In the
United States Court of Appeals
For the Seventh Circuit

No. 92-2953

SARAH HERRIOTT, Individually and as Special Administratrix of the Estate of BRUTUS HERRIOTT, Deceased,

Plaintiff-Appellant,

vs.

ALLIED-SIGNAL, INC., a Foreign Corporation; ENGINEERING MATERIALS, a Foreign Corporation; ALLIED CHEMICAL CORPORATION, a Foreign Corporation, and WILPUTTE COKE OVEN DIVISION, ALLIED CHEMICAL & DYE CORPORATION, a Foreign Corporation,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 91 C 1377
The Honorable **Charles P. Kocoras**, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE ALLIED-SIGNAL, INC.

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CERTIFICATE OF INTEREST

Cause No.: 92-2953
Short Title: Herriott v. Allied

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(2) If such party or amicus is a corporation:

i) Its parent corporation, if any:

N/A

ii) A list of its stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus:

(3) The names of all law firms whose partners or associates have appeared for the party in the district court or are expected to appear for the party in this court:

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Attorney's Signature: Thomas H. Fegan

Date: 10/05/92

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JURISDICTIONAL STATEMENT

Appellee states that Appellant's jurisdictional statement is complete and correct.

STATEMENT OF THE ISSUES

1. Did the District Court correctly determine that Illinois Code of Civil Procedure § 13-214(b) barred plaintiff's action and properly grant defendant's motion for summary judgment?

2. As the entity which designed, manufactured, constructed and installed the coke ovens and larry-car, was Allied-Signal, Inc. within the class intended to be protected by Illinois Code of Civil Procedure § 13-214?

STATEMENT OF THE CASE

Plaintiff appeals from a judgment of the United States District Court for the Northern District of Illinois (Kokoras, J.), entered July 22, 1992, which granted summary judgment in favor of defendant.[1] In its memorandum opinion, the District Court held that plaintiff's action was time-barred pursuant to Illinois Code of Civil Procedure § 13-214(b), the applicable statute of repose.

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[1] In addition to Allied-Signal, Inc., plaintiff incorrectly named three defendants in her lawsuit which were related to Allied-Signal, Inc., but are no longer in existence. This brief is filed on behalf of Allied-Signal, Inc., referred to hereafter as Allied.

SUPPLEMENTAL STATEMENT OF FACTS

Introduction

The appeal in this action stems from an accident which occurred on February 1, 1989, at a coke-processing plant in Chicago, Illinois, operated by Acme Steel, Brutus Herriott's employer. Brutus Herriott sustained fatal injury when the machinery he was operating allegedly moved, pinning him between the machinery and a coal storage bunker.

The Larry-Car

In the period from 1953 to 1957, Wilputte Coke Oven Division ("Wilputte"), a division of Allied Chemical and Dye Corporation, now Allied-Signal, Inc., designed, manufactured, constructed and installed two batteries of coke ovens and ancillary machinery, including the coal charging car involved in plaintiff's decedent's fatal accident (Defendant's Memorandum in Support of Summary Judgment ("Defendant's Memorandum") p.1). Wilputte constructed and assembled the ovens and ancillary machinery at the facilities of Interlake Steel, now known as and referred to hereafter as Acme (Defendant's Memorandum p.1). The coal charging car, also known as a "larry-car", was installed, and was operated in the space between the two batteries of coke ovens (Defendant's Memorandum p.2). The larry-car is a thirty-ton piece of machinery, twelve feet tall, twenty feet long and thirty-five feet wide (Defendant's Memorandum p.2). It travels along 490 feet of rails, constructed on top of the coke ovens, and is situated twenty-five to thirty feet above the ground (Defendant's Memorandum p.2). The larry-car was placed

on top of the coke ovens at the time the ovens were installed (Defendant's Memorandum p.2).

The larry-car is the only means by which coal from charging bins is deposited in the coke ovens (Defendant's Memorandum pp.3-4).

The Lawsuit

In February of 1989, Brutus Herriott, a larry-car operator employed by Acme Steel, was killed while operating a larry-car. Sarah Herriott, Brutus' wife, subsequently commenced this wrongful death action in state court against Allied-Signal, Inc., Engineering Materials, Allied Chemical Corp., and Wilputte Coke Oven Division (Plaintiff's Complaint at Law, pp.1-10). Plaintiff alleged, inter alia, that the unreasonably dangerous condition of the larry-car when it left Allied's control proximately caused Brutus Herriott's death. Plaintiff further alleged that defendants' negligent design and manufacture caused Brutus Herriott's death. The action was subsequently removed to the United States District Court for the Northern District of Illinois.

