

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RONALD L. BERGERON  
Plaintiff-Appellant,

UNPUBLISHED  
December 13, 1996

v

No. 188632  
LC No. 95-507682

USX CORPORATION,  
  
Defendant-Appellee,

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RONALD L. BERGERON  
  
Plaintiff-Appellant,

v

No. 188645  
LC No. 95-507681

BETHLEHEM STEEL CORPORATION,  
  
Defendant-Appellee.

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Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,\* JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals as of right from the trial court order denying class certification and dismissing his class action complaints against defendants. We affirm.

On appeal, plaintiff asserts that the lower court erred in finding that his class action claims did not meet the criteria of MCR 3.501. We will not disturb a trial court's determination whether to certify a class unless it is clearly erroneous. See *Mooahesh v Dep't of Treasury*, 195 Mich App 551, 556; 492 NW2d 246 (1992). A finding is clearly erroneous where the appellate court, on all the evidence, is left with the firm conviction that a mistake has been made. While this standard gives the reviewing court

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\* Circuit judge, sitting on the Court of Appeals by assignment.

some latitude, it does not authorize a reviewing court to substitute its judgment for that of the trial court. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

Class actions in Michigan courts are governed by MCR 3.501:

(A) Nature of Class Action

(1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
- (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

The threshold requirement of any asbestos case is proof that an injured plaintiff was exposed to an asbestos-containing product for which a defendant is responsible. *Barlow v John Crane-Houdaille, Inc*, 191 Mich App 244, 247; 477 NW2d 133 (1991). It is not enough to simply prove that the asbestos was present somewhere at the workplace; rather, a plaintiff must show that the product was used in the specific area in which he worked in order to establish proximate cause. *Id.* at 248; *Schutte v Celotex Corp*, 196 Mich App 135, 139; 492 NW2d 773 (1992). Accordingly, a determination of a defendant's liability to a plaintiff for asbestos exposure would predominantly involve specific factual issues concerning the time and place of each individual plaintiff's exposure.

In the present case, the purported class is made up of unspecified seamen who worked aboard an unspecified number of ships for unspecified lengths of time during their careers. Clearly, the predominant issue of exposure must be resolved on an individual basis, with reference to where and when each class member worked, in order to determine defendants' liability. Where individual factual and legal issues predominate over common issues, class certification is inappropriate. *Lee v Grand Rapids Bd of Education*, 184 Mich App 502, 505; 459 NW2d 1 (1989).

We find that, given that defendants' liability requires individual resolution of the specific factual and legal questions pertaining to each class member, resolution of defendants' liability to plaintiff has no bearing on the claims of the other class members. Therefore, plaintiff's claims against defendants are not typical of the claims of the other purported class members. For the same reason, plaintiff is not an

adequate representative of the purported class members. Furthermore, due to the individual nature of the liability question, class action is not the superior method of adjudication of these claims. For these reasons, we conclude that the lower court did not clearly err in denying class certification of plaintiff's claims.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros