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## Fla. Court Revives Suit Over Mechanic's Wife's Mesothelioma

By **Y. Peter Kang**

Law360 (August 3, 2023, 8:50 PM EDT) -- A Florida appeals court has reinstated a suit over the mesothelioma death of a woman who was allegedly exposed to her mechanic husband's asbestos-covered clothes for years, saying there was enough evidence to establish she was exposed to asbestos from an auto parts manufacturer's specific product.

A three-judge panel for the First District Court of Appeal on Wednesday **unanimously reversed** an Okaloosa County judge's summary judgment ruling in favor of Carlisle Industrial Brake & Friction Inc. in a suit accusing the maker of brake linings of exposing Joan Smith to asbestos dust while she laundered the work clothes of her husband, who performed brake work on heavy trucks made by Mack Trucks from 1969 to 1993.

The suit filed by the woman's son, Larry Smith, says Joan Smith inhaled the asbestos dust because she would regularly "shake out" the dust from the clothes prior to laundering them.

At issue on appeal is whether Carlisle's brake linings were among the asbestos-containing products to which Joan Smith was exposed, according to the opinion. Carlisle had argued none of the plaintiff's "product-identification witnesses" — the corporate representatives of various brake linings manufacturers — identified Carlisle by name as supplying Mack Trucks with asbestos-containing products.

But Larry Smith submitted evidence that Mack exclusively used Carlisle linings from 1974 to 1979 and branded them as Mack Trucks linings, which the panel said was sufficient to establish product identification for the purposes of proving causation.

The appeals court explained that Florida's product-identification legal standard is "no different" from that of the standard set by the Florida Supreme Court's 1984 decision in *Gooding v. University Hospital*, which said the plaintiff must introduce evidence that it was "more likely than not" a defendant was the source of the product.

"Based on this standard, appellant produced sufficient circumstantial evidence to overcome summary judgment," the opinion stated.

While Carlisle had argued that, contrary to the plaintiff's assertion, it was not the exclusive supplier of Mack's brake linings, the panel said it was more likely than not that Joan Smith was exposed to Carlisle's products given the number of brake jobs performed by her husband over the six-year period ending in 1979.

"With every brake job, the probability that decedent was not exposed to Carlisle's product grew smaller and smaller," the panel said, noting that just one truck can have up to 24 linings. "Between 1974 and 1979, Mr. Smith maintained trucks for various companies. In one such example, a company had eight to ten trucks requiring brake work every six months."

The appeals court added that Carlisle's argument — that the 11 other companies that supplied brake linings to Mack from 1969 to 1993

could have caused Joan Smith's exposure — is an issue for a jury to determine.

Counsel for the parties did not immediately respond to requests for comment Thursday.

Judges Bradford "Brad" L. Thomas, Susan L. Kelsey and Rachel E. Nordby sat on the panel for the First District.

Smith is represented by Mathew D. Gutierrez of the Ferraro Law Firm.

Carlisle is represented by Mary J. Street, Eduardo Medina and Timothy Ferguson of Foley & Mansfield PLLP.

The case is Larry D. Smith v. Carlisle Industrial Brake & Friction Inc., case number 1D21-2753, in the First District Court of Appeal for the State of Florida.

--Editing by Janice Carter Brown.

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