

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

SOUTHWIRE COMPANY, GASTON COPPER  
RECYCLING CORPORATION, ASARCO INC.,  
KENNECOTT UTAH COPPER CORP., LEVITON  
MANUFACTURING CO., INC., AMERICAN  
INSULATED WIRE CORPORATION,  
ESSEX ELECTRIC, INC., MUELLER COPPER  
TUBE CO., INC., MUELLER COPPER TUBE  
PRODUCTS, INC., and SUPERIOR TELECOM, INC.,

MDL Docket No. 1303

Plaintiffs,

v.

J.P. MORGAN CHASE & CO., as successor to  
J.P. MORGAN & CO., INC., MORGAN GUARANTY  
TRUST COMPANY OF NEW YORK, SUMITOMO  
CORPORATION, GLOBAL MINERALS AND METALS  
CORPORATION, R. DAVID CAMPBELL, BIPPIN SHAH,  
MERRILL LYNCH INTERNATIONAL, INC., MERRILL  
LYNCH PIERCE FENNER & SMITH, MERRILL LYNCH  
& CO., INC. and YASUO HAMANAKA,

Defendants.

---

MEMORANDUM

02-C-707-C, 03-C-314-C,  
03-C-316-C, 03-C-317-C,  
03-C-318-C, 03-C-368-C

An amended judgment was entered in this case on March 19, 2004. Subsequently, on March 22, 2004, plaintiffs filed a notice of appeal. Now defendant Sumitomo Corporation has filed a document that I construe as a motion to alter or amend the amended

judgment pursuant to Fed. R. Civ. P. 60(b). Defendant states that the court inadvertently or mistakenly showed in the amended judgment that defendants Sumitomo and Global Metals and Minerals Corporation were entitled to summary judgment against all of the plaintiffs when, in fact, defendants Sumitomo and Global Metals and Minerals Corporation were sued by plaintiffs Southwire Company and Gaston Copper Recycling Corporation only and the motion to dismiss filed by defendants Sumitomo and Global Metals and Minerals Corporation had been granted on November 25, 2003, before the motion for summary judgment of the other defendants was granted.

Although defendant Sumitomo's motion has been filed after plaintiffs filed an appeal, this court has jurisdiction to consider the motion. See Brown v. United States, 976 F.2d 1104, 1110-11 (7th Cir. 1992) ("Parties may file motions under Rule 60(b) in the district court while an appeal is pending. In such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to so indicate so that we may order a speedy remand.").

I agree with defendant Sumitomo that it was inadvertent error to state in the amended judgment that it and Global Metals were entitled to summary judgment against plaintiffs. The amended judgment should have shown that judgment was entered in favor of defendants Sumitomo and Global Metals granting their motion to dismiss the first amended complaint of plaintiffs Southwire Company and Gaston Copper Recycling Corporation. If

the court of appeals were to remand the case to this court, I would be inclined to grant the motion to alter or amend the judgment to correct the clerical errors.

Entered this 23rd day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge