

## **New Jersey Appellate Division Upholds \$30.3 Million Verdict In Mesothelioma Asbestos-Exposure Case**

By: Adam M. Smith, Michael H. Hrinewski

April 8, 2010

On April 5, 2010, the New Jersey Appellate Division upheld the state's largest mesothelioma asbestos-exposure award in the case of *Buttitta v. Allied Signal*, Docket No. A-5263-07.

The decision affirmed a February 2008 jury verdict in the amount of \$30.3 Million. Among other things, the opinion provides specific guidance on the distinction between the causation standard in mesothelioma cases as differentiated from cases dealing with asbestosis and lung cancer caused by asbestos.

The underlying lawsuit arose from the death of Mark Buttitta, who died from mesothelioma in December 2002. His wife, Susan Buttitta, brought the action on behalf of his estate against dozens of companies involved in the manufacture or utilization of asbestos containing products. All but two defendants, Borg-Warner Corporation ("Borg-Warner") and Asbestos Corporation Ltd. ("ACL"), settled with plaintiff before the jury returned a verdict in the amount of \$30.3 Million. Mr. Buttitta's exposure allegedly stemmed from summers spent working as a "parts picker" at a GM distribution warehouse, as well as from exposure to asbestos fibers brought home on his father's work clothes from his job at a different GM warehouse. In the 1970's, Borg-Warner manufactured automotive parts used by GM, including disc brake clutches made of chrysotile asbestos, and ACL was a supplier of asbestos to GM.

Borg-Warner and ACL argued that the trial judge erred in his rulings on medical causation, and the admission of plaintiff's expert testimony, among other things.

The trial court had ruled that the "frequency, regularity and proximity test" for causation, utilized in other asbestos bodily injury cases, did not apply to mesothelioma cases because that disease can arise based upon an infrequent exposure to a small amount of asbestos. In affirming the trial court ruling, the Appellate Division held that the "frequency, regularity, and proximity test" often used in asbestosis cases should not be rigidly applied in mesothelioma cases. Applying a more flexible standard for causation, the court held that plaintiff presented sufficient evidence that Mr. Buttitta worked in close proximity to asbestos-containing products manufactured by Borg-Warner to permit the case to go to the jury. The court also determined that the record contained ample information for the trial court to determine the scientifically sound nature of plaintiff's expert testimony. The court also rejected Borg-Warner's other challenges and held that the damages award did not "shock the judicial conscience", such that remittitur should be granted.

In affirming this landmark award for the plaintiff, the Appellate Division recognized a clear distinction in the standard of causation in cases resulting from mesothelioma asbestos-exposure, as opposed to other asbestos-related diseases.