

**WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 2, 2011
1:30 p.m.**

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed an Oneida County Circuit Court decision, Judge Patrick F. O'Melia, presiding.

2009AP775 E-Z Roll Off v. County of Oneida

This case involves allegations that Oneida County helped a waste-hauling company engage in monopolistic behavior by selectively charging reduced dumping fees at a county-run landfill. The Supreme Court is asked to examine the notice requirements of Wis. Stat. § 893.80(1) for filing claims against a county.

Some background: E-Z Roll Off was in the solid waste hauling business, providing dumpsters to its customers. In June of 2003, Oneida County executed an agreement with another waste hauling company, Waste Management, Wisconsin, Inc. As part of that agreement, Waste Management was charged a preferential \$5.25 per ton rate for waste it delivered to the county's transfer station. Other waste haulers, including E-Z Roll Off, were charged \$44.00 or \$54.00 per ton, depending on whether the hauler delivered enough waste to the county annually to earn a rebate.

E-Z Roll Off's owners were unaware of the Waste Management contract until February of 2004 when one of their employees inadvertently saw a scale ticket showing Waste Management's rate. E-Z Roll Off's owners requested a meeting with the county's solid waste director. At the meeting, the owners expressed concern with the Waste Management contract, saying it created a monopoly and that they would take their waste elsewhere unless the county reduced E-Z Roll Off's disposal rate. The county's solid waste director refused to reduce the rate.

E-Z Roll Off's owners then filed complaints with various governmental entities, including the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). E-Z Roll Off requested reimbursement of the amount paid over \$5.25 per ton, which was about \$98,000, and asked that the monopoly be broken and criminal charges be filed against the parties involved. DATCP forwarded a copy of the complaint to the Oneida County landfill but took no further action. DATCP's cover letter indicated the county had the option to provide a response, which DATCP would place in its file. The county's solid waste director replied to the complaint in a letter sent to DATCP and E-Z Roll Off. The solid waste director asserted that E-Z Roll Off's owners were always aware of the contract terms and stressed that the contract had resulted from an open bidding process.

On Sept. 28, 2005, E-Z Roll Off filed with the county a notice of injury alleging violations of ch. 133, Stats., and a statement of claim indicating a loss of over \$1 million in past and future lost earnings. The claim was disallowed. E-Z Roll Off filed suit in April of 2006.

The circuit court ultimately granted the county's motion for summary judgment, dismissing the case. The circuit court concluded that the notice requirements of § 893.80(1) applied. The circuit court held that E-Z Roll Off did not allege a continuing violation but rather alleged that the agreement between the county and Waste

Management signed in June of 2003 was illegal. The circuit court said the action began to accrue in June of 2003 and that E-Z Roll Off was required to file a notice of claim within 120 days. The circuit court said E-Z Roll Off filed its notice of claim in September of 2005, over two years later. Accordingly, the circuit court concluded the claim was not filed timely.

E-Z Roll Off appealed, and the Court of Appeals reversed and remanded. The Court of Appeals said whether the notice provision of § 893.80(1) applies to specific statutory actions is a question of statutory interpretation. The Court of Appeals noted that E-Z Roll Off argued for an exception to the notice requirements for its ch. 133 antitrust claim. The Court of Appeals said the primary focus in that regard was on § 133.16, injunction, pleading, and practice. The Court of Appeals went on to note that the notice of claim is not subject to any filing deadline.

Oneida County asks the Supreme Court to review the following issues:

1. Do the notice requirements mandated by Wis. Stat. §893.80(1) and §59.07 apply to Plaintiff-Respondent E-Z Roll Off LLC's action for declaratory relief under Wis. Stat. §133.03 and damages alleged under Wis. Stat. §133.18?
2. Was the Notice of Injury timely?
3. Did Oneida County have actual notice of the injury and was it prejudiced because it was not timely served with the Notice of Injury?
4. Does the continuing violations doctrine apply to Wis. Stat. §893.80(1)?