

Asbestos**\$3.15 Million Nonpecuniary Damage Award For Wrongful Death of Navy Seaman Vacated**

Nonpecuniary damages in a wrongful death action brought by the widow of a Navy sailor exposed to asbestos were not appropriate because the decedent was a “seaman” under maritime law, the highest court in Virginia held Mar. 2, vacating the jury’s award of \$3.15 million in nonpecuniary damages (*John Crane Inc. v. Hardick*, Va., No. 101909, 3/2/12).

The Virginia Supreme Court, in an opinion written by Justice Donald W. Lemons, found that the sailor qualified as a seaman because his work as a shipfitter and machinery repairman contributed to the function of a vessel in navigation.

According to maritime law, nonpecuniary damages—such as recovery for pain and suffering and loss of society—are not available in actions for the wrongful death of a seaman, regardless of whether the injury occurred in territorial waters or on the high seas.

Christopher Abel, a maritime lawyer with Wilcox & Savage in Norfolk and an adjunct admiralty professor at William and Mary School of Law, told Bloomberg BNA Mar. 7 that this decision cleared up earlier Virginia precedent and brought Virginia into line with established law outside the state.

Sailor Exposed to Asbestos on Ships at Port, at Sea.

Robert Hardick served in the Navy for 20 years aboard several different vessels while they were docked and underway.

While working as a shipfitter and machinery repairman, he was exposed to asbestos dust, fibers, and particles in valves and gaskets. He contracted mesothelioma from the “cumulative asbestos exposure.”

Hardick sued John Crane Inc. and 22 other asbestos manufacturers under general maritime law. He died prior to trial and his wife revived the case as a wrongful death action. She settled or nonsuited the claims against all defendants except JCI.

At trial, the jury returned a \$6 million verdict for the plaintiffs, apportioning 50 percent of the fault to JCI and 50 percent to the gasket manufacturer. The verdict included \$2 million for Hardick’s pain and suffering, \$1.15 million for his wife’s loss of society, \$2.5 million for loss of Hardick’s income and services, as well as medical and funeral expenses.

Seaman v. Nonseafarer. JCI appealed, arguing that Hardick was a seaman and therefore damages for pain and suffering and loss of society were inappropriate nonpecuniary damages.

Under general maritime law, the term seaman refers to an employee whose duties “contribute to the function of the vessel or to the accomplishment of its mission.” A seaman must have a “connection to a vessel in navigation,” substantial in both duration and nature.

The plaintiffs argued that Hardick was a “nonseafarer” under *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996). The U.S. Supreme Court in *Yamaha* defined nonseafarer as someone who is “not a seaman, long-shore worker, or person otherwise engaged in maritime trade.”

The court agreed with JCI that Hardick was a seaman because he contributed to the function of the vessels he worked on and was connected to an identifiable group of vessels in navigation.

Pecuniary v. Nonpecuniary Damages. The court identified the damages awarded for loss of income, loss of services, and medical and funeral expenses as pecuniary damages because they “can be measured by some standard.” These damages were not at issue on appeal.

Instead, JCI took issue with the nonpecuniary damages awards for the decedent’s pre-death pain and suffering and his wife’s loss of society.

In *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), the Supreme Court held that nonpecuniary damages are not available in actions for the wrongful death of a seaman, no matter what statute the case is based on.

The court concluded that once Hardick was determined to be a seaman, it followed that nonpecuniary damages were not available; therefore, it held that the trial court erred by permitting the jury to award the plaintiff nonpecuniary damages for his wrongful death.

According to Abel, “the plaintiffs’ attorneys were given false hope” by the court’s earlier decision in *John Crane Inc. v. Jones*, 274 Va. 581 (2007). *Jones* was a maritime asbestos exposure case that allowed for nonpecuniary damages.

Abel said that the court “came to the right conclusion” on law that is well-settled outside of Virginia, and cleared up any confusion the *Jones* case may have caused. The decision supports the driving force in admiralty law, “that we want predictability, uniformity in the law,” he said.

By PERRY COOPER

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