

Asbestos/Duty of Care: Connecticut Court Addresses Construction Project/Liability Issues

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The Superior Court of Connecticut (Judicial District of Hartford) (“Court”) addressed in a September 30th opinion certain issues arising in an asbestos exposure case. See *Julian Poce, et al., v. O&G Industries, Inc., et al.*, 2019 WL 5295545.

The Court addressed Summary Judgment Motions arguing certain project contractors did not owe mason laborers a duty of care.

Several mason laborers (collectively “Plaintiffs”) were employed by Connecticut Mason Contractors, Inc. to work at certain points on a building project at a high school in Connecticut. They alleged that while working on the building project they were exposed to asbestos.

Plaintiffs filed an action against Southern Middlesex Industries, Inc. (“SMI”) and O&G Industries, Inc. (“O&G”) for negligent infliction of emotional distress in regards to both O&G and SMI. They alleged repeated exposure to asbestos from working in areas of the building project designated by O&G as the project manager. Asbestos was stated to have been disturbed that was present in the floors, walls, and ceilings.

O&G was argued to have had actual or constructive notice of dangerous site conditions/defects, including the presence of asbestos and PCBs. It is stated to have supervised all phases of work along with exercising possession and control of the project. Plaintiffs claimed that even though O&G controlled (or had the ability to control) the means and method of work, the relevant areas were not sampled, remediated or tested for asbestos prior to the Plaintiffs’ exposure. This is alleged to have resulted in asbestos being inhaled by Plaintiffs.

O&G was allegedly aware of the exposure. Further, it was alleged that such exposure was allowed to occur despite an agreement signed with the Town of Wethersfield requiring O&G to observe safety protocols and procedures.

SMI was alleged to have performed demolition work involving asbestos remediation at the site. Plaintiffs claimed that SMI did not properly section off regulated work areas to ensure plaintiffs were not exposed to materials being remediated. This is alleged to have contributed to a lack of adequate testing and sampling of materials including an absence of advance warning to the Plaintiffs.

Both O&G and SMI filed Motions for Summary Judgment arguing that they owed Plaintiffs no duty of care.

Various AIA contract documents along with deposition transcripts were filed in support of the Defendant’s Motion for Summary Judgment.

O&G argued that it owed no duty to the Plaintiffs because issues related to hazardous materials were specifically excluded in its contract from its scope of work. The Plaintiffs responded that legal duty is a question of fact, noting that:

- O&G supervised safety at the worksite
- O&G had a duty of care to third parties because it was in control of the site
- O&G had a duty of care under the Occupational Safety and Health Act Regulations

O&G replied that its contract provided it did not have control over construction means or safety precautions at the site. Further, it claimed that there was no duty under the common law or Occupational and Safety Health Act regulations.

The Court addressed each of these three arguments and granted Summary Judgment concluding that O&G did not owe the Plaintiffs a duty of care with regard to the discovery and removal of asbestos.

SMI argued in support of its Motion for Summary Judgment that it owed no duty of care because it was not hired to identify asbestos. Instead, it argued that the obligation was to remove hazardous materials that had already identified by their contractors.

Plaintiffs responded that an analysis of legal duty ordinarily leads to a question of fact and that SMI was in the best position to ensure their safety. It was argued to have performed its work in such a way as to create hazardous situations and that the company owed a duty of care under Connecticut common law along with the Occupational and Safety Health Act regulations.

SMI replied it had no duty to perform work that was beyond the scope of its contract.

The Court concluded it was evident that SMI was not hired for the specific purpose of identifying and locating hazardous materials. However, it determined this did not establish that it bore no responsibility whatsoever for the identification and discovery of asbestos on the worksite while it performed its demolition or remediation duties. Questions of fact were held to remain regarding SMI's capacity to identify any previously undiscovered hazardous materials to which the Plaintiffs alleged they were exposed.

As a result, SMI's Motion for Summary Judgment was denied.

A copy of the opinion can be downloaded [here](#).