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COURTROOM NEWS

Date: 27 January 2005

Texas Judge Awards Garlock Summary Judgment, Finds Fiber Burden Studies Inadmissible

EL PASO, Texas — A Texas judge has awarded Garlock Sealing Technologies summary judgment in a mesothelioma lawsuit, rejecting the plaintiffs' attempts to use fiber burden studies to prove causation. *Pearson v. Garlock Sealing Technologies, et al.*, No. 2001-297 (Texas 327th Dist. Ct., El Paso Cty.).

The Jan. 25 decision by Judge Linda Y. Chew of the Texas 327th District Court for El Paso County follows up a previous decision awarding Garlock partial summary judgment. That decision rejected the plaintiffs' use of epidemiological testimony linking chrysotile and peritoneal mesothelioma, sources said.

In the same order, Judge Chew also denied the plaintiffs' motions for summary judgment as to Hoffmann-La Roche and Aqua Chem; denied the plaintiffs' motion to strike various testimony; and carried Hoffmann-La Roche and Aqua Chem's motions for summary judgment, stating that the motions may be reconsidered in the form of a directed verdict.

Sources indicated that other defendants in the lawsuit had settled for an estimated \$20 million.

Plaintiff Arlene Pearson brought the action on behalf of herself and as the personal representative of the family of Douglas Kwasnik. Pearson claimed Kwasnik's work as a steamfitter for more than 20 years required him to use defendant Garlock's gaskets, causing him to develop peritoneal mesothelioma.

Sources said that previously the court had partially granted Garlock's motion to exclude evidence that workplace exposure to chrysotile causes mesothelioma. In that order, the court found that the plaintiffs failed to satisfy admissibility standards outlined in *Merrell Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706 (Texas 1997). The Court specifically precluded the plaintiffs from calling an epidemiologist to testify that chrysotile or tremolite-contaminated chrysotile causes peritoneal mesothelioma.

Judge Chew then granted Garlock's subsequent motion for summary judgment, rejecting the plaintiffs' efforts to prove causation with additional evidence, including fiber burden studies.

The plaintiffs are represented by Peter Kraus, Scott Kruka, Rhonda Sullivan-Cleaves and Jeffrey Simon of Waters & Kraus in Dallas.

Garlock is represented by Cary Schachter of Schachter Harris in Dallas and Joe A. Spencer of the Law Offices of Joe A. Spencer.