

Cork & Seal from asbestos liability stemming from its purchase of an asbestos-insulation manufacturer.

(Proposed bill available. Document #01-100421-014L. **Impact statement available.** Document #01-100421-015X.)

Crown Cork supported the legislation, which sought to limit the asbestos-related liabilities of corporations that became a successor before Jan. 1, 1972. The legislation would have limited the successor's liabilities to the assets of the transferor company.

The legislation does not specifically name Crown Cork but is believed to apply only to Crown Cork. The bottle cap company's liabilities arise from its 1963 acquisition of Mundet Cork Co., which manufactured cork-lined bottle caps and had an asbestos insulation division. Crown Cork sold Mundet's insulation division 93 days after the sale.

Proposed Legislation

Under terms of the proposed legislation, the fair market value of the transferor company would have been ascertained "through any method reasonable under the circumstances."

In addition, the cap on liability did not apply to workers' compensation benefits, any claim that did not arise from successor asbestos-related liability or any liability under the National Labor Relations Act.

The Senate's action comes after a tough fight for the legislation in the Virginia House, where Speaker William J. Howell originally introduced the legislation. The legislation was originally defeated in the House on a 49-49 vote, only to have the House reconsider it and pass it on a 49-48 vote in February.

Pennsylvania-based Crown Cork employs approximately 300 workers in Virginia. ■

Kentucky Governor Signs Legislation Designating Mesothelioma Awareness Day

FRANKFORT, Ky. — Kentucky Gov. Steve Beshear on April 13 signed into law legislation designating Sept. 26 as "Mesothelioma Awareness Day."

(Legislation available. Document #01-100430-013L.)

The legislation also requires that the governor issue a proclamation each year on Sept. 26.

The bill was introduced in the Kentucky Senate in January 2010 and amends Kentucky Revised Statute Chapter 2 to read "September 26 of each year is designated 'Mesothelioma Awareness Day' throughout the Commonwealth. The Governor shall proclaim September 26 of each year as 'Mesothelioma Awareness Day' and shall encourage Kentuckians to support research into effective treatments and early detection methods."

The bill won passage in the Kentucky House on April 1 by a 92-0 vote. April 1 is National Asbestos Awareness Day.

Before that, the bill passed the Senate by a vote of 36-0. Kentucky State Sens. Johnny Ray Turner, Gerald A. Neal, R.J. Palmer II, Robin L. Webb, Tom Buford, Carroll Gibson, David Givens, Bob Leeper, Dorsey Ridley and Ken Winters sponsored the bill. ■

Judge: Removal Improper; Settlement 'In Principle' Not A Discontinuation Of Claim

SAN FRANCISCO — An Oregon couple's agreement in principle to settle asbestos-related claims with the last remaining nondiverse company does not constitute a binding, enforceable settlement or a discontinuance of the claims, a California federal judge held March 18 in remanding a case (Ronald Palmer and Carol Palmer v. Pneumo Abex LLC, et al., No. 10-0712, N.D. Calif.; 2010 U.S. Dist. LEXIS 35093).

(Opinion available. Document #01-100421-018Z.)

Ronald and Carol Parker filed suit in the San Francisco County Superior Court against more than 60 defendants whose conduct they claimed exposed Ronald Palmer to asbestos. In February 2010, defendant Pneumo Abex LLC removed the case to the U.S. District Court for the Northern District of California, alleging that the Palmers were citizens of Oregon

while the defendants resided in other states. Ford Motor Co., Carlisle Corp., Kelsey-Hayes Co. and Marmont Corp. joined in the removal.

The Palmers moved for remand, arguing that Pneumo Abex's removal was improper because Performance Warehouse Co., a nondiverse defendant, remained and because not all the defendants consented to removal.

Nondiverse Defendant

Judge Maxine M. Chesney said it is undisputed that Performance Warehouse is an Oregon resident and a party to the action when it was removed. However, removal can still be conducted if the plaintiff discontinues its action against the nondiverse defendant, Judge Chesney said.

Here, the Palmers allege that a settlement with Performance Warehouse, absent a dismissal, is not evidence that they have discontinued their action,

Judge Chesney said. Understandably, Pneumo Abex argues that a settlement is sufficient to constitute the discontinuation of an action, Judge Chesney said.

Judge Chesney said the Ninth Circuit U.S. Court of Appeals has not yet addressed whether an enforceable settlement agreement equates to a voluntary dismissal of a nondiverse defendant.

But regardless, the defendants here have failed to prove even that such an agreement exists.

Settlement 'In Principle'

The Palmers note that their claims against the 16 defendants who had not consented to removal had not been dismissed, Judge Chesney said. Additionally, while the Palmers had executed a release for 11 of those defendants, the defendants had not yet signed settlement papers, Judge Chesney said. The Palmers and the five defendants — including Performance Warehouse — had agreed in principle to a settlement but had not executed a release, Judge Chesney said.

