

ASBESTOS LITIGATION ALERT

A. DISTRICT COURT IN CALIFORNIA FINDS NO DUTY FOR ASBESTOS ADDED BY A THIRD PARTY

Hall v. Warren Pumps LLC et al., No. B208275, 2010 WL 528489 (Cal. Ct. App., 2d Dist., Div. 2 Feb. 16, 2010)

Joining the First District and the Second District's 3rd Division, another Second District panel has ruled that there is no liability on behalf of manufacturers for a third party's component parts under a failure to warn theory. (See *Taylor v. Elliott Turbomachinery Co.*, 171 Cal. App. 4th 564, (Cal. Ct. App., 1st Dist. Feb. 25, 2009), and *Merrill et al. v. Leslie Controls Inc.*, 99 Cal. Rptr. 3d 839 (Cal Ct. App., 2d Dist., Div. 3 Sept. 25, 2009), respectively; see also *Asbestos Litigation Alert*, October 2009.)

Alfred Hall died in 2008 from mesothelioma. He had worked on several Navy ships as a fireman and machinist. Plaintiff's counsel argued that the equipment he worked with was designed to be used with gaskets, packing and insulation containing asbestos, and that this was not "happenstance." However, the panel sided with Superior Court Judge Terry Green's opinion that "there's nothing wrong with the design of the product . . . And it's only because people chose to use asbestos in connection with them that we're here."

The Second District's 5th Division found otherwise last year, (*O'Neil et al. v. Crane Co. et al.*, 177 Cal. App. 4th 1019 (Cal. Ct. App., 2d Dist., Div. 5 Sept. 18, 2009)). Here the panel found liability on behalf of the gasket and pump manufacturers for the asbestos added later in component parts, because the original products were designed to be used in conjunction with asbestos-laden parts, and were thus found to be defective.

The California Supreme Court has granted petitions for review in *Merrill and O'Neill*.

B. WILLIAM POWELL CO. SEEKS TO OVERTURN \$21M CALIFORNIA VERDICT FINDING LIABILITY FOR ASBESTOS ADDED BY THIRD PARTIES

The William Powell Co. v. Walton, et al., No. B208214 (Calif. Ct. App., 2nd Dist., Div. 4)

Adding to the controversy in California's courts, *supra*, is the petition for review filed by The William Powell Co. in a decision finding liability for asbestos added by third parties. Oral arguments are slated for April 15. The Defendant, backed by an *amici* group, argues the \$21M verdict entered against it was wrong, and the finding of liability inconsistent with California principles.

The *amici* emphasize in their brief that The William Powell Co.'s valves "contained no asbestos," and that "Defendant-Appellant supplied none of the asbestos-containing parts that may have been used in conjunction with its valves at the time Plaintiff Respondent worked with them." They also point out that the legal theory placing liability on manufacturers for products affixed post-sale is relatively new: "Indeed, the third-party liability concept Plaintiffs-Respondent seek to impose here is so extreme that almost no plaintiff during the 30-plus years of asbestos litigation has had the audacity even to raise this argument until recently."

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C. \$6.5M VERDICT AGAINST SUCCESSOR DEFENDANT ROCKWELL AUTOMATION INC.

Lanpher v. Alfa Laval Inc., et al., No. 003698 (Pa. Ct. Comm. Pls., Philadelphia Cty. Mar. 5, 2010)

U.S. Navy Electrician's Mate David Lanpher alleged exposure to asbestos from 1954 to 1973 in his work cutting and drilling insulation boards and motor control units within Allen-Bradley's electrical products. He died from mesothelioma in 2008. Rockwell Automation Inc. argued that the asbestos in their products was encapsulated and could not have reached Lanpher. Rockwell Automation also contended that their products were not even on board the various ships he had worked on, since they were not listed on the U.S. Navy's Qualified Products List.

On March 5, a Philadelphia jury assessed Rockwell Automation, the lone remaining defendant and successor corporation to Allen-Bradley, with one-eighth of the liability in Phase II of a five-week trial that ended with a damages award of \$6.5M on February 19. Included in the award was \$3.5M for Lanpher's widow under the Wrongful Death Act. Rockwell Automation is responsible for \$812,500 of the award.

D. U.S. DISTRICT COURT FOR DISTRICT OF COLUMBIA RULES 1976 CONVEYANCE TO CONRAIL NOT "FREE AND CLEAR" OF TORT CLAIMS

Consolidated Rail Corp. v. Ray, No. 07-1148, 2010 WL 760423 (D.D.C. Mar. 2, 2010)

Harold Boyd worked for the Erie Lackawanna Railroad Co. from 1942 until its assets were transferred to Consolidated Rail Corp., or "Conrail," in 1976. He retired in 1978 from Conrail, and subsequently died from mesothelioma. Alleging asbestos exposure while employed by Erie Lackawanna, the executor of his estate filed a claim in Ohio state court under the Federal Employer's Liability Act, 45 U.S.C. § 51. It was later moved, under protest by Conrail, to the District Court for the District of Columbia.

Conrail filed for a Declaratory Judgment that the Regional Rail Reorganization Act of 1973, 45 U.S.C. § 701, provided for Conrail to assume the assets of insolvent railroads "free and clear of any liens or encumbrances." However, U.S. District Judge Ricardo M. Urbina ruled that the "free and clear" provision applies to interests in property, and does not necessarily bar the estate's tort claim.

