

## Illinois Decision Allows Latent Occupational Disease Employer Negligence Claim Despite Workers' Compensation Exclusivity

In the latest in a series of recent decisions that have greatly expanded potential employer liability for latent occupational diseases, an Illinois state court ruled in June that employees may now bring claims against their employers that would have otherwise been impermissible under state workers' compensation laws.

In Folta v. Ferro Engineering, the Illinois Appellate Court found that a plaintiff could bring a direct action against his former employer for allegedly causing his mesothelioma (a rare cancer caused by asbestos exposure), despite the fact that his last exposure to asbestos occurred more than 41 years before his diagnosis.

Illinois workers' compensation law allows only a 25 year window in which an employee can bring a claim against his employer for an injury stemming from asbestos exposure. If a workers' compensation claim is brought, it is then the only action that the employee can assert against the employer. This mechanism is known as the "exclusive remedy provision." However, the Court agreed with the plaintiff, finding that since his workers' compensation claim was barred by the 25 year limit, the exclusive remedy provision did not apply, freeing him to file a direct civil suit.

The Illinois decision comes on the heels of the Pennsylvania Supreme Court's similar ruling in Tooev v. AK Steel, which found that common law claims for latent occupational diseases could be pursued outside the purview of workers' compensation laws, even when the employee did not learn of the disease until decades later. Missouri courts also expanded employers' liability until a concerted lobbying effort by business groups resulted in amendments to the Missouri Workers' Compensation Act, once again making these claims subject to workers' compensation.

With more courts appearing willing to give plaintiffs multiple avenues by which to file suit, a wave of new claims against employers, and their insurance policies, is likely. Indeed, asbestos was prevalent in many workplaces until the 1980's. As employees get closer to the point where latent diseases begin to show symptoms, it is possible they will sue as many of their former employers as possible, even those with minimal potential liability.

It is unknown whether businesses in states where the floodgates have been opened will be successful should they launch campaigns like the one in Missouri. Insurance carriers, especially, should also keep in mind that the very nature of latent disease means that potential defendants will be seeking insurance coverage from decades-old policies.

For more information on how best to manage your risk in light of this new trend, contact Richard S. Ranieri at 973.242.2230 or [rranieri@wglaw.com](mailto:rranieri@wglaw.com).