

Retroactive Application of Florida's Asbestos and Silica Compensation Fairness Act Held Unconstitutional

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Jul 11, 2011

On July 8, 2011, the Supreme Court of Florida issued its opinion (5-2 decision) in [American Optical Corp. v. Spiewak, Nos. SC08-1616, SC08-1640, SC08-1617, SC08-1639, 2011 WL 2652189 \(Fla. 2011\)](#), on consolidated asbestos appeals pending since 2008. The sole issue on appeal was the constitutionality of the retroactive application of the Florida Asbestos and Silica Compensation Fairness Act (Act) to claims that accrued before the Act's effective date. The Act went into effect July 1, 2005. Consistent with a recent decision in Texas and other jurisdictions, the Supreme Court of Florida has now ruled the Act is unconstitutional, as applied to cases retroactively.

As applied, this decision will impact those cases which were filed prior to July 1, 2005. It may also possibly apply to those cases where an injury or diagnosis occurred prior to July 1, 2005, but where the four-year statute of limitations would not have expired until 2009.

The Court provided a detailed analysis of the procedural history and the operation of the Act as applied to physical impairments, and then concluded that plaintiff's vested rights were impacted when applied to pending cases where no level of impairment was ever historically required in Florida, prior to July 1, 2005. The Court stated that the "common law of Florida has never required individuals who have suffered an injury to meet an arbitrarily drawn threshold of physical impairment for a cause of action to accrue." The Court analogized the embedding of asbestos fibers in the lungs to be consistent with other personal injury case law in Florida, which merely requires proof of injury, rather than any specific level of impairment. Currently, the Act will continue to apply to claims that accrued after its effective date of July 1, 2005.

For more information, please contact [Craig T. Liljestrand](#) or your regular [Hinshaw attorney](#).

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