

**RUFUS BLOW, JR.**

\*

**NO. 2016-C-0301**

**VERSUS**

\*

**COURT OF APPEAL**

**ONEBEACON AMERICA  
INSURANCE COMPANY**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\*

\*

\* \* \* \* \*

**MCKAY, C.J., DISSENTS**

“It is well settled in Louisiana Law that [o]nce a party’s cause of action accrues, it becomes a vested property right that may not be constitutionally divested.” Marcel v. Delta Shipbuilding Co., 10-0168 (La.App. 4 Cir. 8/4/10), 45 So.3d 634, 639. A survival cause of action in a long-latency occupational disease accrues at the time of significant exposure, which is when the exposures “later result in the manifestation of damages.” Austin v. Abney Mills, Inc., 01-1598, pp. 25-26 (La. 9/4/2), 824 So.2d 1137, 1154 *citing* Cole v. Celotex, 599 So.2d 1058, 1066 (La. 1992).

In the instant case, Mr. Blow was occupationally exposed to injurious levels of asbestos beginning in the middle 1960s. However, OneBeacon is attempting to apply a venue provision which came into effect nearly thirty years after he was occupationally exposed to asbestos. The Louisiana legislature specifically stated in its 1988 amendment to the Direct Action Statute (La. R.S. 22:655) that the amendment applies only to causes of action that accrued “on or after January 1, 1989.” *See* Acts 1988, No. 934, Sec. 1. As such, logic would dictate that the version of the statute in effect at the time the cause of action accrued should also be the version of the statute that is applicable in this case. A wrongful death action and a survival action are not the same vehicle because they each provide for a

different type of damages for different losses. A wrongful death action accrues at death. A survival action accrues at the time of injury or exposure.<sup>1</sup> Accordingly, I would reverse the trial court's granting of the exception of improper venue.

---

<sup>1</sup> Trasher v. Northrup Grumman Shipbuilding, Inc. 2010-1287 (La. 9/17/10 ), 43 So.3d 961 does not address its applicability to a survival action, but rather focuses only on a wrongful death claim. Therefore, Trasher has no applicability in the instant case.