Allied's Motion for Summary Judgment

Allied moved for summary judgment in the District Court on the grounds that Illinois Code of Civil Procedure § 13-214(b) barred plaintiff's action (Defendant's Motion for Summary Judgment, filed 07/07/92). Section 13-214(b) provides, in relevant part, that "[n]o action based upon tort, contract or otherwise may be brought against any person for an act or omission of such person in the design, planning, supervision, observation or management of

construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission." Ill. Rev. Stat., ch. 110, ¶ 13-214(b). Section 13-214 also provides that as used therein "person" means any individual, any business or legal entity, or any body politic.

In opposing defendant's motion, plaintiff argued that § 13-214 was inapplicable to product manufacturers (Plaintiff's Response to Defendant's Motion for Summary Judgment, pp.1-11).

The Opinion Below

The District Court held that § 13-214 applied in this case to bar plaintiff's action because her action was commenced more than ten years after Allied's involvement in the design and construction of the coke ovens and larry-car (Memorandum Opinion, 07/21/92, pp.1-16). In reaching this determination, the District Court held, as a matter of law, that the larry-car was an improvement to real property subject to the repose period in § 13-214. In connection with its holding, the District Court found that the larry-car was "part and parcel of the construction" of the Acme coke-processing plant and could not be characterized as a mere repair or replacement so as to fall outside the scope of § 13-214 (Memorandum Opinion, 07/21/92, p.12). The court further found that unrebutted deposition testimony established that the larry-car provided the only means to deposit coal in the coke ovens and, therefore, use of the larry-car was the only way that coke could be processed at the Acme plant. As the larry-car was an integral aspect of coke-processing at the plant, the industrial use to which the

property was put, the court concluded that it was an improvement to real property. For these reasons, the District Court held that Allied's role in manufacturing, designing, constructing and installing the coke ovens and the larry-car at the Acme plant entitled Allied to the protection of the repose period of § 13-214.

The District Court specifically rejected plaintiff's argument that § 13-214 was inapplicable to manufacturers of products (Memorandum Opinion, 07/21/92, pp.13-14). The District Court also rejected the argument that technical rules pertaining to the law of fixtures should be employed by the courts to distinguish between goods subject to the repose period in § 13-213 and improvements to real property subject to the repose period in § 13-214 (Memorandum Opinion, 07/21/92, p.14).

ARGUMENT

I.

ALLIED WAS ENTITLED TO SUMMARY JUDGMENT IN ITS FAVOR AS A MATTER OF LAW BECAUSE § 13-214(b) BARRED PLAINTIFF'S ACTION.

This Court reviews de novo the decision of a district court granting summary judgment. Hayes v. Otis Elevator Co., 946 F.2d 1272 (7th Cir. 1991). Summary judgment is appropriate when the record discloses no genuine issue of material fact and the moving party is entitled to judgment in his favor as a matter of law. Fed. R. Civ. P. 56(c).

Moreover, where the moving papers do not reveal the presence of a factual controversy on a material issue, the non-movant opposing summary judgment cannot assent to the factual theory presented in the motion, and then assert on appeal as grounds for reversal a purported factual disagreement never before disclosed. See DeBardeleben v. Cummings, 453 F.2d 320, 324 (5th Cir. 1972); Agustin v. Quern, 611 F.2d 206 (7th Cir. 1979); 6 Moore, Federal Practice ¶ 56.27[1] at 56-855 (2nd ed. 1988).

In support of summary judgment, Allied relied upon the unrebutted deposition testimony of Dick O'Hearn, assistant division manager of the Acme coke plant, to establish that the larry-car was an integral aspect of the coke-processing facility and, therefore, an improvement to real property. In opposing summary judgment, plaintiff did not argue that a disputed issue of fact precluded the grant of summary judgment. Instead, she argued that the facts herein supported her conclusion that § 13-214 was inapplicable to

this case. In view of the foregoing, this Court need not consider plaintiff's argument presented for the first time on appeal that an unidentified disputed issue of fact precludes summary judgment.

