

3/1/19 Mass. Law. Wkly. (Pg. Unavail. Online)
2019 WLNR 6623453

Massachusetts Lawyers Weekly
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March 1, 2019

Statute of repose applies to bar latent disease claims, SJC rules

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The state's six-year statute of repose governing actions arising from improvements to real property operates to bar tort claims involving diseases with extended latency periods, such as those relating to asbestos exposure, the Supreme Judicial Court has ruled.

Today's decision in *Stearns, et al. v. Metropolitan Life Insurance Co., et al.* addresses the statute of repose set forth in G.L.c. 260, §2B.

Justice Elspeth B. Cypher, writing for the unanimous court, said §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."

Cypher explained that such a result occurs "even if the cause of action arises from a disease with an extended latency period and even if a defendant had knowing control of the instrumentality of injury at the time of exposure."

The SJC's decision in *Stearns* answers the certified question of a U.S. District Court judge who had ruled that the Massachusetts statute of repose did not apply to bar the product liability claims of a man who died of mesothelioma in 2016.

The plaintiff in *Stearns* alleged that Wayne Oliver developed mesothelioma as a result of his exposure to asbestos exposure while working as a pipe inspector during the construction of Pilgrim Nuclear Power Station and Calvert Cliffs Nuclear Power Plant between 1971 and 1978. The asbestos was used in steam turbine generators designed, manufactured and installed by defendant General Electric Co.

U.S. District Court Judge Rya W. Zobel denied GE's motion for summary judgment last March.

The manufacturer subsequently moved to certify that portion of the judge's opinion interpreting §2B to the 1st U.S. Circuit Court of Appeals pursuant to 28 U.S.C. §1292(b). The federal statute allows appeals of interlocutory orders that involve a controlling question of law "as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."

Because the determinative question is one of Massachusetts law, the judge instead opted for certification to the SJC.

The 18-page decision is *Stearns, et al. v. Metropolitan Life Insurance Co., et al.*, Lawyers Weekly No. 10-045-19. The full text of the opinion can be found [here](#).

---- **Index References** ----

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Language: EN

Other Indexing: (Rya Zobel; Elspeth Cypher; Wayne Oliver)

Word Count: 373

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