

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Tuesday, May 3, 2016

No. 90 People by Schneiderman &c. v Greenberg

In 2005, the New York Attorney General filed this civil enforcement action against two former executives of American International Group (AIG), former Chairman and Chief Executive Officer Maurice R. Greenberg and former Chief Financial Officer Howard I. Smith, alleging they violated the Martin Act and Executive Law § 63(12) by conducting two fraudulent reinsurance transactions five years earlier in order to conceal from investors the declining financial condition of AIG, which was then the largest insurance company in the world. The Attorney General alleged that a sham transaction with General Reinsurance Corporation (GenRe) was designed to conceal a decline in AIG's loss reserves and a transaction with CAPCO Reinsurance Company, Ltd., was designed to mischaracterize underwriting losses as capital losses. After Greenberg and Smith left the company in 2005, AIG acknowledged improprieties in both transactions and restated its financial statements for 2000 through 2004.

The Appellate Division, First Department denied the defendants' summary judgment motion to dismiss the suit in 2012. While the defendants appealed to this Court, the Attorney General dropped his claim for money damages for AIG shareholders, but sought equitable relief -- including injunctions banning the defendants from working in the securities industry or serving as officers or directors of public companies -- and disgorgement of any performance-based bonuses related to the GenRe and CAPCO transactions.

This Court affirmed (21 NY3d 439 [2013]), saying, "We have no difficulty in concluding that, in this civil case, there is evidence sufficient for trial that both Greenberg and Smith participated in a fraud. The credibility of their denials is for a fact finder to decide.... [W]e cannot say as a matter of law that no equitable relief may be awarded. There is no doubt room for argument about whether the lifetime bans that the Attorney General proposes would be a justifiable exercise of a court's discretion; but that question, as well as the availability of any other equitable relief that the Attorney General may seek, must be decided by the lower courts in the first instance."

The defendants moved again for summary judgment dismissing the suit, arguing, among other things, that neither disgorgement nor injunctions barring participation in the securities industry or on corporate boards are authorized by the Martin Act or Executive Law § 63(12). They said disgorgement is barred by releases provided by AIG and its shareholders in settlements of other litigation; and the State established no basis for a permanent injunction against them.

Supreme Court denied the motion and the Appellate Division affirmed, saying, "The State's disgorgement claim was legally viable, despite the settlement of actions brought by [AIG] shareholders and by [AIG], and the accompanying releases...." The defendants failed to demonstrate that they received no bonuses "as a result of the sham transactions," or that "the claim for a permanent injunction under the Martin Act was not warranted....," it said. "The existence of a federal consent judgment imposing a similar but more lenient injunction ... does not preclude the injunction sought here by the State."

For appellant Greenberg: David Boies, Armonk (914) 749-8200

For appellant Smith: Vincent A. Sama, Manhattan (212) 836-8000

For respondent State: Solicitor General Barbara D. Underwood (212) 416-8016

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No. 87 People v Perry C. Griggs

Perry Griggs was charged with robbing Buffalo cab driver Christopher Hulett of \$30 with what appeared to be a handgun in May 2010. Griggs asked to testify before the grand jury, where he was shackled during his testimony and the prosecutor improperly cross-examined him. He also asked that his girlfriend be called to testify, but she did not appear and the prosecutor did not inform the grand jury of his request.

Griggs and Hulett both testified at the grand jury that Griggs paid \$30 in advance for a one-hour ride to several stores in Buffalo and, when the hour was nearly over, Griggs got out of the cab and told Hulett to take his girlfriend home. Hulett testified that, when he realized there was not enough time left on the meter, the girlfriend told him to return to Griggs for more money. Hulett said Griggs got into the back of the cab, accused him of "trying to play his girl," and demanded his money back. Hulett said he handed over the \$30 after Griggs pulled a gun from his backpack. Griggs testified that when he got back in the cab Hulett asked for \$15 more, Griggs insisted \$10 was enough for the additional fare, and the men argued. Griggs said he was fed up and refused to pay anything more, then got out of the cab with his girlfriend and went home. The grand jury indicted Griggs on one count of first-degree robbery.

