

SAN FRANCISCO

Daily Journal

www.dailyjournal.com

OL 117 NO. 224

THURSDAY, NOVEMBER 17, 2011

Asbestos bar awaits key ruling

Plaintiffs' and defense attorneys are not sure about the impact of a decision on liability.

By Ciaran McEvoy
and Amy Yarbrough

Daily Journal Staff Writers

One week after state Supreme Court justices signaled they might limit the liability of manufacturers who sold asbestos-laden parts to the U.S. Navy for use in World War II warship boilers, lawyers who specialize in such cases are taking stock.

Many in the asbestos bar that has proliferated in California said they do not expect a dramatic decrease in lawsuit filings should the court decide in favor of the manufacturers.

The court is expected to issue a decision within three months in the case brought by the survivors of a Vietnam War veteran who died from the cancer mesothelioma after being exposed to asbestos while serving in the Navy. *O'Neil v. Crane Co.*, S177401. The Second District Court of Appeal reversed a trial court decision dismissing the case before verdict.

Defense and plaintiffs' lawyers throughout the state, speaking after last week's oral arguments in the case, cast doubt on the idea that the asbestos litigation landscape would significantly change.



Daily Journal File Photo

Defense attorney William J. Sayers of McKenna Long & Aldridge LLP

"You may see some machinery defendants who are not sued as often as they used to be, but that will not impact the number, unfortunately, of the plaintiffs getting sick," said defense attorney William J. Sayers of McKenna Long & Aldridge LLP.

"Those people are still getting ill and they're still going to file lawsuits and they're still going to be viable defendants to pursue," Sayers said.

"There are a lot of different scenarios," said plaintiffs' lawyer James L. Oberman of Kazan, McClain, Lyons, Greenwood & Harley PLC.

Lower courts are divided on liability, with some ruling that equipment manufacturers should be held accountable since they knew their products would be wrapped in toxic asbestos as a shield against the heat of the massive warship boilers. In the 1940s, asbestos was the only insulation product able to withstand the 850-degree temperatures.

Defense lawyers have argued that plaintiffs' attorneys are resorting to targets further down the economic food chain since the major asbestos

manufacturers went bankrupt years ago.

As California's courts continue to face mounting budget cuts, the state judiciary has moved to streamline asbestos litigation. Los Angeles, Orange and San Diego counties have coordinated their asbestos cases before Los Angeles County Superior Court Judge Emilie H. Elias. San Francisco County Superior Court's asbestos court has been credited for reducing its asbestos docket by similar methods.

Those people are still getting ill and they're still going to file lawsuits and they're still going to be viable defendants to pursue.'

— William J. Sayers

Not all lawyers agreed that the impact of a pro-defense decision would be minimal.

San Francisco plaintiffs' attorney Stephen M. Tigerman said *O'Neil* might already be giving attorneys the impression that there aren't that many viable defendants in California anymore.

"It's an important decision," said

Tigerman of Harowitz & Tigerman LLP. "I think it will impact the number of filings, the number of defendants and the size of the recoveries."

James C. Parker, whose firm Brydon Hugo & Parker represents defendants in Navy cases, said *O'Neil* should have an impact on future cases if the high court rules in defendants' favor.

"It will probably result in a shifting of liability, and a refocusing of liability," he said.

Tigerman said he believes *O'Neil* and *Taylor v. Elliott Turbomachinery Co.*, a similar case dismissed by the Court of Appeal in 2009, may be the reason for a recent drop in the number of mesothelioma cases filed in San Francisco. *Taylor v. Elliott Turbomachinery Co.* (2009) 171 Cal.App.4th 564.

According to figures compiled by Berry & Berry, an Oakland firm that specializes in asbestos litigation, plaintiffs' firms filed 236 asbestos cases in San Francisco County Superior Court in 2010, a steep drop from the 388 cases filed in 2009. In 2008, there were 467 cases filed, according to the firm's records.

Staff writer Laura Ernede contributed to this report.

ciaran_mcevoy@dailyjournal.com

amy_yarbrough@dailyjournal.com