



Scheuer Mackin & Breslin LLC

Workers' Compensation Legal Alert

First Appellate District Holds That Industrial Commission's Denial of Occupational Disease Claim is Binding in Products Liability Action

In an effort to keep our clients and friends apprised of changes in the laws involving workers' compensation, Scheuer Mackin & Breslin LLC provides this update, regarding *Mitchell v. Internatl. Flavors & Fragrances, Inc.*, a First Appellate District case decided on July 25, 2008, which held that a finding in a workers' compensation claim that a worker did not sustain an occupational disease in the course and scope of employment was binding in subsequent lawsuits arising out of the same alleged workplace exposure.

In *Mitchell v. Internatl. Flavors & Fragrances, Inc.* (2008) 179 Ohio App. 3d. 365, the First Appellate District considered the case of an assembly plant worker who alleged that exposure to chemicals with which she worked caused "breathing problems." She filed a workers' compensation claim, and both the District and Staff Hearing Officers found insufficient evidence to establish that her medical problems were the result of exposure to the chemical. That finding was appealed into Common Pleas court, voluntarily dismissed with the right to re-file, but was not re-filed within the requisite one year time frame.

The worker instead brought a products liability action against the manufacturers of the chemical. The manufacturers filed motions for summary judgment, on the grounds that the Industrial Commission already determined that her pulmonary illness was not related to occupational chemical exposure. The manufacturers argued that the Industrial Commission's decision was binding in the products liability action. The trial court agreed and dismissed the case.

The decision was upheld by the First Appellate District, which found that the worker had an opportunity to fully and fairly litigate the issue of whether her pulmonary condition was related to exposure to chemicals at work at the Industrial Commission level, and had the opportunity to appeal that decision to Common Pleas Court. The First District Court noted that the worker voluntarily dismissed her appeal, and failed to re-file within the requisite one year time period, but instead filed the tort action. The Court held that when she failed to re-file her appeal, the determination that the pulmonary illness was not related to occupational chemical exposure became binding upon her in the tort case. The First Appellate Court's decision was not appealed to the Supreme Court.

The *Mitchell* case establishes that manufacturers in products liability cases and employers have a common interest in the outcome of the occupational disease claims. Both sides often have information that can be of invaluable assistance to the other, and the outcome of the underlying cases can have a profound effect on one another. When defending an occupational exposure claim, the employer may wish to consider contacting the manufacturer of the product in question to see if they can provide technical, evidentiary or other assistance in defending the claim.

This update is provided as a service to our friends and clients for informational purposes, and is not intended to constitute legal advice applicable to any given case. Please contact any of our attorneys for more information as to this important development in Ohio workers' compensation law.

SCHEUER
MACKIN & BRESLIN LLC
Attorneys at Law
www.smbllaw.net

11025 Reed Hartman Hwy.
Cincinnati, Ohio 45242
Phone 513-984-2040
Fax 513-984-6590

8605C N. Dixie Drive
Dayton, Ohio 45414
Phone 937-898-1465
Fax 937-898-1478

110 W. Streetsboro Rd., Suite 2A
Hudson, Ohio 44236
Phone 330-656-2702
Fax 330-656-2755