

*Wayne Bagley Et.Al. v. Adel Wiggins Group Et. Al. (SC 19835)*

The plaintiff brought this wrongful death claim on behalf of her deceased husband as well as a claim for loss of consortium. The plaintiff sought damages pursuant to Connecticut's Product Liability Act §52-572m et seq. The plaintiff alleged that the decedent was exposed to asbestos during the course of his employment with the defendants, as a result of which he contracted mesothelioma which eventually caused his death. The plaintiff contends that the defendant violated §52-572m et seq. by virtue of their unreasonably dangerous products which the defendants knew or should have known were inherently dangerous and failed to use reasonable care in the face of that knowledge. The plaintiff provided testimonies from expert witnesses as well as other former employees of the defendant. One former employee testified that the products produced by the defendant contained the adhesive agent FM-37, which contains asbestos. He further testified that those products required sanding and that the sanding process created visible dust which contained asbestos, which the plaintiff and other employees were exposed to.

One expert the plaintiff brought forward, witness A, advised the court that he believe the proximate cause of the decedent's mesothelioma was asbestos exposure endured during the decedent's employment with the defendant. After the plaintiff rested her case, the defendant moved for a directed verdict. The court denied this motion, reasoning that the plaintiff had brought forward sufficient evidence to prove her theories of liability. The jury then returned a verdict in favor of the plaintiff. Subsequently, the defendant filed a motion for judgement notwithstanding the verdict. This motion was denied, and the defendant then appealed.

The issue presented to the Court in this appeal is "whether, in an action brought pursuant to Connecticut's Product Liability Act [], General Statutes §52-572m et seq., under strict liability

and negligence theories, expert testimony was necessary to prove that a defective, asbestos containing product caused a worker who came in contact with that product to contract a fatal lung disease.” The Court determined that the plaintiff failed to present sufficient expert testimony to prove her theory of liability and therefore failed to prove her case. Specifically, the Court concluded that “the plaintiff’s case lacked essential expert testimony to prove a vital fact in support of her negligence and strict liability claims, namely, that respirable asbestos fibers in a quantity sufficient to cause mesothelioma were released from FM-37 when it was used in the manner that it was in the Sikorsky blade shop during the decedent’s tenure there.” Without such testimony, the plaintiff cannot prove the dangerous nature of FM-37 nor could she prove that the dangerous nature of FM-37 caused the decedent’s death.

The Court reasoned that although the plaintiff proved exposure to respirable asbestos fibers can cause mesothelioma, she failed to specifically establish that the FM-37 dust which the decedent was subjected to had respirable asbestos fibers which were above ambient levels and sufficient to cause mesothelioma. Additionally, the Court found that the question of whether respirable asbestos fibers are released when sanding down FM-37, an adhesive agent with 8.6% asbestos, is sufficient to cause mesothelioma is highly technical. Such information is not within the common knowledge of lay jurors and therefore necessitated expert testimony to support them in reaching a conclusion. The Court further reasoned that in past cases wherein the courts found sufficient evidence to prove asbestos exposure caused asbestos related diseases, plaintiffs provided expert testimony that “the product, when used under conditions similar to those presented by the case, emitted respirable asbestos fibers.”

The Court determined that the plaintiff had sufficiently established, through former employee testimony, that the decedent had regular exposure to FM-37 dust. However, the

plaintiff failed to establish through testimony that when FM-37 is sanded, it created respirable asbestos fibers which the decedent could have inhaled. The Court noted that none of the expert witnesses conducted any testing on FM-37 which could prove that when FM-37 is sanded, respirable asbestos fibers are emitted. Additionally, plaintiff's experts lacked specialized knowledge regarding the way FM-37 behaves under the conditions and for the purposes which the defendant used it. These evidentiary gaps in the expert witness' testimony rendered the plaintiff's argument incomplete and failed to adequately inform the jury's decision and therefore a verdict should not have been rendered for the plaintiff.

Lastly, the Court considered "whether [their] holding in this appeal is compelled by the law as it existed in Connecticut when the case was tried or, rather, whether it stems from principles newly articulated in this court's recent product liability jurisprudence." The newly articulated principles were established while this appeal was pending and required the Court to consider whether the plaintiff is entitled to a new trial to allow her to prove her case under the new standards. The Court determined that the plaintiff was not entitled to a new trial because at the time of the initial trial, it was already well-established law that in order to prove her case, the plaintiff had to prove that FM-37 was unreasonably dangerous as used by the defendant and that such use of FM-37 caused the injury for which the plaintiff was seeking compensation, which she failed to do.

In regard to the plaintiff's claim that the defendant was negligent in their failure to test FM-37 or remove it from the marketplace and that that failure was unreasonable and was the legal cause of the decedent's eventual death, the plaintiff again failed to meet her burden. The plaintiff failed to show that had the defendant performed testing it would have known of the dangers of sanding down FM-37. In light of that lack of evidence, the jury could not have found

that the defendant acted negligently or unreasonably in failing to remove FM-37 from the market.

Ultimately, the Court determined that because the Plaintiff failed to provide adequate expert testimony to support her claims of liability, the jury could not have found in her favor and therefore the lower court erred in denying the defendant's motion for a directed verdict as well as their motion for a judgment notwithstanding the verdict. The case was reversed and remanded.