

White and Williams LLP Secures Affirmation of Denial to Change Trial Settings Based on Plaintiffs' Failure to Meet the Texas Causation Standard for Asbestos Cases

By: Christian Singewald and Rochelle Gumapac

Product Liability Alert

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The Delaware Supreme Court, in a rare split opinion, affirmed the trial court's denial of Plaintiffs' Request to Change Trial Settings in favor of all defendants, including a major automotive manufacturer represented by White and Williams LLP, in a mesothelioma case with a young decedent who had an alleged economic loss claim exceeding \$9,000,000, in *Shaw v. American Friction, Inc. et al.*, No. 86, 2019. This decision operates to dismiss all of Plaintiffs' claims based on their failure to meet Delaware's strict expert deadlines and establish a *prima facie* case under Texas law.

Plaintiffs' Complaint invoked the application of Texas substantive law and alleged that multiple manufacturers were negligent and strictly liable for failing to warn the decedent of the alleged dangers posed by the use of asbestos-containing products. Plaintiffs' alleged asbestos exposures from defendants' products caused Mr. Shaw's disease and subsequent death.

In 2007, Texas instituted its now well-known causation requirement, which requires the "dose" of asbestos exposure from each defendant's products to be quantified by an expert. *Borg-Warner Corp. v. Flores*, 232 S.W.3d 765, 773 (Tex. 2007). Prior to decedent's death, Plaintiffs' counsel deposed decedent and his father for product identification purposes. During the depositions, Plaintiffs' counsel failed to obtain the necessary factual information from his clients for an expert to be able to opine as to alleged exposure doses from any defendant's product. Despite lacking the requisite information for a *prima facie* case under Texas law, Plaintiffs sought and were given placement in an expedited trial setting, which had strict, defined deadlines.

Due to the lack of the necessary, factual information, Plaintiffs requested and received two extensions from defendants to produce a dosage report as required by Texas law. Upon being denied a third request by defendants for yet another extension, Plaintiffs filed a Motion to Change Trial Settings with the Superior Court in an attempt to extend their expert report deadline. The Superior Court denied their request, finding that no good cause existed to extend the deadline since Plaintiffs were not diligent in meeting the well-established Texas causation requirements, the time pressures to meet the deadline were foreseeable, and the refusal to extend the deadline was not unfair.

After the dismissal of their case, Plaintiffs appealed to the Delaware Supreme Court, challenging the Superior Court's denial of their Motion to Change Trial Settings. In their appeal, Plaintiffs, for the first time, argued that another standard should be applied other than the good cause standard applied below.

After briefing and two oral arguments, in a split decision, the Delaware Supreme Court affirmed the trial court's ruling. The majority of the Supreme Court found the Superior Court did not abuse its discretion in denying Plaintiffs' Motion to Change Trial Settings since it applied the law correctly and based its findings and reason on the record. The Delaware Supreme Court also affirmed the Superior Court's application of the good cause standard when analyzing whether a party's request to modify a scheduling order should be granted.

White and Williams LLP's Partners, Christian Singewald and Rochelle Gumapac, represented the automotive manufacturer in the Superior Court below and were part of the appellate team, which substantially drafted the Appellees' consolidated briefing and coordinated the strategy for oral argument before the Delaware Supreme Court.

If you have questions or would like additional information, please contact Christian Singewald (singewaldc@whiteandwilliams.com, 302.467.4510) or Rochelle Gumapac (gumapacr@whiteandwilliams.com, 302.467.4531).

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