important to be denied review, yet too independent to be deferred until the entire case is adjudicated.

While holding that the facts of *Anschul* did not meet the narrow requirements of the "collateral order" doctrine,23 the Seventh Circuit did, in dicta, indicate that parties denied class status might also effectively utilize 28 U.S.C. § 1292(b) certification to gain interlocutory review.24

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20. 544 F.2d 1364 (7th Cir. 1976), cert. denied, 97 S. Ct. 272 (1977). (*Anschul* is also discussed at pages 462-74 infra.)
21. 370 F.2d 119 (2d Cir. 1966), cert. denied, 386 U.S. 1035 (1967) [hereinafter referred to in the text as *Eisen I*].
22. 337 U.S. 541 (1940).
23. The interlocutory appeal in *Cohen* concerned proper allocation of the costs of notice to the class, review of which did not require any adjudication of the underlying cause of action. Moreover, if deferred until conclusion of the trial proceedings, it would escape review entirely. The Seventh Circuit in *Anschul* felt that the deferment of appellate review of the class certification issue, unlike the effect of the notice ruling in *Cohen*, would not effectively foreclose Anschul's right to appellate review of that issue.
24. 28 U.S.C. § 1292(b) (1970). The statute provides in part:
When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal . . . may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.
INTERLOCUTORY APPEALS

In addition to the decisions relating to interlocutory appeals from orders denying class certification, another very narrow issue dealing with interlocutory appeals was considered in United States v. City of Chicago, the highly-publicized Chicago police discrimination case. The district court had entered a preliminary injunction from which defendants took an appeal under 28 U.S.C. § 1292(a)(1). Before the interlocutory appeal was decided, the district court found for plaintiffs on the merits, and entered a permanent injunction to the same effect as the preliminary injunction. Plaintiffs thereupon moved for dismissal of defendants' pending interlocutory appeal.

In its opinion, the Seventh Circuit repeated the often articulated policy that orders granting or denying preliminary injunctions merge into orders granting or denying permanent injunctions, and held that if and when defendants appealed the permanent injunction, their interlocutory appeal should be dismissed. To make it crystal clear, the court went on to say that the panel before which the interlocutory appeal was pending should hold the appeal on its docket, at least until a notice of appeal from the final decree had been filed. Only then could the interlocutory appeal properly be dismissed.

INJUNCTIONS

Rule 65(d) provides that "Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those parties in active concert or participation with them who receive actual notice of the order by personal service or otherwise." The meaning of the phrase "active concert or participation" was exhaustively analyzed in Herrlein v. Kanakis. In that case, plaintiff's predecessor entered into a certain royalty contract with Kanakis who subsequently assigned his rights under the contract to his wholly-owned corporation, Teklad, Inc. Thereafter, while the above contract was still in force, Teklad entered into negotiations with Mogul Corp. for a sale of Teklad's assets. By the time the sale was finally consummated, the royalty contract in question had terminated. Mogul, in acquiring Teklad's assets, was expressly held harmless from liability for any act or controversy arising out of the royalty contract.

25. 534 F.2d 708 (7th Cir. 1976).
28. 534 F.2d at 711.
29. Id. at 712.
31. 526 F.2d 252 (7th Cir. 1976).
Some time later, plaintiff brought suit against Kanakis and Teklad alleging breach by them of the royalty agreement, and sought injunctive and other relief. The district court found for plaintiff. For reasons unexplained, Mogul was never made a party to the action. Nevertheless, Mogul was subsequently served with a writ of injunction, which ordered the defendants and "all persons in active concert or participation with them, including anyone claiming through or under defendants or either of them" to refrain from marketing products covered by the royalty agreement.\(^3\)

Mogul ignored the injunction and was cited for contempt. On appeal, the Seventh Circuit refused to expand rule 65(d) to cover this factual situation. The court of appeals determined that Mogul was not "in active concert or participation with" Kanakis and Teklad simply because it purchased Teklad with knowledge of plaintiff's interests in the royalty contract.\(^3\) As authority for this holding, the court cited a long line of cases which had construed the phrase "active concert or participation" to mean that a non-party must aid or abet a party in violating the injunction in question.\(^3\) Since neither Kanakis nor Teklad had violated the injunction,\(^3\) the court reasoned that Mogul could not be an "aider" or "abettor". The court also found that the cases holding successors in interest bound by injunctions against their predecessor were inapplicable to the instant case because Mogul's acquisition of Teklad occurred before the lawsuit was commenced, not after.\(^3\)

The lesson of Herrlein is clear. Plaintiff's failure to join Mogul in the original action denied the court jurisdiction over Mogul. It follows that a party would be well advised not to rely on the "active concert or participation" language of rule 65(d) as a substitute for service of process. Absent compelling reasons to the contrary, everyone against whom injunctive relief may be desirable should be named a party to the lawsuit.

