



## News & Updates

### **ESTABLISHING ASBESTOS AND NON-ASBESTOS PRODUCTS ON THE MARKET, COUPLED WITH PLAINTIFF'S LACK OF PROOF THAT PRODUCT CONTAINED ASBESTOS, IS NOT ENOUGH TO MEET TILE MANUFACTURER'S BURDEN**

In this NYCAL case, the plaintiff claimed exposure to, inter alia, tiles manufactured by Goodrich. Goodrich moved for summary judgment, establishing that it sold both asbestos and non-asbestos tiles during the relevant time periods and that the plaintiff did not establish the tile to which he claims exposure contained asbestos. The court concluded that this proof was insufficient to meet Goodrich's burden that the tiles did not contain asbestos: "Goodrich has failed to establish a prima facie case. In support of its motion, Goodrich concedes that it made asbestos-containing floor tile until late 1963. The affidavit of Joan M. Taffi, a Goodrich Corporation employee, does not contain any specificity beyond the general claim that '[p]rior to 1964, B.F. Goodrich Company produced and sold asbestos floor tile, as well as vinyl floor tile that contained no asbestos' (see Affidavit of Joan M. Taffi, ¶ 4). Absent from the affidavit are any numerical figures with respect to the quantity of asbestos and non-asbestos floor tiles that Goodrich manufactured prior to 1964. The Taffi affidavit does, however, refer to various corporate records from Goodrich, including Bratenus' deposition testimony. Those records, which also include sample specifications for non-asbestos Goodrich tiles as well as confirmation that Goodrich exited the floor tile business in 1963, do little to advance Goodrich's arguments. Indeed, as previously mentioned, Bratenus' deposition testimony confirms that asbestos was an ingredient in both the asphalt and vinyl tile that Goodrich manufactured, and that such tile was manufactured from 1946 until the end of 1963 (see Bratenus Deposition, Ex. D, Plaintiff's Opposition at pp 5-14). Bratenus' testimony also shows that Goodrich manufactured and sold three types of flooring: vinyl asbestos and non-asbestos tile, asphalt tile and rubber tile (*id.*). Admittedly, Goodrich states that both its vinyl and asphalt tile contained asbestos (*id.*). In fact, only its rubber tile was asbestos free. As such, two out of the three tile types that defendant manufactured contained asbestos. Defendant's concession with respect to the existence of asbestos-containing floor tiles during from 1946 until the end of 1963 is particularly relevant given that it coincides with plaintiff's alleged use of Goodrich products during his work for Phillips and Lamparter from 1955-1956 and 1960-1977, receptively. Plaintiff further asserts that his work as a carpenter commenced in 1952, and that he may have been exposed to asbestos-containing floor tiles from as early as that time."

Read the full decision here .

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

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#### Files

Asbestos Case Tracker - NY - August 12, 2015.pdf

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