

La. Court Reverses Trial Court Order Rejecting Venue Challenges by Exxon Mobil in Asbestos Case

NEW ORLEANS — A Louisiana appellate court has reversed a trial court order retaining jurisdiction over an asbestos case that was originally set for trial last month, saying that dismissal of two defendants named in the complaint made venue in Orleans Parish no longer proper.

In a May 3 decision, the Louisiana Court of Appeals, Fourth Circuit, lifted the stay in the case and remanded the matter for further proceedings.

Plaintiff Brent Deaville filed the underlying case, asserting claims for negligence and strict liability on grounds that he developed malignant mesothelioma as a result of occupational exposure to asbestos. Deaville named 20 defendants in the original petition; of those, two — Eagle, Inc. and Taylor-Seidenbach — were corporations domiciled in Orleans Parish.

In light of this, Exxon Mobil Corp. filed a declinatory exception of improper venue along with its answer to the petition. The company did not request that a hearing on the declinatory exception of improper venue be set.

Five months later, Deaville moved for a partial dismissal, seeking to dismiss the claims against Eagle, Inc. without prejudice. The trial court granted the motion, prompting Exxon Mobil to move to set its declinatory exception of improper venue for contradictory hearing.

In doing so, the defendant argued that Deaville had “improperly named Eagle Inc. and Taylor-Seidenbach as defendants for the sole purpose of establishing venue in Orleans Parish.”

Exxon requested that matter be transferred to East Baton Rouge Parish, where venue was proper.

In October, the trial court held a hearing on the defendant’s venue challenges, but struck it sua sponte for failure to comply with La. Dist. Court Rules, Rule 9.8. Exxon subsequently sought expedited supervisory review, which the appellate court denied.

The case was later set for an April 26 trial. On April 25, however, at 11:59 p.m., counsel for the plaintiff emailed the trial court and Exxon’s counsel a motion for partial dismissal, asking the court to dismiss the claims against Taylor-Seidenbach, the only defendant remaining with a registered office in Orleans Parish. The trial court granted the motion on April 26, the day trial was to begin.

The parties appeared before the trial court that day to start the process of jury questionnaires. Prior to beginning the process, however, Exxon requested clarification on whether the dismissal was voluntary or the result of a settlement. Counsel for the plaintiffs stated that not all of the entities involved are settled, and that some of them were just dismissed without settlement.

In light of the Taylor-Seidenbach dismissal, Exxon filed a declinatory exception of improper venue, seeking to transfer venue. The trial court denied the defense efforts, finding that the claims against Taylor-Seidenbach were compromised by an agreement to dismiss the company in exchange for a waiver of costs.

Exxon noticed its intent to seek supervisory review of the trial court’s order.

In addressing the dispute, the appellate court first looked at whether Eagle, Inc. or Taylor-Seidenbach were released by a settlement or compromise.

“We find that the claims against Eagle, Inc. and Taylor-Seidenbach were not compromised here,” the court said. “First, we note that both defendants were dismissed from this matter without prejudice unilaterally by Mr. Deaville. The motions to dismiss both Eagle, Inc. and Taylor-Seidenbach are virtually identical here, providing that each defendant was dismissed without prejudice and that each party (along with Mr. Deaville) was to bear their own costs We likewise find that the alleged agreement for waiver of court costs contained in the motions to dismiss are inadequate to establish a compromise under La. C.C.P. art 73(b). We note that the motion to dismiss provides only that each party is to bear their own costs, and does not include a waiver of any kind by either Mr. Deaville or the dismissed defendants.”

In light of this finding, the appellate court determined that venue was no longer proper in Orleans Parish. As such, the trial court’s decision

denying Exxon's declinatory exception of improper venue should be reversed, the court of appeals held.

Deaville v. Exxon Mobil Corp., et al, No. 2021-C-0240 (La. Ct. App., Fourth Cir.).

Document is Available Call (800) 496-4319 or Search www.harrismartin.com Opinion Ref# ASB-2105-15

Copyright Note: This article was reproduced from the HarrisMartin Publishing Web site at www.harrismartin.com. While dissemination of this article via e-mail, fax or regular mail -- provided it has not been altered in any fashion -- is permitted, dissemination of multiple articles through any medium is prohibited without express consent from HarrisMartin.

HarrisMartin Publishing - 30 Washington Avenue, Suite D-3, Haddonfield, NJ 08033
(610) 647-5500 - www.harrismartin.com - service@harrismartin.com