

Texas Jury Gives 21 Alabama Steelworkers \$115.6 Million for Grinding Wheel Injuries

A Texas jury awarded 21 Alabama steelworkers \$15.6 million in compensatory damages and \$100 million in punitive damages Feb. 19 for injuries from asbestos in grinding wheels used to cut metal (*Aaron v. Abex Corp.*, Texas DistCt, No. 94-C-2110-2, 2/19/98).

The jury in Texas District Court, 23rd Judicial District, Brazoria County, ruled for the steelworkers on failure to warn, design defect, ordinary negligence, and gross negligence claims. The jury also found the conduct of grinding wheel manufacturer Carborundum Co. "malicious," which allowed a punitive award in excess of the Texas statutory cap of four times compensatory damages.

Plaintiffs' attorney Mark Lanier told BNA March 2 that the steelworkers were part of a case involving 1,500 asbestos plaintiffs from states along the Gulf

Coast, including Texas, that he filed in the Brazoria County court. The underlying case includes claims against many different asbestos manufacturers and suppliers. The 21 Alabama plaintiffs were grouped together because they worked for the same company and used the same equipment, Lanier said.

Defense attorney Jeff Marsh said the jury had no proof either that the grinding wheels were defective or that the workers inhaled asbestos. Calling Carborundum the most "peripheral of the peripheral" among asbestos defendants, he said he has "very little doubt" that the manufacturer will be successful on appeal. The appeal will focus on the lack of evidence for every jury finding, Marsh added.

Workers Not Warned to Use Respirators. The plaintiffs worked at a U.S. Steel plant in Birmingham, Ala., where Carborundum grinding wheels were used to cut metal. Lanier said steelworkers wore goggles when cutting metal, but they were not warned to use respirators.

According to Lanier, 18 of the plaintiffs suffer from asbestosis, and three others have indications of asbestos exposure. The defense argued that none of the plaintiffs suffered any injuries from asbestos exposure, he said. About half the plaintiffs are smokers, Lanier noted.

Marsh attacked the plaintiffs' medical evidence, saying their doctor did not follow the standard procedures used in evaluating asbestos-related illnesses. He said the doctor examined X-rays and attributed "minimal changes" in lung tissue to asbestos damage. He noted that the jury ruled 11-1 for the plaintiffs, and called it a "totally emotional verdict."

The company argued that the asbestos in the wheel is encapsulated, but Lanier said the workers' expert engineer, James Millette, found asbestos was released from the wheel on which he conducted limited tests. Millette scraped one side of the wheel and touched a piece of paper to each side. Both pieces of paper showed the presence of asbestos, Lanier said.

Lanier also said a defense witness admitted Carborundum used asbestos on wheels until 1983, despite testimony in an earlier case that the defendant stopped using it in 1972. He said this finding was an important part of the jury's determination that the company acted maliciously. The jury deliberated for six hours on liability and for about 45 minutes on punitive damages after a four-week trial, Lanier said.

Marsh said he will file post-trial motions once a final judgment has been entered.

Texas District Judge Benjamin Hardin presided over the case.

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Illegal Asbestos Scams Reported

Vulnerable and seeking work, the homeless are becoming victims in illegal asbestos removal scams where they are employed without training or adequate protection, the Justice Department said yesterday.

The problem was highlighted with the announcement of indictments against three Wisconsin men accused of bringing workers from a Chattanooga, Tenn., homeless shelter to their state to illegally remove asbestos from a building being demolished.

Attorney General Janet Reno, calling such activity "a shameful human exploitation," promised the government would take every step to prosecute illegal asbestos removal cases that involve untrained homeless people, teenagers and unqualified day laborers.

"Knowingly removing asbestos improperly is criminal," Reno told a news conference also attended by Environmental Protection Agency Administrator Carol M. Browner. Using vulnerable people for such activity violates "the basic standard of human decency," Reno said.

Asbestos fiber, often used to insulate older buildings, is a hazardous material whose fibers can become deeply embedded in the lungs and cause respiratory illnesses and even cancer. Workers must follow special removal procedures such as wetting down the material and putting it into special containers.

The department cited prosecutions in nine states since September involving the hiring of untrained workers, often homeless people or unwary teenagers, to rip out asbestos. The department sent warning notices to homeless shelters and announced an EPA telephone hot line, 1-800-368-5888, for people to call if they believe someone is being hired for improper asbestos removal.

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