

2003

## Asbestos Litigation Growing with Mounting Negative Consequences

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### Recommended Citation

Valerie Sarigumba, *Asbestos Litigation Growing with Mounting Negative Consequences*, 8 Pub. Interest L. Rptr. 23 (2003).  
Available at: <http://lawcommons.luc.edu/pilr/vol8/iss2/11>

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NEWS

# ASBESTOS LITIGATION GROWING WITH MOUNTING NEGATIVE CONSEQUENCES

By Valerie Sarigumba

**A**s asbestos litigation hits an increasing number of companies, the costs to the companies, the victims, and the public are mounting with it. In a case illustrative of the expanding reach of asbestos litigation, the Supreme Court recently allowed for a broad area of asbestos claims.

On March 10, 2003 in a 5-4 decision, the Court held that under the Federal Employers' Liability Act (FELA), railroad workers who showed signs of asbestosis could receive damages for fear of developing cancer, even though no symptoms of cancer were evident. *Norfolk &*



claims for negligently inflicted emotional distress, claims for pain and suffering associated with, or 'parasitic' on, a physical injury are traditionally compensable . . . A plaintiff suffering from bodily harm

for national legislation." *Ayers*, 2003 WL 888363 at 17.

Dissenting, Justice Kennedy asserted: "As a consequence of the majority's decision, it is more likely that those with the worst injuries from exposure to asbestos will find they are without remedy because those with lesser, and even problematic, injuries will have exhausted the resources for payment. Today's decision is not employee-protecting; it is employee-threatening." *Ayers*, 2003 WL 888363 at 19.

Currently, there are over 600,000 asbestos claims pending in the courts. However, asbestos claims have not been limited to

***Currently, there are over 600,000 asbestos claims pending in the courts.***

*Western Ry. Co. v. Ayers*, 2003 WL 888363 (2003). The plaintiffs were awarded \$5.8 million in damages, although the amount attributed to fear-of-cancer damages was not specified.

The majority opinion by Justice Ginsburg stated that, "Unlike stand-alone

need not allege physical manifestations of her mental anguish." *Ayers*, 2003 WL 888363 at 9. Notably, the majority concluded with, "The 'elephantine mass of asbestos cases' lodged in state and federal courts, we again recognize, 'defies customary judicial administration and calls

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