

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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October 26, 2006

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**Re: *Roberts v. Speakman*
C.A. No. 01C-08-225-ASB**

Dear Counsel:

As you know, Speakman Company (“Speakman”), presented its motion for summary judgment to the Court on September 11, 2006. At the conclusion of oral argument, the Court reserved decision on the motion and requested that the parties present supplemental briefing to address specifically the state of Speakman’s knowledge regarding the hazards associated with asbestos at the time of the plaintiff’s alleged exposure. The Court received the supplemental submissions on September 20, 2006 and October 1, 2006. To follow is the Court’s decision on Speakman’s motion.

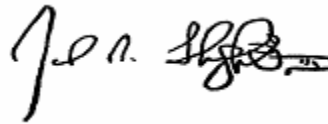
At oral argument, plaintiff’s counsel represented that Speakman had actual

knowledge of the hazards of asbestos at or prior to the plaintiff's alleged exposure to asbestos-containing products distributed by Speakman. Under such circumstances, the Court noted that Speakman's "mere supplier" defense likely would not be dispositive since this defense would not apply if the supplier actually knew that the product it was supplying was hazardous.¹ After reviewing the information contained in the supplemental submissions, the Court is satisfied that plaintiff has presented record evidence which, when viewed in a light most favorable to him as the non-moving party, suggests that Speakman knew of the hazards of asbestos as early as 1973 and, perhaps, prior to that.²

Vel non Speakman is entitled to a "mere supplier" instruction at trial will be determined at the close of the plaintiff's case. For now, the Court is satisfied that plaintiff has established sufficient facts in the record to create a genuine issue as to whether Speakman knew or should have known of the hazards of asbestos at the time of or prior to plaintiff's alleged exposure. Accordingly, Speakman's motion for summary judgment must be **DENIED**.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph R. Slights, III". The signature is written in a cursive, somewhat stylized font.

Joseph R. Slights, III

JRS, III/sb

¹ See Restatement (Second) of Torts, § 402.

² See A 14-16, 19-20, 21-25, attached to plaintiff's answering brief.