

The New Wave of Maritime Asbestos Litigation

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The maritime industry has long defended claims brought by its workers suffering from various asbestos-related illnesses. Vessel construction and maintenance during the first two thirds of the twentieth century involved extensive use of asbestos containing products. Mariners, construction workers, maintenance technicians and others brought claims against their employers seeking to recover damages suffered as a result of lung conditions, many of which are fatal cancers.

Asbestos litigation in the U.S. reached a peak in the 1980s through early 1990s, extending to numerous industry sectors. The primary targets were some two dozen asbestos manufacturers, along with employers in certain industries for which protection and insulation from extreme temperatures are essential. Through most of the last century, ships of the U.S. Navy, as well as most merchant lines, were equipped with asbestos products in their engine rooms and other compartments.

Maritime claimants typically allege they inhaled asbestos particles which became airborne during operations and maintenance, resulting in lung conditions in their later lives. The medical etiology debate over certain lung conditions is the stuff of asbestos trials, and is far too extensive for this article. However, enough medical literature and testimony claim that certain catastrophic diseases (most particularly, mesothelioma) are caused only by asbestos that jury trials on the issue can be risky propositions. A central issue in most asbestos litigation is “product identification,” or defendants arguing their asbestos-containing products or workplaces weren’t involved.

Vessel operators face an added burden when defending asbestos claims. The Jones Act, 46 USC App § 688, a federal statute custom-made to protect seamen from the dangers of life at sea, pretty much renders maritime employers their workers’ comprehensive medical and disability insurers. More importantly, the burden of proof maritime personal injury plaintiffs face under the Jones Act is much less daunting than that of their land-based cousins under state law.

Thus, while workers exposed to asbestos in factories typically base their claims on a product liability theory, maritime workers have the added benefit of concurrently stating their beef in federal court (if they so choose) under the Jones Act. With an injured maritime worker enjoying status as “ward of the admiralty” – something approaching the legal equivalent of His Honor’s nephew – you can see why the shipping industry has always been particularly nervous about asbestos claims.

Asbestos-containing products have been illegal in the U.S. for over a generation, installation on vessels has long since ceased, and the number of maritime claims has

abated. But they haven't fully ceased. A characteristic of asbestos, one which has numerous implications, is that disease can manifest decades after the last exposure.

Take, for example, a claim recently tried and appealed in Louisiana, where a 77-year old retired merchant mariner died in 1994 of mesothelioma caused by his work at sea in the 1940s. His widow brought a Jones Act/state product liability claim against a former maritime employer, and was awarded some \$2 million. This case involved mostly legal procedural issues. However, it affirms, at least in the Pelican State, that maritime plaintiffs enjoy the Jones Act's burden of proof advantages without losing their entitlement to recover for losses that federal statute doesn't allow (here, the spouse's loss of society damages as provided by state law). Interestingly (if alarmingly for the defendant employer and those similarly situated), the jury had refused to find a connection between asbestos exposure fifty years ago at sea and the deceased plaintiff's lung disease. But the judge exercised her authority to rule that conclusion was unsupported by evidence and testimony, and set aside the jury's feelings to find the employer fully liable.

With asbestos litigation's enormity, settlement and judgment costs have gotten close to (or exceeded, depending on how you calculate) one trillion dollars. Most of the old-line defendants, i.e., the asbestos manufacturers, have gone belly up. With fewer and fewer defendants to sue, asbestos plaintiffs have become more expansive in their theories of liability and in deciding whom to sue.

This concept extends to the maritime facet of asbestos litigation. Whereas shipyards and carrier lines were the primary accused in salty asbestos claims of 20 years ago, we now see a wider array of service and product providers being hauled into court. Now it's not just the shipyard and asbestos manufacturer defending a mesothelioma claim; it's also the manufacturers of the maritime employer's air conditioning units, hoisting equipment, and metal piping. Even the manufacturers of respiratory masks and protective gloves used to prevent exposure currently are named as defendants (based on alleged product failure).

Like the new wave of defendants in most all other industries, maritime newcomers should avoid becoming the next mainstay of asbestos litigation. The well-organized asbestos plaintiffs bar, consisting of attorneys from throughout the country, knows just who is doing what in defense of claims. Information about how named defendants behave in litigation is evaluated, disseminated, and used in subsequent determinations about who gets sued.

In other words, simply paying out claims to avoid trial and litigation costs can be an even riskier proposition.

Ref: Torrejon v. Mobil Oil Company, 2004 WL 1338156 (La. App. 4th Cir.)