

UPDATE FROM THE ASBESTOS DOCKET: Court Holds that Plaintiff's Complaint Fails to Plead Factual Allegations Plausibly Suggesting an Entitlement to Relief

by Tierney M. Chadwick
Matthew D. Rush

Our office recently represented several premises defendants in an asbestos lawsuit filed in Massachusetts Superior Court entitled *Flynn v. A.W. Chesterton Co.*, C.A. 11-3000. The plaintiff asserted claims of strict liability and negligence against premises owners arising out of his alleged exposure to asbestos while he worked as an independent contractor at construction projects at their premises. The strict liability claim alleged liability “due to [alleged] abnormally dangerous activity’ carried on by the premises defendants on their premises.” *Flynn v. A.W. Chesterton Co.*, C.A. 11-3000 (Hely, J.). The negligence claim alleged that the premises “defendants breached their [alleged] duty to exercise due care in keeping the premises reasonably safe to invitees such as [the plaintiff].” *Id.*

The premises defendants filed a motion to dismiss under Massachusetts Rule of Civil Procedure 12(b)(6) and argued that the plaintiff’s strict liability and negligence claims should be dismissed because the factual allegations plead in support of his claims failed to plausibly suggest an entitlement to relief. Under contemporary pleading standards in Massachusetts, a complaint must contain “factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief,” in order to

survive a motion to dismiss. *Iannachino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (further citation omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.*, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Case: *Flynn v. A.W. Chesterton Co.*, C.A. 11-3000

Court: Suffolk Superior Court, Massachusetts

Issue: Whether the Plaintiff’s Complaint plead sufficient factual allegations plausibly suggesting an entitlement to relief.

With regard to the strict liability claim, the Superior Court held that the plaintiff’s conclusory factual allegations were not enough to raise his right to relief above the speculative level. *Flynn v. A.W. Chesterton Co.*, C.A. 11-3000 (Hely, J.). The plaintiff did not allege “sufficient facts for a determination on whether strict liability principles are applicable to the activities the [premises] defendants were [allegedly] engaged in at the time of [his] alleged asbestos exposure.” *Id.* In addition, the complaint failed “to adequately put the defendants on notice of the particular conduct . . . that would warrant application of a strict liability standard” against them. *Id.* Moreover, the plaintiff did not allege any individualized facts against the premises defendants

with regard to dates, length of time when he was present at the property, work performed at specific properties, identities of properties where he worked, or where the alleged abnormally dangerous activity occurred. *Id.*

The Court also dismissed the negligence claim against the premises defendants. The Court held that the plaintiff’s conclusory factual allegations were not enough to prove an entitlement to relief. *Id.* First, the plaintiff did not allege specific facts concerning when or where the premises defendants’ alleged negligent conduct occurred or how it occurred. *Id.* But even more detrimental, the plaintiff did not allege sufficient facts to prove that the premises defendants owed him a duty of reasonable care.¹ *Id.* The plaintiff did not allege sufficient facts to support his allegation that the premises defendants “controlled” the work of the independent contractors that performed demolition/renovation work and asbestos or asbestos-containing product installation at their premises, and therefore he failed to prove that the premises defendants owed him a duty of reasonable care. *Id.*

SLOANE AND WALSH LLP

ATTORNEYS AT LAW

THREE CENTER PLAZA
BOSTON, MA 02108
T: 617-523-6010
F: 617-227-0927
WWW.SLOANEWALSH.COM

127 DORRANCE STREET, 4th Floor
PROVIDENCE, RI 02903-2828
T: 401-454-7700
F: 401-454-8855

1 TARA BOULEVARD, SUITE 200
NASHUA, NH 03062
T: 603-324-7134

¹ In Massachusetts, a landowner owes a general duty of reasonable care to invitees which can extend to an employee of an independent contractor. However, a landowner owes no such duty where an independent contractor or its employees created the allegedly dangerous condition or the alleged dangerous condition is incidental to the work the contractor was hired to do, unless the premises owner employed and/or controlled the work of the independent contractor. A plaintiff cannot prove a claim of negligence against a defendant that does not owe him/her a legal duty.