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### **SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION - GRANT OF SUMMARY JUDGMENT TO DEFENDANT REVERSED UNDER THE JONES ACT AND MARITIME LAW (MAR. 3, 2015)**

In this case, the plaintiff claimed that the decedent was exposed to asbestos-containing insulation and winch brakes aboard various dredges and commercial vessels on which he worked over the years. “[P]laintiff asserted a Jones Act negligence claim under 46 U.S.C.A. § 30104 and a general maritime unseaworthiness claim under 28 U.S.C.A. § 1333.” The defendants, Weeks Marine, Inc. and American Atlantic Company, moved for summary judgment on the ground that the plaintiff did not establish that he was exposed to asbestos aboard these vessels. The lower court agreed and granted summary judgment, summarized by the appellate division as follows: “With respect to plaintiff’s negligence claims, the judge found that plaintiff was unable to ‘establish a reasonable inference that asbestos was actually present on the vessels he worked on or that [he] was actually exposed to asbestos.’ Additionally, the judge granted summary judgment on the plaintiff’s general maritime unseaworthiness claim because ‘it would be mere speculation for the [c]ourt to find the presence of an asbestos component on one ship simply because the component may have been on another ship.’”

On appeal, the Appellate Division of New Jersey’s Superior Court reversed on the ground that the fact viewed most favorably to the plaintiff were sufficient for a jury to draw an inference of exposure:

During his discovery and de bene esse depositions, plaintiff testified that he worked on several dredges operated by defendant. Included among his various tasks on these dredges was piping and insulation, which he described as “dusty, dirty work.” Even when he was not actually changing the insulation, it would break apart, “be laying around,” and become airborne. In his de bene esse deposition, plaintiff named the Delaware Valley as one of defendant’s dredges that he worked on. While he had not named this dredge in his earlier deposition, as the opponent of a summary judgment motion he was nonetheless entitled to have the motion judge assume the truth of this factual allegation in ascertaining the existence of a triable issue. *Brill*, supra, 142 N.J. at 540. The schematic diagram of the Delaware Valley’s exhaust system lays out the process for insulating the vessel’s pipes, and contains “General Notes” which provide:

Cover flexible section with 2 layers of “amosite,” then lag with asbestos cloth; balance of pipe and the mufflers inside with [two inches] of “Kaylo” and asbestos cloth, outside up to [six feet] above the deck with [two inches] of “Kaylo” and aluminum sheet lagging.

At a minimum, we deem this testimony and evidence sufficient for a factfinder to reasonably infer that plaintiff was exposed to asbestos while employed by defendant.

[Click here for a copy of this decision.](#)

If you have questions about how this case may impact your business, please contact:

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#### **Files**

[Asbestos Case Tracker - March 4, 2015.pdf](#)

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