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E. CALIFORNIA FEDERAL JUDGE DISREGARDS RECENTLY DISCOVERED UNDERWRITING FILE, RULING FLINTKOTE IS ENTITLED TO INSURANCE COVERAGE

Flintkote Co. v. General Accident Assurance Co. et al., No. C 04-1827 MHP, 2010 WL 770181 (N.D. Cal. Mar. 5, 2010).

After General Accident Assurance Co. located an underwriting file in one of their offices, it asked U.S. District Judge Marilyn Hall Patel to reconsider her 2006 ruling that Flintkote was an “affiliated corporation” and entitled to coverage for asbestos-related claims. In the earlier decision, Judge Patel found that Flintkote, although a parent corporation, was an “affiliated” company under the insurance policy. Flintkote had sued General Accident for failure to defend it against asbestos claims.

The underwriting file and certain letters purportedly showed that there was no intent under the policy to cover Flintkote, the parent corporation. However, Judge Patel refused to overturn her prior decision, holding that this new evidence was insufficient to go against the face of the written policy. It was her opinion that “[t]he court may not accord defendant’s extrinsic evidence weight that would overcome the reasonable expectations created by the unambiguous language of the policy.”

F. MISSISSIPPI ATTORNEYS CONCEALED PRIOR ASBESTOS SETTLEMENT TO OVERCOME STATUTE OF LIMITATIONS

Illinois Central Railroad Co. v. Harried et al., No. 06-160 DCB-JMR, verdict returned (S.D. Miss. Mar. 11, 2010)

A jury awarded compensatory damages and punitive damages equal to twice the amount two attorneys recovered on behalf of William Harried and Warren Turner in a 2001 asbestos suit against the Illinois Central Railroad. Harried and Turner concealed their 1995 suit against several asbestos manufacturers, allegedly with their counsel’s knowledge, in order to overcome a three-year statute of limitations preventing them from suing Illinois Central. Harried and Turner had recovered settlements of \$90,000 and \$120,000, respectively, from Illinois Central.

Attorneys William Guy and Thomas Brock, partners, must pay punitive damages of \$210,000, in addition to compensatory damages of \$210,000 to Illinois Central.

G. CALIFORNIA JURY GRANTS DEFENSE VERDICT FOR JOHN CRANE INC.

Vaught, et al., v. John Crane Inc., No. 392620 (Calif. Super. Ct., Los Angeles Cty. Mar. 15, 2010)

Plaintiffs for James W. Vaught, Sr. claimed that he contracted mesothelioma from working with John Crane’s gaskets and packing products in the 1960s and 1970s. He was a machinist for the County of Los Angeles until the mid-1980s and died before trial began.

John Crane was the lone defendant when the verdict was rendered. During the trial, Crane showed that his disability and death claims filed with the VA had been accepted as service-related. In addition, the Defendant argued that his mesothelioma was caused by exposure to amosite asbestos in thermal insulation on board U.S. Navy ships, rather than the relatively minor exposure he might have had as a machinist in California.

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H. TEXAS JURY AWARDS \$11M TO PAINTER

Walker v. Bondex Inc., No. 2009-52642/09-08930-I, *verdict* (Tex. Dist. Ct., 160th Jud. Dist. Mar. 22, 2010)

Blaming asbestos in joint compound and other products used in the course of painting, Vernon Walker filed suit against Bondex Inc., Union Carbide Corp., Georgia Pacific Corp., Kelly-Moore Paint Co., Carey Canadian and Johns Manville. Walker, a painter, had been diagnosed with mesothelioma. Bondex was the lone defendant when the verdict of \$11M was read, finding Bondex 10 percent liable.

Defendants have argued that there is insufficient evidence that chrysotile asbestos, the kind of asbestos found in products used by painters, causes mesothelioma. However, after hearing experts for both sides, the jury was persuaded that there is a connection. Plaintiffs' attorney John Langdoc argued that the plaintiff was exposed to more than just chrysotile fibers; that there was a combined effect with other asbestos products to cause his disease. Langdoc predicts that there will be more suits by painters, now that signs of exposure during the 1970s are beginning to surface.

I. LATE 2009 DEFENSE VERDICT IN CALIFORNIA FOR FORD MOTOR CO.

Adams v. Allis Chalmers, et al., No. BC337457 (Calif. Super. Ct., Los Angeles Cty. Dec. 21, 2009)

Even though the jury was charged under the *O'Neill* theory, *supra*, that Ford could be assessed liability for replacement parts that it did not manufacture, a jury found for Ford. Plaintiffs for Richard Adams, who died of mesothelioma before trial began, asserted claims that his illness was caused by exposure to asbestos in Ford's brake products while he worked as an auto mechanic hobbyist. However, Adams had also worked in brick masonry as a construction worker during the 1960s.

Ford was the lone defendant at verdict, and had argued that there was insufficient evidence that its products had caused Adam's mesothelioma. Instead, Ford theorized that his illness was caused by amphibole asbestos exposure while on construction sites.

The Asbestos Litigation Alert is intended to keep readers current on matters affecting asbestos litigation and is not intended to be legal advice. If you have any questions or would like a copy of any of the above articles, please contact Darlene Wood at 412.566.5938 or dwood@eckertseamans or any other attorneys with whom you have been working.