In any event, the facts relating to the larry-car are not in dispute. In her complaint plaintiff alleged that Allied manufactured and designed batteries of coke ovens and a larry-car used to transport coal to the ovens. At his deposition, Dick O'Hearn testified that the larry-car and coke oven batteries were installed at the same time. In her statement of facts in her brief plaintiff states that Allied constructed and installed the ovens and larry-car at Acme's plant (Appellant's Brief p.8). The sole dispute in the court below involved a question of law -- whether Allied's design, manufacture, construction and installation of the larry-car constituted an improvement to real property within the meaning of § 13-214. See Memorandum Opinion, 07/21/92, p.5; Hilliard v. Lummus Co., Inc., 834 F.2d 1352 (7th Cir. 1987).

On appeal plaintiff principally argues that § 13-214 is inapplicable to the facts at bar and, furthermore, that Allied is not within the class intended to be protected by § 13-214. As explained herein, the District Court correctly determined that § 13-214 plainly barred plaintiff's action because the larry-car was an improvement to real property within the meaning of § 13-214 as interpreted by the courts.

1. The Larry-Car Is An "Improvement To Real Property" Within The Meaning of § 13-214.

In ascertaining the meaning of the term "improvement to real property", this Court has adopted the definition expressed by the Appellate Court in Calumet Country Club v. Roberts Environmental Control Corp., 136 Ill.App.3d 610, 483 N.E.2d 613 (1985). Hilliard, supra, 834 F.2d at 1354. In Calumet Country Club, the Appellate Court applied a "common sense" approach to statutory interpretation, focusing on the ordinary meaning of the words used. Thus, the Calumet court defined an improvement to real property as "an addition to real property amounting to more than a mere repair or replacement, and which substantially enhances the value of the property". Calumet, supra, 136 Ill.App.3d 610, 483 N.E.2d at 616 (adopting definition found in Black's Law Dictionary at 682 (5th ed. 1979)). This Court, as well as several Appellate Courts construing § 13-214, have applied the definition expressed in Calumet. See Witham v. Whiting Corp., ___ F.2d ___, 1992 WL 233390 (7th Cir., Sept. 23, 1992) (hoist crane held "improvement to real property"); Kleist v. Metrick Electric Co., 212 Ill.App.3d 738, 571 N.E.2d 819 (1991) (electric box installed as part of electrical system in construction of shopping center was an "improvement to real property"); Billman v. Crown-Trygg Corp., 205 Ill.App.3d 916, 563 N.E.2d 903, 906 (1990) ("improvement" not limited solely to buildings; highway construction work was "improvement to real property"); Cross v. Ainsworth Seed Co., 199 Ill.App.3d 910, 557 N.E.2d 906, 913 (1990) (conveyor system held "improvement to real

property"); Cates v. Hunter Engineering Co., 205 Ill.App.3d 587, 563 N.E.2d 1239, 1240 (1990) (cold-rolling mill in newly-constructed aluminum sheet mill was "improvement to real property"). As did this Court in Hilliard, the Appellate Courts in Cross and Billman quoted from Black's Law Dictionary, which defines an improvement as:

> A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes. ***

See Hilliard, supra, 834 F.2d at 1354 n.3; Billman, supra, 205 Ill.App.3d 916, 563 N.E.2d at 906; Cross, supra, 199 Ill.App.3d 901, 557 N.E.2d at 913.

In Witham, supra, this Court recently applied the definition articulated in Calumet and Hilliard and held that a main hoist crane manufactured by defendant Whiting Corporation was an improvement to real property. This Court explained that the crane was an improvement to real property because it was more than a mere repair or replacement and it substantially enhanced the value of the steel plant where the injured plaintiff was employed. Accordingly, this Court determined that the crane manufacturer was entitled to the protection of § 13-214. This Court premised its holding on the fact that the manufacturer worked with the builders of the bay where the crane was installed to create a crane intended to fit at the steel plant.[2] Witham, supra, 1992 WL 233390, p.5.

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[2] In the case at bar, Allied constructed the larry-car and the coke ovens for the Acme plant.

