

# OREGON LAW UPDATE

## Specificity Needed to Prove Asbestos Claims

case in point ...

**From the Desk of Jeff Eberhard:** In this case the Oregon Court of Appeals held that in asbestos liability claims, a plaintiff must offer evidence showing both the specific products used and specific instances of their use.

**Claims Pointer:** Manufacturers and distributors who have been sued for asbestos-related claims should be aware that a defendant's motion for summary judgment will be allowed if the plaintiff is unable to prove his or her specific use of the defendant's products. At the very least, a plaintiff must be able to identify which specific type of product the defendant manufactured or distributed, which caused Plaintiff's injuries.

Greer v. Ace Hardware Corp., in the Court of Appeals of the State of Oregon, A145112 (April 10, 2013).

The estate of Russell Greer brought a lawsuit against two suppliers of asbestos products, Backstrom Builders Center ("Backstrom") and The Miller Lumber Company ("Miller") and one manufacturer, Georgia Pacific Corporation ("Georgia-Pacific"). Greer's estate alleged that the defendants were responsible for Greer's mesothelioma because he was exposed to products manufactured by Georgia Pacific, or sold by Backstrom and Miller, during his time in the construction industry.

On motion for summary judgment, the defendants argued that the estate could not show any specific instances in which Greer had used their asbestos-containing products. The trial court granted the defendants' motion for summary judgment.

On appeal, the estate argued that the record contained enough evidence regarding the defendants' liability to go to trial and that summary judgment was improper. The Court of Appeals analyzed the issue by examining three previous asbestos cases, looking at the type of evidence that had previously been found to be sufficient to determine liability. The Court noted that

in each of the three cases, the record was sufficient to grant summary judgment because it "included evidence from which a juror reasonably could infer that the plaintiff or decedent had been exposed to a particular asbestos-containing product sold or manufactured by the defendant." In this case, the plaintiff's evidence lacked the required specificity. The plaintiff offered declarations stating that "some" of Georgia Pacific's products and "some" of the products Greer had purchased from Backstrom and Miller contained asbestos. The Court held that such statements were conclusions, insufficient to guide jurors. Accordingly, summary judgment was proper, and the ruling of the trial court was affirmed.



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