Three other Seventh Circuit decisions involved challenges to district court orders granting or denying preliminary injunctions on the ground that the courts had committed an abuse of discretion. In Banks v. Trainor\(^3\) and American Medical Association v. Weinberger,\(^3\) the court reiterated its long-standing policy that appellate review of the grant or denial of preliminary injunctions for abuse of discretion is extremely rare. Only where it clearly appears that the district court failed to balance and weigh the appropriate equities will reversal be mandated.\(^3\)

\(^{32}\) Id. at 253.
\(^{33}\) Id. at 254.
\(^{34}\) Id.
\(^{35}\) They were no longer engaged in any business relative to the royalty contract.
\(^{36}\) 526 F.2d at 255.
\(^{37}\) 525 F.2d 837 (7th Cir. 1975), cert. denied, 96 S. Ct. 1484 (1976).
\(^{38}\) 522 F.2d 921 (7th Cir. 1975).
\(^{39}\) 525 F.2d at 842 and 522 F.2d at 925.
One case where such an abuse of discretion was found to exist was White v. Roughton. Plaintiffs there claimed that the defendant's methods of denying and terminating their welfare benefits violated their rights of procedural due process to notice and a hearing. The district court denied plaintiffs' motion for a preliminary injunction on the apparent ground that plaintiffs were not, in fact, eligible for welfare benefits. The Seventh Circuit, however, agreed with the plaintiffs and held that the proper issue before the district court was not whether plaintiffs were entitled to such benefits, but whether the requirements of procedural due process were met, that is, whether plaintiffs were given proper notice and a hearing. Finding that the appropriate equities had not been given due consideration by the district court, the court of appeals reversed and remanded the case for further consideration of this limited issue. Plaintiffs' ultimate rights to welfare benefits were held totally irrelevant to the determination of whether procedural due process requirements had been met.

THIRD PARTY PRACTICE

Under rule 14(a), a defendant, acting as a third party plaintiff, may implead one who is not a party to the action (a third party defendant) "who is or may be liable for all of the plaintiff's claim against" the original defendant. The interplay of rule 14 and Illinois substantive law disfavoring joinder of indemnity claims, was considered in Colton v. Swain. Plaintiff filed a section 1983 civil rights action against various sheriff's deputies. Upon being informed by their insurer that it would not defend the action, defendants filed a third party complaint against the insurer to determine the extent of coverage, if any, that was available to them. The district court denied the insurer's motion to dismiss the third party complaint, and granted the third party plaintiffs summary judgment.

On appeal, the carrier contended that rule 14 is merely procedural. It argued that since the third party complaint was predicated upon Illinois substantive law, and since Illinois law prohibits direct actions against insurers until a final judgment has been entered against the insured, impleader was improper under rule 14. To buttress its position, the carrier further argued that the insurance policy in question contained a no-action and no-impleader/joinder clause.

The Seventh Circuit agreed that Illinois law, rather than federal, con-
trolled the impleader issue—but disagreed with the carrier that impleader was improper. 47 The court opined that under Illinois law, the insurer’s obligation to defend is broader than its obligation to indemnify, and found the former to exist in spite of the no-action clause in the policy. 48 In the instant case, the obligation to defend arose because the complaint filed against the insureds was potentially within the coverage of the policy. Although the policy did not expressly cover section 1983 violations, it did cover parallel common law actions such as malicious prosecution and false arrest—and even though plaintiff had predicated his case on section 1983, the elements of the common law actions were sufficiently alleged in the complaint. The court further reasoned that by serving notice on the insureds of its intent not to defend the action, the carrier waived any rights it had under the no-action clause. Impleader, therefore, was proper. 49

Another recent third party indemnity case deserving brief mention is Kudelka v. American Hoist & Derrick Co. 50 This was a diversity case. Plaintiff, a federal employee, sued the defendant for personal injuries incurred in the course of his employment. The defendant countered with a third party claim against the United States for contribution or indemnity. The court of appeals held that the defendant was barred from impleading the United States by virtue of 5 U.S.C. § 8116(c). 51 That statute provides that federal workmen’s compensation shall be the employee’s exclusive remedy against the United States and, in effect, bars an action by a federal employee against the government for employment connected injuries. In direct opposition to its holding in Colton, the court here applied federal substantive law, rather than state law, to control the impleader issue, even though relief was predicated exclusively on state law. 52

Colton and Kudelka aptly illustrate that the impleader provisions of rule 14 will not be mechanically applied by the Seventh Circuit. On the contrary, impleader will be allowed only if the substantive law applicable to the narrow issues presented in the third party complaint supports an appropriate action for indemnity—and not otherwise.

