

Bond Case Briefs

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LIABILITY - TEXAS

Jefferson County, Texas v. Farris

Court of Appeals of Texas, Houston (1st Dist.) - December 28, 2018 - S.W.3d - 2018 WL 6844046

Widow of retired county judge brought wrongful death and survival action against county in its capacity as premises owner and employer, claiming judge was exposed to asbestos while working in county courthouse and annex and then died from mesothelioma.

The 11th District Court denied county's plea to the jurisdiction. County filed interlocutory appeal.

The Court of Appeals held that:

- Cancer diagnosis, or manifestation of symptoms, was an incident giving rise to cause of action, thus triggering provision of the Texas Tort Claims Act (TTCA) requiring notice of the claim against a governmental entity within six months of the day that the incident giving rise to the claim occurred;
- Widow adequately pleaded a premises liability claim under TTCA; and
- Action was not barred by exclusive-remedy provision of the Texas Workers' Compensation Act (TWCA).

Retired county judge's cancer diagnosis, or manifestation of symptoms, was an incident giving rise to cause of action for his injury and death brought by judge's widow, arising from judge's alleged exposure to asbestos while working in county courthouse and his subsequent diagnosis of mesothelioma, thus triggering provision of the Texas Tort Claims Act (TTCA) requiring notice of the claim against a governmental entity within six months of the day that the incident giving rise to the claim occurred.

Retired county judge's widow adequately pleaded a premises liability claim against county in connection with judge's death from mesothelioma under provision of the Texas Tort Claims Act (TTCA) waiving governmental entity's immunity for personal injury and death caused by a condition or use of tangible personal or real property if governmental unit would, were it a private person, be liable to the claimant according to Texas law; petition alleged that judge had worked around asbestos-containing materials for many years, that county exposed judge to asbestos-containing materials that were disturbed or installed during courthouse renovations, and that county knew that asbestos products used in proximity of judge contained dangerous and harmful substances but that county failed to warn him, instruct him in proper safety precautions, or adopt or enforce a safety plan.

Wrongful death and survival action against county brought by retired county judge's widow, alleging that judge was exposed to asbestos while working in county courthouse and annex and then died from mesothelioma, was not barred by the exclusive-remedy provision of the Texas Workers' Compensation Act (TWCA), absent any evidence of last date of judge's injurious exposure to asbestos and whether county's election to provide workers' compensation coverage to elected officials continued during time judge was exposed to asbestos.

