



## News & Updates

### **WISCONSIN COURT OF APPEALS: COURT AVOIDS STATUTE OF REPOSE WHILE DISMISSING PLAINTIFF'S CLAIMS ON LACK OF CAUSATION (FEB. 10, 2015)**

Plaintiff Todd Alexander commenced a wrongful death action claiming decedent Richard Alexander was exposed to asbestos in connection with his sheet metal, heating, and plumbing business. Defendants Auer and Milwaukee Stove moved for summary judgment under Wisconsin's Statute of Repose and, in the alternative, along with defendant CertainTeed, on lack of causation. The lower court granted Auer's and Milwaukee Stove's motion based on the Statute of Repose and CertainTeed's motion based on causation.

On appeal, the Wisconsin Court of Appeals avoided ruling on the Statute of Repose issue but instead affirmed the lower court's decision for all three defendants on the basis of causation. With respect to Auer and Milwaukee Stove, the court stated: "Because we agree with Milwaukee Stove that Alexander has not set forth sufficient facts to show causation as to Milwaukee Stove and because Alexander's evidence against both Milwaukee Stove and Auer is nearly identical, we affirm the circuit court's grant of summary judgment to both defendants on that ground." Regarding CertainTeed, the court noted that a possibility of causation was not enough: "These facts, even combined with the other evidence Alexander presents, at best, present only a mere possibility that Richard was exposed to CertainTeed's asbestos cement air duct pipes. It is equally possible that Richard purchased air duct pipes from Johns-Manville. As we have seen, when the matter remains one of pure speculation or conjecture or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant. That is the case here. A possibility of causation is not enough, and therefore, we affirm."

[Click here for a copy of the decision.](#)

If you have questions about how this case may impact your business, please contact:

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#### **Files**

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