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ALICE SOUDERS ET AL V. ATLANTIC RICHFIELD CO.

United States District Court, Eastern District of Pennsylvania,

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Maritime law's three year statute of limitations for personal injury claims is triggered when a plaintiff possesses critical facts that would provide a reasonable person with knowledge of his cause of injury.

FACTS: On April 3, 1987 plaintiffs Earl and Alice Souders filed this maritime action against the Atlantic Richfield Company (ARCO), for negligence and unseaworthiness, and against the asbestos defendants for negligence and strict liability. As these claims arose under the Jones Act, plaintiffs had to file suit within three years from the date the cause of action accrued. Plaintiffs alleged that Earl Souders contracted asbestosis while in the employ of ARCO. Plaintiffs also claimed that during his tenure as seaman aboard a number of ARCO's vessels Souders was exposed to asbestos-containing products manufactured by the defendants. After his retirement from ARCO, Souders began working for another company which required employees to receive annual physical examinations. As a result of chest x-rays taken during these examinations during the period from 1975 to 1977, Souders learned that there were progressive bilateral linear markings in his right lung. During the period from 1978 to 1980 Souders consulted a family practitioner, who viewed these x-rays and determined that Souders was suffering from interstitial fibrosis of the lungs. This physician then referred Souders to a Dr. Kestner, a board certified pulmonary specialist. Based on his examination, x-rays and Souders' extensive exposure to asbestos, Dr. Kestner's finding was that Souders suffered from asbestosis, and this finding was related to Souders on several occasions. However, Dr. Kestner testified at trial that he believed Souders discounted his exposure to asbestos. The defendants argued that for twelve years Earl Souders virtually ignored his physicians' findings while his health continued to deteriorate and that the applicable three-year statute of limitations, 46 U.S.C. sec. 763(a), bars this action.

ISSUE: Whether Souders, before April 3, 1984, knew or possessed the requisite critical facts so that he could reasonably be considered to have known the cause of his injury.

ANALYSIS: The District Court for the Eastern District of Pennsylvania held Souders knew or should have known before April 3, 1984, that his injury was caused by his exposure to asbestos while on the ARCO ships. The court stated the general rule to be that a tort cause of action accrues at the time the tortious act is committed, although a claimant who becomes aware of the fact that he has been injured after the statute of limitations has lapsed, may rely on the "discovery rule." This rule tolls the statute until such time as the claimant, through the exercise of reasonable diligence, discovers or should have discovered both the injury and its cause. Based upon the testimony of two of plaintiffs' physicians, the court found, that the physicians had made their respective asbestosis diagnosis in 1980 and 1981 with a reasonable degree of medical certainty and had informed Souders of their findings. Consequently, the court concluded that in 1981 Souders was in possession of sufficient critical facts concerning his injury and its cause to trigger the duty of diligence to consult with an attorney. In reaching its decision the court relied in part on a Third Circuit opinion holding that, "the statute of limitations begins to run on the first date that the injured party possesses sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress." *Zelesnik v. United States*, 770 F.2d 20, 23 (3d Cir. 1985), cert. denied, 475 U.S. 1108 (1986). The court noted that Pennsylvania precedent requires only that the claimant be aware of the fact that he has an injury and that there is no requirement that he be aware of a precise diagnosis of the injury. Based on these findings, the court dismissed the action as untimely and entered judgment in favor of ARCO and the asbestos defendants.

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