

Virginia Supreme Court reduces asbestos verdict

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Virginia's maritime businesses got some good news from an unexpected quarter in Richmond earlier this month.

On March 2, the Virginia Supreme Court chopped in half a \$6 million verdict in a maritime asbestos exposure case.

The case, *Hardick v. John Crane Inc.*, involved a former Navy sailor who claimed to have contracted mesothelioma as a result of working with and around gaskets containing asbestos aboard a series of Navy ships from the late 1950s until the mid-1970s - service that included time spent alongside the dock in state waters.

Hardick died in 2009, and his estate brought a wrongful death suit against an Illinois company that supplied asbestos gaskets to the Navy.

After a 12-day trial in Newport News Circuit Court, a jury awarded his widow just under \$6 million in damages. Of that \$6 million, \$3 million were for so-called "non-pecuniary" damages - Hardick's pre-death pain and suffering and his widow's loss of his society.

Earlier this month, however, the Virginia Supreme Court set aside half of the jury's verdict, ruling that, under the general maritime law applicable to this case, non-pecuniary damages are not available in the wrongful death of a seafarer fatally injured in state waters.

As it was, less than five years ago, in *Jones v. John Crane Inc.*, the Virginia Supreme Court left an award of non-pecuniary damages undisturbed in a similar mesothelioma wrongful death case in which yet another Newport News jury had awarded more than \$10 million to the estate of a local shipyard worker suing the very same gasket company for his own exposure occurring in state waters.

After that 2007 decision, Virginia plaintiffs' lawyers were emboldened to bring waterfront wrongful death cases in state court under the general maritime law precisely because of the availability of the kind of non-pecuniary damages that - as seen in both the Hardick and Jones cases here in Hampton Roads - could add millions of dollars to a plaintiff's recovery.

At the same time, businesses working in the commonwealth's maritime industry were faced with the prospect of exposure to virtually unlimited damages were they to risk

letting a maritime wrongful death case go to a jury here. Both of those trends were reversed sharply by the Supreme Court's newest ruling.

In slamming the door on plaintiffs seeking non-pecuniary damages in these cases, the Supreme Court was guided principally by the general maritime law's strong preference for uniformity, noting that the law already bars non-pecuniary damages for a seaman's death occurring outside of state waters, in negligence suits against a seaman's employer, and in seamen's suits premised on a vessel's unseaworthiness.

Although his estate contended that Hardick, a career Navy sailor, was not a "seaman" for these purposes, the Supreme Court was unpersuaded, finding that the nature and extent of his service afloat fit squarely within the classic definition of a "Jones Act" seaman - thereby eliminating his entitlement to non-pecuniary damages.

As for any confusion that may have been sown by its 2007 Jones case opinion, the Supreme Court observed that, as it had not been asked to rule on the availability of non-pecuniary damages on that occasion, its reference to them in that earlier opinion should not have carried any legal weight.

In the wake of this month's ruling, maritime wrongful death plaintiffs will be able to pursue non-pecuniary damages in Virginia only if they can prove that they were not seafarers but that they were, nevertheless, fatally injured on state waters - a category sufficiently narrow to offer welcome relief to maritime business here and throughout the commonwealth.

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