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Ala. Federal Court Awards $3.5 Million in Take-Home Asbestos Exposure Bench Trial

BIRMINGHAM, Ala. –– An Alabama federal court has awarded more than $3.5 million at the conclusion of a bench trial involving take-home asbestos exposure claims asserted against the former employer of the decedent's husband.

In the Sept. 29 decision, the U.S. District Court for the Northern District of Alabama found that the defendant "treated mandatory federal regulations as discretionary guidelines and nullified its own exposure reduction standards by failing to implement them."

The plaintiffs asserted the claims on behalf of Barbara Bobo, contending that she was exposed to asbestos fibers while laundering her husband's work clothing. Bobo's husband came into contact with asbestos-containing products while working as a laborer at Tennessee Valley Authority's power general facility, the plaintiffs said. As a result of the take-home exposure, Bobo developed pleural mesothelioma, according to the lawsuit.

Tennessee Valley Authority was the lone remaining defendant in the action, the federal court noted.

The case proceeded to a bench trial on the plaintiffs' claim that Bobo developed mesothelioma as a result of the negligence of the Tennessee Valley Authority. After hearing evidence from both parties, the court determined that the outcome of the claims turns on "two unsettled questions of Alabama tort law," the federal court said.

As such, the court found that it was advisable to certify to the Alabama Supreme Court the question of the scope of duty owed by premises owners to non-employees for hazards created at the workplace and the question of the causation standard when a plaintiff's injury is the result of multiple exposures to a toxic agent, such as asbestos.

"There are no clear, controlling precedents in the decisions of the Alabama Supreme Court on these issues, and their significance extends beyond the present case," the court opined.

In order to assist the high court with the determination of the questions, the federal court outlined the details of the case, including the employment history of Bobo's husband. The court also noted that, "like many Americans over the age of 60," Bobo was most likely exposed to products containing some amount of asbestos at various times during her life.

The court specifically noted that Bobo worked as a beautician; during this time, she used stationary hair dryers and "she inhaled dust particles while doing so."

"[T]he question of whether traditional 'but-for' causation, or 'substantial factor' causation should apply to cases in which multiple exposures to a toxic agent, such as airborne fibers, combine to product the plaintiff's injuries is an unanswered issue of Alabama law that should be resolved by that State's highest court," the federal court stated.

In August, the federal court weighed in on both of these questions, opining that a duty of care can in fact be enforced on a company since the policy considerations in recognizing such a duty do not outweigh the foreseeability of the injury.

In the same opinion, the court said that the state would recognize a substantial factor causation analysis in multiple exposure asbestos suits, as opposed to the "but-for" causation examination.

On Aug. 24, the Alabama Supreme Court declined to hear the dispute.

As such, the federal court proceeded with its determination of the claims, noting that in order for the plaintiffs to prevail on their claims, they must establish that TVA owed a duty of care to Barbara Bobo; that the defefendant breached that duty; that Barbara Bobo was harmed; and that the defendant's breach of duty was a proximate caused of the alleged harm.

The federal court first addressed the question of whether the TVA owed Bobo a duty of care, opining that the foreseeability of harm to Bob was evident from OSHA regulations and the defendant's internal standards.

"[These regulations and standards] mandated, among other things, that TVA provide two lockers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes, separate changing facilities, and showers for its employees," the court noted. "The common thread linking those rules was the goal of preventing asbestos fibers from clinging to an employee's street clothes, skin, or hair, and being carried off of TVA property. Other regulations, such as those setting limits on airborne asbestos concentrations at the nuclear plant, and those requiring periodic medical examinations, clearly contemplated that TVA employees would be exposed to and inhale airborne asbestos fibers while at work. Note well, however, that no reasonable person can argue that the regulations which sought to prevent the transport of asbestos fibers off TVA property did not contemplate that employees' household members would be exposed to asbestos originating at the plant."

The federal court also rejected TVA's notion that the Alabama appellate courts would decline to enforce liability for non-employee exposure.

"In contrast to TVA, plaintiffs rely upon cases that are actually persuasive because, in the opinions they cite, the courts emphasized the foreseeability of an injury, while also considering public policy," the court found.

After finding that TVA did in fact owe a duty to Bobo, the court determined that the defendant breached that duty as well when it failed to "implement eminently reasonable and minimally expensive safety procedures that would have prevented her exposure to asbestos fibers carried home on her husband's work clothes."

In turning to the question of causation, the court noted that, while declining to weigh in on the dispute in the instant matter, the Alabama high court has in the past addressed the application of "but-for" v. "substantial factor" causation, albeit in a maritime case.

"If the Alabama Supreme Court desired to indicate that the concept of substantial facor causation applies only to maritime cases, then it would not have instructed this court to 'See Sheffield v. Owens-Corning Fiberglass Corp., 595 So. 2d 443, 450 (Ala. 1992),' in response to this court's certification of a question governed by Alabama negligence law," the court opined.

The plaintiffs in the instant case had demonstrated that TVA's conduct was a substantial factor in causing Bobo's injury, the court concluded. The court also rejected TVA's contention that the claims were barred by the statute of limitations and by the discretionary function doctrine.

In assessing damages, the court noted that the plaintiffs sought more than $500,000 in medical bills and $8 million for physical pain, suffering, mental anguish and the loss of enjoyment of life. Additionally, the court noted, that the defendant is entitled to $136,176.37 in offsets.

Ultimately, the court found that the plaintiffs were entitled to the full amount of Bobo's medical expenses, which totaled $537,131.82. Additionally, the court awarded $3 million for physical pain and suffering.

In entering the award, the court did note that the defendant would be entitled to any settlement awards distributed from bankruptcy trusts with which the plaintiffs currently have submitted claims.

The Tennessee Valley Authority is represented by James S. Chase, Edwin W. Small and Edward C. Meade of the Tennessee Valley Authority in Knoxville, Tenn.

The plaintiffs are represented by Rebekah Keith McKinney of Watson McKinney LLP in Huntsville, Ala.; and Christopher J. Panatier, Charles E. Soechting Jr., Jay Stuemke and Rachel Perkins of Simon Greenstone Panatier Bartlett, P.C., in Dallas.

Bobo, et al. v. Tennessee Valley Authority , No. 12-1930 (N.D. Ala.).

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