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Section: News

Tort Statute of repose Asbestos Construction

Mass. Lawyers Weekly Staff

Where a lawsuit was brought on behalf of a decedent who died in 2016 of mesothelioma after exposure to asbestos during the construction of two nuclear power plants in the 1970s, the suit is barred by the six-year statute of repose set forth in G.L.c. 260, 2B.

"In this case we are called on to answer a certified question from the United States District Court for the District of Massachusetts concerning whether the six-year statute of repose set forth in G.L.c. 260, 2B (2B), operates to bar tort claims arising from diseases with extended latency periods, such as those associated with asbestos exposure, where the defendants had knowing control of the injurious instrumentality at the time of exposure. We answer the question in the affirmative. Consistent with our precedent, we conclude that 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, 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. In so doing, we recognize that, considering the latency period for asbestos-related illnesses, this will have the regrettable effect of barring all or nearly all tort claims arising from negligence in the use or handling of asbestos in construction-related suits. Nonetheless, the appropriate recourse is in the Legislature, not this court.

"We answer the certified question as follows: Section 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, 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."

Stearns, et al. v. Metropolitan Life Insurance Company, et al. (Lawyers Weekly No. 10-045-19) (18 pages) (Cypher, J.) Question of law certified by the U.S. District Court for the District of Massachusetts. John A. Heller, of Illinois (Catherine A. Mohan and Benjamin M. Greene also present) for General Electric Company; Michael J. McCann (Michael C. Shepard, Lisa M. Conserve and Erika A. O'Donnell also present) for the plaintiffs; John R. Felice and Brad W. Graham for Massachusetts Defense Lawyers Association, amicus curiae, were present but did not argue; the following submitted briefs for amici curiae: Lawrence G. Cetrulo, Stephen T. Armato, Whitney K. Barrows, Elizabeth S. Dillon, Lauren K. Camire and Brian D. Fishman for Massachusetts Asbestos Litigation Defendants' Liaison Counsel; Thomas R. Murphy, Kevin J. Powers and John G. Mateus for Massachusetts Academy of Trial Attorneys (Docket No. SJC-12544) (March 1, 2019).

[Click to read the full text of the opinion.](#)

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