

[Products Liability Law Daily Wrap Up, TOP STORY—ASBESTOS—M.D. N.C.: Verdict and \\$32.7M award against pipe insulation company for mesothelioma death stand, \(May 2, 2019\)](#)

Products Liability Law Daily Wrap Up

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By Leah S. Poniatowski, J.D.

The court could not be persuaded to dismiss the jury's determinations in light of "compelling and virtually uncontradicted" evidence of the company's liability.

A company that sold insulated pipe containing asbestos was unsuccessful in its request for judgment as a matter of law, or, in the alternative, a new trial following a jury's finding that the company was liable on negligence and failure to warn claims and its awarding of \$32.7 million in damages to the widow of a deceased worker whose death from mesothelioma was alleged to have been caused by his exposure to the company's asbestos-containing products, a federal district court in North Carolina ruled. The court found that the widow presented sufficient evidence to support the jury's finding that the company sold asbestos-containing insulation products to the plant where the decedent worked at a time when the company knew those products were dangerous to human health, that the company did not warn users then or thereafter of those dangers, that the decedent had worked in close proximity to the pipe covering for many years on a daily basis, under circumstances which created asbestos dust, and that the exposure caused his mesothelioma and death. As such, the company was not entitled to judgment as a matter of law. Further, the damages award was not excessive given the evidence, and the company failed to persuade the court that the jury was inflamed by passion or prejudice (*Finch v. Covil Corp.*, May 1, 2019, Eagles, C.).

The decedent had worked at a Firestone plant in North Carolina during the 1970s through the mid-1990s. During that time, he worked, on a daily basis, on and around the tire presses in the curing room and the insulated steam pipes leading to and from the presses. Many years after his retirement in 1996, he was diagnosed with mesothelioma and died 10 months later at age 78. His widow alleged that the cancer was caused from his exposure to asbestos in pipe insulation sold to Firestone by Covil Corporation. She filed a lawsuit against Covil for wrongful death premised on negligence and failure-to-warn claims. The jury returned a verdict in her favor and awarded her \$32.7 million in damages. Covil filed the present motions for judgment as a matter of law and a new trial. Covil asked the court to set aside the verdict and grant it judgment as a matter of law because, it argued, the widow did not present sufficient evidence in support of the verdict on liability. In the alternative, Covil asked for a new trial based on the "cumulative effect" of what it claimed were erroneous evidentiary rulings and jury instructions, improper arguments to the jury by the plaintiff's counsel, and the excessiveness of the jury's verdict. In addition, in the event that the court denied its motion for a new trial on damages, Covil sought remittitur.

Evidence of exposure. The court agreed that the evidence presented at trial was more than sufficient to support the jury's finding that the decedent had been exposed to the company's asbestos-containing product. First, it was practically undisputed that Covil provided all of the pipe insulation used when the plant was constructed in 1973. Business records and other evidence showed that the insulation products contained asbestos, and Firestone removed over 7000 feet of material or pipe insulation in 1990 from the area where the worker was stationed as part of asbestos abatement. Strikingly, Covil did not proffer any evidence to rebut the presumption that its insulation contained asbestos, only offering the testimony that its sales records had been destroyed in a fire in 1973. The court observed that the widow was able to provide sales receipts from 1974 showing Covil continued to provide insulation to Firestone.

Moreover, the widow offered evidence that during his 20 years at the plant, the worker worked in close proximity to the insulation, often repairing the pipes and being exposed to the dust and debris from removing and reinsulating the pipes. The worker's doctor opined that the exposure to the insulation was sufficient to cause mesothelioma. The court was not persuaded by Covil's attempt to refute causation, observing that the company misstated the applicable exposure test and mischaracterized the record.

Warnings. The court also held that the widow provided ample evidence that Covil failed to warn of the dangers of its asbestos-containing products. Covil's own witness testified that the company, as early as the mid-1960s, was aware of the hazards and risk of mesothelioma from asbestos exposure. Further, federal regulations in 1971 and thereafter mandated warning labels, and Covil's president had copies of these regulations. However, according to the evidence, this information was not provided to Firestone workers until the later 1980s, and the worker testified by deposition that he had no idea of the dangers of asbestos until around 2010. There was no evidence that Covil had a safety-protocol or other documented warning until the late 1980s.

Covil's argument that it was absolved of liability because Firestone failed to warn its employees was incorrect as a matter of North Carolina law. Under North Carolina law, the seller of a product generally does not discharge its duty to directly warn a reasonably foreseeable user or claimant by warning an intermediary, such as Firestone. Furthermore, the one specific statutory exception to the law did not apply here, the court said. Accordingly, the jury's determination was reasonable in light of the evidence presented and Covil's motion for judgment as a matter of law was denied.

Trial proceedings. Covil additionally sought a new trial based on the court's evidentiary rulings, the widow's statements and arguments, and the jury instructions from the trial. The court rejected the request. With respect to the evidentiary rulings, the court determined that the purported errors were not sufficient to merit a new trial because the liability verdict was consistent with the clear weight of the evidence. Covil asserted that the widow's counsel made improper statements to the jury, but Covil largely failed to object in a timely fashion and its objections were properly addressed at trial. Finally, Covil did not demonstrate that the instructions provided to the jury were erroneous or that an error impacted the verdict. The complaint listed "negligence" as the first cause of action and the general negligence issue was properly presented to the jury. The proximate causation question was reasonable and sufficient in light of the factual differences between the controlling precedent and the case at bar, the court explained. Consequently, the company's contentions did not support granting a new trial.

Damages. The court further held that the \$32.7 million damages award was not excessive or the product of passion or prejudice. The court noted that the widow's evidence was "compelling and virtually uncontradicted," and that Covil had the full and fair opportunity to present its case at trial. The jury was better situated than a single judge to determine the value of the damages, especially in light of the challenge of giving a value to pain and suffering. Further, the court could not hold that the award was excessive as a matter of law if there was no proof of passion or prejudice. The strong health of the worker before he fell ill, the extreme painfulness of mesothelioma, the constant schedule of medical procedures and loss of quality of life, and his closeness to his family were compelling proof of the worker's value to his family. Additionally, there was no evidence that there was anything improper in giving the instructions to the jury. The remaining arguments proffered by Covil were unsupported by North Carolina law. Therefore, the company's requests for a new trial or remittitur were not granted.

The case is No. [1:16-CV-1077](#).

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Companies: Covil Corp.; McNeil Ohio Corporation, Inc.

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