

VIRGINIA LAWYERS WEEKLY

OPINION DIGEST

Negligence

Asbestos Exposure - Maritime Jurisdiction

By Virginia Lawyers Weekly Staff
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A Newport News Circuit Court holds that admiralty jurisdiction and general maritime law apply where plaintiff's alleged asbestos exposure to products manufactured, sold or used by defendants occurred solely from ship construction activities on launched, but uncompleted vessels (still under construction) on the navigable waters of the James River.

Defendant Owens-Illinois has moved to restrict admiralty jurisdiction and general maritime law as alleged by plaintiff to cases involving ship repair, and to sever plaintiff's cause of action against Owens-Illinois on the grounds that exposure to Owens-Illinois' asbestos products occurred solely on launched, but uncompleted vessels at the Newport News Shipyard. Defendant also has moved to strike plaintiff's allegations concerning strict liability in tort as contained in the 20th amendment to the master motion for judgment filed in these asbestos actions on June 23, 2004, on the grounds that this amendment did not relate back to the date on which plaintiff's original abbreviated motion for judgment was filed in this court and on the ground that the allegations concerning strict liability in tort constituted a new cause of action that was barred by the Virginia two-year statute of limitations. Other parties to this action participated in this hearing by telephone conference call.

In a ruling from the bench July 23, 2004, in *In re: All Asbestos Cases Pending in the Circuit Court for the City of Newport News* (which explains the rationale for the application of admiralty jurisdiction, as applied to asbestos exposures involving ship repair at the Newport News Shipyard on vessels in the navigable waters of the James River), this court hereby orders that admiralty jurisdiction and general maritime law apply where plaintiff's alleged asbestos exposure to products manufactured, sold or used by these defendants occurs solely from ship construction activities on launched, but uncompleted vessels (still under construction) on the navigable waters of the James River. Since it has been stipulated by the parties that the alleged exposure to asbestos products manufactured by Owens-Illinois occurred, if at all, on the two named ships after both of these ships had been launched onto the navigable waters of the James River, but prior to the completion of these vessels, the motion to sever by Owens-Illinois is denied and general maritime law shall apply to this case.

It is further ordered that plaintiffs' allegations of strict liability in tort as contained in the 20th amendment to the master motion for judgment is not a new cause of action, but rather an application of general maritime law to these cases; therefore, these allegations shall relate back to the date on which plaintiff's original abbreviated motion for judgment was filed. The court finds that the controlling statute of limitations in these cases is three years pursuant to general maritime law; consequently, even if the allegations concerning strict liability in tort constituted a new cause of action, it would not be barred since plaintiff's abbreviated motion for judgment was originally filed in March 2002.

Upon representation of plaintiff's counsel and agreement by Owens-Illinois that state-of-the art is a

defense to both the negligence cause of action and the claims under strict liability in tort, the court finds that plaintiff's allegations concerning strict liability do not create the need for additional discovery by Owens-Illinois.

Owens-Illinois and other defendants in this cause have argued surprise at the application of admiralty jurisdiction and general maritime law to these actions; however, the court finds that these arguments are both unpersuasive and untimely in consideration of the longstanding allegations in plaintiff's master motion for judgment and the longstanding legal precedents in support of the application of admiralty jurisdiction and general maritime law to these cases.

It is further ordered that plaintiff will be limited to the punitive damages alleged in the motion for judgment irrespective of whether punitive damages are allowed or whether maritime law limits such damages.

McLean, Executrix v. Owens-Illinois Inc. (Conway, J.) Law No. 31799V-04, Aug. 25, 2004; Newport News Cir. Ct.; Robert R. Hatten for plaintiff VLW 004-8-217, 4 pp.

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