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LAW

Asbestos Case Jury Awards $26.3 Million

By Wayne E. Green
And Milo Geyelin
Staff Reporters of The Wall Street Journal

A federal jury awarded damages of $26.3 million against Owens-Corning Fiberglas Corp. after finding that an asbestos product it once made damaged the health of a retired insulation worker.

The verdict, by a jury in the Virgin Islands, is believed to be one of the largest ever awarded in an asbestos case to a single plaintiff.

Owens-Corning, a building-products concern based in Toledo, Ohio, is one of several former asbestos-product manufacturers facing thousands of suits claiming health damage from past exposure to the products. Large verdicts previously have been issued in class actions sometimes involving hundreds of asbestos plaintiffs.

LEGAL BEAT

But plaintiffs' attorneys say the size of the current award to one claimant is likely to increase pressure on Owens and other asbestos defendants to settle cases. Several other companies did settle out of court in this suit, but Owens-Corning decided to try the case.

"The verdict is large enough that Owens is going to have to reassess how they handle these cases," said Joel H. Holt, a Christiansted, St. Croix, attorney for the plaintiff, William R. Dunn.

A spokesman for Owens-Corning said the company resolves 99% of its asbestos cases prior to verdict, but asserted that the plaintiff failed to make a "reasonable" request. "We're very, very comfortable that this verdict [will] be reversed on appeal," the spokesman said. He asserted that Mr. Dunn's attorneys also realize that and settlement negotiations are under way.

Mr. Dunn, who lives in the Virgin Islands, worked for 30 years installing insulation in commercial projects in Texas, Colorado, Illinois and the Virgin Islands. Now 57, he suffers from asbestosis, a progressive hardening of the lungs. He alleged in his suit that a cause of his asbestosis was exposure to an asbestos product sold under the brand name Kaylo.

Kaylo was used to insulate pipes, boilers and other facilities. Owens-Corning stopped manufacturing Kaylo in 1972.

Paul Minor, a Biloxi, Miss., attorney who also represented Mr. Dunn, said the suit alleged that Owens-Corning knew Kaylo was dangerous but for years failed to put a warning label on the product. When it subsequently attached a label, the warning was inadequate, the suit asserted. The jury awarded Mr. Dunn $1.3 million in compensatory damages and $25 million in punitive damages.

The judgment was approved by federal Judge Constance Baker Motley of New York who was sitting as a visiting judge in St. Croix.

* * *

JOB BIAS LAWSUIT filed by recovering alcoholic goes to trial.

Set for trial this week in federal court in Columbus, Ohio, the case highlights what promises to become a growing area of litigation for employers: whether alcoholics and drug abusers in the workplace should be afforded the same civil rights as the handicapped.

Debi Eyerman, a former national sales director for Mary Kay Cosmetics, contends that she was discriminated against when she was fired two years ago because of alcoholism.

High courts in Ohio and at least four other states—Iowa, Minnesota, New Jersey and Wisconsin—have ruled that drug abuse and alcoholism are physical disabilities that fall within the legal definition of "handicapped." In those states employers are required to make reasonable accommodations to drug-dependent employees before firing them. In 27 other states, civil-rights advocates say existing legislation also protects alcoholics and drug addicts.

Mrs. Eyerman, who sued Mary Kay in 1988, argues that her former employer knew about her alcoholism as early as September 1983 but did nothing to help her obtain treatment.

She alleges she was fired after being arrested for drunk driving and wrecking the company's prize for top sales performance—a pink Cadillac—in July 1988 and getting drunk again at a company function the following September. In a termination letter, Mary Kay officials informed Mrs. Eyerman, 37 years old, that her conduct "adversely affected the reputation" of the company.

The complaint contends that Mrs. Eyerman was a top sales director in Ohio for the Dallas-based, door-to-door retailer, earning $3 million in sales for Mary Kay in 1987 and $4.3 million in 1986. She is seeking $4.2 million in projected commissions and other compensation.

Attorneys for Mary Kay maintained that Texas law, which makes no provision for alcoholism as a handicap, should apply in this case. And, they argue, Mary Kay is exempt under Ohio law because Mrs. Eyerman technically was not an employee: she was an independent contractor.

Judge James Graham of Columbus is expected to issue a ruling on those arguments today or tomorrow.

Starting in July 1992, businesses with more than 25 employees will be required to treat alcoholism and drug abuse as a handicap under the new Americans with Disabilities Act. The anti-discrimination law prohibits bias in the workplace against alcoholics and drug abusers, so long as they are not current users.

Mrs. Eyerman is not covered by the new law because she filed her suit before the law was enacted in July.

* * *

ALLEGATIONS OF FRAUD over "secured" credit cards are dismissed.

A federal judge in Manhattan threw out a suit accusing four financial institutions of bilking thousands of secured-card applicants of millions of dollars, ruling that the charges in the suit weren't sufficiently specific.

Secured credit cards allow people who have poor credit ratings to establish a credit line by putting down a deposit that can be used to cover unpaid charges.

The suit, filed against Universal Bank of Maryland, Security Trust Co., Trust Co. Bank and Liberty Securities by card applicants, stemmed from a secured-card program arranged by MoneyCard Systems Inc., which went out of business in 1986. The suit contended that the deposits were used to pay prior obligations, rather than being invested in interest-earning accounts as the applicants were promised.

Federal Judge John Keenan ruled that the allegations of racketeering and fraud "are sweeping and unspecific, and clearly fail to satisfy the requirements" of federal law. He added that the plaintiffs have until Dec. 13 to amend their suit.

Michael Malakoff, an attorney for the card applicants, said he expects a more specific complaint will be filed to comply with the judge's order.

* * *

EUROPEAN EXPANSION: Skadden, Arps, Slate, Meagher & Flom, a New York law firm, opened offices in Frankfurt and Paris. Three lawyers work in each branch. The 1,100-lawyer firm has 15 offices in North America, Europe, Asia and Australia.

* * *

—Wade Lambert contributed to this column.

Commerzbank AG

Commerzbank AG of Germany said group partial operating profit for the first 10 months rose 18% to 1.09 billion marks ($736.8 million), compared with a year earlier, buoyed by continuing firm economic growth in Germany and resulting strong demand from customers for loans.

Partial operating profit represents the bank's pretax earnings, excluding gains or losses from trading for its own account. This earnings category is followed closely by German analysts and viewed as a key indicator of a bank's underlying business trends.

Commerzbank Chairman Walter Seipp said he expects firm earnings growth to continue for the rest of the year.

Separately, the French banking group Credit Lyonnais said its capital markets division is teaming up with Commerzbank to sell German securities to British institutional investors.

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