"With respect to the five defendants as to whom there exists 'absolutely no settlement paperwork in place,' plaintiffs also offer evidence to support a finding that some of those defendants are 'still negotiating material terms' such as confidentiality, timing of payments and/or terms relating to reimbursement and reporting of liens," Judge Chesney said.

Neither Ford nor Pneumo Abex present any evidence that these constitute binding and enforceable contracts or agreements, Judge Chesney said.

Finally, Judge Chesney rejected Pneumo Abex's argument that the Palmers' intention to go to trial against only some of the remaining defendants constituted a discontinuance of the claims not being tried. Judge Chesney said Pneumo Abex cites no federal cases to support this claim nor any state law that suggests that trying only certain claims against some defendants at a particular time constitutes the termination of the remaining claims.

Steven M. Harowitz, Stephen M. Tigerman, Marileni Mattis and Roger Edward Gold of Harowitz & Tigerman represent the Palmers. Edward R. Hugo, James Carl Parker and Thomas J. Moses of Brydon, Hugo & Parker represent Pneumo Abex. Lynn R. Fiorentino



Reach decision-making attorneys in your area of specialty - **advertise your firm in LexisNexis® Mealeys™ Litigation Reports** and you'll have the rapt attention of your target audience.



Contact Mealey's Sales Representative Michele Rogers at 610-205-1906 or michele.rogers@lexisnexis.com for more details.



LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. It's How You Know is a trademark of LexisNexis, a division of Reed Elsevier Inc. Mealey's is a trademark of LexisNexis, a division of Reed Elsevier Inc. © 2010, LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

of Nixon Peabody represents Ford. All are in San Francisco.

(Additional documents available: **Removal.** Document #01-100421-017B. **Memo supporting remand.** Document #01-100421-019B. **Ford's opposition.** Document #01-100421-020B. **Pneumo Abex's opposition.** Document #01-100421-021B. **Reply.** Document #01-100421-022B.) ■

Federal Judge: Issuing Stay Before Ruling On Remand Not Evidence Of Bias

OAKLAND, Calif. — The likelihood that a judge would stay an asbestos action upon receiving a conditional transfer order from the Judicial Panel on Multidistrict Litigation without ruling on a pending motion to remand does not demonstrate prejudice or bias and does not warrant disqualification, a California federal judge held Feb. 16 (David Wolgamott v. Asbestos Defendants, et al., No. 09-5667, N.D. Calif.; 2010 U.S. Dist. LEXIS 20770).

(**Opinion available.** Document #01-100421-007Z.)

David Wolgamott filed suit in the San Francisco County Superior Court, alleging that Metalclad Insulation Corp., among others, exposed him to the asbestos that caused his asbestosis and asbestos-related pleural disease.

Insulation Exposure

Wolgamott alleged that he was exposed to asbestos-containing insulation while employed as a shipfitter and welder in the construction of U.S. Navy ships. Metalclad removed the action to the U.S. District Court for the Northern District of California, where it was assigned to Judge Sandra Brown Armstrong.

Wolgamott moved for remand and then filed an affidavit of prejudice and certificate of counsel, seeking to have Judge Armstrong disqualified and to have his case assigned to another judge.

In denying the motion for disqualification, Judge Armstrong said Wolgamott's motion comes in anticipation that she will stay the action after receiving a

conditional transfer order from the Judicial Panel on Multidistrict Litigation. Wolgamott believes that issuing such a stay and transfer before ruling on the motion to remand demonstrates prejudice and bias, Judge Armstrong explained.

Disqualification

But to warrant disqualification, a plaintiff must demonstrate facts that show bias or prejudice arising from extrajudicial sources and that interfere with a fair ruling; merely adverse rulings are not sufficient, Judge Armstrong said.

Judge Armstrong noted that Wolgamott's complaint is not unique among plaintiffs likely to be included in the asbestos multidistrict litigation. But Judge Armstrong said Wolgamott is mistaken in his belief that granting a stay of the proceeding before ruling on the motion to remand constitutes prejudice and bias.

Instead, judicial economy and fairness requires such an outcome, Judge Armstrong said.

David R. Donadio of Brayton Purcell in Novato, Calif., represents Wolgamott. Felicia Y. Feng of McKenna, Long & Aldridge in San Francisco represents Metalclad.

(Additional documents available: **Removal.** Document #01-100421-008B. **Affidavit of prejudice.** Document #01-100421-009B.) ■

Judge: Expert Affidavits On Warnings Insufficient Absent Contracts, Regulations

EAST ST. LOUIS, Ill. — Testimony from a former employee and the U.S. Navy are insufficient to warrant removal under the federal officer statute absent evidence of actual contracts or regulations, an Illinois federal judge held March 9 (Martha Kuhlman, et al. v. A.W. Chesterton Inc., et al., No. 10-119, S.D. Ill.; 2010 U.S. Dist. LEXIS 21571).

(**Opinion available.** Document #01-100421-024Z.)

U.S. Judge G. Patrick Murphy of the Southern District of Illinois also declined to recuse himself, saying that his wife's clients are not a sufficient reason to do so.