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December 21, 1983

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DEC 28 '83			
		Action	Info.
	JDB		
Diary	CWC		
	CAG		
	PDH		CE
File	FSH		
O	ICFH		CE
110.5	LRP		
16	DAT		
LEL		CE	

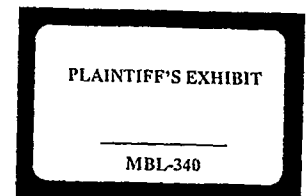
OSHA EMERGENCY TEMPORARY
STANDARD FOR ASBESTOS

In our correspondence of November 14, 1983, concerning the above subject, you were notified of the new ETS for asbestos. Now the Fifth Circuit Court of Appeals has stayed OSHA's Emergency Temporary Standard for Asbestos. A hearing date of January 12, 1984 has been set, but OSHA has requested an acceleration of this date. A copy of the BNA summary is attached for your review.

We will keep you advised as action progresses on this subject.

D. B. Dunham
D. B. Dunham

DES:sal
Attachment



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Current Report

Litigation

APPEALS COURT DELAYS ASBESTOS ETS; OSHA SEEKS TO ACCELERATE HEARING DATE

The U.S. Court of Appeals for the Fifth Circuit Nov. 23 granted the Asbestos Information Association's request for a stay of the Occupational Safety and Health Administration's emergency temporary standard covering occupational exposure to asbestos.

The appellate court's order in *The Asbestos Information Association, et al. v. Occupational Safety and Health Administration, Raymond J. Donovan, et al.* (Nos. 83-4687, 83-4688, 83-4689, 83-4711) bars the agency from lowering the permissible workplace exposure limit for asbestos to 0.5 fibers per cubic centimeter "pending further order of the court."

The three-judge panel in New Orleans set a hearing date of Jan. 12, 1984, and ordered the petitioners and respondent to file simultaneous supplementary briefs by Jan. 3, 1984. Chief Judge Charles Clark and Circuit Judge E. Grady Jolly voted for the stay while Circuit Judge Alvin B. Rubin opposed granting the industry's motion.

On Nov. 28, OSHA petitioned the appeals court to accelerate the timetable, asking that the agency be permitted to file its brief by Dec. 6 while giving AIA until Dec. 9 to submit its supplemental papers to the court. The hearing would be held on Dec. 15, under the schedule sought by OSHA.

OSHA Special Assistant for Public Affairs Doug Clark told BNA that this is an "emergency situation," and the agency is anxious to have it resolved "as quickly as possible" so that the standard can go back into effect. While OSHA is disappointed with the court's action, it is confident that "the court will rule in our favor" when the merits of the case are heard, Clark remarked.

OSHA issued the emergency standard of 0.5 fibers on Nov. 4 requiring employers for the next six months to achieve the reduced exposure level through "any feasible combination of engineering controls, work practices, and personal protective equipment and devices" (Current Report, Nov. 10, pp. 567, 596).

In filing suit against the emergency standard, AIA argued that the rulemaking represented a "precipitous" action based on "the unfounded conclusion that a health 'emergency' exists" under the current two fiber per cubic centimeter standard.