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- RT Vanderbilt Loses Second Mesothelioma Suit

ACTS FACTS

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R.T. VANDERBILT LOSES SECOND MESOTHELIOMA SUIT

Products Liability Reporter, Leonard M. Ream Law Center, Johnny Franklin v. R.T. Vanderbilt Docket No., 04-CI-00274 & depositions of Paul Vanderbilt, Thomas Rogers, and other trial materials

Johnny Franklin, husband of Flora Franklin, sued RT Vanderbilt under product liability negligence. In 2005, Flora Franklin died from malignant mesothelioma at age 68 after suffering from this disease for a year and a half. She worked as a tile sorter at Florida Tile in Lawrenceburg, Kentucky. Florida Tile used millions of pounds of RT Vanderbilt talc over the years and the dust was everywhere in the plant according to testimony from the Plant Manager and other workers. A Kentucky OSHA inspector also testified that when he measured the dust in the air, he identified tremolite asbestos in the talc.

Evidence at trial demonstrated that Johns-Manville, a large asbestos manufacturer, specifically tested RT Vanderbilt's product in the 1970s and determined the talc was asbestos-containing. And a 1980 NIOSH (National Institute for Occupational Safety & Health) study also found the talc contained tremolite and anthophyllite asbestos.

The Trial Court sanctioned RT Vanderbilt for repeatedly failing to turn over court ordered documents and produce individuals for depositions. Specifically, the court ordered the Chief Financial Officer to be deposed regarding the possibility of misconduct, but RT Vanderbilt refused to produce this witness for a deposition in direct and blatant violation of the Trial Court's order. RT Vanderbilt also ignored the Court's order to turn over internal documents regarding its own employees suffering from asbestos-related diseases, including malignant mesothelioma and they failed to comply with the court order to reveal the amount of money RT Vanderbilt has spent to try to have other laboratories and researchers classify its talc as a non-asbestos containing product.

The owner of the talc mines, Hugh Vanderbilt Sr., sent his son, Paul Vanderbilt, to oversee their defense team's jury selection process. In a surprise move, Plaintiff's Attorney, Joe Satterley, subpoenaed him while he was there. Paul Vanderbilt is Vice President, Secretary, and director of Environmental Affairs for RT Vanderbilt. Yet at trial, he testified that he had no knowledge of the number of his workers who developed asbestos-related diseases nor did he seem to have an interest in environmental safety. Joe Satterley's final question to Paul Vanderbilt and his answers were:

Q. Final question: You'll agree that if it is determined that your product kills people, causes mesothelioma, and product should be banned from sale in the United States, correct?

A. If it causes mesothelioma, yes.

Q. It should be banned, right?

A. Yes.

PROOF POSITIVE. Lawyer Satterley was also able to demonstrate to the jury using posters showing enlarged pictures of the fibers taken under the microscope by his experts, that the same kinds of fibers known to be in RT Vanderbilt talc were also present in Mrs. Franklin's lungs.

DRAMATIC TESTIMONY. Stunning evidence was presented by Thomas Rogers, a 72 year old former employee of RT Vanderbilt with a 10th grade education. He had worked 27 years for RT Vanderbilt as a miner, a mechanic, and in many other jobs. Rogers was asked about an incident that happened sometime in the late 70s or early 80s after a NIOSH study found that the ore contained asbestos, a fact which could have put them out of business. The jury heard testimony from Rogers that Hugh Vanderbilt, Sr., stated he would spend millions to fight the classification of the fibers in the talc as asbestos and if that was not successful, he had a Senator in his hip pocket. In Rogers' own words in deposition:

A. *Well, they was having quite a spell on whether that [the talc] was going to be called asbestos or not and, of course, they had their own labs I guess and they was testing against NYAS [sic. NIOSH] and he [Hugh Vanderbilt] said that in the end if all else failed he padded [patted] his back pocket he says, I got a Senator right here.*

Rogers also said that the researchers from the labs that RT Vanderbilt used to defend their talc were supposed to come to the mines without notifying people in advance and take samples at any locations they thought appropriate. But Rogers says it was management that told the workers where to take the samples and to give them to the researchers. This is consistent with the information I have from the first successful lawsuit (see below), in which researchers for the 1980 NIOSH study and other researchers observed that the asbestos occurs in pockets scattered throughout the ore. By carefully selecting samples, it would be possible to get ones that were asbestos-free.

THE DECISION. The jury awarded \$5,659,000 in total damages to Franklin. Those damages included \$5,000,000 in pain and suffering, \$20,000 in medical expenses incurred, awarded punitive damages and found in clear and convincing evidence of fraudulent concealment and gross negligence in the amount of \$450,000. The awards to the Franklin estate were reduced by 30% to reflect the jury's allocation of fault. They found RT Vanderbilt 70% at fault and a few other defendants (Ford Motors for brake linings, Georgia Pacific for joint compound used in the house, etc.) were found jointly responsible for the other 30%. After the apportioning fault, the court entered judgement against RT Vanderbilt totaling \$4,090,000. The date of the verdict was September 10, 2007.

RT Vanderbilt moved for a new trial and a Judgement notwithstanding the verdict. The Trial Court, after extensive arguments and hearing on the matter, denied RT Vanderbilt's post-trial motions.

THE FIRST SUCCESSFUL LAWSUIT. The Flora Franklin lawsuit was the second successful suit against RT Vanderbilt. Earlier, on November 16, 2006, the estate of a New Jersey pottery shop operator who had used RT Vanderbilt talc and who died of mesothelioma in 2004, was awarded \$3.35 million in compensatory damages by a Superior Court jury in New Brunswick. The jury awarded \$1.4 million for pain and suffering, \$1.45 million for loss of earnings and \$500,000 for his widow's loss of companionship. On December 7, the punitive damage phase of the trial ended in a settlement of an additional confidential sum. (See also *ACTS FACTS* 12/06)

SUMMARY. Many studies of this talc have determined that it contains asbestos, and now two juries have decided it causes mesothelioma. According to Paul Vanderbilt's own testimony, it should be banned. And RT Vanderbilt has announced they will close their mines at the end of this year. Since mesothelioma has a latency period of between 20 and 40 years after exposure, we can be sure this is not the last of these trials against RT Vanderbilt.
