

General Contractor and Insulation Subcontractor Granted Summary Judgment Under Massachusetts Statute of Repose

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Special Master for the Massachusetts Asbestos Litigation, the Honorable Kenneth J. Fishman (Ret.), recommended summary judgment under the Massachusetts Statute of Repose, M.G.L. c. 260, § 2B, in favor of Turner Construction Co. (“Turner”) and Manganaro Industries, Inc. (“Manganaro”), two defendants in an action brought by Stephen Catalano and his wife for injuries sustained from his alleged exposure to asbestos during the application of spray-on insulation. *Catalano v. NSTAR Electric, f/k/a Boston Edison Company, et al.* (C.A. No. 22-2649).

Catalano worked on the construction of the parking garage in the Prudential Center complex in 1969 or 1970. Turner was the general contractor, and Manganaro was the insulation subcontractor, at a jobsite adjacent to where Catalano worked. As Manganaro sprayed the insulation at its jobsite, debris from the spraying of the insulation traveled from that jobsite to Catalano’s jobsite, allegedly exposing Catalano to the asbestos in the insulation.

Relying on the Massachusetts Supreme Judicial Court (“SJC”) decisions in *Stearns v. Metropolitan Life Ins. Co.* (2019) and *Conley v. Scott Prods., Inc.* (1988), Turner and Manganaro each moved for summary judgment under Massachusetts’ Statute of Repose, asserting that the insulation at issue constituted an improvement to real property that was substantially completed more than six (6) years before the accrual of Plaintiffs’ claims.

Special Master Fishman agreed, recognizing as the SJC did in *Conley* that insulation constitutes an “improvement to real property” under M.G.L. c. 260, § 2B and as it did in *Stearns* that it applies to latent-disease matters, including asbestos. *Stearns v. Metropolitan Life Ins. Co.*, 481 Mass. 520, 538 (2019) (“Section 2B completely eliminates all tort claims arising out of any deficiency or neglect in the design, planning, construction, or general administration of an improvement to real property after the established time period has run, even if the cause of action arises from a disease with an extended latency period [such as asbestos]”); *Conley v. Scott Prods., Inc.*, 401 Mass. 645 (1988) (MA SJC found installation of insulation constituted an improvement to real property). Accordingly, Special Master Fishman concluded that since Plaintiffs commenced their action over fifty (50) years after the asbestos insulation at issue was applied—an improvement to real property—their claims against Turner and Manganaro were barred under the Statute of Repose.

This ruling reinforces the applicability of the Statute of Repose in the Massachusetts Asbestos Litigation where the defendant’s alleged offending product constitutes an improvement to real property so long as that improvement was completed more than six years before the plaintiff’s filed their action. Importantly, though the term “improvement” is not expressly defined in M.G.L. c. 260, § 2B, the Massachusetts SJC and Appeals Court previously found Webster’s Third New Int’l Dictionary’s definition instructive: “a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” *Conley*, 401 Mass. at 647.