In applying the Calumet definition, the courts have stated that the appropriate inquiry is whether the "whole" of the work performed by the party seeking the protection of the statute of repose amounts to an improvement to real property. This Court in Hilliard adopted the approach of the Supreme Court of Georgia:

> The issue is whether a component of a system which is definitely an improvement to real property is an improvement to real property itself. However, to artificially extract each component from an improvement to real property and view it in isolation would be an unrealistic and impractical method of determining what is an improvement to real property. Frequently, as in this case, an improvement to real property is going to consist of a complex system of components.

Hilliard, supra, 834 F.2d at 1356, (quoting Mullis v. Southern Co. Services, Inc., 250 Ga. 94, 296 S.E.2d 579, 584 (1982)); see also St. Louis, supra, 220 Ill.App.3d 704, 581 N.E.2d at 96; Cross, supra, 194 Ill.App.3d 910, 557 N.E.2d at 913.

Applying these principles to the case at bar, the District Court correctly determined that the larry-car was an improvement to real property within the meaning of § 13-214. The record established that Allied designed, manufactured and constructed the two batteries of ovens and ancillary machinery, including the larry-car, comprising the coke-processing plant. The larry-car was assembled at the Acme plant during the period that the ovens were installed and was built as an integral component of the coke-processing plant, which could not function without the use of larry-cars. Furthermore, in addition to designing and manufacturing the coke ovens and larry-car, Allied was responsible for the installation of the ovens and larry-car at the Acme plant.

In view of the foregoing, the District Court found that the larry-car was an integral part of the coke-processing facility and therefore substantially enhanced the value of Acme's property which was used to process coke. The court further found that the larry-car, which required the expenditure of labor and capital, enhanced the utility of the property.

On appeal to this Court, plaintiff contends that Allied had no other design functions in addition to manufacturing and installing the larry-car at the Acme plant (Appellant's Brief p.9). Plaintiff argues, therefore, that Allied is not protected by the repose period of § 13-214. In so arguing, plaintiff ignores the allegations of her own complaint in which she alleged, inter alia, that Allied "was engaged in the business of designing, manufacturing, assembling, distributing, and selling certain coke ovens and ancillary equipment for use in the production of steel . . ." and "[t]hat a piece of the ancillary equipment . . . was a device known as a 'larry-car', which was used to transport coal . . . to the various coke ovens." Plaintiff also contradicts her statement of facts in which she specifically states that Allied designed the ovens and the larry-car (Appellant's Brief p.5).

Furthermore, plaintiff's related argument that Allied's activities in connection with its design, manufacture, and construction of the ovens and larry-car were distinguishable from the activities performed by the defendant in Hilliard, supra, and therefore outside the scope the § 13-214, is unpersuasive and belied by the express terms of § 13-214. The plaintiff in Hilliard

sued Lummus Company, which had been retained by a chocolate company to modernize a cocoa-processing plant. During the modernization project, Lummus advised the chocolate company to replace the carbon steel components of screw conveyors that moved the cocoa through the plant with stainless steel components. Hilliard, supra, 834 F.2d at 1353. Lummus, however, did not manufacture components nor did it perform the replacement work that it recommended be done. This Court found that the screw conveyor was installed at the time that the plant itself was constructed and had been in place since that time. This Court further found that the conveyor was installed as part of the plant's construction, and had substantially enhanced the value of property used to produce processed cocoa. Accordingly, this Court held that the conveyor was an improvement to real property and held that § 13-214 barred the plaintiff's action.

In the case at bar, Allied installed the ovens and larry-car at the Acme plant in the mid-1950's in order for the plant to operate as a coke-processing facility. Consequently, the ovens and the larry-car, which was an integral component of that facility, constituted an "improvement to real property" within the meaning of § 13-214. The fact that Lummus and Allied, which both sought the protection of § 13-214, did not do precisely the same work in connection with an improvement to real property does not compel the conclusion that Lummus was protected by § 13-214, but that somehow Allied was not. Section 13-214 does not apply only to entities involved in the modernization of a plant. By its terms, § 13-214

applies to entities, such as Allied, involved in the construction of particular improvements to real property. See Ill. Rev. Stat., ch. 110, § 13-214(b).

