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## Publication

### CONSTRUCTION

## Asbestos in Construction Practice – 2014

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Most plaintiff-oriented experts agree that asbestos was essentially removed from all new construction materials by the late 1970s. Why, then, do contractors and construction-industry materials suppliers still regularly find themselves embroiled in asbestos litigation? The answers are multifold.

First, most states allow plaintiffs to bring their asbestos injury claims within a set period after they become ill, not determined by when they were allegedly exposed. In California, the limitations period does not start to run until the plaintiff is disabled from work due to his or her asbestos injury. It is not at all uncommon for plaintiffs in their 60s and 70s to make claims that they have only recently learned they suffer from asbestosis arising from exposure in the 1950s and 1960s. Further, strict liability theories in most states allow plaintiffs to pursue suppliers of materials in addition to manufacturers. Some plaintiffs' experts opine that the latency period (time between exposure and developing a disease) from some cancers can run as long as 40 years or more.

In private projects, contractors are not insulated from liability by the fact that particular products were specified by the designer or owner. There also is little solace in the fact that all the products of a particular class on the market at the time contained asbestos.

We routinely see contractors sued under theories that they oversaw the daily cleanup on projects or employed the laborers who did the sweeping. The mere act of creating airborne dust in an environment where an asbestos-containing product was used is enough to become embroiled in litigation.

Many in the construction industry have gone through various forms of corporate reorganization. A number of asbestos claims are resolved by fighting off allegations by plaintiffs' attorneys that the current corporate entity is the legal successor to a prior entity. We strongly recommend retaining any documents related to corporate formation – especially anything that would disprove the intent for a later entity to succeed a prior entity.

Due to the exceptionally long latency periods, we also recommend that our construction industry clients retain records of their insurance policies. One major benefit of doing so is that insurance policy issues in the relevant time periods are less likely to contain asbestos exclusions and therefore provide the potential for coverage and/or a defense against spurious asbestos claims.

Litigators nationwide in Gordon & Rees's Construction and Toxic Tort Groups are ready to help with any asbestos claims or questions you may have.

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