

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1609

GARY ADAMS,

Plaintiff – Appellant,

v.

AMERICAN OPTICAL CORPORATION; MINE SAFETY APPLIANCES
COMPANY,

Defendants – Appellees,

and

COAST HOLDINGS, INCORPORATED; 3M COMPANY, as successor by
merger to Minnesota Mining and Manufacturing Company and/or its
predecessors/successors in interest,

Defendants.

Appeal from the United States District Court for the Western District of Virginia, at Big
Stone Gap. James P. Jones, District Judge. (2:16-cv-00027-JPJ-JMS)

Argued: September 8, 2020

Decided: November 6, 2020

Before KING and FLOYD, Circuit Judges, and Thomas S. KLEEHE, United States District
Judge for the Northern District of West Virginia, sitting by designation.

Affirmed by published opinion. Judge Floyd wrote the opinion, in which Judge King and
Judge Kleeh joined.

ARGUED: Michael Blair Martin, MARTIN WALTON LAW FIRM, Houston, Texas, for Appellant. Milton Trent Spurlock, DINSMORE & SHOHL LLP, Louisville, Kentucky; Carol Dan Browning, STITES & HARBISON, PLLC, Louisville, Kentucky, for Appellees.
ON BRIEF: Bethany A. Breetz, STITES & HARBISON, PLLC, Louisville, Kentucky; Chad M. Eggspuehler, TUCKER ELIS LLP, Cleveland, Ohio, for Appellees.

FLOYD, Circuit Judge:

Plaintiff-Appellant Gary Adams appeals from a district court order entering summary judgment in favor of Defendants-Appellees American Optical Corporation (AO) and Mine Safety Appliances Company (MSA) (collectively, “Defendants”).¹ Defendants moved for summary judgment on the sole basis that Virginia’s two-year statute of limitations barred Adams’s state-law personal injury claims. Thus, the only question before this Court is whether Adams filed his personal injury suit outside the two-year limitations window.

I.

A.

Between 1981 and 2014, Adams worked as a coal miner, which exposed him to harmful coal dust. During that period, Adams was given and wore respirators allegedly produced by Defendants to protect himself from inhaling excessive amounts of that dust. Adams contends that these respirators failed to protect him from lung disease that he developed by inhaling coal dust, while Defendants argue his illness developed outside the statute of limitations. We begin with a review of Adams’s medical history.

¹ Adams voluntarily dismissed his claims against Defendant 3M Company. *See* Order of Voluntary Dismissal of 3M Co., *Adams v. Am. Optical Corp.*, No. 2:16-cv-00027 (W.D. Va. Apr. 22, 2019), ECF No. 81. Claims against Defendant Coast Holdings Incorporated were later dismissed by oral order of the court. Oral Order, *Adams v. Am. Optical Corp.*, No. 2:16-cv-00027 (W.D. Va. May 17, 2019), ECF No. 110.

To promote the early detection of mining-related illnesses, the National Institute for Occupational Safety and Health (NIOSH) administers a program that gives free x-rays to coal miners. These x-rays are reviewed by NIOSH-certified B-readers who look for any abnormalities in a miner's lungs.² However, NIOSH does not use these x-rays to formally diagnose an individual with a specific occupational illness. X-ray evidence of coal dust exposure resembles multiple non-occupational diseases, so any abnormalities must be "clinically correlated" through other forms of testing. J.A. 889–93.

In 2000, Adams received a NIOSH x-ray and was later informed by the Mine Safety and Health Administration (MSHA) that the B-reader found evidence of Category 1 coal workers' pneumoconiosis (CWP). CWP, known colloquially as "black lung," is a latent occupational disease marked by fibrosis, or scarring, of the lungs and caused by inhalation of coal dust. It can take years of coal dust exposure for CWP to develop, and it progresses slowly once it occurs. The disease progresses through three stages of simple CWP—beginning with Category 1 and advancing to Category 3—followed by three stages of complicated CWP—beginning with Category A and ultimately becoming Category C.

Adams received another NIOSH x-ray in 2006 and was sent a letter indicating the B-reader found "DEFINITE EVIDENCE of CATEGORY 1 PNEUMOCONIOSIS." J.A. 56. MSHA letters that Adams received in 2000 and 2006 advised him to contact a doctor

² B-readers are physicians who have passed a NIOSH-approved test demonstrating their ability to "interpret[] chest radiographs for pneumoconiosis and other diseases." 42 C.F.R. § 37.52(b)(2).

and informed him that he was eligible to transfer to a less dusty area of the mine. At that time, Adams felt “wide open healthy and wasn’t having any problems,” so he declined to transfer positions. J.A. 558. But in 2007, he decided to visit Dr. Mahmood Alam for further evaluation.³ Dr. Alam performed a CT scan and pulmonary function testing, which led him to conclude that NIOSH’s findings could not be clinically correlated. Dr. Alam did not diagnose Adams with CWP, because he believed at the time that Adams’s abnormal x-ray results were caused by calcified granulomas on his lungs.

In 2009, Adams was again screened by NIOSH and received another letter informing him that his x-ray revealed “DEFINITE EVIDENCE OF CATEGORY 1 PNEUMOCONIOSIS.” J.A. 67–68. He visited Dr. Alam for a second time and received another CT scan and round of pulmonary function testing. J.A. 1220–21. Based on those results, Dr. Alam continued to believe Adams had calcified granulomas, rather than CWP. J.A. 960.

Between 2010 and 2011, various doctors treated Adams for shortness of breath. In 2010, Adams’s primary care physician, Dr. April Hall, placed him on an albuterol inhaler to help with symptoms of “obstructive lung function.” J.A. 1074.⁴ In 2011, Adams continued to experience shortness of breath along with chest pain, so Dr. Hall referred him to a cardiologist, Dr. Jose Velazquez. Dr. Velazquez did not find any coronary artery

³ As discussed below, Dr. Alam subsequently became an expert witness for Adams in this case.

⁴ Defendants’ expert, Dr. James Lockey, believes that Adams may have also suffered from allergies and asthma during this time period.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.