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PBN PHOTO/FRANK MULLIN

PRECEDENT-SETTING RULING: Attorney Jerry Petros represented General Electric in a case that the state Supreme Court ruled couldn't be tried in Rhode Island.

Canadian asbestos cases dismissed

Rhode Island high court reverses a 2005 ruling in Superior Court

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In dismissing 39 asbestos-related injury cases in May that originated in Canada, from plaintiffs who neither lived nor worked in Rhode Island, the R.I. Supreme Court has adopted a legal doctrine that would allow similar injury cases to be dismissed quickly in the future.

In recognizing Forum Non Conveniens, the Supreme Court reversed a May 2005 ruling by the Providence County Superior Court and joined the 46 other states that already have adopted the doctrine.

The 39 plaintiffs, all Canadian residents, allege that they were exposed to asbestos while working in Canada, according to Jerry Petros, a partner in the Providence office of **Hinckley, Allen & Snyder LLP**. He represented General Electric Co., one of the lead defendants.

The plaintiffs allege that the exposure caused asbestos-related diseases and that each received treatment in Canada, he said.

"They then chose to file a lawsuit against a number of manufacturers, certainly more than 30," he said. "And they filed that lawsuit in Rhode Island, even though none of the injuries occurred here, these plaintiffs were never exposed to asbestos in Rhode Island, they never received any care in Rhode Island and none of the defendants were headquartered or located in Rhode Island."

The plaintiffs' attorneys chose Rhode Island because they said it offered the "best shot" at receiving a favorable ruling, Petros said.

In writing the 25-page opinion of the court, Supreme Court Justice Paul A. Suttell said Forum Non Conveniens "allows a court to decline to exercise jurisdiction when the plaintiff's chosen forum is significantly inconvenient and the ends of justice would be better served if the action were brought and tried in another forum."

In recognizing the doctrine, the Supreme Court also took an opportunity to detail the standards of applying it. Another forum – in this case a venue in the Canadian court system – must be "clearly inadequate, which is certainly not the case here," Suttell wrote. "It cannot be disputed that Canada has a legal system capable of affording the possibility of remedies to the plaintiffs in the underlying cases."

For Rhode Island trial lawyers, the discovery process would also be "clearly less convenient," because they'd have to travel to Canada, Suttell wrote.

"That means that businesses will not be required to spend additional resources defending claims in a jurisdiction that has no relationship to that particular dispute," said Petros. In this case, the defendants would have had to "spend money for [Rhode Island] lawyers to travel to Canada to depose and take testimony from plaintiffs, to obtain documents from Canadian doctors and hospitals and to interview witnesses, taking deposition testimony."

Last winter, attorney Eric S. Sherby, founder of the Israeli firm Sherby & Co., argued in the American Bar Association's International Litigation Quarterly that the expanding use of the Forum Non Conveniens would be "good news" for U.S. companies that do business internationally. The doctrine, he wrote, "has benefited and will continue to benefit U.S. businesses that are engaged in international commerce and whose preference is that suits brought against them with respect to their international activities not be adjudicated in the United States."

Nationally, only three state supreme courts haven't adopted the doctrine. But those three states – Montana, Idaho and Oregon – haven't yet ruled definitively against applying it either, according to Suttell's decision.

A 2005 Montana Supreme Court decision, Rule v. Burlington Northern and Santa Fe Railway Co., said that the state "neither denied nor recognized the existence of that doctrine in cases where there is no strong policy favoring plaintiff's forum selection."

In Rhode Island, attorneys for the 39 plaintiffs had argued that the doctrine had only in the past been applied in child-custody cases. Because it was specifically authorized for that use by the R.I. General Assembly, it could only be justified in similar cases. While the Superior Court agreed, the Supreme Court did not. The Rhode Island legislature isn't the only governmental branch that's able to institute a doctrine, Suttell wrote.

And the decision has cursory benefits for the state, Petros said. Applying the doctrine to dismiss cases will likely save the judiciary money.

"Particularly in this time of significant budgetary concern, the state should not be spending its scarce resources to resolve disputes that lack any significant relationship – or really any relationship – with the state," he said. "I think it's also good for the citizens in Rhode Island, because there were really no citizens in Rhode Island who had any interest in the outcome of these specific cases."

And it wouldn't be fair to devote the time of 12 Rhode Island citizens to sitting on a jury for this case, he said.

In the 2005 decision by the Superior Court, Justice Alice B. Gibney had argued that Rhode Island's asbestos-related case docket was not full.

"Although the asbestos docket has been active, it has been neither unmanageable nor unwieldy," she wrote, adding, "Asbestos and asbestos-relating litigation defies containment by boundaries. This court will not deny these plaintiffs their right to pursue claims in this court."

Now, Petros said it's unclear whether the plaintiffs will file the suit in another venue. "The state Supreme Court clearly left them an option to do so," he said, "presumably in a state where there is a strong correlation with these cases."

A spokesman for the lead plaintiff in the case, listed in court documents as the estate of Brian Scallion, couldn't be reached for comment before press time. ■