Free research paper on moeller v. garlock sealing technologies, llc

Law, Evidence

Garlock Sealing Technologies, LLC is a company that manufactures fluid sealing products used in the processing industry. The company employs more than1900 people, with 12 manufacturing facilities around the world (Garlock, 2013a). In the past, sealing gaskets for use with pipes moving steam or other heated materials were manufactured using asbestos to provide heat resistance to the seal. Workers exposed to asbestos in the workplace have a highly increased risk for mesothelioma, a type of lung cancer (Mayo Clinic, 2012). Garlock Sealing Technologies, LLC has been involved in product liability suits related to the use of asbestos in their seals for 35 years, during that time processing to conclusion over 900, 000 claims (Garlock, 2010). Several years ago, Garlock declared bankruptcy in order to put a hold on the remaining lawsuits and allow a plan to be put in place that will resolve the remaining cases while still allowing Garlock to stay in business (Rubenstein, 2010).

The plaintiff in this case is Robert Moeller, a pipefitter who worked from about 1962 to about 1970 with asbestos-containing gaskets made by Garlock. He brought the suit but died of mesothelioma in 2008 before the case was decided. His wife, Olwen, has continued the suit because she is the executor of his estate. Moeller v. Garlock Sealing Technologies, LLC is a lawsuit that occurred in federal court because the plaintiff and the defendant were from different states, a type of jurisdiction called diversity jurisdiction (Edmonds, n. d.). An important aspect of this case is that Kentucky law was what the jury was to follow in making its decision. In the lower court, a jury found that Garlock was liable to Moeller under the tort law of Kentucky.

In particular, the jury found a negligent failure on Garlock’s part to

adequately warn about its product as the basis for the liability. Failure to warn is an example of a basis for product liability often used when the dangers of the product cannot be eliminated without making the product less functional (LaMance, 2012). It can include having to prove that the defendant knew about the danger, the failure to warn about the danger caused injury, and the person who used the product would've followed the warning, if one had been given. Additionally, the plaintiff in this case chose to use an expert that testified that any fiber of asbestos or any exposure to asbestos could cause the injury. This is a very broad definition of cause for an expert to take because it generally does not consider dosage levels, does not distinguish between various types of asbestos, and doesn't focus on the specific cause of that specific plaintiff's cancer (Hoenig, 2011). But even with only that general type of expert evidence, the jury believed that all of the requirements for a negligent failure to warn had been met, and awarded Moeller's wife damages in the amount of $516, 094. 00.

Garlock chose to challenge this verdict asking the judge to find there was not sufficient evidence to support the jury's finding. They asked the judge to look at the evidence, compare it to what is required by the law, and overturn the decision made by the jury. It is difficult to get a judge to do this. Under Kentucky law, the judge must look at whether the evidence was sufficient, along with " all fair and rational inferences" in favor of the winning party, in this case, Moeller. Thus, this is a very high standard to meet, so judges usually keep the jury verdict. That is what the lower court judge in this case did.

However, after Garlock appealed the decision on their request to the higher

court, the judge there disagreed with the lower court judge and found that the evidence was not sufficient to support the jury's verdict. Specifically, the question was whether Garlock's gaskets were a " substantial factor" in causing Moeller's mesothelioma, something that is specifically required by the language of the Kentucky law. Both Garlock and Moeller agree that the mesothelioma was caused by asbestos exposure, but it was necessary to show that exposure from Garlock's gaskets specifically was a " substantial factor." Importantly, during the trial, evidence had been presented that Moeller had also been exposed to asbestos insulation products in his workplace.

Other evidence that supported that the gaskets were not a substantial factor was presented. First, the asbestos in the gaskets was encapsulated, or surrounded by material, and a doctor testified that this type of asbestos is less likely to cause mesothelioma than free asbestos. Second, it was shown that the asbestos in the insulation was not encapsulated. Finally, evidence that Moeller had installed gaskets was presented but not that he had removed them, and removal was when the exposure to the asbestos within the gaskets was argued to have taken place. In contrast, there was strong evidence presented that Moeller did a significant amount of tearing out of asbestos-containing insulation during his working years. The appeals court in the opinion pointed out that plaintiff's experts never explicitly testified that exposure to Garlock's gaskets was a " substantial factor" in causing his mesothelioma. Therefore, even after taking all the inferences in favor of Moeller, the appeals court found that there was insufficient evidence to show that the asbestos in Garlock's gaskets was a " substantial factor" in the

cause of Moeller's cancer. As a result, the lower court judge's decision was reversed and the jury's verdict was overturned (Moeller, 2011).

I agree with this case because a company, such as Garlock, should not be liable for every case of mesothelioma just because they manufactured a product that contains asbestos and someone worked with their product. Instead, as required by Kentucky law, it is the plaintiff's responsibility to show that the company's particular product was a " substantial factor" in the development of the disease. Because Moeller was unable to show sufficiently that asbestos from the gaskets was the cause of his mesothelioma, Garlock should not pay him. There is evidence that another source of asbestos was the likely cause of Moeller's mesothelioma. Instead, it would be better for any damages he deserves to come from the company who made the insulation. However, this presents a problem for Moeller, and this problem will be discussed further below.

