

Court Won't Ax Covil's \$33M Asbestos Verdict

By Emily Field

Law360 (May 1, 2019, 6:37 PM EDT) -- A North Carolina federal judge refused Wednesday to overturn a \$32.7 million verdict in favor of a former tire worker whose widow says he died of asbestos exposure while working for Covil Corp., saying persuasive and aggressive closing arguments weren't prejudiced.

U.S. District Judge Catherine Eagles said that while the defunct pipe insulation supplier didn't come out of the trial "looking like a model corporate citizen" and counsel for Franklin "Doc" Finch's widow didn't pull punches in arguing that Covil should be held responsible for its negligence, a plaintiff isn't legally required to downplay her arguments or sugarcoat a defendant's conduct.

"The plaintiff's arguments were supported by the evidence, and Covil had a full and fair opportunity to challenge those arguments on the merits," the judge said. "The fact that Covil lost and the jury returned a large verdict is explained by the evidence, not by passion or prejudice."

Following a five-day October trial, a jury found, after about two hours of deliberating, that Covil's negligence had caused Finch's death and that it failed to warn of the dangers of asbestos. Finch had claimed he'd been exposed to asbestos while working at a Firestone tire factory for 20 years until 1995.

"My reaction is that we had a jury that was on time, attentive, and conscientious who spoke unanimously and that we believe honoring the jury's verdict was the correct ruling," Jessica Dean of Dean Omar & Branham LLP, an attorney for Finch, told Law360 on Wednesday. "Doc Finch suffered horribly, which was not disputed. I am hoping and praying for closure for the family and that this step will push Covil to reach a meaningful resolution so that they can try to heal and move on."

During the trial, Judge Eagles said that Finch's widow, Ann, presented more than sufficient evidence from which the jury could conclude that Covil supplied thousands of feet of pipe insulation containing asbestos used in the plant's construction.

Covil, which went out of business in 1991, also argued in a November brief that the jury's award was over the line, dwarfing other recent wrongful death awards in the state, including decedents with a longer life expectancy than Finch, who was 78 at the time of his death.

However, Finch's expert Dr. Edwin Holstein testified that he was an "unusually healthy" 78-year-old man when he first developed symptoms of mesothelioma and would have lived another 13 or 14 years if he hadn't developed the disease, the judge said.

During the trial, Finch's attorney didn't put forth any hard numbers of his monetary value to his family, instead focusing on the emotional loss of his "companionship, guidance, and advice," and it's well-established that those kinds of losses can't be given an exact figure, the judge said.

"The evidence was compelling that Mr. Finch's death deprived his next of kin — his widow and his three children — of 14 years of his society, comfort, guidance, advice, and companionship," Judge Eagles said. "It is undisputed that these losses were of a substantial value."

While the jury's verdict is sizable, Finch's evidence on damages was "compelling and virtually uncontradicted," the judge said.

"Covil has not met its burden to show that the jury's verdict was excessive, that it was rendered under the influence of passion or prejudice, or that the jury did not follow the law," the judge said.

Representatives for Covil didn't immediately respond to requests for comment on Wednesday.

Finch is represented by Jessica Dean and Kevin Paul of Dean Omar Branham Shirley LLP, and William Graham of Wallace & Graham PA.

Covil is represented by Keith Coltrain and Mark Wall of Wall Templeton & Haldrup PA.

The case is Finch v. Covil Corp., case number 1:16-cv-01077, in the U.S. District Court for the Middle District of North Carolina.

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