

## Covil Wants \$33M Fatal-Mesothelioma Award Axed

By **Cara Salvatore**

*Law360 (November 19, 2018, 7:29 PM EST)* -- Covil Corp. wants a North Carolina federal judge to overturn a \$33 million verdict in favor of a former tire worker whose widow says he died of asbestos exposure on the job, saying the case was presented like a punitive-damages case even though the door to punitive damages was closed before trial.

A North Carolina jury found in October that Franklin “Dock” Finch, a longtime Firestone tire factory worker, and widow Ann Finch were owed \$32.7 million by Covil, which made the asbestos insulation that surrounded Finch daily in his job changing molds on tire presses in Firestone’s curing room. Finch died of mesothelioma in 2017.

But Covil said the award was over the line. It “dwarfs recent wrongful death awards in North Carolina, many involving decedents with a much longer life expectancy than Mr. Finch,” who was 78 at the time of his death, the company said.

Covil, which went out of business in 1991, also believes the case was out of bounds given that summary judgment was granted on the punitive-damages claim before trial.

“The court improperly admitted evidence that allowed plaintiff to try an implicit punitive-damages case ... Plaintiff was allowed to offer improper character evidence against Covil; Covil was not permitted to introduce evidence relevant to its continuing duty to warn; the court forced Covil to stipulate to portions of Dwaine Waters’ testimony or else admit his entire testimony which was not relevant and highly prejudicial; and plaintiff’s counsel argued matters not in evidence and misrepresented record evidence during closing,” the company said.

It’s unclear what Waters’ job was at the time, but he testified that Covil took asbestos-containing insulation, put it in boxes boasting their contents were free of asbestos, and sent it off to two unrelated companies, Duke Power and BASF, according to Covil’s brief.

The closing argument by Finch’s lawyer included discourse that “grossly misrepresented the amount of Kaylo insulation supplied to the Firestone plant. Plaintiff’s counsel argued that 50 miles of Kaylo insulation was provided to the plant, where the actual purchase orders and invoices show less than a tenth of this amount of calcium silicate pipe insulation,” among many other things, according to Covil.

Covil also argued it deserves, at a minimum, a new trial if the judge declines to simply overturn the verdict.

In October, the jury found that the defunct pipe-insulation maker didn't tell Finch there was asbestos in the materials he was around for his job, including in all the steam lines in his work area.

The jury found Covil unreasonably failed to warn Finch about the dangers of the asbestos insulation.

According to court papers, Finch was exposed to Covil's asbestos-based insulation daily for 20 years. He was diagnosed with mesothelioma in March 2016, filed suit in August 2016, and died in January 2017.

Representatives for the parties did not respond to requests for comment Monday.-

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

Covil is represented by William Silverman 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.

--Additional reporting by Y. Peter Kang. Editing by Adam LoBelia.