

SUPREME COURT OF VIRGINIA

Garlock Sealing Technologies, LLC v. Little, 270 Va. 381

620 S.E.2d 773 (2005) · No. Record No. 050002 · Decided November 4, 2005

SUMMARY

The Supreme Court of Virginia held that federal maritime tort principles governed an asbestos-exposure claim arising from work performed on submarines in navigable waters. The court affirmed the judgment against Garlock Sealing Technologies, concluding that Garlock could not challenge the apportionment method it had requested and used at trial. The court also noted that maritime joint and several liability may require a defendant to pay amounts attributable to insolvent entities.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Leroy R. Hassell, Sr., Chief Justice; All the Justices
JURISDICTION	Virginia
DECIDED	November 4, 2005
DOCKET	Record No. 050002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Garlock appealed a final judgment entered after a jury trial in a wrongful-death asbestos case. The circuit court entered judgment requiring Garlock to pay both the percentage of damages allocated to Garlock and the percentage allocated to three bankrupt entities.
STANDARD OF REVIEW	The court reviewed the legal question whether maritime tort principles governed the claim and reviewed the judgment for assignments of error preserved under Virginia Rule 5:17(c).
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Virginia
PARTIES	Garlock Sealing Technologies, LLC v. Michael Little, Executor of the Estate of Zebulon A. Little, Jr.

TOPICS

- admiralty jurisdiction
- negligence
- wrongful death
- comparative fault
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether federal maritime tort principles governed Little's asbestos-related cause of action arising from work performed on submarines located in navigable waters.
2. Whether Garlock's argument that it had no duty to warn about products manufactured by other entities was properly before the court under the assignment of error presented.
3. Whether Garlock could challenge the method of apportionment and resulting liability after inducing the trial court to apportion fault among nonparty entities.

HOLDINGS

1. Federal maritime tort principles govern a tort claim arising from asbestos exposure during construction and repair work on submarines located in navigable waters when the conduct satisfies the locality and maritime-nexus tests.
2. A litigant may not invite the trial court to apportion liability among nonparty entities and then obtain appellate relief by challenging the resulting method of apportionment.
3. The court will not consider a legal argument concerning duties to warn about products manufactured by others when the assignment of error challenges only the admission of evidence.

KEY QUOTATIONS

“A litigant seeking the application of federal maritime tort law must satisfy both a locality test, demonstrating that the alleged negligence occurred on the navigable waters of the United States, and a nexus test, demonstrating that the wrong bears a significant relationship to traditional maritime activity and has a potentially disruptive impact upon maritime commerce.” (270 Va. 385)

“We hold that plaintiff's cause of action is governed by maritime tort principles.” (270 Va. 386)

“no litigant. . . will be permitted to approbate and reprobate to invite error . . . and then to take advantage of the situation created by his own wrong.” (270 Va. 387)

FACTUAL BACKGROUND

Little worked as a machine installation worker at Newport News Shipbuilding and Drydock Company and performed construction, repair, and overhaul work on submarines moored in the navigable waters of the James River. He installed and repaired valves, packing, and gaskets, including making gaskets from asbestos-containing material manufactured by Garlock. The work generated asbestos dust that Little inhaled, and he later developed mesothelioma and died.

PROCEDURAL HISTORY

Zebulon A. Little sued Garlock and fourteen other defendants, alleging asbestos exposure and mesothelioma. After Little died, the action was revived as a wrongful-death action; all claims except those against Garlock were settled, nonsuited, or dismissed before trial. The jury returned a \$467,818.59 verdict, allocated 30 percent to

Garlock and 29 percent to three bankrupt entities, and the circuit court entered judgment against Garlock for 59 percent of the verdict. The Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995)
- Matthews v. Commonwealth, 253 Va. 180, 482 S.E.2d 810 (1997)
- Mizenko v. Electric Motor & Contracting Co., 244 Va. 152, 419 S.E.2d 637 (1992)
- East River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858 (1986)
- Sisson v. Ruby, 497 U.S. 358 (1990)
- John Baizley Iron Works v. Span, 281 U.S. 222 (1930)
- Messel v. Foundation Co., 274 U.S. 427 (1927)
- Robins Dry Dock & Repair Co. v. Dahl, 266 U.S. 449 (1925)
- Great Lakes Dredge & Dock Co. v. Kierejewski, 261 U.S. 479 (1923)
- Cohn v. Knowledge Connections, Inc., 266 Va. 362, 585 S.E.2d 578 (2003)
- Fisher v. Commonwealth, 236 Va. 403, 374 S.E.2d 46 (1988)
- Hansen v. Stanley Martin Cos., 266 Va. 345, 585 S.E.2d 567 (2003)
- McDermott, Inc. v. AmClyde, 511 U.S. 202, 220-21 (1994)