

**Case Name:** CSX Transportation v. Robert V. Gilkison  
**Date Decided:** July 30th, 2009  
**Originally Filed in:** West Virginia (Federal)  
**Decided by:** West Virginia Northern District Court (Federal)  
**Court:** U.S.D.C. Northern District of West Virginia  
**Judge:** Judge Stamp Jr.  
**Citation:** 2009 WL2357142 (N.D.W.Va.)

**Background:**

CSX Transportation, ("CSX") brought action against defendants, Robert V. Gilkison ("Gilkison") and Pierce, Raimond & Coulter, P.C. ("The Pierce Firm") alleging that the defendants knowingly and negligently added client, Ricky May, in pursuing a fraudulent asbestosis claim against CSX. Before this Court were Motions for Summary Judgment filed by the plaintiff and defendants. On June 13, 200, Danny Jayne, a CSX employee who had tested positive for asbestosis, attended a Pierce Firm screening allegedly impersonating Ricky May, an employee whom had tested negative for asbestosis. Gilkison, an employee of the Pierce Firm, was present at the screening to assist and facilitate the screening process. The fraudulent X-ray was then used to support a claim by Mr. May against CSX in a lawsuit filed pursuant to the Federal Employer Liability Act ("FELA"). CSX settled Mr. May's claim for \$8,000. The Plaintiff and Defendants both filed for motions of summary judgment.

**Issue:**

Should the Court grant defendants' or plaintiff's motion(s) for summary judgment?

**Overall Issues Discussed or Touched Upon in this Case:**

- *Ruling on Summary Judgment*

**Held:**

A motion for summary judgment will be granted if the moving party can show, construing facts in favor of the non-moving party, that there exists no genuine issues of material facts and that they must be granted judgment as a matter of law. CSX contends that Gilkison's deposition testimony established his affirmative knowledge of the fraud. Furthermore, CSX contends that because Gilkison is an employee of the Pierce Firm and that if the individual is an agent and if he was acting within the scope of the employment when he committed the tort, the principle, The Pierce Firm, is liable for the tort as well. The Pierce Firm contended that CSX's fraud claim is barred by the statute of limitations. CSX filed suit three years after becoming aware of the fraud which was one year after the applicable statute of limitations had run. Under West Virginia Law, the essential elements for fraud are: (1) The act of fraud was committed by the defendant (2) that it was material and false (3) that the plaintiff relied upon the misrepresentation and was justified in relying upon it and (4) the plaintiff was damaged

because he relied upon it. This Court held that genuine issues of material fact remain in the case, whether CSX's fraud claim is barred by the applicable statute of limitations, whether Gilkison had knowledge of the fraud, acted reasonably, and in the scope of his employment duties as to impute any knowledge of fraud to the Pierce Firm. Accordingly, this Court denied CSX's motion for Summary Judgment. Furthermore, because the Pierce Firm advances motions for summary judgment that require the a fact finder to determine the above mentioned facts, their motions are denied.

**Comments:**

A claim for fraud must be pleaded with particularity and, as demonstrated, moving for summary judgment on a fraud claim requires the Court to find as a matter of law for the moving party because there were no genuine issues of material fact. Combining the requirements to plead a fraud claim with those of a summary judgment motion make fraud a difficult claim to be granted summary judgment upon.

Steve Gordon