



## News & Updates

### **RHODE ISLAND SUPERIOR COURT, APPLYING OHIO LAW, DISMISSES CLAIMS BASED ON BARE METAL DEFENSE AND STATUTE OF REPOSE**

This case involves an interesting discussion regarding the conflict between Ohio and Rhode Island law on the bare metal defense, the sophisticated user doctrine, state of the art, the open and obvious defense, the statute of repose, joint and several liability, compensatory damages, and punitive damages. The Rhode Island court ruled that Ohio law applied to this case on those issues and proceeded to consider the defendants' summary judgment motions under Ohio law.

On the bare metal defense, the court granted summary judgment to the valve, strainer, and pumps defendants, but denied the motions of the boiler manufacturers because the insulation may have been originally supplied with the boilers. The court also ruled that the valve, strain, and pumps defendants were entitled to summary judgment based on lack of substantial cause: "... there is no indication that any of the Defendants' products were delivered with asbestos attached to the exterior of the product. ... Furthermore, even if there was asbestos in the interior of the valves — of which Plaintiff has not presented any evidence — there is no indication that Mr. Baumgartner ever worked with the interior components of the valves, strainer, and pumps. ... Second, it is clear that Mr. Baumgartner applied insulation to the exterior of the valves that was neither manufactured nor directed to be used by the Defendants. ... Accordingly, it is clear to this Court that there is insufficient evidence upon which a reasonable jury could conclude that Mr. Baumgartner was exposed to Defendants' asbestos-containing products, and that such insulation was a substantial factor in his disease."

The court also granted the motions of the turbine and boiler defendants based on Ohio's statute of repose. With respect to the turbines, the court stated: "... these turbines were not mass-manufactured products, but rather custom-designed machines that powered the various manufacturing and power plants. ... Accordingly, the turbines that were installed by G.E. and C.B.S. are improvements to real property and thus fall within the protection of the statute of repose." With respect to the boilers, the court stated: "... this Court is persuaded that the Defendants' boilers are 'improvements to real property' within the meaning of Ohio *R.C. § 2305.131*. ... Because this Court finds that the Defendants' boilers are improvements to real property, and thus protected under the statute of repose, Plaintiffs' claims as to Cleaver-Brooks, Foster Wheeler, Riley, and Oakfabco are barred by the Ohio statute of repose."

Read the full decision [here](#).

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

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#### Files

[Asbestos Case Tracker - July 24, 2015.pdf](#)

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