

Alerts and Updates

EXCEPTION TO PENNSYLVANIA'S ONE-DISEASE RULE: PRE-1992 ASBESTOS PLAINTIFFS MAY FILE NEW CLAIMS

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On October 21, 2009, the Pennsylvania Supreme Court issued an opinion in *Abrams v. Pneumo Abex Corp., et. al.*,¹ following oral argument almost exactly one year ago. This decision creates a significant exception for plaintiffs who sued for a non-malignant asbestos-related injury prior to 1992 and recovered damages both for the non-malignancy and for their increased risk and fear of developing cancer in the future.

One-Disease Claims

In 1992, the Pennsylvania Superior Court, in its seminal decision of *Marinari v. Asbestos Corp., Ltd.*,² changed Pennsylvania from a "one-disease" state to a "two-disease" state, meaning that plaintiffs have separate causes of action for non-malignant claims and malignant claims arising out of their alleged exposure to asbestos. Prior to 1992, Pennsylvania was a one-disease state, and plaintiffs had two years from the onset of the first symptoms allegedly caused by their asbestos exposure to sue for all current and future asbestos-related claims, both malignant and nonmalignant. Prior to *Marinari*, plaintiffs suing for a non-malignancy claim could also recover for the increased risk and fear of developing cancer in the future. After *Marinari*, plaintiffs suing for a non-malignancy claim could recover only for that claim—and not for the fear and risk of developing cancer in the future—but could file a subsequent action if they later developed cancer that they alleged was caused by asbestos exposure.

Abrams Creates a Limited Exception to One-Disease Rule

The plaintiffs in *Abrams* sued multiple defendants in 1985 for nonmalignant diseases allegedly caused by asbestos exposure and in 1993 settled all of their claims relating to their asbestos exposure, including increased risk and fear of developing cancer in the future. In 2002, both of the plaintiffs were diagnosed with lung cancer, which they attributed to their asbestos exposure. Shortly thereafter, the plaintiffs filed suit against multiple companies, including John Crane, Inc., which were not defendants in the 1985 suit. John Crane filed a motion for summary judgment, claiming that the plaintiffs' 2003 suit was barred by their 1985 settlement, as they had already recovered for their increased risk and fear of cancer. The

Pennsylvania high court disagreed, stating that the plaintiffs' "prior recovery does not preclude a subsequent recovery, from a new defendant, of damages for the actual development of asbestos-related lung cancer."

The *Abrams* decision is likely to create a new cause of action for plaintiffs who recovered for non-malignancy claims and increased risk and fear of cancer before *Marinari* was decided. Plaintiffs who recovered for non-malignancy claims under Pennsylvania's former one-disease rule can now file a second claim for a malignancy that was allegedly caused by asbestos exposure, if they can identify a defendant that was not a party to the first action.

Conclusion

Asbestos defendants should be aware that they may now be receiving claims from plaintiffs who were previously compensated under the one-disease rule in Pennsylvania. Defendants should determine whether they were a party to the previous suit and, if so, seek to be dismissed from the new suit. If the defendant was not a party to the prior suit, it should analyze the claim and determine whether the plaintiff can substantiate a claim of asbestos exposure against the new defendant. Companies that are most likely to be presented with "new" claims are those that were not defendants in asbestos litigation, or those that had a limited number of claims prior to the *Marinari* decision in 1992.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [Sharon L. Caffrey](#), [Karen Shichman Crawford](#), any of the [attorneys](#) in our [Products Liability and Toxic Torts Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. The Pennsylvania Supreme Court docket number is 17 EAP 2009. The majority opinion is available at <http://www.courts.state.pa.us/OpPosting/Supreme/out/J-138A&B-2008mo.pdf>, and the dissenting opinion is available at <http://www.courts.state.pa.us/OpPosting/Supreme/out/J-138A&B-2008do.pdf>.
2. *Marinari v. Asbestos Corp., Ltd.*, 612 A.2d 1021.