

## ASBESTOS LITIGATION ALERT

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### **A. WASHINGTON APPEALS COURT AFFIRMS AWARD OF SUMMARY JUDGMENT TO DEFENDANT, FINDS NO EVIDENCE OF EXPOSURE**

*Wangen v. A.W. Chesterton Co. et al.*, No. 65258-3-I (Wash. Ct. App., Div. 1 Aug. 8, 2011).

William Wangen worked in the fireroom aboard the USS Wiltsie for three and a half years, during which time he allegedly was exposed to asbestos. After Mr. Wangen contracted mesothelioma, but before his death, he and his wife Mary Jo Wangen commenced a products liability lawsuit against various defendants in California. Subsequently, the suit was moved to Washington where Warren Pumps Inc. (“Warren”) was added as a defendant.

Warren moved for summary judgment, contending there was no evidence that Mr. Wangen was exposed to any asbestos-containing Warren products, original or replacement. Although Warren conceded that it sold asbestos-containing gaskets to the Navy in 1943, the destroyer was overhauled twice before Mr. Wangen began his service on the vessel. The trial court granted Warren’s motion, finding no issue of material fact with regard to Mr. Wangen’s exposure or Warren’s specification of the use of its products.

On appeal, Mrs. Wangen argued in her reply brief that the trial court improperly struck her husband’s testimony which maintained that Warren was the source of replacement gaskets for pumps in the destroyer’s fireroom. Because Mrs. Wangen failed to timely argue the issue, the Washington Court of Appeals, Division 1 did not include the testimony in its review of the trial court’s award of summary judgment. No evidence remained as to whether Mr. Wangen was exposed to Warren’s products. Without exposure to the product, the remaining issue of whether Warren should be liable for specifying asbestos-containing products could not be decided. Accordingly, the Court of Appeals affirmed the trial court’s award of summary judgment to Warren.

### **B. NEW YORK JURY AWARDS PLAINTIFFS OVER \$50 MILLION**

*Konstantin et al. v. 630 Third Avenue Associates, et al.*, No. 190196/10 (N.Y. Sup. Ct., N.Y. Cty. Aug. 17, 2011); *Dummit, et al. v. A.W. Chesterton, et al.*, No. 190196/10 (N.Y. Sup. Ct., N.Y. Cty. Aug. 17, 2011).

A New York jury awarded two plaintiffs over \$50 million on August 17, 2011 in cases presided over by Judge Joan A. Madden.

In the first case, the jury awarded Ronald Dummit a total of \$32 million, allocating 99 percent liability to Crane Co. and 1 percent liability to Elliot Turbomachinery. Dummit, who suffers from pleural mesothelioma, claimed he was exposed to asbestos while working aboard Naval ships during the course of his 17 years of employment with the Navy. As part of his work as a U.S. Navy boiler tender, Dummit worked with Crane Co. valves and replaced asbestos-containing gaskets, packing, and lagging pads. During trial, Crane Co. contested whether Dummit was exposed to Crane Co. products and asserted the government contractor defense.

In the second case, the jury found that the defendant Tishman Liquidating Corp., f/k/a Tishman Realty and Construction Con. Inc. acted with reckless disregard and awarded David Konstantin \$7 million for past pain and suffering and \$12 million for future pain and suffering. The verdict amount also included

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\$64,832 for past lost wages, and \$485,325 for future lost wages. The jury allocated Tishman 76 percent liability

For three years Konstantin worked as a carpenter on the construction of two New York buildings. Konstantin claimed he was exposed to asbestos during that time, and that the exposure caused him to develop testicular mesothelioma.

### **C. ASBESTOS PLAINTIFFS ASK ILLINOIS APPELLATE COURT TO REHEAR THE COURT'S OWN DECISION**

*Rodarmel, et al. v. Pneumo Abex, et al.*, No. 4-10-0463 (Ill. 4<sup>th</sup> Dist. Ct. App. Aug. 9, 2011)

After a jury awarded plaintiffs Juanita and Baxter Rodarmel \$2.5 million in an asbestos verdict, the Illinois 4<sup>th</sup> District Court of Appeal reversed. The plaintiffs are now asking the same appeals court to vacate its own order.

