

California Court of Appeal affirms \$24 million verdict against supplier of asbestos

By Farid Zakaria

In a personal injury lawsuit brought against manufacturers and suppliers of asbestos-containing products, a jury awarded Bobbie Izell \$6 million in compensatory damages and \$18 in punitive damages. On appeal, Union Carbide, one of the defendants in the case, argued that the evidence was insufficient to support the award. The appellate court however disagreed and affirmed the lower court's decision.

Mr. Izell owned a home construction business in California and visited many construction sites as part of his work between 1964 and 1994. Among other tasks, his workers routinely installed dry walls and used premixed joint compound to cover nail heads, fill seams between drywall boards, and fill corner sections of drywalls. Once the joint compound was dry, the workers sanded it, causing asbestos-containing dust to be released into the air. Similarly, asbestos-containing dust became airborne when the workers handled bags of gun plastic cement. Mr. Izell breathed the dust when he was present on the construction sites.

At age 85, he developed mesothelioma, a rare—and particularly virulent—form of cancer caused by exposure to asbestos. Decades may pass before symptoms of the disease appear as was the case with Mr. Izell.

Mr. Izell claimed that Union Carbide was liable for his injuries. When asked about the products that workers used around him at the construction sites, Mr. Izell recalled four different brands of joint compound and two brands of gun plastic cement. At varying times from 1970 to 1978, Union Carbide supplied asbestos to all four of the joint compound manufacturers and one of the manufacturers of gun plastic cement.

Union Carbide argued that the evidence was insufficient to find that Mr. Izell was exposed to asbestos for which it was responsible. The Court disagreed. It explained that ample evidence existed to establish that Mr. Izell was exposed to asbestos supplied by Union Carbide to Hamilton, a manufacturer of one of the four brands of joint compounds.

Hamilton's president testified that from the 1960's through 1977 all joint compounds manufactured by Hamilton contained asbestos. He further testified that Union Carbide supplied all asbestos used by Hamilton to manufacture joint compounds. Mr. Izell, for his part, testified that he inhaled dust from a joint compound manufactured by Hamilton during the mid to late 1970's. The Court concluded that the jury could reasonably infer that Union Carbide was the exclusive supplier of asbestos to Hamilton during the relevant period, and that Mr. Izell was more likely than not to have inhaled Union Carbide asbestos.

Union Carbide also argued that the evidence did not establish that its products constituted a substantial factor in the development of Mr. Izell's disease. Again, the Court disagreed. It explained that taken together, Mr. Izell's testimony regarding workers sanding dry Hamilton joint compound and the expert witness' testimony regarding the type of asbestos fiber likely to contribute to disease were sufficient to establish in reasonable medical probability that exposure

to Union Carbide was a substantial factor contributing to Mr. Izell's mesothelioma.

The Court went on to explain that the punitive damages award was not excessive given that Union Carbide's conduct was highly reprehensible and that a substantial award of punitive damages was necessary to achieve the state's interest in deterring similar conduct, especially when the company's net worth stood at \$4.2 billion.

The case is *Bobbie Izell et al. v. Union Carbide Corporation* and was decided by the Second Appellate District of California Court of Appeal (Case No. B245085).

If you were exposed to asbestos and suffered asbestosis, lung cancer, or mesothelioma, contact the law firm of Keller, Fishback & Jackson at 1-800-LAW-4-YOU for a free, confidential consultation.