

Appellate Division Dismisses Claim After Plaintiff Failed To Name Company As Asbestos Supplier

Article by: Eric Genau

A worker's failure to identify a defendant as a supplier of the asbestos product to which he alleges exposure dooms his claims, the New York Appellate Division, Fourth Department affirmed on April 28 in *Gorzka v. Insulation Distributors, Inc.*

Matthew Gorzka sued a number of defendants, alleging that he developed injuries related to his workplace exposure to asbestos. Defendant IDI moved for and was granted summary judgment by Justice James B. Kane. Plaintiffs appealed.

The court upheld the decision, stating that IDI had met its burden by establishing that Gorzka never identified it as a supplier of any asbestos product to which he alleged exposure. Plaintiffs' failure to name IDI as a supplier in his response to its interrogatories is an admission that it was not the source of asbestos-containing product to which he alleges exposure. The court held that Gorzka's evidence showing that IDI supplied asbestos-containing products to his employer is insufficient to create a reasonable inference that he was exposed to those products.

There has been a great deal of discussion about asbestos legislation in recent months. Still, federal legislation that would create a \$140 billion trust fund to handle asbestos claimants is unlikely to come up for a vote on the Senate floor in the near future, and alternatives in the House of Representatives are also stalled.

Sources said leaders in the Republican Party will not bring S. 852, the Fairness in Asbestos Injury Resolution Act, back to the Senate floor until they are sure they have the 60 votes necessary to overcome the budget point of order.

The bill was on the Senate floor once already this year. At that time, Sen. John Ensign, R-Nev., raised a budget point of order that the Senate failed to overcome by a 58-to-41 vote on Feb. 14, sending the bill to the Senate Budget Committee. Sen. Arlen Specter, R.-Pa., and other supporters were quoted at the time as saying they would try to resurrect the bill, but sources now say Specter could have as few as 57 votes in support of the measure.

Sources said the bill's path is further obstructed because the Senate is considering immigration and pension reform. Sources said that little progress had been made on the bills and that work on them could continue until Memorial Day. Medical criteria legislation is likewise stuck. Sen. John Cornyn, R.-Texas, recently met with lobbyists and other interested in the bill, but sources said little progress was made.<http://asbestoslitigation.typepad.com/about.html>

ERIC C. GENAU is an attorney at the law firm of Kenney Shelton Liptak Nowak LLP, and represents insurance carriers and self-insured companies in connection with claims and lawsuits for exposure to toxic substances across New York State. KSLN has been heavily involved in the defense of toxic tort and mass tort cases for many years, including the development of national defense strategies in its role as National and Regional Coordinating Counsel. KSLN maintains offices in Buffalo, Rochester and New York City.