

ASBESTOS

Expert Analysis

Navy connection keeps wrongful-death suit in California federal court

Rockwell Automation's defense that its asbestos-containing products were made to the Navy's specifications means the case should stay in a federal forum, a federal judge in California has ruled.

Olschewske et al. v. Asbestos Defendants (B-P), No. C 10-1729 PJH, 2010 WL 3184317 (N.D. Cal. Aug. 11, 2010).

References to the use of asbestos-containing insulation in the Navy's orders for electrical equipment are sufficient to establish a connection to the plaintiff's claims of asbestos exposure, U.S. District Judge Phyllis J. Hamilton of the Northern District of California said.

The plaintiffs, heirs of Thomas Olschewske, sued Rockwell and other companies in the San Francisco County Superior Court. They alleged Olschewske was exposed to asbestos used with the company's products.

Rockwell removed the case to the District Court, citing the federal officer removal statute. The company said it was entitled to have the case heard in that forum because it would be asserting a federal defense.

The plaintiffs moved for remand. They said the defense cannot show that the Navy required the company's products to be made with asbestos.

To remove the case, the plaintiffs said, Rockwell must prove that the federal contractor defense applies.

Judge Hamilton disagreed. She said the case is removable if Rockwell is able to "articulate a 'colorable' federal contractor defense — which is not the same thing as establishing that a defense applies to bar asserted claims."

The judge noted that Rockwell produced a specification from the Navy that said asbestos products "may be utilized."

The plaintiffs said the phrase "may be utilized" does not mean "is required to be used."

But Judge Hamilton said other references indicate a requirement "sufficient for purposes of this motion."

In one specification, the Navy said “insulation consists of ... asbestos,” the judge noted.

While this provision is not unequivocal, she said, it is sufficient to establish a connection between the Navy’s requirements and the plaintiffs’ claims of exposure to asbestos used with Rockwell’s products.

The judge concluded that Rockwell has asserted a federal contractor defense, and she denied the motion for remand. [WJ](#)

Attorneys:

Plaintiffs: David R. Donadio and Richard Martin Grant, Brayton Purcell LLP, Novato, Calif.

Defendant: Evan Craig Nelson and Nicole E. Gage, Tucker Ellis & West, San Francisco

Related Court Documents:

Opinion: 2010 WL 3184317