Griggs represented himself at trial. He was convicted of the robbery charge and given an enhanced sentence of 20 years in prison pursuant to Penal Law § 60.07 because the victim "was operating a for-hire vehicle."

The Appellate Division, Fourth Department affirmed, saying "Although we agree with defendant that he should not have been shackled when he testified before the grand jury..., the prosecutor's cautionary instructions to the grand jury were sufficient to dispel any potential prejudice..." It said Griggs failed to preserve his claims that the prosecutor engaged in misconduct during the grand jury proceeding by improperly cross-examining him and by failing to inform the jurors that he had asked that his girlfriend be called. "In any event..., there was no 'likelihood [or] possibility of prejudice' inasmuch as the witness did not observe the criminal transaction at issue." It ruled the conviction was supported by legally sufficient evidence.

Griggs argues "the concerted effects of various errors impaired the integrity of the [grand jury] proceeding" and the failure of his pretrial counsel to move for dismissal of the indictment based on those errors "rendered his performance ineffective." He also argues he was deprived of a fair trial by "severe and persistent" misconduct by the prosecutor at trial, and says the evidence was legally insufficient to establish his guilt.

The prosecution concedes that Griggs was "improperly shackled" during his grand jury testimony; that the prosecutor "used inappropriate tactics" in cross-examining him; and that the prosecutor failed to call his girlfriend to testify, did not mention his request for her testimony to the grand jury, and then "mistakenly represented to the defense" that she had appeared before the grand jury and identified Griggs from a photograph. However, it argues the "errors did not so impair the integrity of the grand jury proceeding as to compel reversal."

For appellant Griggs: Alan Williams, Buffalo (716) 853-9555

For respondent: Erie County Assistant District Attorney Michael J. Hillery (716) 858-2424

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No. 83 M/O New York City Asbestos Litigation (Dummitt v A.W. Chesterton Co.)

No. 84 M/O Eighth Judicial District Asbestos Litigation (Suttner v A.W. Chesterton Co.)

The common question in these asbestos cases is whether a manufacturer had a duty to warn of the latent dangers of component parts used in its equipment, where the company did not manufacture or sell the components.

The defendant in both appeals, Crane Co., manufactured steam valves that, when sold, included asbestos-containing gaskets and packing that were produced by other companies. During the relevant period, Crane's specifications called for replacement of gaskets and packing with similar asbestos-containing products, although it did not produce or sell such products.

The plaintiffs are the estates and survivors of two men who died of mesothelioma after years of exposure to asbestos dust while changing gaskets and packing on Crane valves, which was a regular part of their duties. The plaintiffs contended Crane was negligent in failing to warn of the dangers inherent in the asbestos products used in its valves.

Ronald Dummitt was a boiler technician in the Navy who was assigned to maintain steam systems on naval vessels, which were largely controlled by Crane valves. At trial, his estate presented evidence that Crane worked with the Navy on instruction manuals calling for the use of asbestos gaskets and tried unsuccessfully to sell asbestos gaskets to the Navy. Crane sought to present testimony by a naval officer that the Navy would not have allowed it to put asbestos warnings on the nameplates of its valves, but Supreme Court precluded it. The court instructed the jury that "a manufacturer's duty to warn extends to" dangers "of the uses of the manufacturer's product with the product of another manufacturer if such use was reasonably foreseeable." The jury found Crane 99 percent liable for Dummitt's death, and the court set damages at \$8 million.

The Appellate Division, First Department affirmed on a 3-2 vote. It agreed unanimously that Crane had a duty to warn, finding the company had influenced the Navy's decision to use asbestos gaskets in its valves. The justices agreed that "mere foreseeability" did not give rise to a duty to warn, but said a new trial was not necessary. The court split on the issue of proximate cause, with the dissenters arguing that errors relating to that issue required a new trial.

