



## California Workers' Compensation Institute

1333 Broadway Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763-1592

September 24, 2015

Significant Decision 15-03

**MELENDREZ V AMERON**  
**COURT OF APPEAL SECOND APPELLATE DISTRICT**  
**B256928, 259523**  
FILED SEPTEMBER 17, 2015

**The Court of Appeal upholds the exclusive remedy bar for an employee with substantial exposure to asbestos and discounts that the employee was also a casual consumer of the products.**

**SIGNIFICANCE:** The Court of Appeal rejected Plaintiff's argument that the employer should be shielded by exclusivity for the use of products by a consumer, as they asserted the decedent was, in addition to being an employee.

**FACTS:** Decedent worked for the employer for 24 years, where he was exposed to asbestos in the manufacture of pipe products. In 2011 the employee died of asbestos-related mesothelioma. Decedent's dependents filed a wrongful death claim in superior court alleging workplace exposure and exposure to the products as a consumer.

Both the trial court and the DCA rejected this attempt to circumvent the exclusive remedy rule. The Court of Appeal also awarded the defendant expert witness fees as costs.

**HOLDING:** The court ruled that whenever the substantial cause of an injury is work related, the exclusive remedy rule applies.

**DISCUSSION:** The court reasoned that the two exposures did not establish separate injuries.

*"It is undisputed that Melendrez's exposure to asbestos in his employment with Ameron substantially contributed to his mesothelioma. Therefore, under the contributing cause standard applicable in workers' compensation law, his mesothelioma is covered by workers' compensation, and his separate exposure at home does not create a separate injury outside workers' compensation coverage. Thus, plaintiffs' lawsuit is barred by workers' compensation exclusivity."*

The court also cited the recent Supreme Court holding in *South Coast Framing* to explain the industrial causation standard used to bring injuries within the coverage of workers' compensation.

Had the court agreed that a casual consumer of the employer's products could state a cause of action in civil court as well, it would have created a significant exception to exclusive remedy and further muddied the waters between workers' compensation and civil liability.