

Summary Judgment Granted for Defendant When Plaintiff Failed to Satisfy “Frequency, Regularity, Proximity” Test of Proximate Cause

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On April 30, 2018, Presiding Justice Gibney of the Rhode Island Superior Court issued Mary Suprey, et al. v. CBS Corporation F/K/A Viacom, Inc., et al., No. Civ.A. 13-3512, (R.I. Super. April 30, 2018), wherein the Court examined whether the plaintiff presented enough evidence to meet the “frequency, regularity, proximity” exposure requirement to overcome a defendant’s motion for summary judgment.

By way of background, the plaintiff-decedent, Paul F. McCarthy (“Mr. McCarthy”) alleged exposure to asbestos-containing turbines while employed by the U.S. Navy. A turbine company that was named as a defendant sought summary judgment, arguing the plaintiff failed to provide evidence of exposure to turbines on a regular basis over an extended period of time and in close proximity. The Court denied the motion for summary judgment in June 2017, and the defendant filed a motion for relief from the order under Rule 60(b) of the Rhode Island Superior Court Rules of Civil Procedure. See Suprey v. Alfa Laval, Inc., No. PC-2013-3511, No. PC-2013-3512, 2017 WL 2840563 (R.I. Super. June 27, 2017) (Gibney, P.J.).

In reviewing the motion for summary judgment and motion for relief under Rule 60(b), the Court examined whether the plaintiff met its burden to show causation through competent evidence to satisfy the “frequency, regularity, proximity” test to prove proximate cause in an asbestos case. In this case, the plaintiff provided (1) historical documents that a ship the plaintiff lived aboard contained turbines by the defendant; (2) a general technical letter from the turbine company that listed asbestos-containing materials in steam turbines and testimony from a corporate representative that the turbines needed to be insulated to properly function; and (3) a sworn statement by Mr. McCarthy discussing his work history and alleged asbestos exposure aboard the ship.

After reviewing this evidence, the Court determined the plaintiff did not provide any evidence to show frequent, regular, and proximate exposure to the turbine company. Specifically, there was nothing in Mr. McCarthy’s sworn statement or deposition testimony that he had contact with the turbines at issue, nor was there evidence Mr. McCarthy was ever present in the engine room where the turbines were located. Further, the evidence related to turbine insulation failed to show Mr. McCarthy actually was exposed to the turbines at issue. Because there was a lack of any exposure evidence, the Court granted the Defendant’s motion for summary judgment and motion for relief.

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