

SUPREME COURT OF KENTUCKY

Carroll v. Owens-Corning Fiberglas Corp.

37 S.W.3d 699 (Ky. 2000) · No. No. 99-SC-0740-CL · Decided March 22, 2001

SUMMARY

The Supreme Court of Kentucky held that a lung-cancer claim arising from asbestos exposure accrues when the cancer is diagnosed, rather than when a separate, earlier diagnosis of asbestosis was made. The court concluded that the asbestosis and lung-cancer claims involved separate and distinct diseases and that the earlier diagnosis did not trigger the statute of limitations for the later cancer claim. The court therefore allowed the cancer claim to proceed while recognizing that the asbestosis claim was time-barred.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Graves, Justice
JURISDICTION	Kentucky
DECIDED	March 22, 2001
DOCKET	No. 99-SC-0740-CL
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Kentucky decided a certified question of Kentucky law referred by the United States Court of Appeals for the Sixth Circuit in an asbestos personal-injury, wrongful-death, and loss-of-consortium action.
STANDARD OF REVIEW	The opinion addresses a certified question of law; the underlying ruling was partial summary judgment.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; binding state precedent.
PARTIES	Geraldine Carroll v. Owens-Corning Fiberglas Corp., Owens-Illinois Glass Co., Garlock, Inc., Fibreboard Corp., Foster Wheeler Energy Corp., The Anchor Packing Co.

TOPICS

statute of limitations

personal injury

wrongful death

torts

civil procedure

PRACTICE AREAS

Torts

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Asbestos litigation

QUESTIONS PRESENTED

1. Whether Kentucky's one-year statute of limitations for personal-injury claims begins to run for an asbestos-related lung-cancer claim when the plaintiff is diagnosed with an earlier, separate disease such as asbestosis.
2. Whether Kentucky's rule against splitting causes of action bars a later lung-cancer claim when the plaintiff did not previously sue for asbestosis, fear of cancer, or enhanced risk of cancer.

HOLDINGS

1. When asbestos exposure causes separate and distinct diseases, a cause of action for lung cancer accrues when the lung cancer is diagnosed, not when the earlier asbestosis is diagnosed. The earlier diagnosis does not trigger the limitations period for the later cancer claim unless the plaintiff had actual knowledge or knowledge of the probability of that later disease.
2. The rule against splitting causes of action does not bar the cancer action because Carroll brought only one action and had not previously litigated an asbestosis claim. Although the asbestosis claim was time-barred and waived, the later cancer claim could proceed.

KEY QUOTATIONS

“When an injury does not manifest itself immediately, the cause of action should accrue not when the injury was initially inflicted, but when the plaintiff knew or should have known that he had been injured by the conduct of the tortfeasor.” (700)

“Therefore, we hold that the action for cancer accrued on the date of the diagnosis of the cancer, not the diagnosis of asbestosis, which is a separate and distinct disease.” (703)

FACTUAL BACKGROUND

James Carroll worked for approximately thirty years as a plumber and steamfitter and was exposed to asbestos manufactured by the appellees. He was diagnosed with mild, non-progressive asbestosis in December 1983 but did not sue because the condition was not disabling. Approximately eight years later he was diagnosed with lung cancer, filed suit within five months, and later died from lung cancer in December 1991, after which Geraldine Carroll added a wrongful-death claim.

PROCEDURAL HISTORY

James Carroll filed suit in the United States District Court within five months after being diagnosed with lung cancer, after having been diagnosed with non-disabling asbestosis approximately eight years earlier. The district court granted partial summary judgment for the defendants, holding that the limitations period for both diseases began with the asbestosis diagnosis and therefore barred the personal-injury and loss-of-consortium claims. The Sixth Circuit requested certification from the Supreme Court of Kentucky concerning accrual of claims involving separate asbestos-related diseases.

DISPOSITION

other

CASES CITED

- Louisville Trust Co. v. Johns-Manville Prods. Co., 580 S.W.2d 497, 500 (Ky. 1979)
- Caudill v. Arnett, 481 S.W.2d 668 (Ky. 1972)
- Davis v. Graviss, 672 S.W.2d 928 (Ky. 1984)
- Farmer's Bank & Trust Co. v. Rice, 674 S.W.2d 510 (Ky. 1984)
- Capital Holding Corp. v. Bailey, 873 S.W.2d 187, 195 (Ky. 1994)
- Eagle-Picher Indus., Inc. v. Cox, 481 So. 2d 517, 529 (Fla. App. 1985)
- Wilson v. Johns-Manville Sales Corp., 684 F.2d 111, 118 (D.C. Cir. 1982)