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Asbestos

MONDAY, JANUARY 25, 2010 2:14:00 PM

Groups line up to support CSX asbestos appeal

BY JOHN O'BRIEN

RICHMOND (Legal Newsline) - CSX Transportation's appeal in a case alleging a Pittsburgh law firm conspired with a radiologist to fabricate an asbestos exposure claim is drawing attention from tort reform groups and asbestos expert witnesses.

Several organizations, including the West Virginia Chamber of Commerce and the American Tort Reform Foundation, are supporting the appeal of CSX. A federal judge granted Robert Peirce's law firm on its motion for summary judgment two weeks before a September trial was to begin.

U.S. District Judge Frederick Stamp ruled that CSX missed the statute of limitations to bring the suit.

"The question before this Court is whether attorneys and doctors who exploit the unique circumstances of these mass proceedings to defraud the courts, opposing parties, and even indirectly plaintiffs with legitimate claims, can and will be held accountable for their misconduct in a manner that deters more of the same," says the West Virginia Chamber of Commerce's amicus brief, filed Monday.



Peirce

"The district court's rulings which that are the subject of this appeal place in doubt whether litigation fraud will in fact be deterred, given that the type of fraud in question often can be very difficult to detect, particularly for defendants confronted, through no fault of their own, with thousands of consolidated claims at a time and operating under severe discovery limitations and time constraints.

The Chamber argues that Stamp relied on "erroneous assumptions about the special procedures adopted for litigating asbestos personal injury claims" in the state when he dismissed CSX's claims as time-barred.

Stamp should have further explored when CSX could have had access to plaintiff-specific information, the Chamber says.

Former Bridgeport radiologist Ray Harron was accused of diagnosing lung disease in patients who did not have it. CSX says Peirce, Raimond & Coulter then hid those plaintiffs with thousands of others, preventing it from being able to adequately investigate each complaint.

In 2005, federal court judge Janis Graham Jack made national headlines when she uncovered duplicate and fraudulent silica diagnoses in her Texas courtroom. Many of those diagnoses were made by Harron and were made on plaintiffs who had already brought asbestos claims.

In Jack's opinion dismissing the claims, she said "These diagnoses were driven by neither health nor justice - they were manufactured for money."

Following Harron's admission that he did not even make the diagnoses of the patients whose x-rays he read, Jack noted that most of "these diagnoses are more the creation of lawyers than doctors."

The Washington Legal Foundation, a tort reform organization, filed an amicus brief Tuesday. It argues that the statute of limitations should have begun running on CSX's claim when it realized it may have been being defrauded -- when Jack issued her opinion.

Instead, Stamp ruled that the four-year statute of limitations began when the Peirce firm began targeting CSX.

"WLF believes that the courts will continue to be deluged by spurious asbestos liability claims and similar claims unless and until they permit companies victimized by such claims to seek compensation from the responsible lawyers and doctors," the brief says.

"WLF is concerned that the decision below - by adopting an inappropriately narrow understanding of limitations rules governing federal and state causes of action - will prevent meritorious claims against lawyers and doctors from going forward."

Other organizations that have filed amicus briefs are the American Society of Radiologic Technologists, the Virginia Society of Radiologic Technologists and three doctors who also serve as asbestos expert witnesses.

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Mark Behrens on Friday entered his appearance as counsel for the ATRF, the Association of American Railroads, the Coalition for Litigation Justice, Inc., the National Association of Manufacturers and the Property Casualty Insurers Association of America.

Behrens works at Shook, Hardy & Bacon in Washington, D.C.

From Legal Newsline: Reach John O'Brien by e-mail at jobrienwv@gmail.com.

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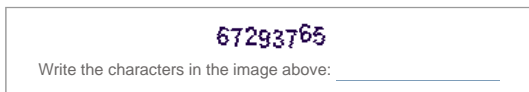
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