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COURT REINSTATES FRAUD SUIT AGAINST ASBESTOS LAWYERS, DOCTORS

(CSX Transportation, Inc. v. Gilkison)

The U.S. Court of Appeals for the Fourth Circuit in Richmond this week reinstated a lawsuit filed against a group of lawyers and doctors accused of scheming to file thousands of fraudulent asbestos-liability claims in courts throughout the country.

The decision in *CSX Transportation, Inc. v. Gilkison* was a victory for the Washington Legal Foundation (WLF), which filed a brief urging reinstatement. WLF argued that the trial court threw out the lawsuit based on a far-too-narrow understanding of the applicable statute of limitations. The appeals court agreed with WLF that the limitations period should not be deemed to have started running until after the plaintiff had at least some reason to suspect that the lawyers and doctors were engaging in fraud.

“WLF is concerned by mounting evidence that much of the money awarded as damages in asbestos liability cases has been paid to uninjured claimants, and that many of those payments were facilitated by the fraudulent conduct of lawyers and doctors who knew full well that their clients had suffered no asbestos-related injuries,” said WLF Chief Counsel Richard Samp following the court decision. “Courts will continue to be deluged by spurious asbestos liability claims unless and until they permit companies victimized by such claims to seek compensation from the responsible lawyers and doctors. WLF was concerned that the trial court decision – by adopting an inappropriately narrow understanding of limitations rules governing federal and state causes of action – would prevent meritorious claims against lawyers and doctors from going forward,” Samp said.

The case involves a Pittsburgh law firm, Peirce, Raimon & Coulter, PC (the “Peirce Firm”), and a West Virginia radiologist, Ray Harron, who teamed up to file thousands of lawsuits on behalf of seemingly healthy individuals who claimed to be suffering from asbestosis. The Peirce Firm obtained its clients by conducting mass x-ray screenings of current and former railroad employees; the screenings were performed by an unlicensed technician who intentionally shot poor quality x-rays. Then Dr. Harron diagnosed asbestosis on virtually every one of the thousands of lung x-ray he read, despite the fact that he never spoke to any of the employees (to ascertain what, if any, history they had of exposure to asbestos) and despite extensive studies suggesting that no more than one to three percent of railroad workers develop asbestosis. The Peirce Firm relied exclusively on Harron for its x-ray readings because it knew he could be relied on

to consistently report “positive” findings. The firm filed thousands of suits on behalf of the workers, without taking additional steps to establish a good-faith basis for making its claims.

Finally, in 2005 a federal judge in Texas, Janis Jack, issued a lengthy decision that exposed the extensive fraud engaged in by those involved in mass torts litigation. She singled out Dr. Harron for particular criticism. She noted that Dr. Harron repeatedly diagnosed patients as suffering from silicosis (brought on by exposure to sand dust) when he earlier had diagnosed them as suffering from asbestosis – even though it is virtually impossible for a patient to suffer from both diseases. Judge Jack concluded that repeated inconsistencies in Dr. Harron’s medical conclusions could “only be explained as a product of bias – that is, Dr. Harron finding evidence of the disease [*i.e.*, either asbestosis or silicosis] he was currently being paid to find.”

CSX Transportation had been named as a defendant in hundreds of the Peirce Firm’s asbestosis lawsuits. Armed with the evidence compiled by Judge Jack, CSX filed suit against the Peirce Firm and Dr. Harron in 2007, alleging common law fraud and violations of RICO, the federal anti-racketeering statute. The trial judge concluded, however, that the four-year statute of limitations began running in 2000, when the Pearce firm started targeting CSX. He thus dismissed virtually the entire case as time-barred.

In its decision reinstating the case, the appeals court agreed with WLF that the limitations period did not begin running until CSX had reason to think it was being defrauded. It held that being named in a lawsuit does not necessarily put one on “inquiry notice” that the plaintiffs’ lawyer is engaging in fraud. The court held that precisely when CSX should first have become aware of fraud can only be determined after all the facts of the case have been determined, not (as the district court held) on the basis of the pleadings. WLF argued that CSX had no reason to suspect fraud until Judge Jack’s 2005 ruling. While CSX had access to the medical records of the railroad workers and theoretically could have undertaken a massive investigation that might have uncovered the Harron fraud, WLF argued that it was unrealistic to expect CSX to undertake such an investigation given its ability to settle cases for less than the cost of investigating.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to promoting tort reform and combating the excesses of the plaintiffs’ bar.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.