

From: HarrisMartin's Asbestos Publication

Date: May 9, 2016

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## Fla. Federal Court Remands Asbestos Case, Says Defendant Can't Raise Colorable Federal Defense Against Claims that Don't Exist

MIAMI -- A Florida federal court has remanded an asbestos exposure suit, finding that the removing defendant could not raise a colorable federal defense against claims that simply do not exist.

In the May 6 order, the U.S. District Court for the Southern District of Florida found that since the plaintiff had expressly disclaimed any claims relating to his service in the U.S. Navy, federal jurisdiction was not appropriate.

Plaintiff Richard Batchelor asserted the asbestos-related claims, contending that he was exposed to asbestos fibers that were released while he was working on a number of Florida Power & Light Co. power plants.

The court noted that the plaintiff also indicated that he may have encountered asbestos-containing products while performing personal automotive work in a number of states.

Batchelor said he developed mesothelioma as a result of the exposure.

During Batchelor's deposition, however, he stated that he served in the U.S. Navy on a nuclear submarine. During this time, he replaced control panels on the submarine and supervised shipyard workers that were repairing turbines, the court said.

In light of this disclosure, CBS Corp. removed the complaint, citing the federal officer removal statute. The plaintiff filed an emergency motion to remand.

In the motion to remand, Batchelor pointed out that he had specifically disavowed exposure to asbestos in the U.S. Navy. CBS Corp. countered, arguing that the plaintiff could not avoid removal, regardless of the disclaimer.

In addressing the dispute, the federal court noted that disclaimer provisions are permitted in certain instances, particularly when a plaintiff has "expressly disclaimed the claims upon which federal officer removal was based."

"The Court finds that Plaintiff's disclaimer falls squarely within the second category of disclaimer provisions and, therefore, concludes that it lacks subject matter jurisdiction over this case," the court found. "In this case, Plaintiff expressly disclaims any attempt to recover based on his four-year naval service on the U.S.S. Gato. Moreover, while Plaintiff's Complaint and exposure sheets are not controlling, these documents do not even

mention Plaintiff's service in the Navy, much less allege claims based on asbestos exposure while Plaintiff was stationed on the U.S.S. Gato. Plaintiff, instead, alleges asbestos exposure from: (1) working at three different FPL Power Plants; and (2) completing automotive work. Plaintiff has, therefore, made it abundantly clear both in his Motions and filings in state court that he only seeks to recover for asbestos exposure occurring at specific locations that have no relation to the U.S. Navy.”

Since CBS Corp. could not raise a colorable federal defense to claims that do not exist, remand is proper, the court concluded.

The plaintiff is represented by Gabriel Santiago Saade of The Ferraro Law Firm in Miami.

Removing defendant CBS Corp. is represented by Christopher J.M. Collings of Sedgwick LLP in Miami.

Batchelor, et al. v. American Optical Corp., et al., No. 16-21235 (S.D. Fla.).

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