Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood

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Torts - Ship Owner Has no Duty to Warn Maritime Contractor Employees of Asbestos-Related Hazards Where the Maritime Employer Is Legally Charged with Knowledge of Asbestos Hazards

Alan Bartholomew v. SeaRiver Maritime, Inc.
Court of Appeal, First District (March 16, 2011)

Alan Bartholomew was employed between 1977 and 1980 as a marine machinist at West Winds, a maritime ship repair contractor. He was later diagnosed with asbestosis and sued the ship owner, SeaRiver, for vessel owner negligence under the Longshore and Harbor Workers' Compensation Act ("the Act").

Under the Act, a ship owner is required to turn over its ships to maritime contractors in a reasonably safe condition. A ship owner must warn of any hidden or latent hazards relating to the ship's gear, equipment, tools and work space used in maritime contractor repair operations.

The trial court granted summary judgment in favor of SeaRiver holding that SeaRiver had no duty to warn maritime contractors or its employees (such as Bartholomew) of asbestos hazards aboard its ships prior to turnover for repairs. The trial court held that, under the Act, a legal presumption exists that a ship repair contractor is "expert and experienced," allowing a ship owner to rely on the contractor's judgment in safely negotiating work hazards. Since 1971, OSHA requires contractor employers to know

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about the potential hazards of asbestos aboard ships and to warn their employees of the same.

In opposing SeaRiver's motion for summary judgment, Bartholomew argued that expert opinion declarations created a triable issue of material fact regarding whether SeaRiver breached its duty to turn over ships to West Wind in a safe condition prior to repairs. His experts opined that both ships contained asbestos-containing materials to which Bartholomew was exposed. He also submitted historical "state of the art" evidence reflecting that the presence of asbestos on ships was an occupational hazard that was known as early as 1937.

The Court of Appeal affirmed the decision of the trial court in favor of SeaRiver. There was evidence that West Winds had complied with OSHA regulations dealing with asbestos hazards aboard vessels by 1977. Accordingly, it was not unreasonable for West Winds to anticipate that asbestos would be present on ships that it serviced. Therefore, SeaRiver had no duty to warn West Winds or its employees, including Bartholomew, of asbestos hazards.

COMMENT

While a ship owner has a duty to turn over a ship in a reasonably safe condition, the owner is not required to turn over a ship free from all hazards. Under the Longshore and Harbor Workers' Compensation Act, the duty is limited to insuring that a vessel is free from hazards that prevent an "expert and experienced" maritime contractor from conducting operations in a reasonably safe manner. Based on OSHA requirements and historical "state of the art" evidence, the court concluded that ship repair contractors should typically be charged with knowledge of the presence of asbestos aboard ships, thereby eliminating a ship owner's duty to correct or warn contractors of standard asbestos hazards prior to turnover. Maritime contractor employers -not ship owners- have a legal duty to warn their employees of the dangers associated with working on vessels that contain asbestos-containing products.

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For a copy of the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A127424.PDF

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