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Gallagher Sharp Newsflash: Asbestos Related Workers' Compensation

Today, September 3, 2014, the Supreme Court of Ohio held that former testimony given by the claimant in a products liability lawsuit against asbestos manufacturers is not admissible in a workers' compensation lawsuit against the claimant's employer alleging workplace exposure to asbestos.

In *Burkhart v. H.J. Heinz Co.*, Slip Opinion No. 2014-Ohio-3766, a former employee of H.J. Heinz had sued numerous asbestos manufacturers alleging their products had caused his malignant pleural mesothelioma. He was deposed in those actions and subsequently passed away. His wife then filed a workers' compensation claim for death benefits. She sought to introduce her husband's former testimony to support her claim. The Supreme Court found his prior testimony inadmissible under Evid.R. 804(B)(1) because the asbestos manufacturers and his employer, H.J. Heinz, were not sufficiently aligned in interest: "each asbestos manufacturer sought to disprove that he had been exposed to asbestos that it had produced, and none had an incentive to dispute that he had not been exposed to asbestos at H.J. Heinz."

The full opinion can be found at: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2014/2014-ohio-3766.pdf>

If you have any questions, please contact:

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