STATUTES OF LIMITATION

Two decisions of the court reflect the present salutary trend in both

47. 527 F.2d at 300.
48. Id. at 302 (citing, inter alia, Sprayregen v. American Indem. Co., 105 Ill. App. 2d 318, 245 N.E.2d 556 (1969)).
49. 527 F.2d at 303.
50. 541 F.2d 651 (7th Cir. 1976).
52. Illinois law permits a third-party action against the plaintiff’s employer. This has been held not to constitute an action by the employee against the employer which would circumvent the exclusive remedy provisions of the Illinois Workmen’s Compensation Act. See ILL. REV. STAT. ch. 48, § 138.5(b) (1975).
federal and state courts toward a more liberal interpretation of the running of a statute of limitations. The Seventh Circuit virtually bent over backwards to toll the running of the statute in *Sperry v. Barggren*.\(^5\) Plaintiffs, an elderly husband and wife, owned stock in Badger Manufacturing Co., the husband's former employer. They sold this stock for $200 per share to defendants, officers of Badger. At the time of the sale, negotiations for the acquisition of Badger by another company were pending. Shortly after the purchase of plaintiffs' shares, Badger was acquired. Thereafter, the acquiring company purchased from the defendants the Badger shares they had acquired from the plaintiffs, for $781 per share.

Plaintiffs brought suit against the defendants, charging them with a violation of section 10(b) of the Securities Act.\(^4\) The limitations period was three years.\(^5\) Plaintiffs, in their original complaint and in their two amendments, *admitted* that they knew of the contemplated acquisition of Badger prior to the time they sold defendants their stock, notwithstanding that it was not publicized in their home state. However, in an attempt to defend a motion for summary judgment for failure to bring their action within the statutory period, plaintiffs submitted an affidavit in which they stated they did *not* know of the acquisition prior to the running of the statute of limitations.\(^6\)

The district court granted summary judgment.\(^7\) The Seventh Circuit, however, reversed and remanded the case for trial. The court reasoned that the disparity between the allegations in plaintiffs' complaints and their affidavit should be resolved by the factfinder, and not by the court as a matter of law.\(^8\)

Another case where the court was called upon to resolve a statute of limitations problem was *Goldman v. First National Bank*.\(^9\) In that case, which originated under the Truth in Lending Act,\(^6\) the plaintiff brought a class action alleging that defendant's application for a BankAmericard credit card contained a misleading disclosure as to finance charges. The crucial issue was the date that the plaintiff had learned of his right of action.

The district court decided that the one year limitations period afforded by the Act began to run from the date the application was made, or from the

\(^{53}\) 523 F.2d 708 (7th Cir. 1975).
\(^{55}\) 523 F.2d at 710. The statute of limitations in an action under a federal statute which does not provide for a limitation period, as is the case with section 10b-5 actions, is determined by the applicable state statute of limitations. See International Union, U.A.W. v. Hoosier Cardinal Corp., 383 U.S. 696 (1966), and Kramer v. Loewi & Co., 357 F. Supp. 83 (E.D. Wis. 1973), decided after the pleadings in Sperry v. Barggren were filed, determined that the applicable limitations' period in Wisconsin was three years.
\(^{56}\) 523 F.2d at 710.
\(^{57}\) Id. at 709.
\(^{58}\) Id. at 711.
\(^{59}\) 532 F.2d 10 (7th Cir. 1976).
date plaintiff first used his BankAmericard. Since both occurred more than a year prior to bringing of the suit, the district court granted defendant’s motion for summary judgment.61

The Seventh Circuit reversed.62 It held that where an inaccurate, incomplete or misleading disclosure is alleged, as distinguished from a total failure to disclose, the limitations’ period must be measured from the date when a finance charge is first imposed and plaintiff is first made aware of the misleading nature of the disclosure.

*Goldman*’s importance rests not so much on the court’s adoption of the "discovery rule," which could have been anticipated, but on the meticulous dissection of the nature of the debtor-creditor relationship, which the court felt compelled to examine in determining the point at which plaintiff reasonably should have become aware of the misleading disclosure.

**CONCLUSION**

Because of the volume of litigation that reaches the Court of Appeals for the Seventh Circuit, it is only natural that the majority of cases would do no more than restate established and well-recognized rules of law. Indeed, an apt cliche would be that "only the facts differ—the law remains the same." Yet, when all of the cases are analyzed, many significant refinements in procedural law can be credited to decisions from the last term of this court. The few cases cited here, though obviously not inclusive, provide some insight into the complex issues that an active and innovative bar can, and properly does, produce for judicial resolution.

62. 532 F.2d at 22.