

News

Texas Jury Returns \$3M Plaintiff Verdict Against Kelly-Moore, Georgia-Pacific

Case name: Juana D. Newman, individually and as personal representative of Joe K. Newman, deceased, v. Aqua-Chem Inc., et al.

Case number: 02-10140E

Court: Dallas Co. Ct. at Law No. 5

Judge: Mark Greenberg

Verdict / Settlement (breakdown): \$3 million plaintiff verdict: The jury awarded \$2 million in compensatory damages and \$1 million in punitive damages, \$500,000 each against remaining defendants Georgia-Pacific Corp. and Kelly-Moore Paint Co. Georgia-Pacific was held 25 percent liable with Kelly Moore responsible for the remaining 75 percent.

Sources said the award would likely be reduced by set-offs resulting from the \$3.3 million in payments the Juana D. Newman received from prior settlements.

Plaintiff(s): Joe K. Newman, deceased, Juana Newman

Defendant(s): Georgia-Pacific and Kelly-Moore were the only remaining defendants at trial.

Date: Aug. 29, 2005

Claim (disease): Mesothelioma

Defense: Chrysotile and exposure to asbestos insulation products

Background: Juana Newman alleged that Joe Newman was exposed to a number of asbestos products while employed as an insulator and had bystander exposure to drywall work. Newman alleged exposure to a number of products, including Georgia-Pacific joint compound and Kelly-Moore's Paco joint compound.

Plaintiff experts: Arnold Brody, Ph.D., pathologist, Tulane University, New Orleans; Edwin Holstein, M.D., occupational medicine, Boston; John Maddox, M.D., pathologist, Newport News, Va.

Defense experts: William Dyson, Ph.D., industrial hygienist, Greensboro, N.C.; Charles Weaver, memory expert, Waco, Texas

Plaintiff attorneys: David C. Greenstone, Jay Stuemke, Waters & Kraus, Dallas

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Defense attorneys: Kelly-Moore — Todd Wade, Brown McCarroll, Austin, Texas; Stephen Foley, Foley & Mansfield, Walnut Creek, Calif. Georgia-Pacific — Brent Karren, Bailey Crowe & Kugler, Dallas; Mark Phillips, Nelson Mullins, Nelson Mullins Riley & Scarborough, Charleston, S.C.

Key related documents: **Jury Instructions and Verdict Sheet in Section A.** Document #01-050921-104V. ■

California Jury Clears DaimlerChrysler In Asbestos Brake Case

Case name: Ernest Lantz and Malle Lantz v. DaimlerChrysler Corp.

Case number: 436967

Court: Calif. Super., San Francisco Co.

Judge: Kevin McCarthy

Verdict / Settlement (breakdown): Defense verdict: The jury found that there was no defect in DaimlerChrysler Corp.'s brake lining products by a 10-2 vote. The jury also held that the brake linings did not fail to perform as an ordinary customer would have expected. The jury voted 12-0 that DaimlerChrysler was not negligent in failing to warn Ernest Lantz regarding its brake products.

Plaintiff(s): Ernest and Malle Lantz

Defendant(s): DaimlerChrysler Corp.

Date: Aug. 31, 2005

Claim (disease): Mesothelioma

Defense: Chrysotile. Lantz's disease was caused by exposure to amphibole asbestos while employed at Hunters Point Naval Shipyard and not to its products. Mechanics are not at an increased risk for developing mesothelioma, but shipyard workers are.

Background: Lantz alleged that his mesothelioma was caused by exposure to asbestos in DaimlerChrysler Corp.

brake linings while he was employed as a parts helper and assistant mechanic from 1943 to 1944. Lantz alleged that he grinded, drilled and riveted asbestos brake linings, often for eight hour a day, while performing brake relinings on DeSoto taxi cabs at the Plymouth DeSoto dealership.