The case stems from Juanita Rodarmel's alleged exposure to asbestos fibers from her first husband's work clothing. Mrs. Rodarmel later developed mesothelioma. The lawsuit named Honeywell International Inc. and Pneumo Abex LLC as defendants although neither defendant either employed Mrs. Rodarmel's first husband nor supplied Mrs. Rodarmel's first husband's employer with asbestos.

In its reversal of the jury verdict, the appellate court reasoned that because the defendants had no employer or supplier connection to the plaintiffs, the trial court erred in imposing a duty to warn on the defendants. Petitioning for rehearing, the plaintiffs contend that the appeals court misstated the record and drew inferences and made arguments that the defendants did not present to the court, or to the jury.

### **D. PLAINTIFF AWARDED \$2.4 MILLION, JOHN CRANE CO. FOUND 5 PERCENT LIABLE**

*Mansir v. Air & Liquid Systems Corp.*, No. 37-2010-00104112-CU-AS-CTL (Calif. Super. Ct., San Diego Cty. Jul. 20, 2011)

A jury in the California Superior Court for San Diego County returned a plaintiffs verdict, awarding William W. Mansir \$2.4 million. Mansir worked aboard U.S. Navy ships as a fireman and boiler technician. Mansir claimed that exposure to John Crane's alleged asbestos-containing gasket and packing material caused his malignant pleural mesothelioma.

Crane Co. was the last remaining defendant after Kelly-Moore reached a settlement with the plaintiffs prior to trial. During trial, John Crane argued that Mansir's symptoms did not support a diagnosis for malignant pleural mesothelioma. Moreover, the defendant pointed out that its products contained chrysotile asbestos, a type of asbestos that when released in small dosages does not cause mesothelioma. Despite John Crane's efforts, the jury apportioned the company five percent liability while apportioning Mansir 1 percent liability. The U.S. Navy and insulation manufacturers were found to be 57 percent liable in the aggregate.

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### **E. PENNSYLVANIA JUDGE GRANTS MULTIPLE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

*Curtis v. Pneumo Abex Corp., et al.*, No. 10-2863 (E.D. Pa. Aug. 9, 2011)

A former parts clerk at Goldring Motors in Brooklyn, NY sued various suppliers of asbestos-containing components used in Chrysler automobile brake systems. Plaintiff William Curtis was in charge of cleaning used brake sets in a ten-foot by ten-foot windowless room. Curtis alleged that he developed lung cancer as a result of his exposure to asbestos in brake products supplied by Pneumo Abex LLC, Brake Systems Inc., Kelsey-Hays Co. and Honeywell International. The supplier-defendants moved for summary judgment.

Under Pennsylvania law, in order to survive summary judgment when multiple companies' products are at issue, plaintiffs must present evidence of exposure to each specific product as well as evidence of sufficient frequency and proximity of exposure to each product. Because the brake systems at issue incorporated so many parts, Curtis could not specifically identify which defendant supplied asbestos-containing parts. Consequently, Judge Eduardo C. Robreno found that it would be impossible for a jury to determine causation between each defendant's product and Curtis' exposure. Accordingly, Judge Robreno granted the defendants' motions for summary judgment.

### **F. SETTLEMENT REACHED IN MASSIVE LAWSUIT AGAINST STATE OF MONTANA**

*Orr v. Montana*, No. BDV-2001-423, *settlement filed* (Mont. Dist. Ct. Sept. 8, 2011)

Judge Jeffrey Sherlock of the Montana First Judicial District Court approved a settlement agreement between 1,178 asbestos claimants and the State of Montana. The settlement resolves a negligent lawsuit by miners and their families against the State of Montana. The plaintiffs claimed that the State knew of asbestos danger associated with working in the Libby, Montana vermiculite mine but failed to warn them, or protect them by requiring the mine owners to correct the unhealthful conditions.

The agreement provides that Montana will pay \$26.8 million to a qualified settlement trust. In addition, the Montana Insurance Guaranty Association will pay \$100,000 into the trust and the state's insurer will pay \$16.1 million into the trust. Each of the claimants will receive payments between \$500 to \$60,700 in accordance with their injuries.

*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.*