

Products Liability Law Daily Wrap Up, TOP STORY—ASBESTOS—D. Md.: Failure to prove causation dooms plaintiffs' claims against manufacturers of asbestos-containing products, (May 6, 2014)

By Kathleen Bianco, J.D., and Pamela C. Maloney, J.D.

Summary judgment in favor of several manufacturers of asbestos-containing products was granted by the federal district court in Maryland because shipyard workers and their spouses were unable to prove causation, an essential element of their claims (*Harper v. Anchor Packing Co.* and *Hurley v. Anchor Packing Co.*, May 5, 2014, Russell, III, G.).

Background. Claude Harper and Ronald Hurley filed lawsuits against various manufacturers of asbestos materials, including E.L. Stebbing & Co., Inc., CBS Corporation (Westinghouse), Foster Wheeler LLC, Foster Wheeler Energy Corporation (collectively "Foster Wheeler"), and MCIC, Inc. Harper and Hurley claimed that they were injured as a result of exposure to asbestos-containing products present at the Key Highway Shipyard in Baltimore, Maryland. The complaints allege, among other claims, negligence and product defect/strict liability. All of the manufacturers filed motions for summary judgment asserting that they were entitled to judgment as a matter of law because the plaintiffs could not establish causation.

Causation. Under Maryland law, in order to prevail on claims of negligence or product liability, plaintiffs must prove proximate causation. The Court of Appeals of Maryland has established a "frequency, regularity, proximity" test for showing substantial factor causation in asbestos-exposure cases (see *Eagle-Picher Indus., Inc. v. Balbos*, 604 A.2d 445 (Md. 1992)).

E.L. Stebbing & Co., Inc. As to the claims against E.L. Stebbing, the plaintiffs failed to oppose the summary judgment motion. As such, the court concluded that based on the undisputed facts, there was no evidence from which a reasonable jury could find that the shipyard frequently used E.L. Stebbing products or that the plaintiffs routinely worked in proximity to these products. Thus, the plaintiffs were unable to satisfy the causation requirement and, accordingly, E.L. Stebbing's motion for summary judgment was granted.

CBS Corporation (Westinghouse) [opinion dated April 8, 2012]. Plaintiffs asserted that there were genuine issues of material fact in dispute as to the claims against Westinghouse related to whether asbestos-containing insulation removed from and installed on Westinghouse turbines had caused the shipyard workers' injuries. The court disagreed, finding that, in order for Westinghouse to be liable in negligence or strict liability, there must be a genuine dispute as to whether Westinghouse manufactured or supplied the asbestos-containing insulation. Because plaintiffs failed to present any evidence that Westinghouse manufactured or supplied the insulation, the court determined that Westinghouse did not have a duty to the plaintiffs; therefore, Westinghouse was entitled to summary judgment on the negligence claims.

As to the strict liability claim, plaintiffs asserted that they had been exposed to Micarta laminate manufactured by Westinghouse. In order to prevail on this claim, the plaintiffs were required to show that the asbestos-containing product manufactured by the defendant was present in the area where the plaintiffs worked. The plaintiffs were unable to satisfy this requirement. Consequently, Westinghouse was entitled to judgment on the strict liability claim.

Foster Wheeler. One of the plaintiffs, Claude Harper, alleged that he had been exposed to asbestos dust when contractors removed and installed asbestos-containing insulation on boilers manufactured and supplied by Foster Wheeler. Although Foster Wheeler acknowledged that it sold boilers to the U.S. Navy for construction of three ships, Harper had worked in the vicinity of a Foster Wheeler boiler on only one of the ships. Harper proffered excerpts from a schematic of a marine type "D" boiler that used asbestos millboard as insulation, along with a proposal to supply two of the same boilers for use on another ship and asked the court to infer that Foster Wheeler incorporated the same asbestos millboard on the marine type "D" boilers the company sold to the Navy for use on the ship where he worked. However, the schematic and the proposal were prepared seven and ten years, respectively, after Foster Wheeler sold the boilers used aboard the ship in question, and Harper failed to provide any evidence that the boilers used while he was employed at the shipyard were the same as those mentioned in the schematic and proposal. Further, Harper provided no witness who could identify with specificity

that Foster Wheeler's asbestos-containing products were present where he had worked. Because there was no identification witness, summary judgment in favor of Foster Wheeler was granted.

MCIC, Inc. It was undisputed that MCIC supplied asbestos-containing products to the shipyard during the years the two workers were employed there. The workers had submitted invoices showing that MCIC sold asbestos-containing products to the shipyard during the relevant time period. However, the workers failed to produce any evidence that they were exposed to dust from MCIC millboard or rollboard, and the invoices, without other evidence that the shipyard frequently used MCIC's asbestos-containing products, were insufficient to raise a genuine dispute as to whether the workers were regularly exposed to dust from MCIC's products. Finally, the workers submitted no identification evidence showing that MCIC's products were present where the two men worked, without which they could not establish that they were exposed to MCIC's asbestos-containing products. Finally, there was no evidence from which a jury could infer that MCIC's products were frequently used at the shipyard or that the workers had been regularly and proximately exposed to them. Therefore, MCIC's motion for summary judgment was granted.

The case numbers are GLR-12-460 and GLR-12-462.

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Companies: E.L. Stebbing & Co., Inc.; CBS Corp. (Westinghouse); Foster Wheeler LLC; Foster Wheeler Energy Corp.; MCIC, Inc.

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