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KENTUCKY SUPREME COURT LIMITS LIABILITY CLAIMS FROM ASBESTOS EXPOSURE

(Rehm v. Navistar International Corp.)

The Washington Legal Foundation (WLF) scored a victory last week when the Kentucky Supreme Court affirmed a lower court ruling that rejected attempts by plaintiffs' lawyers to circumvent Kentucky workers' compensation program. The Supreme Court held that the so-called "exclusive remedy" immunity in the Kentucky statute was properly invoked by the companies and not unconstitutional.

In *Rehm v. Navistar*, the plaintiff was an employee of a business that installed industrial conveyor systems and machinery. That business was hired as a subcontractor over the years by some 15 different companies to install such equipment at their facilities. The plaintiff claims he was exposed to asbestos at those premises and contracted malignant mesothelioma. Under Kentucky law, a contractor becomes a statutory employer, and thus, is immune from tort liability, if the work it subcontracted is a "regular or recurrent" part of the work or trade of the contractor. In that circumstance, injured employees are compensated under the state's workers' compensation program and cannot sue the companies separately under tort liability.

The Supreme Court agreed with the lower courts that the companies were considered statutory employers and thus, could not be sued. As described in the WLF-supported brief filed in the case, workers' compensation laws were designed to provide a substitute for -- not a supplement to -- the tort system in the field of workplace injury. Otherwise, to impose costs of workers' compensation on companies, and to expose them to risks and costs of the tort system when they hire subcontractors, would force employers to pay twice for the same liability. Any inadequacies of the system should be addressed by the state legislature, not by judges.

WLF teamed up with the Kentucky Chamber of Commerce, the U.S. Chamber of Commerce, the Associated Industries of Kentucky, Greater Louisville, Inc., Coalition For Litigation Justice, Inc., UWC-Strategic Services on Unemployment & Workers' Compensation, American Insurance Association, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America, American Chemistry Council, American Tort Reform Association, and the National Federation of Independent Business Legal Foundation. Besides Navistar, the subcontractors supported were Philip Morris, Brown & Williamson Tobacco, Lorillard, Reynolds Metals Company, Ford Motor Company, General Electric, Allied Chemical, Colgate-Palmolive, Brown-Forman Corp., Rohm & Haas, Goodrich Corp., E.I. DuPont De Nemours, American Standard, and Kentucky Utilities.

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For information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302.