



 Jon / Wednesday, January 3, 1996 / Categories: [Asbestos/Mesothelioma](#), [Vinyl Chloride & Cancer](#), [Workers' Compensation](#)

# Court Upholds Asbestos Award - Custodian died after exposure

Asbestos Litigation

In a decision that could open the doors to lawsuits by employees harmed by exposure to secondhand smoke or other indirect hazards in the workplace, an appeals court

Tuesday upheld benefits for a West Milford custodian who died of cancer after exposure to asbestos in a school.

Unlike shipbuilders and others in the asbestos industry who have won awards in the past for injuries sustained while working directly with the carcinogenic material, Lawrence Whritenour of Butler was sweeping and buffing classroom floors when he was exposed to asbestos, his lawyer said. "The more I think of this case, the more I think it's going to have an impact on tobacco litigation," his lawyer, [Jon L. Gelman](#) said. "He's a custodian. He's not an employee who worked with the product directly or manufactured the product directly. He was a bystander."

The case was argued before Judges James M. Havey and Dennis J. Braithwaite of the state Superior Court's Appellate Division. Tuesday's decision upholds a judge's award of more than \$218,000 to Whritenour in workers' compensation and medical expenses. Whritenour, a cigarette smoker for more than 30 years, worked at several township schools from Jan. 1, 1980, until April 23, 1991, when it was discovered that he had cancer. He died in August at the age of 62 while the matter was under review. The cancer began in his lungs and traveled to the rest of his body, and his lawyer argued that its cause was asbestos.

But William F. Perry, a lawyer defending the school district, said there was no evidence that asbestos exposure caused Whritenour's disease. Perry may ask the Appellate Division to reconsider the case.

"I don't think he had any longterm exposure," said Barbara Mortimer, the school district's business administrator. Mortimer said Whritenour had been exposed only for a matter of weeks while asbestos was removed from the school property.

Although the opinion would not be binding on other appeals courts or lower courts, the decision sheds light on an evolving area of the law regarding environmental hazards in the workplace, Gelman said.

Last month, in what may be the first award of benefits for a secondhand smoke claim, a federal Department of Labor claims examiner awarded death benefits to the husband of a Veterans Administration nurse who claimed she had contracted lung cancer while caring for mentally ill patients. Likewise, Tuesday's holding could invite claims by others who were exposed indirectly to asbestos, radon, tobacco smoke, or other hazards, Gelman said.

But Perry said he doubted the ruling will have broader consequences. Arguing that the award should be overturned, Perry said there was no evidence that Whritenour's exposure to asbestos contributed to his death any more than cigarette smoking did.

Perry said he received no more exposure to asbestos than anyone else in his generation who attended school in buildings where the substance was often used as fire retardant insulation.

Although Whritenour had admitted smoking 1½ packs of cigarettes daily for 34 years, a workers' compensation judge in Paterson found that Whritenour's exposure to asbestos had likely contributed to his lung cancer - particularly during the summer of 1985. That year, Whritenour went about his rounds while a private contractor ripped out asbestos at some of the township's schools. Whritenour stripped and waxed floors on one side of a canvas curtain, while the asbestos was being removed on the other.

With Tuesday's decision, Whritenour's widow, Patricia, will be entitled to additional dependent benefits over the course of her life, Gelman said.

"We're pleased that he's been vindicated," said Patricia Whritenour, but she said she didn't know what she could say to skeptics who might blame her husband's death on cigarettes.

"I don't think he really knew what it could do to him," she said.

The Whritenours, who had three adult children and seven grandchildren, would

have been married 40 years in February.

Mortimer said the decision would likely have an impact on insurance premiums, which had been dropping, but she couldn't estimate what the additional cost might be.

The Record Wednesday, January 3, 1996

By FREDRICK KUNKLE Staff Writer

[Whritenour v. West Milford Board of Education](#), 676 A.2d 1094 (NJ Sup. Ct. App. 1996), Cert. denied. 144 N.J. 379, 676 A.2d 1094 (NJ 1996).

Attorney Advertising

Prior results do not guarantee a similar outcome.

[Disclaimer](#)

[Download Adobe Reader](#)

---

Tags: [asbestos](#) [workers compensation](#) [asbestos litigation](#) [bystander exposure](#) [custodian](#) [bystander](#)

[secondhand tobacco smoke](#)

---

**Court upholds asbestos award**  
*Custodian died after exposure*

**By Frederick Kunkle**  
Staff Writer

In a decision that might open the door to lawsuits by custodians and other workers who have been exposed to asbestos, the Appellate Division of the New Jersey Superior Court has ruled that a custodian who died after exposure to asbestos in a school building was entitled to workers' compensation benefits. The court's decision, which was handed down last week, is the first time a New Jersey court has ruled in favor of a custodian who has died after exposure to asbestos in a school building.

The case involves the death of a custodian who worked for the West Milford Board of Education. The custodian died after exposure to asbestos in a school building. The court ruled that the custodian was entitled to workers' compensation benefits because he was exposed to asbestos while performing his duties as a custodian.

The court's decision is significant because it establishes that custodians are entitled to workers' compensation benefits if they are exposed to asbestos while performing their duties. This decision could lead to more lawsuits by custodians and other workers who have been exposed to asbestos in school buildings.