This decision is an example of a court refusing to expand theories about causation in product liability cases (Hoenig, 2011). The plaintiff attempted to show causation in a general way rather than in a way specific to the plaintiff. The " any exposure" theory states that each and every exposure to asbestos, no matter how small, contributes to the development of the disease. This theory has also been called the " any fiber" or the " single fiber" theory of causation in asbestos litigation. This argument has been put forth because the companies that manufactured asbestos-containing insulation are no longer solvent, so it does not make sense to sue them. Instead, the plaintiff lawyers search to find a company to sue that still has money, such as Garlock. They bring the suit even if the causation between

the company's product and the disease in the specific plaintiff is weak. The only way to succeed with such suits is to get the jury to agree to a very broad definition of causation, as presented by the plaintiff's expert. Although this worked in the lower court in the Moeller case, the appeals court refused to allow the broader definition to govern how it judged the sufficiency of the evidence. This resulted in an overturning of the jury's verdict. A further interesting part of this decision was the " substantial factor" language present in the Kentucky state tort law. Without that phrase, the case may have been decided the other way.

Interestingly, there have been very little changes in the gasket product made by Garlock since the lawsuits. The case stated that these gaskets are still sold today and are not banned. It should be noted, though, that Garlock has expanded its gaskets to include those made without asbestos, and those gaskets are specifically advertised as " non-asbestos material" (Garlock, 2013b). Rather, regulations concerning the training of those who handle asbestos and regulations guiding how asbestos is handled have changed since the time that Moeller worked with asbestos. One regulatory agency highly involved in these changes is the Environment Protection Agency (EPA). They are involved in asbestos regulation as an agency that protects human health and the environment by enacting and enforcing regulations based on laws passed by Congress that touch on these concerns. The EPA issued a plan, called the EPA Asbestos Model Accreditation Plan (MAP) after the passage of the Asbestos Hazard Emergency Response Act of 1986 (AHERA) by Congress (United States Environmental Protection Agency, 2013a). MAP requires the use of trained professionals when asbestos is

present and provides guidelines for that training. There are also asbestos training programs mandated by individual states that can add additional regulations on top of the federal ones (United States Environmental Protection Agency, 2013b).

Another governmental agency that is highly involved in the regulation of asbestos and its use is the Occupational Safety and Health Administration (OSHA). OSHA is within the United States Department of Labor and is an agency that works to save lives, prevent injuries, and protect the health of workers in the United States. OSHA has established regulations for the amount of inhaled asbestos fibers any worker can legally be exposed to in an eight-hour work day (United States Occupational Safety and Health Administration, 2002). It should be noted that there is no “ safe” level of exposure for any type of asbestos fiber, only legal limits. If such legal limits and exposure times are exceeded, OSHA regulations require medical monitoring of the workers (United States Occupational Safety and Health Administration, 2002).

There are some recommendations that can be made to Garlock to avoid future lawsuits. First, whenever possible, steer customers away from the purchase of gaskets that contain asbestos. The expansion of the product line to focus on non-asbestos containing gaskets is a very good step toward doing this. If any customer insists on purchasing asbestos-containing gaskets care should be taken that the asbestos content is absolutely required in the proposed use. Given the heavy economic impact of all the regulations surrounding the use of asbestos, and the possible liability of the employer, it is likely that such considerations are taken into account before purchase. But

it does not hurt the company to be extra vigilant with the necessity of these purchases. Second, the company should warn early and warn often about the dangers of the product. This should avoid any further ability of for customers to use of the failure to warn basis for product liability, as was found in the Moeller case. Finally, a risk/reward analysis should be performed on a regular basis about remaining in the asbestos-containing gasket business. If and only if asbestos-containing gaskets prove and remain extremely profitable should the company keep selling those products. However, given the high liability risk of the business that would keep out the competition and the likely expert position that Garlock has developed in the handling of asbestos during the gasket manufacture and its expertise in asbestos product liability case defense, it may make sense to remain in the business despite the possible future product liability risk.

References

Edmonds, C. D. (n. d.). Glossary. In Federal Court Concepts. Retrieved from http://www. catea. gatech. edu/grade/legal/glossary. html

Garlock. (2010). Garlock Sealing Technologies moves toward a permanent resolution of asbestos litigation [Press release]. Retrieved from http://www. garlock. com/en/corporate/news/

Garlock. (2013a). Company profile. Retrieved from http://www. garlock. com/en/corporate/company-profile/

Garlock. (2013b). Gasketing products. Retrieved from http://www. garlock. com/en/product/gasketing

LaMance, K. (2013). Failure to warn lawsuit. LegalMatch. com. Retrieved from

http://www. legalmatch. com/law-library/article/failure-to-warn-lawsuit. html

Hoenig, M. (2011). Courts shoot down asbestos causation theory. New York Law Journal. Retrieved from http://www. toxictortlitigationblog. com/uploads/file/Document. pdf

Mayo Clinic (2010). Risk factors. In Mesothelioma. Retrieved from http://www. mayoclinic. com/health/mesothelioma/DS00779/DSECTION= risk-factors

Moeller v. Garlock Sealing Technologies, LLC, 660 F. 3d 950 (2011). Retrieved from http://www. ca6. uscourts. gov/opinions. pdf/11a0276p-06. pdf

Rubenstein, A. (2010). Asbestos claims send EnPro's Garlock into bankruptcy. Law360. com. Retrieved from http://www. law360. com/articles/173412/asbestos-claims-send-enpro-s-garlock-into-bankruptcy

United States Environmental Protection Agency. (2013a). Asbestos professionals. epa. gov. Retrieved from http://www2. epa. gov/asbestos/asbestos-professionals#howto

United States Environmental Protection Agency. (2013a). State Asbestos Contacts. epa. gov. Retrieved from http://www2. epa. gov/asbestos/state-asbestos-contacts

United States Occupational Safety and Health Administration. (2002). Asbestos standard for the construction industry. osha. gov. Retrieved from http://www. osha. gov/Publications/osha3096. pdf