SEMAPHORE

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Two Out of Three Causes of Action Granted for Navy Veteran

A pipefitter/shipfitter who served in the United States Navy from 1959 to 1963 and subsequently developed malignant mesothelioma has succeed in two out of three motions brought against the manufacturer of asbestos-containing products he regularly handled.

Heard by Judge John Robert Blakey in the United States District Court for the Northern District of Illinois (Eastern Division), this maritime tort case saw plaintiffs Chloyde Pelton and Shirley Pelton sue defendant John Crane Inc.

Alleging the defendant's products caused Mr Pelton to develop the disease, the plaintiffs brought the following causes of action:

- Count I – negligence
- Count II – willful and wanton conduct
- Count III – strict product liability

During his deposition, Mr Pelton explained that removing old gaskets and packing was "dirty work" requiring scraping and using a wire brush that would create "lots of dust in the air" such that breathing it in was "inevitable". Asked about the manufacturer or brandname of the gaskets he installed and removed, Mr Pelton testified he "remember[ed] it being John Crane".

Retired United States Navy Captain Bruce Woodruff opined in an affidavit that "more likely than not" Mr Pelton received substantial exposure to asbestos during the 38 months on the destroyers USS Lyman K Swenson and USS Prichett, and Destroyer Tender USS Frontier.

The judgment noted that asbestos was regularly employed at workplaces for a wide variety of purposes during this time, including the manufacture of insulating materials, gaskets and packing material of pumps.

"Although quite useful, scientists later discovered the dangers of asbestos exposure, including that it causes mesothelioma," stated the judgment.

Moving for summary judgment, John Crane Inc counter-argued:

1. Counts I, II and III fail because plaintiffs cannot establish specific causation
2. plaintiffs' strict liability claims fail because –
    a. the record is insufficient for a reasonable jury to balance the usefulness of the products at issue against the severity of the harms they pose
    b. plaintiffs' strict liability-design defect claim fails because plaintiffs have failed to present evidence of a safer alternative design
    c. plaintiffs' claim for willful and wanton conduct fails because it is not a cognisable cause of action under maritime law

The defendant also argued that "to the extent the plaintiffs' claims are premised solely upon a failure to test theory, they fail as a matter of law, because maritime law does not recognise a freestanding cause of action based upon such a theory".

On the latter point, the judgement noted: “But, plaintiffs do not assert ‘failure to test’ as an independent cause of action or theory of liability for any of their claims. As a result, the Court denies summary judgment on this basis.”

“Given the entire record”, the judgment stated that the “plaintiffs present sufficient evidence from which a reasonable jury could conclude”:

1. Mr Pelton was exposed to John Crane Inc’s products
2. those products were a substantial factor in causing his mesothelioma

The judgment consequently stated that “plaintiffs may proceed on their negligence and strict liability claims (Counts I and III)”.

While accepting John Crane Inc’s arguments in regard to Count II and therefore granting that respective motion for summary judgment from the defendent, the Court nonetheless observed that “punitive damages remain available to plaintiffs in this maritime tort case since this remedy has been historically available, and no applicable ... law eliminates that availability”.

“Plaintiffs’ failure to specifically request punitive damages in their complaint does not bar plaintiffs from seeking this remedy at trial.”

The judgment can be viewed here.

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