



John R. Osburn
Portland, Of Counsel

Direct Dial: 503.499.4665
Fax: 503.295.0915
Email Attorney



Jeanne F. Loftis
Portland, Shareholder

Direct Dial: 503.499.4601
Fax: 503.295.0915
Email Attorney

Citing the Lack of a "Daubert" Hearing, U.S. Ninth Circuit Vacates \$10 Million Asbestos Verdict

By John R. Osburn, Jeanne F. Loftis

A three-judge panel of the United States Court of Appeals for the Ninth Circuit vacated a \$10 million jury verdict and remanded *Barabin v. AstenJohnson, Inc.* to a Washington federal district court for a new trial after concluding that the district court should have held a Daubert hearing before permitting an expert witness to offer his "any exposure" theory.

The case involved expert testimony by plaintiff's expert Ken Cohen, and concerns a hotly disputed issue in asbestos litigation—the "any exposure" theory of liability, through which plaintiffs attempt to hold manufacturers liable for increasingly trivial exposures to asbestos. In *Barabin*, there was evidence that Mr. Barabin (who had mesothelioma) had causative exposure to amphibole insulation products, but he and his wife sued, among other defendants, the manufacturer of chrysotile-containing dryer felts that were used at his workplace. The evidence at trial established that exposure to fibers from dryer felts was minimal; nevertheless, plaintiff was allowed to present testimony through Dr. Cohen that any occupational exposure to asbestos, no matter how trivial, was enough to be a substantial contributing factor to Mr. Barabin's disease.

The Ninth Circuit vacated the jury verdict after concluding that the district court should have held a Daubert hearing to assess the scientific methodologies, reasoning, or principles behind Dr. Cohen's "any exposure" theory. The case was remanded to the district court for that hearing and a new trial.