

VIRGINIA LAWYERS WEEKLY

Vol. 20, No. 24

November 14, 2005

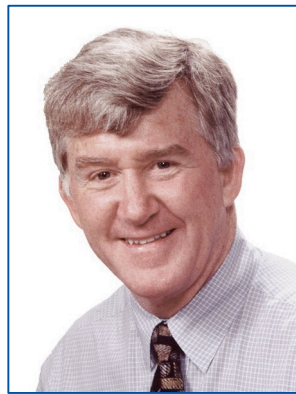
www.valawyersweekly.com

THE WEEK'S OPINIONS

ADMIRALTY

Submarine Repair – Asbestos Exposure – Maritime Law

In this suit by a man who alleges exposure to asbestos in products manufactured by defendant sealing technology company, and who developed mesothelioma, the trial court did not err in holding that federal maritime principles apply to this suit against the manufacturer of products used by the man during the construction and repair of submarines situated in navigable waters.



HATTEN

Prior to trial, plaintiff estate settled, nonsuited or dismissed his claims against all defendants except the manufacturer. After trial, the jury returned a verdict of \$467,819 and apportioned 30 percent of the damages to defendant manufacturer and 29 percent of the damage to three entities that were bankrupt. The circuit court entered final judgment that required the manufacturer to pay the 29 percent of damages apportioned to the bankrupt entities as well as the 30 percent of damages apportioned to the manufacturer. The manufacturer's total liability was 59 percent of the verdict, or \$276,013.

A litigant seeking application of federal maritime tort law must satisfy both a locality test, demonstrating that the alleged negligence occurred on the navigable waters of the U.S., and a nexus test, demonstrating that the wrong bears a significant relationship to traditional maritime activity and has a potentially disruptive impact upon maritime commerce.

The record here shows that decedent performed

work with gaskets on at least 10 submarines lying in navigable waters and that he was injured while performing this work. The installation and maintenance of these gaskets was necessary to enable the submarines to operate properly. The Supreme Court has uniformly and consistently held that ship repair is a maritime activity. We hold that plaintiff's cause of action is governed by maritime tort principles. Plaintiff has shown that: the manufacturer's tortious acts or omissions were a proximate cause of decedent's injuries; that the acts or omissions occurred on navigable waters; that the acts or omissions had a significant connection with maritime activity; and that defendant's tortious conduct has a potentially disruptive impact upon maritime commerce.

We find no merit in defendant's argument that its wrongful act and the manifestation of injury in decedent were not sufficiently close in time to satisfy the exercise of admiralty jurisdiction.

We will not consider defendant's claims relating to the apportionment of damages. We will not permit defendant to obtain an apportionment of liability among itself and 10 entities that were not parties to this litigation and then complain about the method of apportionment. We observe that we have serious reservations whether federal maritime principles permit a court to enter a judgment reflecting a jury's apportionment of damages among entities that were never named defendants in the lawsuit before the court and from whom plaintiff has received no compensation for his injuries.

Judgment for plaintiff estate affirmed.

Garlock Sealing Technologies LLC v. Little, Executor (Hassell, J.) No. 050002, Nov. 4, 2005; Newport News Cir. Ct. (Conway) Carl L. Schwartz for appellant; Robert R. Hatten for appellee; Robert L. O'Donnell for appellant amici curiae Owens-Illinois Inc. et al.; John Charles Thomas for appellant amici curiae Warren Pumps LLC et al. VLW 005-6-101, 10 pp.