Plaintiff experts: Barry Castleman, Sc.D., state of the art, Baltimore; Barry Horn, M.D., pulmonologist, Berkeley, Calif.; Samuel Hammar, M.D., pathologist, Bremerton, Wash.; Arnold Brody, Ph.D., pathologist, Tulane University, New Orleans; Richard Hatfield, dust sampling, Norcross, Ga.; Allan Smith epidemiologist, Berkeley; Barry Ben-Zion, Ph.D., economist, Sonoma, Calif.

Defense experts: Morton Corn, Ph.D., industrial hygiene, Baltimore; Andrew Churg, pathologist, Vancouver, British Columbia; Dennis Paustenbach, Ph.D., D.I.H., DABT, San Francisco; Mary Jane Teta, Ph.D., epidemiologist, Danbury, Conn.

Plaintiff attorneys: Deborah F. Schweizer, Clapper & Patti, Sausalito, Calif.

Defense attorneys: James J. Ostertag, Ronald F. Lopez, Evan C. Nelson, Thelen Reid & Priest, San Francisco

Key related documents: **Verdict Sheet in Section C.** Document #01-050921-109V. ■

Texas Jury Returns Defense Verdict; Settlement Reached

Case name: Susan Ingraham v. Garlock Sealing Technologies LLC

Case number: GN1-02642

Court: Texas Dist., 201st Dist., Travis Co.

Judge: Suzanne Covington

Verdict / Settlement (breakdown): Defense verdict: The jury returned a verdict for Garlock Sealing Technologies. After the jury announced that it had reached a verdict, the parties reached a confidential settlement.

Plaintiff(s): Susan Ingraham

Defendant(s): Garlock Sealing Technologies

Date: Sept. 13, 2005

Claim (disease): Mesothelioma

Defense: Low-dose, chrysotile defenses

Background: Carl Ingraham's wife, Susan, alleged that he died as a result of mesothelioma contracted by exposure to asbestos from Garlock gaskets and packing material while serving as a boiler tender in the U.S. Navy from 1961 to 1965. Ingraham alleged marketing defect and negligence.

Plaintiff experts: Richard Lemen, Ph.D., epidemiologist, Atlanta; Hector Battifora, M.D., pathologist, Los Angeles; Arthur Frank, M.D., Ph.D., occupational medicine, University of Texas Medical School, Tyler, Texas

Defense experts: Carl Mangold, certified industrial hygienist, Seattle; Richard Thomas, Ph.D., Texas; Allan Feingold, M.D., pulmonologist, Miami

Plaintiff attorneys: Rick Nemeroff, Nemeroff Law Firm, New York City; Scott Hendler, Hendler Law Firm, Austin, Texas; Christian Hartley, Richardson, Patrick Westbrook & Brickman, Chicago

Defense attorneys: Ray Harris, Cary Schachter, Schachter Harris, Dallas; Shelly Levick, Segal, McCambridge, Singer & Mahoney, Austin, Texas

Key related documents: none ■

Report: Cancer Claims Could Double FAIR's Estimated Liability

WASHINGTON, D.C. — Asbestos trust fund legislation currently before the Senate could create as much as \$300 billion in entitlements, an estimate that would leave the fund with at least a \$160 billion shortfall, according to a report released Sept. 19.

(Report in Section E. ■ Document #01-050921-118X.)

The report, "The Analysis of S. 852 Fairness in Asbestos Injury Resolution Act," issued by economic consulting firm Bates White LLC, says Senate Bill 852, the Fairness in Asbestos Injury Resolution Act (FAIR), would create two categories of claimants that are not included in the current litigation and would thus threaten the financial viability of the fund.

The report claims that the fund would see a tenfold increase in claims from people with lung cancer and other cancers who are not currently being compensated for their asbestos exposure. In addition, claimants who had settled with some but not all defendants would be allowed to recover the difference between their settlement amount and the amount they could collect under the fund, the report says.

\$45B Debt

After taking these two factors into consideration, the report estimates that FAIR would sunset after three years with a debt of more than \$45 billion.

