

NEW YORK COURT OF APPEALS

In the Matter of New York City Asbestos Litigation (Andrucki v. Aluminum Company of America)

24 N.Y.3d 275 (2014) · No. No. 185 · Decided November 20, 2014

SUMMARY

The New York Court of Appeals held that a notice of claim identifying personal-injury claims was sufficient to support a subsequent wrongful-death claim against the Port Authority when the claimant died after serving the notice but before commencement of the action. The court concluded that the notice satisfied the statutory requirements and fulfilled the purpose of allowing the Port Authority to investigate the claim and estimate potential liability. The court reversed the Appellate Division and remitted the matter for consideration of unresolved issues.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Smith, J.; Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Pigott; Judge Rivera; Judge Abdus-Salaam
JURISDICTION	New York
DECIDED	November 20, 2014
DOCKET	No. 185
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from an Appellate Division order reversing Supreme Court's denial of the Port Authority's motion to dismiss and the resulting default judgment. The Court of Appeals reversed and remitted.
STANDARD OF REVIEW	Interpretation of statutory conditions governing suit against the Port Authority and review of the Appellate Division's determination.
PRECEDENTIAL VALUE	published precedential opinion of the New York Court of Appeals
PARTIES	Mary Andrucki, as administratrix, et al. v. Port Authority of New York and New Jersey

TOPICS

- civil procedure
- statutory interpretation
- subject matter jurisdiction
- municipal law

PRACTICE AREAS

civil procedure

statutory interpretation

wrongful death

personal injury

municipal law

QUESTIONS PRESENTED

1. Whether a notice of claim describing a personal-injury claim is sufficient to satisfy the statutory notice requirement for a wrongful-death claim when the injured person dies after service of the notice but before commencement of the action.
2. Whether the Port Authority's sovereign-immunity waiver and statutory notice requirements required strict construction such that a new notice of claim had to be served after Andrucki's death.

HOLDINGS

1. A notice of claim for personal injuries is sufficient notice of a wrongful-death claim when the injured person dies from those injuries after the notice is served but before the action is commenced, provided the notice sufficiently describes the underlying claim and injuries.
2. Strict construction of statutory conditions attached to the Port Authority's waiver of sovereign immunity does not require a new notice of claim under these circumstances, where the original notice substantially provided the information required by the statute and the only asserted deficiency was the absence of a wrongful-death label.

KEY QUOTATIONS

"We hold that under this statute a notice of a claim for personal injuries is a sufficient notice of a claim for wrongful death, where the person injured dies of his injuries between the service of the notice of claim and the beginning of the lawsuit." (at 2)

"This information was definite enough to fulfill the purpose of the notice of claim requirement: to allow the State to investigate the claim and to estimate its potential liability." (at 8)

"By contrast, the difference between a notice of claim labeled 'personal injury' and one labeled 'wrongful death' is, under the circumstances of this case, essentially a formality." (at 9)

FACTUAL BACKGROUND

George Andrucki was exposed to asbestos while working on various projects, including construction of the World Trade Center, and was diagnosed with mesothelioma in April 2010. He and his wife served the Port Authority with a notice of claim describing his asbestos exposure, mesothelioma, physical and emotional injuries, medical expenses, and loss of companionship and consortium. Andrucki died before the action could properly be commenced against the Port Authority, and his widow added wrongful-death and survivorship claims without serving a new notice of claim.

PROCEDURAL HISTORY

Andrucki and his wife served the Port Authority with a notice of claim for personal injury and commenced an action the following day, before the statutory 60-day waiting period had elapsed. After Andrucki died, his widow

continued the survivorship claim and added a wrongful-death claim without serving a new notice of claim. Supreme Court denied the Port Authority's motion to dismiss and entered a default judgment after the Port Authority declined to participate in the trial. The Appellate Division reversed, holding that a new notice of claim was required for the wrongful-death and survivorship claims. The Court of Appeals reversed and remitted for consideration of issues not previously determined.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remitted to the Appellate Division, First Department, for consideration of issues raised but not determined on the appeal to that court.

CASES CITED

- Holmes v. City of New York, 269 A.D. 95 (1st Dep't 1945), aff'd without opinion, 295 N.Y. 615 (1945)
- Zamel v. Port of New York Authority, 56 N.J. 1, 264 A.2d 201 (1970)
- Kolnacki v. State of New York, 8 N.Y.3d 277 (2007)
- Lichtenstein v. State of New York, 93 N.Y.2d 911 (1999)
- Lepkowski v. State of New York, 1 N.Y.3d 201 (2003)
- Luciano v. Fanberg Realty Co., 102 A.D.2d 94 (1st Dep't 1984)
- Lyons v. Port Authority of N.Y. & N.J., 228 A.D.2d 250 (1st Dep't 1996)

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