

VIRGINIA LAWYERS WEEKLY

OPINION DIGEST

Negligence

Asbestos Exposure - Maritime Law - Workers' Comp Bar

By Virginia Lawyers Weekly Staff
October 4, 2004

Where a decking subcontractor to a shipbuilder is a defendant in personal injury suits alleging injuries from asbestos exposure, the circuit court declines to dismiss the sub as a defendant on the basis of its plea of the exclusivity provisions of the Virginia Workers' Compensation Act, Va. Code Sect. 65.1-1 et seq.

The sub argues that the Comp Act operates to bar the claims of plaintiffs because the decking sub was a subcontractor to plaintiffs' employer, Newport News Shipbuilding & Dry Dock Co. Plaintiffs have opposed this motion on the grounds that Virginia law does not apply to these actions, that admiralty jurisdiction and general maritime law applies and pursuant to general maritime law, the Longshore & Harbor Workers' Act, the sub is a proper defendant.

The court denies the sub's plea in bar and specifically finds that admiralty jurisdiction and general maritime law applies to plaintiffs' claims against the decking sub and other defendants in two related cases both set for trial on Aug. 23, 2004.

The court also finds that admiralty jurisdiction and general maritime law does not apply to the claims against a defendant in a related case because the asbestos exposures occurred in Williamsburg, Va., during work that was unrelated to ship construction or repair.

The court also finds that admiralty jurisdiction and general maritime law have been properly pleaded by plaintiffs in the master motion for judgment and will apply to all of plaintiffs' claims against the decking sub and the other defendants in these actions subject to proof at trial that plaintiffs' claims arise in part as a consequence of asbestos exposure during ship repair. The court reserves the discretionary right to sever any claims against defendants where the asbestos exposure did not occur during ship repair or construction at the shipyard. The court also reserves ruling on whether or not admiralty jurisdiction or general maritime law would apply in those cases where plaintiffs claims do not include asbestos exposure during ship repair and all of the alleged exposure to all of the asbestos defendants' products occurred during ship construction.

In re All Asbestos Cases (Tench, J.) No. CL90-10000W-01, Aug. 6, 2004; Newport News Cir. Ct.; Robert R. Hatten, Richard S. Glasser for plaintiffs VLW 004-8-220, 4 pp.

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