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✓ COURT OF APPEALS DECISION ON ASBESTOS GIVES SOMETHING TO EVERYBODY:

It would be difficult to determine, at first glance, who won what in a major ruling by the U.S. Court of Appeals for the District of Columbia on April 15 on a suit filed by the AFL-CIO's Industrial Union Department and seven international unions in asbestos and related industries. Suffice it to say that both organized labor and the Government won on several key issues, and neither side is claiming victory.

The suit was filed last September by organized labor following the promulgation of the temporary asbestos standard by the Labor Department last July. The suit attacked several provisions in the standard, but the court's ruling went far beyond the issues involved and may have created a precedent which will go beyond occupational health and safety itself and into the entire philosophy of standard setting generally in regulated industries.

The lengthy ruling must be read and analyzed in detail, but here are some of the highlights:

The Secretary's standard called for a delay of up to four years in meeting all of the requirements by industry especially impacted by it. The union appealed this aspect, and the court remanded to the Secretary reconsideration of a blanket four-year delay for all industries in matters of fact and judgment. Distinctions should be made between industries in terms of their ability to comply, it ruled.

It also remanded to the Secretary for reconsideration his ruling that records of employee exposure to asbestos need only be retained for three years. The union had contended that because cancer often does not appear until up to 20 years following exposure, that a three-year record-keeping provision would be inadequate. The court agreed, and remanded it.

On two other points—application of work practices and engineering controls and the amount of employee monitoring required—the court generally sided with labor's position but did not remand the cases back to the Secretary. In each case, the court contended that companies were obliged to continue monitoring and good work practices even though the initial finding indicated they would not exceed the standard.

On other points, however, the court ruled against organized labor and on behalf of the Government. Of particular importance were provisions governing medical examinations and the economic factors to be considered in the standard-setting process.

On medical examinations, the court ruled against labor, which wanted every employee to have the right to be examined by his own physician rather than the company physician for purposes of determining exposure to the standard. The court ruled otherwise, upholding the right of the company to require examinations by its own physicians.

The question of economics also figured prominently, and here the court may have established precedents beyond occupational health. It ruled that the Secretary properly could consider economic factors the capability of a company or industry to meet the standard in determining the feasibility of the standard itself.

"It would comport with common usage to say that a standard that is prohibitively expensive is not feasible," said the court, which made it clear that the ruling applied to an entire industry rather than a single company, adding for purposes of emphasis:

"This qualification is not intended to provide a route by which recalcitrant employers or industries may avoid the reforms contemplated by the Act." The statute makes reference to standards "to the extent feasible."

On one point, both labor and Government are agreed: the standard will remain in effect while the Labor Department carries out the court's ruling.

✓ FIRESTONE CASE BRINGS TO 14 TOTAL OF KNOWN VINYL CHLORIDE TUMORS: 5A-4

Investigators have uncovered the records of a death due to angiosarcoma of the liver in an employee of the Firestone Co. plant in Pottstown, Pa., bringing to 14 the number of known cases in which vinyl chloride is implicated.

As of April 15, here are the totals: Seven cases (including five fatalities) at the B.F. Goodrich plant in Louisville; three fatalities at the Goodyear plant in Niagara Falls, N.Y.; one in the Union Carbide plant in South Charleston, W.Va.; one in the Firestone plant in Pottstown, Pa.; one in Great Britain, one in Norway.

Discovery of the new cases came as the Manufacturing Chemists Association reported the development of angiosarcoma in mice exposed to 50 parts per million, the level of the emergency temporary standard adopted by OSHA for human exposure pending development of a permanent standard.

Industrial Bio-Test Laboratories, Inc., which is conducting the MCA-administered vinyl chloride animal