



And The Defense Wins

Published 9-5-12 by DRI

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DRI members [John Osburn](#) and [Elizabeth Wright](#), attorneys with **Bullivant Houser Bailey PC** in Portland, Oregon, prevailed on a motion for summary judgment, terminating a premises liability asbestos case valued at approximately \$3.5 million. In the “take home” exposure case of *Nicole Oudinot v. Port of Seattle, et al.*, Case No. 11-2-07458-2, Superior Court, Pierce County, Washington, Ms. Oudinot alleged that she contracted peritoneal mesothelioma from exposure to asbestos fibers that her father brought home on his work clothes after delivering copy machines and other equipment to the Seattle-Tacoma International Airport, a facility owned by the Port of Seattle. The Port of Seattle’s alleged liability stemmed from its operation of premises that incorporated asbestos-containing insulation, joint compound and fireproofing materials.

In this case, the plaintiff offered evidence of the presence of asbestos-containing materials and construction activity at the defendant’s premises during the years Ms. Oudinot’s father made deliveries, but there was no evidence that her father was actually near asbestos or that he was exposed to asbestos during his deliveries.

The issues in the case were whether there was sufficient evidence in the record to support a finding that the defendant owed Ms. Oudinot a “duty” with respect to asbestos materials allegedly used by fireproofers at the defendant’s premises, and whether there was sufficient evidence of causation. With respect to “duty,” Ms. Oudinot asserted that the defendant’s duties arose as a result of its ownership of and activities at the defendant’s premises connected with construction at the premises when her father delivered equipment there. Ms. Oudinot relied on various Washington cases to assert that a duty owed to an asbestos-exposed worker extended to the members of that worker’s household. The defendant contended that whether it owed a duty to Ms. Oudinot turned, under Washington law, on the foreseeability of the injury—that is, that the hazard that brought about the resulting injury must be a reasonably perceived hazard. The defendant asserted that there was not sufficient evidence in the record to support a finding of such a foreseeable injury. It also argued that under Washington premises law, it did not owe a legal duty to someone like Ms. Oudinot, who was not on the premises and could not have encountered any dangerous conditions there.

With respect to causation, Ms. Oudinot pointed to certain deposition testimony from her father and a coworker of her father’s, both of whom testified that they saw dusty conditions when delivering at the defendant’s premises, and that they saw construction workers scraping what they believed to be fireproofing off of beams at the premises. Mr. Oudinot testified that he sometimes walked through construction zones at the defendant’s premises when delivering equipment. He also testified that, at

times, he came within 20 to 25 feet of what appeared to be asbestos abatement activity. Ms. Oudinot further relied on asbestos survey and testing data conducted at the premises in the early 1990s to show that asbestos-containing materials were present.

The defendant asserted that there was insufficient evidence to conclude that Ms. Oudinot's father was exposed to asbestos, let alone that he brought asbestos fibers home to Ms. Oudinot and exposed her. Ms. Oudinot submitted no evidence of actual contact with any asbestos product located at the defendant's premises, let alone a friable asbestos product.

Pierce County Superior Court Judge Garold Johnson awarded summary judgment to the defendant, fully terminating the case in the defendant's favor. The plaintiff has not filed an appeal.

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