



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**VICKIE POUNDERS v. ENSERCH E&C, INC., et al.  
CV-12-0173-PR**

**PARTIES:**

*Petitioner:* Vickie Pounders, individually and as surviving wife of Dudley W. Pounders, deceased

*Respondents:* Enserch E&C, Inc., nka EECI, Inc.; Riley Power, Inc. fna Riley Stoker Corporation; BW/IP, Inc.

*Amicus Curiae:* The Arizona Association for Justice/Arizona Trial Lawyers Association

**FACTS:**

This asbestos-related wrongful death case concerns the application of conflicts of law principles in the context of long-latency disease cases. Dudley Pounders, who had been a welder at an Arizona Public Service power plant in New Mexico more than 30 years ago, died of mesothelioma, a cancer attributable to asbestos exposure. His wife, Vickie Pounders, filed a wrongful death action against the manufacturing companies that had designed and installed pumps and boilers containing asbestos at the New Mexico power plant where her husband had worked. The Pounders lived in Arizona when, 30 years after his exposure to asbestos, Mr. Pounders was diagnosed with mesothelioma and when he died, but they lived in New Mexico when he was employed at the plant and was exposed to the asbestos.

The court of appeals affirmed the trial court's ruling that Ms. Pounders' claims were time-barred under the New Mexico statute of repose. The court recognized the principle that the law of the forum state, Arizona, governs procedural matters, but substantive issues are resolved by the law of the jurisdiction to which the court is referred by the forum state's choice-of-law rules. Here, Arizona's choice-of-law rules dictate that substantive issues are governed by New Mexico law. That means New Mexico's ten-year statute of repose for improvements to real property applies and bars Ms. Pounders' personal injury and wrongful death claims against the manufacturers. The court held this was true even if the manufacturers also supplied the asbestos because the asbestos used in the boilers and pumps was essential to their function – the fact that the manufacturers supplied the materials with which the pumps and boilers were made did not convert the manufacturers into suppliers of materials under New Mexico law, which would have changed the time during which a lawsuit could be brought.

**ISSUES:**

1. In this long-latency disease case in which the Decedent's exposure to

asbestos occurred over 30 years prior to his illness and subsequent death, did the court of appeals err in defining the “place of injury” under RESTATEMENT (SECOND) OF CONFLICT OF LAWS §175 as the place of exposure (New Mexico), rather than the place of illness and death (Arizona)?

2. Did the court of appeals err in finding that New Mexico had the most significant relationship to [Pounders’] claims under RESTATEMENT (SECOND) OF CONFLICTS §§ 6 and 145?

**DEFINITIONS:**

*Conflicts of law:* A situation where the laws of more than one state may apply to a potential lawsuit and seem to be inconsistent or in conflict.

*Choice-of-law:* Referring to which state’s law is to be applied to a law suit.

*Forum state:* The state in which a law suit is filed.

*Statute of repose:* A legislative enactment that bars a claim against a party unless a claim is brought within a certain period of time following some event described in the statute; in this case the event is the designing or manufacturing of the materials, pumps, and boilers.

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