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Mass Tort Litigation Update

Eckert Seamans Prevails at Summary Judgment in Three Separate Delaware Matters

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On January 26, 2023, Delaware Superior Court Judge Francis "Pete" Jones granted summary judgment to three Eckert Seamans' clients in three different matters:

Charles Davis v ABB Inc., et. al., C.A. No N21C-01-216 ASB

In *Davis*, the Court – applying North Carolina law – granted summary judgment finding that though the plaintiff regularly worked with the defendant's roofing shingles between 1970 and 1975, the plaintiffs did *not* prove that those shingles contained asbestos. Importantly, the Court found that the plaintiff's internet research and Google searches about the defendant's products were inadmissible hearsay. Additionally, the defendant provided an affidavit establishing that its shingles, as described by the plaintiff, did *not* contain asbestos. Therefore, the record was devoid of any admissible evidence creating a genuine dispute of fact.

Further, the Court declined to hold the same defendant responsible for products that the plaintiff did *not* specifically associate with the defendant, but nonetheless identified generally. Without testimony that the plaintiff used the specific defendant's brand of a particular roofing product, there is no inference he used them based solely on general testimony.

Robert Hutto v Air & Liquid Systems Corp. et. al., C.A No. N18C-10-329 ASB

In *Hutto*, the plaintiff encountered the defendant's pumps at Norfolk Shipyard for fourteen (14) months starting in 1969. His potential asbestos exposure was limited to exterior insulation on the pumps. Applying the "bare metal" defense under the U.S. Supreme Court's decision in *Air & Liquid Systems Corp., et al. v. Devries*, 139 S. Ct. 986 (2019), the Court granted summary judgment, finding no evidence: i) that the defendant's pumps *required* exterior asbestos insulation to function; and/or ii) that the defendant ever supplied asbestos insulation with its pumps. Of additional note, the Court found that the *navy requirement* to use asbestos exterior insulation does *not* mean the manufacturer-defendant required asbestos for its pumps to function.

Robert Shears v ABB., Inc. et. al, C.A. No N19C-11-264, ASB matters.

In *Shears*, the Court granted the defendant summary judgment for both the plaintiff's maritime and land-based (Texas) asbestos exposures:

a) Navy Exposures:

While serving aboard the USS Worden (CG-18) in the Navy, the plaintiff worked with the defendant's pumps numerous times. There was, however, no evidence that the plaintiff was the first individual to ever work on the defendant's pumps, or that the defendant supplied any replacement gaskets, packing or exterior insulation to which the plaintiff was exposed. Under *Devries'* "bare metal" defense, the Court granted summary judgment.

In opposition, the plaintiff proffered archive records from a different class of Navy vessel that identified the defendant's main feed pump in an effort to satisfy one of the exceptions under *Devries* – namely, that the manufacturer required, supplied or designed the product to incorporate asbestos components. Using these records, the plaintiff attempted to reason that because the defendant sold pumps with asbestos gaskets to the Navy (in general), the reasonable inference is that its pumps on USS Worden also contained or were designed with asbestos components. The plaintiff further maintained that because the Navy required asbestos gaskets and packing, it meant that the manufacturer required asbestos in the design of the pumps.

In rejecting the plaintiff's arguments, the Court employed the same reasoning as in *Hutto* – the Navy's requirement that a manufacturer's equipment use asbestos gaskets, packing and/or insulation does not mean the manufacturer required asbestos for its pumps to function properly. Further, the Court found the plaintiff's use of ship records from a different class of ships to support the inference that the defendant's pumps on the USS Worden originally contained or required asbestos to function impermissibly speculative.

b) Land-Based Exposures:

The Court also ruled that the plaintiff did not meet his burden for alleged land-based exposures from working in Texas on oil rigs. While the plaintiff proved that the defendant's pumps were present on several oil rigs at issue, the evidence only showed that he worked on one of the pumps on one occasion. The defendant's evidence showed that it manufactured both asbestos and non-asbestos-containing pumps during the relevant time period, and the plaintiff did not know if he worked on the asbestos-containing ones.

Considering this evidence, under the Delaware Supreme Court's recent *Droz* decision, the presumption is that the plaintiff did not work on the asbestos-containing version of the defendant's pump. Further, a single, one-time potential exposure as compared to all the plaintiff's exposures was insufficient as a matter of law to substantially contribute the plaintiff's asbestos-related disease. When considering a *de minimis* exposure argument, the Court must assess the entirety of an individual's exposures to determine if an exposure is *de minimis*. Here, the Court found that a potential one-time exposure compared to all the rest of his exposures is, as a matter of law, de minimis.

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This Legal Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact authors Robert Weller at 617.342.6869 or rweller@eckertseamans.com, Joel Doner at 302.552.2902 or jdoner@eckertseamans.com, Patrick Brannigan at 302.574.7406 or pbranningan@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.