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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

United Fruit Beats Asbestos Exposure Suit In MDL

By **Sindhu Sundar**

Law360, New York (September 05, 2014, 5:46 PM ET) -- United Fruit Co. on Wednesday persuaded the Pennsylvania federal court overseeing the multidistrict asbestos litigation against dozens of defendants to throw out a suit against it by arguing that the plaintiff had not shown enough proof that a seaman was exposed to the carcinogenic mineral on any vessels it owned.

U.S. District Judge Eduardo C. Robreno granted United Fruit's motion for summary judgment, siding with its argument that plaintiff Willard Bartel representing the estate of seaman George Murray, had not pointed to any co-workers who could testify about Murray's alleged exposure to asbestos while he worked on the Ben F. Dixon, a vessel owned by United Fruit.

Bartel had claimed on behalf of Murray that he had been exposed to asbestos over the course of his work on a number of vessels owned by various companies, for nearly four decades until 1981. United Fruit had argued that merely claiming that there was asbestos present somewhere on a ship when a worker was present is not enough to show causation, according to court documents.

The court agreed that the plaintiff had not shown any proof that Murray had been exposed to asbestos on United Fruit's ship, granting the first "no evidence of exposure" motion filed by its defense attorneys at Thompson Hine LLP.

"In this case, even if a reasonable jury could conclude that the vast majority of merchant marines were exposed to respirable asbestos aboard any given vessel, in the absence of any evidence pertaining specifically to Mr. Murray's service on the Ben F. Dixon, a reasonable jury could not conclude that Mr. Murray was exposed to respirable asbestos on the Ben. F. Dixon," Judge Robreno wrote in his order.

The law firm said Friday that the court's decision was the first to grant such a motion, and that the firm has filed roughly 1,300 such motions in the litigation, involving other plaintiffs in similar circumstances. Judge Robreno has selected a small group of such motions for hearings, and his rulings in that group would likely extend to other similar motions in the case, according to the firm.

"We are pleased the court agreed that a jury cannot presume a seaman was exposed to respirable asbestos on a particular vessel or infer exposure from generalized evidence about in-place asbestos on vessels or from medical records," Harold Henderson of Thompson Hine, an attorney for United Fruit, said Friday.

"If the plaintiff cannot present testimonial evidence to prove actual exposure to respirable asbestos fibers on the vessel, the vessel owner should be dismissed on summary judgment," he said.

An attorneys for the plaintiff could not immediately be reached for comment Friday. None of

the cases in the MDL have been selected for trial, Henderson said Friday.

The lead counsel for ship owner defendants is Harold W. Henderson of Thompson Hine LLP

The lead counsel for plaintiffs is John Herrick of Motley Rice LLC.

The case is Willard Bartel, Admrs. for George E. Murray, deceased v. A-C Product Liability Trust, et. al., case number 2:10-cv-37528, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Patricia K. Cole.

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