

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
INDIANA, INDIANAPOLIS DIVISION

Martha E. Groce, Kenneth Groce v. Johns-Manville Sales
Corporation, et al.

662 F. Supp. 936 (S.D. Ind. 1987) · No. IP 81-245-C · Decided June 22, 1987

SUMMARY

The court denied Asbestos Corporation Limited's motion for summary judgment or partial summary judgment in an asbestos product-liability action. It held that the plaintiffs' negligence and strict-liability claims accrued when Martha Groce was diagnosed with an asbestos-related disease and were timely under Indiana's two-year limitation periods. The court also concluded that the ten-year product-liability cutoff did not bar the claims because ACL's last delivery of asbestos to the employer occurred in 1976, and that the husband's derivative loss-of-consortium claim was likewise timely.

CASE DETAILS

COURT	United States District Court for the Southern District of Indiana, Indianapolis Division
WRITING FOR THE COURT	Steckler
JURISDICTION	Indiana
DECIDED	June 22, 1987
DOCKET	IP 81-245-C
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Asbestos Corporation Limited moved for summary judgment, or alternatively partial summary judgment, on the ground that the plaintiffs' product-liability claims were barred by applicable statutes of limitation and repose.
STANDARD OF REVIEW	Summary judgment is appropriate only when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law; the court applied that standard to the timeliness issues.
PRECEDENTIAL VALUE	Published federal district court order; persuasive rather than binding precedent outside the case.

TOPICS

products liability

statute of limitations

summary judgment

loss of consortium

civil procedure

PRACTICE AREAS

product liability

statute of limitations

civil procedure

QUESTIONS PRESENTED

1. When did Martha Groce's asbestos-related negligence and strict-liability claims accrue for purposes of Indiana's two-year limitation periods?
2. Were Martha Groce's claims barred in whole or in part by Indiana's ten-year product-liability cutoff?
3. Was Kenneth Groce's derivative loss-of-consortium claim barred if Martha Groce's underlying claims were timely?

HOLDINGS

1. Under Indiana law, a claim for an injury caused by a disease resulting from protracted exposure to a foreign substance accrues when the plaintiff knew or should have discovered that the injury was caused by the product or act of another. Martha Groce's claims accrued on February 15, 1980, when she was diagnosed with an asbestos-related disease, and her March 17, 1981 filing was within the applicable two-year limitation period.
2. Martha Groce's product-liability claim was timely under Indiana Code § 33-1-1.5-5 because ACL last delivered asbestos to her employer in 1976, within ten years before the action was filed in 1981. ACL therefore was not entitled to partial summary judgment based on the ten-year cutoff.
3. Kenneth Groce's derivative loss-of-consortium claim was not barred because Martha Groce's underlying negligence and strict-liability claims were timely.

KEY QUOTATIONS

“Under Indiana law, when an injury is caused by a disease which may have been contracted as a result of protracted exposure to a foreign substance, the cause of action is deemed to accrue when the plaintiff knew or should have discovered that the injury was caused by the product or act of another.” (937)

“In the instant case, Martha Groce's cause of action accrued on February 15, 1980, when she was diagnosed as having an asbestos-related disease.” (937)

“The Court finds that Martha Groce's claim is timely under Ind. Code § 33-1-1.5-5 in that ACL last delivered asbestos to her employer in 1976 which falls within the ten-year cutoff period.” (938)

FACTUAL BACKGROUND

Martha Groce worked with asbestos at Firestone Tire & Rubber Company's WorldBestos Division plant from 1959 through 1974. She was diagnosed with an asbestos-related disease on February 15, 1980, and the plaintiffs filed suit on March 17, 1981, alleging negligence, strict liability, and loss of consortium. ACL last delivered asbestos to the employer in 1976.

PROCEDURAL HISTORY

Martha and Kenneth Groce brought a federal product-liability action against asbestos-related defendants, alleging negligence, strict liability, and loss of consortium. ACL moved for summary judgment under Federal Rule of Civil Procedure 56, contending that the claims were untimely in whole or in part. The district court denied the motion.

DISPOSITION

other

CASES CITED

- Barnes v. A.H. Robbins Co., Inc., 476 N.E.2d 84, 87-88 (Ind. 1985)
- Walters v. Owens-Corning Fiberglass Corp., 781 F.2d 570, 572 (7th Cir. 1986)
- Thurston v. Johns-Manville Sales Corporation, et al., No. 81-C-243 (S.D. Ind. Sept. 5, 1986)
- Troxell v. Johns-Manville Sales Corporation, et al., No. 81-C-307 (S.D. Ind. Oct. 7, 1986)

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