



News & Updates

BRAKE MANUFACTURER OBTAINS DISMISSAL OF CLAIMS OF WILLFUL AND WANTON CONDUCT

In this federal court case, the plaintiffs alleged exposure to asbestos from a variety of automotive parts while working as mechanics' helper, maintenance laborer, inspector, construction worker, and salesman, in addition to automotive maintenance work performed on his own personal vehicles and those of his family. The defendant, brake manufacturer Genuine Parts, moved for summary judgment to dismiss the plaintiffs' claims that it committed false representation and fraud regarding the dangers of asbestos exposure. The plaintiffs opposed, offering among other things historical documents, an expert report, and OSHA regulations.

In ruling in favor of Genuine Parts, the court held: "Here, plaintiffs have failed to introduce evidence permitting a reasonable inference that defendant Genuine Parts performed an act 'purposely and with knowledge that such is a breach of duty to others,' so as to show 'conscious disregard of the safety of others.'" (Citation omitted.)

Considering the historical literature offered by the plaintiffs, the court stated: "...plaintiffs have not presented any evidence that defendant Genuine Parts was actually aware of any particular article or study. There is no evidence that defendant Genuine Parts was a member of the FMSI, or otherwise received any of the publications mentioned. The evidence likewise does not permit a reasonable inference that defendant Genuine Parts was purposely neglecting any duty to conduct research while knowing that, in doing so, it was breaching a duty." Regarding the plaintiffs' expert report the court noted that plaintiffs failed to provide the studies upon which the expert relied and held: "...the court takes note that it is not bound to accept expert assertions lacking record support as evidence sufficient to raise a genuine issue on summary judgment, and may consider the facts underlying those opinions."

Regarding the OSHA regulations, the court held: "...plaintiffs do not identify evidence that defendant Genuine Parts recognized a duty imposed by these regulations and acted purposely and with knowledge that they were breaching such duty, or that injury was a probable consequence of such violation. The court notes that a violation of an OSHA regulation is not per se negligence and is not, by itself, enough evidence of willful and wanton conduct to present a jury issue." (Citations omitted.) In addition to the above, the court pointed out that "...plaintiffs have not shown evidence that defendant Genuine Parts actively sought to conceal or misrepresent the dangers of its products, such as would show knowledge of a breach of duty and such as is commonly identified in case law holding that the evidence creates a genuine issue of willful and wanton."

Read the full decision [here](#).

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

Joseph J. Welter (716.566.5457; jwelter@goldbergsegalla.com)

Jason A. Botticelli (716.566.5460; jbotticelli@goldbergsegalla.com)

Or another member of Goldberg Segalla's Toxic Torts Practice Groups

Files

[Asbestos Case Tracker - NC - July 28, 2015.pdf](#)

Attorney Advertising © 2018 Goldberg Segalla
Prior results do not guarantee a similar outcome.

- New York
- Chicago
- Los Angeles
- Orange County
- Orlando
- West Palm Beach

- St. Louis
- Philadelphia
- Miami
- Baltimore
- Newark
- Garden City
- Hartford
- Princeton
- Greensboro
- Raleigh
- Buffalo
- Rochester
- Syracuse
- Albany
- White Plains
- London