Plaintiff further argues that the District Court erroneously granted summary judgment because Allied failed to present any evidence that the larry-car added to the value of Acme's plant (Appellant's Brief p.13). This argument is specious. The record indisputably established that Acme's plant was used as a coke-processing facility and that coke could not be processed without the use of a larry-car. In an analogous case, the United States Court of Appeals for the Sixth Circuit upheld the determination of the United States District Court for the Northern District of Ohio that the defendant therein, who had designed and installed a conveyor to transport coal to certain coke ovens, was protected by a statute of repose comparable to § 13-214. The District Court in Adair reasoned that the conveyor was an "integral component of an industrial system which is essential for the plant to serve the purpose for which it was designed: transportation of coal is essential to the operation of the By-Product Coke Plant." Adair v. Koppers Co., Inc., 541 F.Supp. 1120, 1125 (N.D. Ohio 1982), aff'd, 741 F.2d 111 (6th Cir. 1984).

Under these circumstances, there can be no doubt that the larry-car in this case added value to the coke-processing plant -- which could not fulfill its principal purpose without the use of larry-cars.

2. Products And Improvements To Real Property Are Not Mutually Exclusive Categories So As To Render § 13-214 Inapplicable To "Products".

This Court recently rejected plaintiff's principal argument herein that § 13-214 is inapplicable to product manufacturers. In Witham, this Court held that a crane manufacturer was entitled to the repose period of § 13-214. Relying on established Illinois law, this Court reasoned that "a particular good can be both a product subject to the strict liability doctrine and an improvement to real property." Witham, supra, 1992 WL 233390, p.3 (citing, inter alia, Calumet, supra, 136 Ill.App.3d 610, 483 N.E.2d 613 (1985)).

In view of this Court's opinion in Witham and the Illinois cases on point, plaintiff's reliance upon two California decisions in support of her argument that Allied should not be protected by the repose period of § 13-214 is inapposite. In the California cases cited by plaintiff, the courts held that "mere" manufacturers whose products were ultimately installed on real property were not entitled to the protection of a statute of repose intended to apply to persons "performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property." See Baker v. Walker & Walker, Inc., 133 Cal.App.3d 746, 184 Cal.Rptr. 245 (1982) (manufacturer of cooling and heating units not protected by California improvement to real property statute of repose); Sevilla v. Stearns-Roger, Inc., 101 Cal.App.3d 608, 161 Cal.Rptr. 700 (1980) (manufacturer of pan used in sugar refinery not protected by

statute of repose). As this Court observed in Hilliard, however, there was no mention in the California cases that the defendants therein had participated in any way in the design, planning or supervision of construction of more general improvements to the property involved. Hilliard, supra 834 F.2d at 1357. In contrast to Allied's role in this case, their participation was limited to manufacturing equipment that later was installed on real property. In the case at bar, Allied was not a mere manufacturer -- Allied designed, manufactured, constructed and installed the larry-car, batteries of coke ovens and other machinery, comprising the Acme coke-processing facility.

Boddie v. Litton Unit Handling Systems, 118 Ill.App.3d 520, 455 N.E.2d 142 (1983) does not lend support to plaintiff's argument that § 13-214 does not apply to manufacturers. In Boddie, the Appellate Court merely held that the status of a conveyor system as a real estate fixture did not preclude a recovery by the plaintiff based on a theory of strict liability. The court in Boddie, however, never addressed the applicability of a particular statute of repose to the circumstances of that case. Furthermore, plaintiff's suggestion in her brief that the District Court never considered Boddie is erroneous. The District Court expressly found plaintiff's reliance upon Boddie misplaced (Memorandum Opinion, 07/21/92, p.15).

In the case at bar, plaintiff attempts to equate the batteries of ovens and the larry-car to mass-produced products such as an air-conditioner or a pan which were merely attached to real

property. However, Allied did not pluck ovens from its inventory and ship them to Acme. Instead, Allied designed and manufactured the ovens and the larry-car, a thirty-ton piece of machinery, for Acme's coke-processing facility, and installed the batteries of ovens and other machinery at Acme's plant.

