

**Products Liability Law Daily Wrap Up, JURISDICTION—ASBESTOS—
E.D. Pa: New evidence did not enable personal jurisdiction over maritime
defendants in multidistrict asbestos litigation, (Mar. 14, 2014)**

Products Liability Law Daily

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By John W. Scanlan, J.D.

New evidence presented by plaintiffs did not enable a federal district court to find personal jurisdiction over numerous defendants involved in consolidated asbestos products liability multidistrict litigation on the maritime docket, a U.S. District Court for the Eastern District of Pennsylvania held in granting 5,974 motions to dismiss by the shipowner defendants. The court also denied 293 motions to dismiss for improper service of process (*In re: Asbestos Products Liability Litigation (No. VI) (Jacobs v. A-C Product Liability Trust)*), March 11, 2014, Robreno, E.).

Background. In the 1980s, merchant marines began filing cases in the Northern District of Ohio against shipowners, manufacturers, and suppliers of products containing asbestos, alleging that they had been injured by exposure to these products. The cases were originally assigned to a maritime docket (MARDOC), but in 1991 they were consolidated and transferred to the Eastern District of Pennsylvania, which has handled this multidistrict litigation since then as part of Docket No. MDL 875. In 1989, defendants filed motions to dismiss for lack of personal jurisdiction, and the district court in the Northern District of Ohio found that it had no personal jurisdiction over the approximately 100 named shipowner defendants, but because the cases were not transferred to another jurisdiction, those claims and defendants remained on the docket of the Northern District of Ohio and were consolidated with the other cases in MDL 875.

In *In re: Asbestos Products Liability Litigation (No. VI) (Bartel v. Various Defendants)*, the U.S. District Court for the Northern District of Ohio granted 418 motions to dismiss for lack of jurisdiction. The court found that there was no personal jurisdiction over the defendants under Ohio's long-arm statute because Ohio does not recognize general jurisdiction and the defendants had not waived the lack of personal jurisdiction defense. The present case also involves 5,974 motions to dismiss filed by shipowner defendants asserting a lack of jurisdiction or improper service of process. The court noted that while the plaintiffs in the present case submitted essentially identical responses to the shipowner defendants' motions to dismiss as in the *Bartel* case, they also submitted what they called "new evidence" that the defendants had either explicitly or implicitly waived the defense of lack of jurisdiction during the course of the litigation.

Personal jurisdiction. The court lacked personal jurisdiction over the defendants because the additional evidence presented by the plaintiffs did not change the court's analysis from *Bartel* finding that the plaintiffs had not carried their burden of proving personal jurisdiction. Two exhibits of *ex parte* letters sent by counsel to the judge in 1990 and 1991 did not constitute new evidence of waiver; the *Bartel* court had already examined the letters and determined that the defendants had filed answers under protest and asserted the defense at that time. A response filed by counsel for various defendants stating that several nonresident defendants had agreed to waive the lack of jurisdiction defense was not evidence that any specific defendant agreed to waiver because the document did not identify the defendants purportedly waiving the defense or the circumstances under which they were waiving it. This was insufficient to carry the plaintiffs' burden of establishing the facts in each individual case. A 1991 brief submitted by counsel for various defendants opposing consolidation of the MARDOC cases into the proposed asbestos MDL was not an indication of a desire to waive lack of personal jurisdiction but of a desire not to be included in a federal asbestos MDL, which the court observed was "arguably justifiable." Taken together, the evidence did not show by preponderance of the evidence that all of the defendants had waived personal jurisdiction, but at most that some defendants had considered a waiver.

The court noted that the defendants agreed that two exhibits from certain dockets and of a hearing transcript established waiver in those cases alone, but those cases were not among those before the court and the decisions by those defendants could not be imputed to the defendants in the present case.

The case number is [02-md-875](#).

Attorneys: Duane C. Marsden (Jacques Admiralty Law Firm, PC) and John E. Herrick (Motley Rice LLC) for plaintiffs. Harold W. Henderson (Thompson, Hine LLP) for a majority of defendants.

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