



News & Updates

CONNECTICUT APPELLATE COURT AFFIRMS DISMISSAL OF ASBESTOS ACTION FOR FAILURE TO PROSECUTE THE ACTION WITH REASONABLE DILIGENCE

The plaintiff's decedent brought this personal injury action in August 2009, alleging that his mesothelioma was caused by exposure to asbestos from several defendants' products. The plaintiff's decedent died a few days after the commencement of this action and before any deposition testimony or product identification evidence was disclosed. The plaintiff was appointed as executrix of the decedent's estate less than a month after his death. In November 2012, three years after the decedent's death, the trial court set a trial date. The defendants moved for a continuance on the basis that the decedent's estate representative had not been substituted as a party, probate had not been resolved, and the defendants had never deposed any product identification witnesses.

The court denied the motion for continuance without prejudice and instructed the clerk to inform the plaintiff that an estate substitution must be completed. The plaintiff moved to substitute herself in as a plaintiff on the eve of the scheduled trial date and in her motion failed to provide any explanation for the four-year delay in seeking the substitution. The trial court, *sua sponte*, raised the issue whether the plaintiff's case should be dismissed for the plaintiff's failure to prosecute the action with reasonable diligence. The defendants subsequently filed motions for summary judgment, seeking dismissal on the grounds suggested by the court; their motions were granted and the plaintiff appealed the trial court's decision.

In affirming the trial court's decision, the Connecticut Appellate Court ruled: "...the court properly exercised its discretion by dismissing the present action for lack of diligence in prosecuting the matter. The matter was commenced in August, 2009, and thus had been on the court's docket for more than four years at the time it was dismissed. More importantly, for the majority of that time period, the case was in limbo and could not properly progress because the decedent had died and, although the plaintiff had been appointed as executrix of his estate within a month of his death, she did not notify the court of the death and, without any explanation, did not move to substitute herself in as representative of the estate for several years...The defendants, like the court, were powerless to act prior to the substitution. Accordingly, they were prejudiced by an inability to file motions for summary judgment or other substantive motions and to effectively engage in discovery."

[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 - September 2, 2015.pdf](#)

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