

SUPREME COURT OF ALABAMA

Jerkins v. Lincoln Electric Co.

103 So. 3d 1 (Ala. 2011) · Decided June 30, 2011

SUMMARY

The Supreme Court of Alabama answered three certified questions concerning claims arising from long-term exposure to welding fumes. Applying pre-Griffin Alabama law, the court held that recovery is limited to injuries occurring within the applicable limitations period, that a six-year limitations period applies to wantonness claims filed before *Ex parte Capstone* was released, and that the plaintiff bears the burden of proving the timely injuries and resulting damages.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Stuart, Justice; Stuart; Woodall; Bolin; Parker; Murdock; Shaw; Main; Wise; Cobb
JURISDICTION	Alabama
DECIDED	June 30, 2011
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Northern District of Ohio, Eastern Division, sitting as the multidistrict litigation court, certified three questions of Alabama law to the Supreme Court of Alabama under Rule 18, Ala. R. App. P.
STANDARD OF REVIEW	Questions of law certified by a federal court are answered de novo. In addressing the underlying summary-judgment record, facts are viewed in the light most favorable to the nonmoving plaintiff.
PRECEDENTIAL VALUE	Published and precedential Supreme Court of Alabama opinion answering certified questions of Alabama law.
PARTIES	Jerkins v. Lincoln Electric Company, Hobart Brothers Company, The ESAB Group, Inc., Sandvik, Inc.

TOPICS

[products liability](#)[torts](#)[damages](#)[statutory interpretation](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Under Alabama law applicable before *Griffin v. Unocal Corp.*, is a plaintiff injured by long-term, continuous exposure to a toxic substance limited to recovering damages attributable only to injuries occurring within the applicable limitations period?
2. How does the limitations rule announced in *McKenzie v. Killian* apply to wantonness claims, particularly after *Ex parte Capstone Building Corp.* overruled *McKenzie*?
3. When recovery is limited to injuries occurring within the limitations period, does the plaintiff or defendant bear the burden of proving which injuries and damages are timely?

HOLDINGS

1. Under pre-*Griffin* Alabama law, a plaintiff injured by long-term, continuous exposure to a toxic substance may recover only damages attributable to injuries that occurred within the applicable limitations period.
2. A six-year limitations period applies to wantonness claims filed before *Ex parte Capstone Building Corp.* was released, because *Ex parte Capstone*'s rejection of the six-year period was prospective and did not immediately cut off vested claims.
3. The plaintiff bears the burden of proving which injuries occurred within the applicable limitations period and the amount of damages attributable to those injuries.

KEY QUOTATIONS

“a party alleging injury as a result of long-term exposure to a toxic substance can recover only damages attributable to injuries that occurred within the relevant limitations period.” (at 5)

“Accordingly, we hold that a plaintiff injured by long-term continuous exposure to a toxic substance bears the burden of proving what injuries he suffered within the limitations period as a result of his exposure to that substance and what the appropriate damages for those injuries should be.” (at 10)

“A plaintiff injured by long-term continuous exposure to a toxic substance is limited to recovering damages attributable to injuries occurring within the period of limitations.” (at 11)

FACTUAL BACKGROUND

Jerkins began welding in 1979 and was exposed to welding fumes essentially continuously through approximately 2008. He filed suit on April 21, 2004, alleging neurological injury caused by manganese in the fumes and asserting product-liability, negligence, and wantonness claims against welding-rod manufacturers. The parties disputed when his symptoms first manifested, with evidence placing their onset between 2000 and 2003.

PROCEDURAL HISTORY

Jerkins sued welding-rod manufacturers for injuries allegedly caused by long-term exposure to welding fumes, asserting claims under the Alabama Extended Manufacturer's Liability Doctrine, negligent and wanton failure to warn, and sale of an unreasonably dangerous product. The Principal Defendants moved for summary judgment based on statutes of limitations. The MDL court determined that factual disputes concerning when Jerkins's symptoms manifested precluded summary judgment on limitations grounds, but certified three unresolved questions concerning the recoverability of damages, the limitations period applicable to wantonness claims, and the allocation of the damages burden.

DISPOSITION

other

REMAND INSTRUCTIONS

The certified questions were answered for application by the MDL court; the Alabama Supreme Court did not enter a conventional affirmance or reversal of a lower-court judgment.

CASES CITED

- In re Welding Rod Products Liability Litigation, 269 F. Supp. 2d 1365 (J.P.M.L. 2003)
- Griffin v. Unocal Corp., 990 So. 2d 291 (Ala. 2008)
- Garrett v. Raytheon Co., 368 So. 2d 516 (Ala. 1979)
- Garren v. Commercial Union Insurance Co., 340 So. 2d 764 (Ala. 1976)
- American Mutual Liability Insurance Co. v. Agricola Furnace Co., 236 Ala. 535, 183 So. 677 (1938)
- American Mutual Liability Insurance Co. v. Phillips, 491 So. 2d 904 (Ala. 1986)
- Cline v. Ashland, Inc., 970 So. 2d 755 (Ala. 2007)
- Travis v. Ziter, 681 So. 2d 1348 (Ala. 1996)
- Ex parte Carlton, 867 So. 2d 382 (Ala. 2003)
- Cazalas v. Johns-Manville Sales Corp., 435 So. 2d 55 (Ala. 1983)
- Hillis v. Rentokil, Inc., 596 So. 2d 888 (Ala. 1992)
- Liberty & Prosperity 1776, Inc. v. Corzine, 720 F. Supp. 2d 622 (D.N.J. 2010)
- McKenzie v. Killian, 887 So. 2d 861 (Ala. 2004)
- Ex parte Capstone Building Corp., Ms. 1090966, June 3, 2011, ___ So. 3d ___ (Ala. 2011)
- Johnson v. Harrison, 404 So. 2d 337 (Ala. 1981)
- Smith v. Richardson, 277 Ala. 389, 171 So. 2d 96 (1965)
- Great American Insurance Co. v. Railroad Furniture Salvage of Mobile, Inc., 276 Ala. 394, 162 So. 2d 488 (1964)
- Lands v. Lull International, Inc., 963 So. 2d 626 (Ala. 2007)
- Chatham v. CSX Transportation, Inc., 613 So. 2d 341 (Ala. 1993)
- Cloud v. Olin Corp., 552 F. Supp. 528 (N.D. Ala. 1982)
- Holcim (US), Inc. v. Ohio Casualty Insurance Co., 38 So. 3d 722 (Ala. 2009)

- John Deere Co. v. Gamble, 523 So. 2d 95 (Ala. 1988)
- American Stevedores, Inc. v. Porello, 330 U.S. 446, 450 n. 6, 67 S. Ct. 847, 91 L. Ed. 1011 (1947)

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