

SUPREME COURT OF NEW JERSEY  
A-42 MARCH TERM 2009

TROY SURPLUS LINES INSURANCE COMPANY, ET AL.,

Plaintiff-Appellant,

v.

THREE JOKERS, LLC,

Defendant-Respondent.

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Argued November 16, 2009 - Decided April 1, 2010

JUSTICE PUTON delivered the opinion of the Court.

Nearly two decades ago this Court was called upon to determine whether insurance companies were liable for injuries sustained by individuals exposed to their insured's product containing asbestos. *Owens-Illinois, Inc. v. United Ins. Co.*, 138 N.J. 437 (1994). We answered this question by adopting what is commonly known as the "continuous trigger." "[W]hen progressive indivisible injury or damage results from exposure to injurious conditions for which civil liability may be imposed, courts may reasonably treat the progressive injury or damage as an occurrence within each of the years of a CGL policy." *Id.* at 478.

This conclusion was based on the "overwhelming weight of authority" that acknowledges the progressive nature of asbestos-induced disease, and affirms that "bodily injury" occurs when asbestos is inhaled and retained in the lungs. *Owens-Illinois* at 454. (citations omitted). In reaching our decision, however, we conceded that it was "necessarily imperfect." *Id.* at 459. Nonetheless, it was driven by a recognition that "[m]ass-exposure toxic-tort cases have simply exceeded the capacity of conventional models of judicial response." *Id.* The adoption of the continuous trigger was also justified on the basis that it has the ability to maximize coverage and encourages all insurers to monitor risks and charge appropriate premiums. *Id.* at 450-51.

Today we revisit *Owens-Illinois* and address whether the continuous trigger applies to determining insurance companies' liability for another instance of mass-exposure, albeit not one that involves a toxic-tort.

Three Jokers, LLC manufactures slot machines. Many of their machines are located in several casinos in Atlantic City. Beginning in 2004, Three Jokers began to be sued by casino patrons who alleged bodily injury - primarily to their shoulders - on account of repetitive pulling of these so-called one arm bandits. Just as in the case of asbestos, it didn't take long

for the number of lawsuits to add up. Three Jokers found itself as a defendant in approximately 4,500 repetitive stress injury suits filed in the Law Division in Atlantic County.

Three Jokers has been in business since 1990. Since that time it has been insured under commercial general liability policies issued by several insurers - the appellants in this case. These insurance policies provide coverage for products liability. In 2007, Three Jokers filed a declaratory judgment action seeking a determination that, based on *Owens-Illinois*, all of its insurance policies on the risk, from the time that each casino patron first pulled the arm of one of its slot machines, to the time that such patron was diagnosed with injury, were obligated to provide a defense to Three Jokers and pay any liability for damages.

The Law Division had no hesitancy following *Owens-Illinois* and found in favor of Three Jokers. The Appellate Division affirmed. *Troy Surplus Lines Ins. Co. v. Three Jokers, LLC*, 402 N.J. Super. 611 (2008). We granted Certification and now reverse the decision of the Appellate Division.

In examining the specific question, whether the continuous trigger applies to the slot players' injuries, we are also compelled to consider a more fundamental question -- whether there is still a place in our law for an "imperfect" solution.

*Stare decisis* - following precedent - "provides stability and certainty to the law. Those governed by decisions of this Court must know that they can rely on our pronouncements. For that reason, we do not lightly alter one of our rulings." *Pinto v. Spectrum Chemicals and Laboratory Products*, 200 N.J. 580, 598 (N.J. 2010). Nonetheless, *stare decisis* "is not an unyielding doctrine. Sometimes we learn that one of our decisions has consequences that were not fully anticipated. *Stare decisis* does not compel us to continue on a mistaken path or to 'adhere blindly to rules that have lost their reason for being.'" *Id.* (quoting *Fox v. Snow*, 6 N.J. 12, 23 (1950) (Vanderbilt, C.J., dissenting)). "New Jersey courts have not viewed the doctrine of *stare decisis* as a straitjacket preventing us from making appropriate and necessary course corrections to our law." *State v. Pena-Flores*, 198 N.J. 6, 49 (N.J. 2009) (Albin, J., dissenting).

We are mindful that *stare decisis* has a long and important history in this state. We also recognize that not all members of this Court are in agreement with the decision that we reach today. The tone of the opinion authored by the dissent reveals that this is not a decision that this Court came to lightly. Nonetheless, we will no longer continue down a mistaken path. Today we overrule *Owens-Illinois*. In its place we pronounce

Happy April Fool's  
Day!



















