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New Asbestos Rules, Including Punitives, Survive Challenge From Defense Bar

New rules for the New York City asbestos litigation court, including one opening the door for plaintiffs to seek punitive damages, have survived a challenge in state appellate court.

By Andrew Denney | March 26, 2018

New rules for the New York City asbestos litigation court, including one opening the door for plaintiffs to seek



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punitive damages, have survived

(http://nycourts.gov/reporter/3dseries/2018/2018_02020.htm) a challenge in state appellate court.

A panel of the Appellate Division, First Department found that Justice Peter Moulton, who served as coordinating justice for the asbestos court until last June when he was elevated to the First Department, had the authority to issue the new case management order without the defense bar's consent.

The panel that heard the asbestos defense bar's challenge was composed of Justices Dianne Renwick, Sallie Manzanet-Daniels, Marcy Kahn, Cynthia Kern and Anil Singh.

Punitive damages

(<https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2017/09/19/first-dept-clears-way-for-implementation-of-new-asbestos-case-rules/>) have been inaccessible to asbestos plaintiffs since 1996, when a state judge in Manhattan indefinitely deferred all punitive claims.

But in 2014, Manhattan Supreme Court Justice Sherry Klein Heitler lifted the blockade and found that punitive claims could be sought.

The First Department affirmed Heitler's decision, but stayed the punitive damages rule until the asbestos court could issue a new case management order.

In crafting the new case management order, which also includes a cap on the number of cases that can be consolidated, Moulton consulted with a group of attorneys from both the plaintiff and defense bars.

The defense bar remained steadfast in its resistance to the reinstatement of punitive damages and challenged

(<https://www.law.com/newyorklawjournal/sites/newyorklawjournal/2017/06/21/new->

asbestos-court-rules-may-draw-challenges-from-defense-plaintiff-bars/) the new case management order after it was promulgated.

The plaintiffs attorney who took part in the talks included Jerry Kristal and Charles Ferguson of Weitz & Luxenberg; Jordan Fox of Belluck & Fox; and Robert Komitor, a partner at Levy Konigsberg. Brian Early of The Early Law Firm served as an alternate.

The defense bar was represented by Kristen Fournier of Orrick, Herrington & Sutcliffe; Judith Yavitz of Darger Errante Yavitz & Blau; Robert Malaby, founding partner of Malaby & Bradley; and Peter Dinunzio, senior counsel to Clyde & Co. David Keyko of Pillsbury Winthrop Shaw Pittman, who appeared for the defense bar for its court challenge, did not respond to a request for comment.

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