

SUPREME COURT OF THE STATE OF OREGON

Keller v. Armstrong World Industries, Inc.

Keller · No. S52801 · Decided November 24, 2006

SUMMARY

The Oregon Supreme Court addresses when the two-year limitations period under ORS 30.907(1) begins for an asbestos-related product-liability action. The court holds that a reasonable juror could find that the plaintiff did not actually discover, and should not necessarily have discovered, that asbestos caused his pulmonary disease before a 2000 medical diagnosis. The court affirms the Court of Appeals, reverses the circuit court's judgment, and remands for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Oregon
WRITING FOR THE COURT	Kistler, J.; De Muniz, Chief Justice; Carson, J.; Gillette, J.; Durham, J.; Balmer, J.
JURISDICTION	Oregon
DECIDED	November 24, 2006
DOCKET	S52801
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tenneco sought review of the Court of Appeals' reversal of summary judgment for defendants in an asbestos-related product liability action. The Oregon Supreme Court affirmed the Court of Appeals, reversed the circuit court's judgment, and remanded.
STANDARD OF REVIEW	On summary judgment, the court determines whether the record requires, as a matter of law, a finding that plaintiff discovered or reasonably should have discovered the asbestos-related disease and its cause more than two years before filing. A reasonable juror's permissible contrary inference precludes summary judgment.
PRECEDENTIAL VALUE	published precedential opinion of the Oregon Supreme Court
PARTIES	Tenneco Automotive Operating Company Inc. v. Lawrence Keller, Patricia Keller

TOPICS

products liability

statute of limitations

summary judgment

statutory interpretation

standard of review

PRACTICE AREAS

product liability

statute of limitations

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the summary judgment record established as a matter of law that Keller actually discovered, more than two years before filing suit, that he had an asbestos-related disease and that asbestos was its cause under ORS 30.907(1).
2. Whether Keller, in the exercise of reasonable care, should have discovered more than two years before filing suit that he had an asbestos-related disease and its cause under ORS 30.907(1).

HOLDINGS

1. The evidence did not compel a finding that Keller actually discovered more than two years before filing suit that asbestos had caused his pulmonary disease. His knowledge that asbestos was a possible cause, and his references to "asbestos lungs," could reasonably be viewed as his own supposition rather than a medical diagnosis.
2. Whether a plaintiff, in the exercise of reasonable care, should have discovered an asbestos-related disease and its cause depends on the evidence concerning the nature of the disease, its latency, and the difficulty of diagnosing asbestos as the cause. On this record, a reasonable juror could find that Keller should not have discovered the disease and its cause more than two years before suit was filed.
3. Defendant was not entitled to summary judgment on its statute-of-limitations defense because the record permitted a reasonable juror to find that Keller did not discover and reasonably should not have discovered his asbestos-related disease and its cause until April 2000.

KEY QUOTATIONS

*"Actual knowledge * * * is not required. On the other hand, a mere suspicion is insufficient to begin the statute of limitations to run. We believe that a quantum of awareness between the two extremes is contemplated by the statute."* (at the discussion of Gaston)

"The period of limitations in [ORS 12.110(4)] commences from the earlier of two possible events: (1) the date of the plaintiff's actual discovery of injury; or (2) the date when a person exercising reasonable care should have discovered the injury, including learning facts that an inquiry would have disclosed." (at the discussion of Greene)

FACTUAL BACKGROUND

Lawrence Keller worked as an automobile mechanic and muffler-business operator for many years, handling mufflers that exposed him to asbestos. He developed respiratory problems beginning in the mid-1980s, but his doctors diagnosed interstitial lung disease or pulmonary fibrosis and expressed uncertainty or only suspicion regarding whether asbestos caused those conditions. In 1995, a physician concluded that Keller had no asbestos-

related condition, while Keller nevertheless referred to his condition as "asbestos lungs" in benefit applications. In April 2000, Dr. Schaumberg diagnosed an interstitial lung disease and concluded that, given Keller's asbestos exposure, asbestosis was the most likely cause; Keller filed this product liability action in October 2000.

PROCEDURAL HISTORY

The circuit court granted defendant's summary judgment motion and entered judgment under ORCP 67 B, concluding that the two-year statute of limitations barred the action. The Court of Appeals reversed, holding that a reasonable juror could find that plaintiff neither discovered nor reasonably should have discovered that asbestos caused his pulmonary disease more than two years before filing suit. The Oregon Supreme Court allowed review and affirmed the Court of Appeals' decision.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Multnomah County Circuit Court for further proceedings after reversal of the summary judgment judgment.

CASES CITED

- Jones v. General Motors Corp., 325 Or 404, 420, 939 P2d 608 (1997)
- Uris v. Compensation Department, 247 Or 420, 424-26, 427 P2d 753, 430 P2d 861 (1967)
- Gaston v. Parsons, 318 Or 247, 864 P2d 1319 (1994)
- Doe v. American Red Cross, 322 Or 502, 910 P2d 364 (1996)
- Greene v. Legacy Emanuel Hospital, 335 Or 115, 60 P3d 535 (2002)
- Gladhart v. Oregon Vineyard Supply Co., 332 Or 226, 232, 26 P3d 817 (2001)
- Nelson v. Hughes, 290 Or 653, 664-65, 625 P2d 643 (1981)
- Keller v. Armstrong World Industries, Inc., 197 Or App 450, 107 P3d 29 (2005)
- Keller v. Armstrong World Industries, Inc., 200 Or App 406, 115 P3d 247 (2005)