The holding of the Illinois Supreme Court in St. Louis v. Rockwell Graphic Systems, Inc., ___ Ill.2d ___, 1992 WL 2979603 (10/22/92), which found the record therein insufficient, does not apply in this case. In St. Louis, the Appellate Court had concluded that an offset printing press installed as part of a newspaper company's expansion was an improvement to real property within the meaning of § 13-214. St. Louis v. Rockwell Graphic Systems, Inc., 220 Ill.App.3d 704, 581 N.E.2d 93 (1991), rev'd __ Ill.2d ___, 1992 WL 297603. On appeal to the Supreme Court, the Supreme Court vacated the judgments in the defendants' favor. Specifically, the court found that the record contained "no evidence as to the cost, size, or weight of the printing press." Nor was there evidence as to how the press was installed. St. Louis, supra, 1992 Wl 297603, p.2. In the case at bar, however, although there was no evidence as to cost, there was ample evidence of the size and weight of the larry-car as well as evidence regarding the relationship of the larry-car to the larger improvement -- the coke-processing facility. The record established that the larry-car was installed twenty-five to thirty feet above the ground, on top of the coke ovens. It was also established that the larry-car was installed at the time the ovens

were installed -- further evidence that the larry-car was an improvement to real property within the meaning of § 13-214.

Thus, on the facts in this record, there is no question that Allied was involved in the design and construction of an improvement to real property. See Witham, supra, 1992 WL 233390 (7th Cir., Sept. 23, 1992); McCormick v. Columbus Conveyer Co., 522 Pa. 520, 564 A.2d 907, 910-911 (Pa. 1989).

3. Whether or Not the Larry-Car Is Deemed A Fixture, § 13-214 Is Applicable In The Case At Bar.

The District Court properly rejected plaintiff's argument that only fixtures should be considered improvements to real property. Plaintiff argues that because it might be possible to disassemble the larry-car and move it to another location at some future date, the larry-car was not a fixture subject to § 13-214 (Appellant's Brief pp.10-11). Plaintiff's reasoning is flawed and unsupported in the case law. The status of a component as an improvement to real property is not affected by the fact that the component may not be a fixture. See Hilliard, 834 F.2d 1352, 1355; Cross, supra, 199 Ill.App.3d 910, 557 N.E.2d at 913; see also St. Louis, supra, 220 Ill.App.3d 704, 581 N.E.2d at 95-96.

In Hilliard, this Court expressly rejected the concept that only fixtures may be considered improvements to real property:

> Nothing in § 13-214 indicates that it intended the peculiar definitions of fixture law to apply to that section . . . Taken to its logical conclusion, [this] argument would mean that nothing could be considered an

'improvement to real property' if there were any possibility that the structure might be redesigned or rebuilt at any time, no matter how far into the future.

Hilliard, supra, 834 F.2d at 1355.

II.

ALLIED IS WITHIN THE CLASS INTENDED TO BE PROTECTED BY § 13-214.

As explained in Point I, the record established that Allied was involved in the construction of an improvement to real property. Nevertheless, as its second point on appeal, plaintiff argues that Allied is not within the class of persons intended to be protected by § 13-214. In support of this position, plaintiff argues that § 13-214 applies only to persons involved in "design, planning, supervision, observation, or management of construction or construction of an improvement to real property" and not to manufacturers. Plaintiff's argument is belied by the plain language of § 13-214, the allegations of her complaint, the deposition testimony of Dick O'Hearn and the applicable case law. Plaintiff asserted and Dick O'Hearn confirmed, that sometime in the 1950's, Allied designed, constructed and installed coke ovens and other machinery, including the larry-car, at Acme's facility in Chicago. The fact that Allied also manufactured the ovens and the larry-car does not render § 13-214 inapplicable because, as the designer and installer of an improvement to real property, Allied's activities plainly fell within the scope of § 13-214. Under the plain language of § 13-214, manufacturers who construct components which fall within the definition of an improvement to real property are protected by the statute. See Witham, supra, 1992 WL 233390.

On its face, § 13-214 protects anyone who engages in enumerated activities. See Witham, supra, 1992 WL 233390, p.5 (finding manufacturer entitled to protection of § 13-214); Kleist, supra, 212 Ill.App.3d 738, 571 N.E.2d 822 (1991). Allied engaged in the protected activities, and, therefore, is within the class protected by the statute.

CONCLUSION

For all of the foregoing reasons, summary judgment in Allied's favor was proper. Section 13-214(b) barred plaintiff's action because the larry-car is an improvement to real property within the meaning of that section. Allied's status as the manufacturer of the larry-car did not render § 13-214 inapplicable because Allied's activities in connection with the design, manufacture, construction and installation of the coke-processing machinery at Acme plainly fell within the scope of § 13-214.

Accordingly, the judgment below should be affirmed by this Court.

Respectfully Submitted,

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