The report also points to four factors that could increase the fund's entitlement to \$695 billion. First, the fund says very few people who develop cancer actually go to trial because their claims are often not viable in the tort system. The report says 3.5 million people with the necessary occupational exposure to meet FAIR criteria will develop cancer between 2001 and 2055. These claims, which may not ordinarily be viable litigation cases, would be compensable under FAIR, the report says.

Further, the report claims that between 27 million and 34 million people would be able to meet the occupational exposure criteria under the bill. If the upper limit of that estimate is reached, the report says another \$90 billion in entitlements would be added to the fund.

Additionally, if family members are eligible under FAIR, it could add another \$45 billion based solely on the additional lung and other cancer claims.

CBO Report

The report is critical of the recent Congressional Budget Office (CBO) report that estimated claims

in a wide range generally around the amount of funding expected for FAIR. The Bates White report says the CBO estimate incorrectly assumes that cancer claims would continue to be filed at the same rate as they currently are. Such an assumption would require 85 percent of all lung and other cancer claims not to collect their \$500,000 entitlement, the report says.

The report was released at the Mealey's National Asbestos Litigation Conference in Philadelphia. ■

Judiciary Approves Subpoena Powers For FAIR Funding

WASHINGTON, D.C. — The Senate Judiciary on Sept. 8 gave its leaders the power to subpoena information from companies regarding how much they would pay into the asbestos trust fund currently before the bill becomes law, sources told Mealey Publications.

Although the unanimous vote gives Sen. Arlen Specter, R-Pa., the bill's sponsor, and Sen. Patrick Leahy, D-Vt., the power to subpoena information from companies, sources said judiciary leaders are not sure if they will use the power.

FAIR, the Fairness in Asbestos Injury Resolution Act of 2005 (FAIR), passed out of the Senate Judiciary Committee on May 26 by a 13-5 vote, but several senators who voted for the bill said they could not support it on the Senate floor without substantial changes.

Although the bill calls for the creation of a \$140 billion trust fund, one of the sticking points has been the lack of disclosure about how much individual companies would pay into the fund, sources said. Specter has complained about the lack of disclosure in the past, saying it has made the judiciary's job more difficult.

The Congressional Budget Office (CBO) recently announced that the fund would likely see \$120 billion in valid claims submitted to it over the next 30 years.

In a report seen as having both good and bad news, the CBO went on to say that although collected revenue would amount to around \$140 billion, the initial onslaught of cases combined with payout rates, borrowing and other factors could leave the fund with insufficient resources to pay all of its claims. ■

Asbestos Claims Trust Bars Reports By 9 Doctors, 3 Companies

FALLS CHURCH, Va. — One of the oldest trusts set up to compensate people who were exposed to asbestos announced Sept. 12 that it will no longer accept medical reports prepared by nine doctors and three screening companies.

(Letter in Section B. ■ Document #01-050921-108X.)

In a letter announcing the move, David Austern, president of the Claims Resolution Management Corp. (CRMC), said the group would stop accepting the reports of 11 doctors or facilities based on legitimate challenges that were raised in the silica MDL. Acceptance of the reports would be suspended pending the outcome of federal grand jury and congressional investigations into the matter, Austern said.

The challenges were raised in MDL 1553, presided over by U.S. Judge Janis Jack of the Southern District of Texas. Judge Jack said the diagnoses in the cases before her appeared to be driven by "neither health nor justice; they were manufactured for money." Judge Jack went on to say "it is clear that lawyers, doctors and screening companies were all willing participants."

'Great Red Flags Of Fraud'

Testimony in the case revealed that more than 60 percent of the plaintiffs in the MDL had also been asbestos claimants in Manville Trust, yet their diagnosis of silicosis omitted any reference to their having asbestosis. At one point, Judge Jack commented that the testimony raised "great red flags of fraud."

Austern said that in the two months since Judge Jack's ruling, the CRMC has received no information or