

## Third Circuit Joins Sister Circuits in Construing Ambiguities in Dismissal Orders Against Claim Preclusion

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In a precedential opinion, the Court of Appeals for the Third Circuit has joined the Fourth, Fifth and Eleventh circuits, in construing ambiguities in dismissal orders against claim preclusion. As a result, courts in this Circuit should “not read a dismissal order as dismissing involuntarily, or voluntarily with prejudice, unless it says so clearly and expressly.” [\*Papera, et al., v. Pennsylvania Quarried Bluestone Company, et al.\*](#), No. 18-3060 (Filed: Jan. 22, 2020).

In *Papera*, the parties reached a tentative settlement of their dispute following mediation. Plaintiffs reported the seemingly amicable resolution of their case to the District Court (the United States District Court for the Middle District of Pennsylvania), and asked for “a sixty (60) day Order of Dismissal.” The District Court entered an order dismissing the case and giving the parties sixty days to finalize the settlement. [A procedure for entry of a “60-day Order of Dismissal” exists in the District of New Jersey, and is set forth in Local Civil Rule 41.1(b)].

The settlement in *Papera* fell through, but no effort was made to reinstate the case *prior* to expiration of the specified 60-day time period. Almost four months *after* entry of the District Court’s dismissal order, plaintiffs contacted the court concerning the status of the case, but were informed by the court that it “no longer had jurisdiction over the case” and that the case had been closed. Plaintiffs thereafter filed a new complaint against defendants, asserting the same claims and causes of action as before. The new case was assigned to the same judge who entered the order dismissing the prior case. Defendants moved to dismiss the new case, and the District Court granted defendants’ motion, holding that claim preclusion bars the new case.

On appeal, the Court of Appeals for the Third Circuit reversed. Noting that a party asserting claim preclusion bears the burden of proof, and dismissal with prejudice “‘is a severe and disfavored remedy’ that is ‘only appropriate in limited circumstances[,]’” the Court of Appeals adopted “two clear-statement rules” applied in the Fourth, Fifth and Eleventh circuits:

For purposes of claim preclusion, we will construe unclear dismissal orders as voluntary rather than involuntary. And we will construe unclear first voluntary dismissals as without prejudice, so they will not preclude relitigating the same claims. Only a clear and explicit statement will suffice to make a dismissal involuntary, or voluntary with prejudice.

Applying these “two clear-statement rules” to the District Court’s 60-day dismissal order below, the Court of Appeals found that nothing in the record clearly or explicitly specified that the dismissal was either involuntary or with prejudice, or warned plaintiffs that failing to reopen the case during the specified 60-day time period would preclude relitigating their claims.

Going forward, dismissals with prejudice are best stated clearly and explicitly. And, a 60-day dismissal order pursuant to D.N.J. Local Civil Rule 41.1(b), should be carefully scrutinized and followed to avoid unwanted surprises or unintended results.