



News & Updates

CALIFORNIA APPELLATE COURT UPHOLDS REJECTION OF LAY AND EXPERT WITNESS AND GRANTS ZENITH SUMMARY JUDGMENT IN RADIO TUBE ASBESTOS CASE

The California Court of Appeal affirmed the rejection of lay witness testimony as to asbestos content: "As a lay witness, Darby could testify to his observations about the texture of the material, but not to his conclusion that it contained asbestos since a lay witness may not opine about matters not within common knowledge or experience. (Cf. McAlpin, supra, 53 Cal.3d at p. 1308 [lifeguards who recovered body from water were not qualified to express medical opinion on cause of death].) According to Savic, 'fibrous shields, insulators and barriers made of cardboard, duroid, nomex' and other materials that did not contain asbestos were used in Zenith products. Appellants have cited no authority for the proposition that asbestos content in materials may be identified by sight and touch alone, or that such identification is a matter of common knowledge and experience. The documentary evidence they submitted in support of the opposition indicates that the presence of asbestos in materials is determined through testing. Regardless of his experience, a lay witness may not testify about scientific tests that require expert opinion."

The court also affirmed the lower court rejection of a purported expert on radios and tubes because the expert did not possess the proper qualifications regarding asbestos: "The court was clearly concerned about Dr. Jackson's credentials to express expert opinion about asbestos, not about radio collection or repair. The court's conclusion that Dr. Jackson does not have asbestos-related expertise reasonably follows from his own admission that he had observed heat strips in only a limited number of radios, had not tested their composition, and had no special knowledge or expertise in identifying materials containing asbestos or critiquing tests of such materials."

After rejecting this evidence, the court ruled that in absence of any connection between an asbestos containing product in a radio and decedent's exposure: "Similarly, here, appellants' evidence would require the trier of fact to speculate that at some point, decedent repaired a Zenith radio model that might have contained asbestos paper as a heat shield."

Read the full decision [here](#).

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

- Joseph J. Welter (716.566.5457; jwelter@goldbergsegalla.com)
- Jason A. Botticelli (716.566.5460; jbotticelli@goldbergsegalla.com)
- Or another member of Goldberg Segalla's Toxic Torts Practice Groups

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