

From: Kevin Alexandersen
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Gallagher Sharp Newsflash: Ohio Asbestos Litigation

Today, September 3, 2014, the Supreme Court of Ohio held that when a smoker makes a claim under the Federal Employer's Liability Act alleging that exposure to asbestos has caused lung cancer, Ohio's asbestos legislation requires the claimant to present a diagnosis from a "competent medical authority" who treated the claimant showing that the asbestos exposure was a substantial contributing factor to the cancer.

In *Renfrow v. Norfolk Southern Railway Company*, Slip Opinion No. 2014-Ohio-3666, a longtime smoker alleged occupational exposure to asbestos and later died of lung cancer. His estate argued that because Renfrow was treated at facilities operated by the Veterans Administration, 38 C.F.R. 14.808 prohibits treating physicians from providing expert opinions. The railroad contended that the estate must provide an opinion from a treating physician as required by Ohio's asbestos legislation, and Renfrow's records did not show that asbestos contributed substantially to his lung cancer. Since Renfrow did not comply with the statutory requirements for filing an asbestos claim, the railroad moved to administratively dismiss the suit.

The Supreme Court of Ohio held that 38 C.F.R. 14.808 does not prohibit a litigant from issuing a subpoena to a Veterans Administration official. Because Renfrow's counsel did not subpoena the treating physician at the Veterans Administration facility, "Renfrow abandoned her efforts to secure an opinion from a medical doctor whom she had identified as a competent medical authority." Based on these facts, the Court concluded that Ohio's asbestos legislation requiring testimony from a treating physician "has not denied Renfrow a right to a remedy in this case" and "Renfrow failed to make a prima facie showing required to withstand administrative dismissal ***." The Court explained that Renfrow "has not been deprived of a right to a remedy because dismissal of this action is based on a failure of proof and she has the opportunity to move to reinstate the case upon presentation of proper prima facie evidence in the future."

The full opinion can be found at: <http://www.sconet.state.oh.us/rod/docs/pdf/0/2014/2014-Ohio-3666.pdf>

If you have any questions, please contact:

Kevin C. Alexandersen
Mass Tort Practice Group Manager
Holly M. Olarczuk-Smith
GALLAGHER SHARP
Sixth Floor, Bulkley Building
1501 Euclid Avenue
Cleveland, Ohio 44115-2108
Ph: (216) 241-5310
kalexandersen@gallaghersharp.com
holarczuk-smith@gallaghersharp.com
www.gallaghersharp.com