



News & Updates

FELA ASBESTOS VERDICT UPHeld ON APPEAL, REJECTING DEFENDANT'S CHALLENGE TO LACK OF EVIDENCE OF NEGLIGENCE AND CHARGE ON PREEXISTING INJURY

The plaintiff brought this action claiming that the decedent's work as a laborer and machinist for Illinois Central and its predecessor caused him to be exposed to asbestos and to develop lung cancer. After the jury awarded \$2.6 million, with a 45 percent reduction for smoking, the defendant, Illinois Central, appealed, arguing it was not negligent and that the trial court should not have charged the jury on aggravation of a preexisting condition related to the decedent's smoking.

On appeal, the court rejected the argument that a jury could not have found Illinois Central negligent under FELA: "Here, there was a factual basis for the jury to conclude the railroad could foresee Jacob Lilienthal's injury. Duane Amato, Illinois Central's expert in industrial hygiene, testified the railroad knew asbestos caused asbestosis as early as the 1930s and lung cancer as early as the 1950s. As Jacob started at the railroad in 1957, the railroad knew of the dangers of asbestos throughout his career, and the jury could find he developed both asbestosis and lung cancer as a result of his exposure during his employment with the railroad. Moreover, evidence existed to indicate the railroad never warned Jacob about the dangers of asbestos."

With respect to the jury charge of aggravation of a preexisting injury, the court stated: "The trial court considered petitioner's proposed instruction based on Illinois Pattern Jury Instruction, Civil, No. 160.27 (2008), dealing with the measure of damages under FELA for aggravation of a preexisting condition. Following Illinois Central's objection, petitioner's counsel pointed out the 'synergistic effect between cigarettes and asbestos' and noted decedent 'was smoking cigarettes about the same time he started with the asbestos.' In testifying to the 'synergistic effect,' Dr. Houser stated, 'cigarette smoking is associated with approximately a tenfold increase in risk for lung cancer, and if you combine that with asbestos, it is approximately 50 times.' The evidence indicated decedent smoked for 45 years, starting when he was 18 years old. He also started working for the railroad after high school. Dr. Houser noted cigarette smoking causes immediate damage to the lungs. The trial court found 'some evidence' of a preexisting condition. Given the evidence, the jury could have reasonably concluded exposure to asbestos aggravated the health conditions decedent suffered from due to smoking cigarettes."

Read the full decision [here](#).

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

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Files

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