



NEWS & NOTES

March 30, 1984

PLAINTIFF'S EXHIBIT

DOW-1893

OSHA's ETS ON ASBESTOS IS INVALIDATED BY COURT

On Mar. 7, in response to a legal challenge brought by AIA/NA, the U.S. Court of Appeals, Fifth Circuit, rendered its decision on the U.S. Occupational Safety and Health Administration's (OSHA) emergency temporary standard (ETS) on asbestos. The Court issued the following ruling:

We determine the Emergency Temporary Standard to be invalid because the record, considered as a whole, does not indicate that the risk the ETS seeks to eliminate is "grave," as OSHA itself has defined it, or that the ETS is "necessary," as those terms are used in the ETS statute.

OSHA's ETS on asbestos was issued in the Federal Register of Nov. 4, 1983, without prior public hearings, and immediately reduced the permissible level on worker exposure from 2 f/cc to 0.5 f/cc. By order dated Nov. 23, 1983, the Court, however, stayed the effectiveness of the ETS pending judicial review.

The Association had challenged the ETS basically for the reasons that such precipitous action was neither warranted nor necessary and that full public hearings should occur prior to OSHA taking regulatory action. AIA/NA contended that OSHA's declaration of an "emergency" was never necessary because of the significant strides made by asbestos manufacturers and users over the last decade which have reduced most worker asbestos exposures well below the current permanent standard of a 2 f/cc PEL. It is significant to note that the Court held "that OSHA did not properly act pursuant to its ETS enabling statute and that the standard in question, therefore, should not become effective absent notice-and-comment rulemaking."

On Mar. 20, the Secretary of Labor filed a motion for extension of time to file a petition for rehearing on the ETS case. The Court granted that motion as requested until April 20, 1984. In his motion, the Secretary stated that "full consid-

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ASBESTOS INFORMATION ASSOCIATION

1745 Jefferson Davis Highway, Crystal Square 4, Suite 508
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