

# MADISON COUNTY AND COOK COUNTY TRIAL COURTS' DISAGREE ON THE INTERPRETATION OF ILLINOIS' CORPORATE DISSOLUTION STATUTE IN ASBESTOS CASES



**By Sean P. Sheehan**

Like most states, Illinois has a corporate dissolution statute that allows lawsuits to be filed against dissolved corporations. Before January 1, 2015, Illinois Statute 805 ILCS 5/12.80 allowed a party to file suit against a dissolved corporation where the claim existed at the time of the dissolution and where the claim was filed within five years of the dissolution. The statute was amended, however, effective January 1, 2015, to allow a party to file a lawsuit against a dissolved corporation within five years of the dissolution regardless of whether the claim existed before, at the time of or after the dissolution. Recently, the Madison County Circuit Court and the Cook County Circuit Court issued rulings interpreting the predecessor language in an asbestos case.

In the case of *James Rutherford v. Aerco International, Inc., et al.*, 17-L-1103, plaintiff sued Avocet Enterprises, Inc. in Madison County, alleging that Mr. Rutherford contracted mesothelioma as a result of exposure to Avocet products. Similarly, in the Cook County case of *Roger Nelson v. A. O. Smith Corporation, et al.*, 17-L-3354, Avocet was sued by Mr. Nelson who alleged that he contracted mesothelioma as a result of exposure to Avocet products. Avocet filed motions for summary judgment in both cases arguing that since it had been dissolved pursuant to Illinois law before the amendment of the statute, the original version of the act applied. In both cases, the plaintiffs were diagnosed with mesothelioma AFTER Avocet had been dissolved. The issue for both courts ultimately turned on the determination of when an asbestos cause of action accrues for purposes of the dissolution statute. The courts reached opposite conclusions.

## **Madison County Ruling**

Defendant was involuntarily dissolved on July 11, 2014, five and one half months before the amendment took effect. Avocet relied on the case of *In re Johns Manville/Asbestosis Cases*, 516 F.Supp. 375, 378 (N.D.Ill. 1981) for the proposition that a defendant does not incur liability until an injury has actually occurred. It also cited *Nolan v. Johns-Manville Asbestos*, 85 Ill.2d 161 (1981) to argue that an asbestos cause of action accrues when a plaintiff knows or reasonably should know of an injury and that the injury was caused by the wrongful acts of another. Defendant cited the plaintiff's complaint which alleged that he was first diagnosed with mesothelioma on June 23, 2017, after the company had dissolved. Avocet argued that Rutherford's claim was thus barred under the survival statute as it existed at the time of its dissolution. Plaintiff argued that each exposure represented a separate claim and that plaintiff's alleged exposure to defendant's asbestos products before it dissolved. Plaintiff argued that for purposes of the statute, the claim accrued before the dissolution and should be allowed.

Defendant further argued that the 2015 amendment to the dissolution statute should not be applied retroactively to corporations like it that dissolved prior to the amendment's effective date. Defendant argued that the 2015 amendment to the statute was a substantive change to the law because it allowed a new cause of action for "future contingent claims and liabilities" that were previously abated under the earlier version of the law.

Judge Stephen Stobbs of the Madison County Circuit Court found that the earlier version of the statute did apply to defendant in this case. However, Judge Stobbs also found that "accrual" for purposes of the dissolution statute does not have the same meaning as "accrual" under the Illinois statutes of limitations or repose. For dissolution analysis, the court held a claim accrues and liability is incurred at the time of the alleged exposure. Since Mr. Rutherford's alleged exposure pre-dated the defendant's dissolution, the Court found Rutherford's claim existed at the time of Avocet's dissolution. Therefore, his claim survived dissolution, was viable for this case, and it denied Avocet's motion for summary judgement.

Rutherford is actually not the first Madison County case which raised this issue. Judge Stobbs denied Avocet's motion under similar circumstances in *Edward Kramer v. Air & Liquid Systems Corporation, Successor by Merger to Buffalo Pumps, Inc., et al.* 14-L-1561.

## **Cook County Ruling**

Prior to the Rutherford decision, Judge Claire McWilliams of the Cook County Circuit Court was presented with a case nearly identical to Rutherford. In the *Roger Nelson* case cited above, defendant argued that the dissolution statute as it existed prior to the 2015 amendments applied to plaintiff's claim and since the plaintiff's mesothelioma accrued at the time of his diagnosis (in 2017), the claim was barred. Judge McWilliams found the amended statute "creates a new cause of action that did not exist prior to its enactment". Therefore, she held that the 2015 amendment was substantive and could not be applied retroactively. Similar to Rutherford, Mr. Nelson's alleged exposure pre-dated defendant's dissolution. Judge McWilliams in *Nelson* ultimately held that under the earlier version of the statute, "future contingent claims and liabilities were abated as of the date of dissolution, and a corporation had no liability for claims that accrued after dissolution". The order stated that the amendment broadened application of the survival statute "to include claims against dissolved corporations materializing after dissolution", and was meant "to encompass claims or liabilities incurred after a corporation's dissolution".

Unlike the Madison County order, Judge McWilliams' order did not explicitly say when Mr. Nelson's claim against Avocet accrued under the dissolution statute. It is clear, though, that the court determined that Mr. Nelson's claim accrued after defendant had dissolved in 2014, and the clear implication is that the operative date for the accrual was when Mr. Nelson became aware of his injury. Judge McWilliams granted Avocet's motion for summary judgement finding its dissolution extinguished Mr. Nelson's claim.