

Calif. Court Awards Summary Judgment to Foster Wheeler, Finds Direct Questions of Defendant's Counsel Determinative on Asbestos Exposure Issue

LOS ANGELES — A California federal court has awarded summary judgment to Foster Wheeler LLC in an asbestos exposure case, concluding, in part, that the “direct questions of Foster Wheeler’s counsel at the plaintiff’s deposition were determinative” on the issue of exposure.

According to Civil Minutes entered by the court on Aug. 1, the U.S. District Court for the Central District of California issued a tentative ruling granting Foster Wheeler’s motion for summary judgment, later adopting it as a Final Ruling.

The order relates to all causes of action in the First Amended Complaint against Foster Wheeler.

In the same Civil Minutes, the court noted that it had taken Viking Pump Inc.’s motion for summary judgment under submission.

In its tentative ruling, the court explained that plaintiffs Dennis A. Rockwell and his wife, Dawn Rockwell, had brought the underlying claims against more than 60 defendants for alleged asbestos-related injuries. Dennis Rockwell testified, in part, that he came into contact with asbestos-containing products while working as a boiler tender at Camp Pendleton from 1966 to 2000, causing him to develop mesothelioma.

Rockwell stated prior to his deposition that he worked with a number of different boilers at Camp Pendleton.

During his deposition, however, counsel for Foster Wheeler asked Rockwell where he worked with Foster Wheeler boilers; Rockwell stated that his time in the U.S. Navy and subsequent work at Camp Pendleton “all run together,” and that while he recalled working on Foster Wheeler boilers, he could not “pinpoint any particular boiler at any time or anyplace.”

The court further noted that the defendant had presented evidence that Foster Wheeler did not sell or provide any boilers for use at Camp Pendleton and that the majority of the boilers present at the site were small units for heating buildings. Foster Wheeler maintained that it did not manufacture these types of small boilers.

Ultimately, the court found that, under defense counsel’s questioning, the plaintiff’s responses did not create a material issue of disputed fact.

“While Rockwell did state that he worked on and around others working on Foster Wheeler boilers, again the issue is not whether he ever worked on a Foster Wheeler boiler, but rather if he worked on a Foster Wheeler boiler at Camp Pendleton,” the court ruled. “Hence, the direct questions of Foster Wheeler’s counsel at this deposition (e.g. ‘Can you testify that you personally worked on or around a Foster Wheeler boiler at Camp Pendleton?’) were determinative. Rockwell’s failure to answer those questions results in a dearth of admissible evidence to rebut Foster Wheeler showing that it had never supplied boilers to Camp Pendleton and there is no actual evidence of any Foster Wheeler boiler in use at that location.”

In light of its findings, the court concluded that summary judgment was appropriate as to all claims asserted against Foster Wheeler.

The deposition of Rockwell was conducted by Charles S. Park of Hugo Parker LLP on behalf of Foster Wheeler.

Also representing Foster Wheeler is Edward R. Hugo and Jon C. James of Hugo Parker LLP in San Francisco.

Counsel for the plaintiffs are Scott L. Frost, Andrew Seitz, and Paul C. Cook of Frost Law Firm in Pedro, Calif.; and John. M. Caron of The Law Offices of Worthington & Caron, P.C., in San Pedro, Calif.

Rockwell, et al. v. Afton Pumps Inc., et al., No. 21-03963 (C.D. Calif.).

Documents are Available Call (800) 496-4319 or Search www.harrismartin.com Civil Minutes/Final Ruling Ref# ASB-2208-04 Tentative Ruling Ref# ASB-2208-05 Amended Notice of MSJ Ref# ASB-2208-06 Summary Judgment Motion Ref# ASB-2208-07 Opposition Ref# ASB-2208-08 Reply Ref# ASB-2208-09

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