Gerald Suttner was a pipefitter at a General Motors engine plant in Tonawanda and maintained the plant's steam system, including Crane valves. A jury found Crane 4 percent liable for Suttner's death and awarded his estate total damages of \$3 million, resulting in a \$121,145 judgment against Crane.

Crane moved to set aside the verdict, arguing it had no duty to warn because it did not manufacture the gaskets or place them into the stream of commerce and it derived no benefit from their sale. Supreme Court denied the motion, saying Crane had a "duty to warn against latent dangers resulting from foreseeable uses of its products of which it knew or should have known." The Appellate Division, Fourth Department affirmed.

For appellant Crane Co. (Nos. 83 & 84): Caitlin J. Halligan, Manhattan (212) 351-3909

For respondent Dummitt: Seth A. Dymond, Manhattan (212) 681-1575

For respondent Suttner: John N. Lipsitz, Buffalo (716) 849-0701

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No. 85 M/O New York City Asbestos Litigation (Konstantin v 630 Third Avenue Assoc.)

This case was tried jointly with M/O New York City Asbestos Litigation (Dummitt v A.W. Chesterton Co.), [see No. 83, to be argued here on the same day]. Tishman Liquidating Corporation (TLC), challenges the consolidation of the cases under CPLR 602(a) and the reasonableness of the \$8 million verdict for the plaintiff in Konstantin. CPLR 602(a) provides, "When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

David Konstantin was a carpenter from 1973 to 1977 on two Manhattan construction projects where Tishman Realty & Construction, TLC's predecessor, was the general contractor. He often worked near drywall crews who sanded joint compound containing asbestos and he was exposed to the dust. Konstantin alleged that TLC took no steps to protect workers from the asbestos dust. He was diagnosed with testicular mesothelioma in 2010, and it spread to his lungs. He died in 2012, after bringing this action against TLC for negligence and workplace liability under Labor Law § 200 for failing to supervise the drywall workers.

Supreme Court consolidated the case with an action by Ronald Dummitt, a Navy boiler technician who was exposed to asbestos while replacing gaskets and packing in steam valves aboard naval ships from 1960 to 1977. Most of the valves were produced by Crane Co. He was diagnosed with mesothelioma of the lungs in 2010 and brought this products liability action against Crane for failure to warn of the danger of asbestos.

The jury found TLC 76 percent liable for Konstantin's death and awarded \$19 million in damages, which the court reduced to \$8 million. The same jury found Crane 99 percent liable for Dummitt's death and awarded his estate \$32 million, which the court reduced to \$8 million.

The Appellate Division, First Department affirmed, noting that, "in asbestos cases, it has been 'routine' to join cases together for a single trial." Three justices said, "We recognize that a shipboard boiler room is a different physical environment than a building under construction, and that the work performed by [Konstantin and Dummitt] was somewhat different. Fundamentally, however, [they] were both exposed to asbestos in a similar manner ... by being in the immediate presence of dust that was released at the same time they were performing their work. TLC has failed to articulate why the differences in the environments and job duties had such an impact on the manner of exposure that it was necessary for the evidence of exposure to be heard separately.... [T]he exposure periods are sufficiently common" and "ended in 1977, meaning that the state of the art was the same for both cases." The plaintiffs asserted different legal theories, but "both theories ultimately required a showing that defendants failed to act reasonably" in preventing exposure to asbestos. In a concurrence, two justices would not address the issue because TLC did not provide "any of the papers upon which the consolidation order was made."

TLC argues the cases "involved no common questions of law or fact ... and in any event consolidation prejudiced TLC's substantial right to a fair trial. The lengthy and disjointed trial confused the jury and allowed each plaintiff's claims to bolster the other's, resulting in an outsize verdict of over \$51 million. Only under an unstated 'asbestos exception' to CPLR 602(a) could the consolidation below be sustained, and dramatic changes in the landscape of asbestos litigation in the past several decades warrant this Court's clarification that such distortion of the statute is no longer acceptable and that consolidation in asbestos actions should no longer be 'routine.'"