

Minimizing Defense Costs – Summary Judgment Awarded in Asbestos Case

KEY SERVICES

Litigation

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Attorneys recently joining Hermes, Netburn, O'Connor & Spearing, P.C. previously represented the manufacturer of propulsion and auxiliary diesel engines contained on three naval ships, in a wrongful death case alleging negligence, failure to warn and strict liability. The plaintiff asserted that her decedent husband was exposed to asbestos-containing gaskets and exhaust systems in and affixed to the engines while a serviceman on the ships in the 1950s and 1960s. She further alleged that he contracted and died from mesothelioma, a fatal cancer of the lining of the lung, from this exposure. These attorneys obtained summary judgment for their client in Bridgeport Superior Court before incurring significant litigation costs associated with trial preparation including expert retention expenses.

Because the defendant's husband passed away before he was deposed, the plaintiff attempted to use naval records and discovery responses to establish the elements of her claims. Naval records indeed established that he served on the ships during the time in question and, further, that the manufacturer's engines were on the ships. Discovery responses filed in other jurisdictions also established that the engines in question were equipped with asbestos-containing gaskets and that asbestos was used on some of the exhaust systems attached to the engines. The plaintiff maintained that the documentary evidence she produced was sufficient to establish a genuine issue of fact concerning whether her husband was exposed to asbestos from the manufacturer's engines. The manufacturer moved for summary judgment arguing that despite the documentary information, there was no evidence, expert or otherwise, as to the frequency, duration or proximity of the alleged exposures, if there were any exposures at all.

The plaintiff opposed summary judgment contending that, if given the opportunity, she would present the testimony of a naval historian to detail the nature of exposures expected of someone who held the rank and assumed the duties of her husband. The manufacturer countered that under the applicable rules, the time for designating and offering expert evidence had passed and that without this testimony, the plaintiff could not meet her burden of proof. After hearing, Superior Court Judge David W. Skolnick allowed the motion. The handling of this case was in keeping with the philosophy of Hermes, Netburn, O'Connor & Spearing, P.C. We tailor our litigation strategy to provide a vigorous defense appropriate to the needs of each case. Here, the manufacturer was prepared to present a thorough defense through trial but was able to obtain summary judgment before paying the significant costs

associated with experts and other trial preparation.