

Foster Wheeler On Hook For \$2.25M Asbestos Award

By Y. Peter Kang

Law360 (May 22, 2019, 10:51 PM EDT) -- A Louisiana appellate panel on Wednesday upheld a \$2.25 million award in a suit accusing engineering firm Foster Wheeler and others of subjecting a woman to secondhand asbestos exposure that caused her cancer, saying the verdict was supported by the evidence.

A three-judge Court of Appeal panel affirmed a jury verdict in favor of Lynda Berry in a suit accusing Foster Wheeler LLC, asbestos supplier J. Graves Insulation Co. and several other companies of causing her mesothelioma, which resulted from decades of inhaling asbestos fibers her paper mill worker husband brought home on his clothes, which she handled and washed daily.

Berry's husband worked as a technician at the mill and was exposed to asbestos on a daily basis because the mill housed two five-story electric power generators with asbestos-containing insulation.

General Electric Co. and a number of other defendants settled out of the case prior to trial while J. Graves settled during the trial. The jury found that Foster Wheeler and nonparty Olin Corp., the then-owner of the mill, equally caused Berry's injuries. It awarded \$3 million in past and future medical expenses but did not award noneconomic damages for pain and suffering.

In a post-trial ruling, the trial judge reduced the medical expenses award to \$1.5 million, awarded noneconomic damages of \$3 million and entered a final judgment against Foster Wheeler for \$2.25 million, reflecting the jury's determination that the company was 50% negligent.

On appeal, Foster Wheeler argues that the jury erred by not finding any of the settling defendants partially liable. But the panel disagreed, saying even though it may seem incongruous for the jury to not find J. Graves or GE partially liable, it was not outside the realm of possibility.

"While the evidence against GE and J. Graves was significant, their input does not approach the long and intensive involvement of Foster Wheeler," the panel wrote in a 23-page opinion. "The jury could reasonably find a practical limit to various parties' liability, based on the length and kind of conduct they engaged in."

Foster Wheeler had also argued that the judgment against it should be reduced because J. Graves settled out of the case during the trial and, under Louisiana case law, "last-minute settlements impair a defendant's ability to prove the negligence of the settling defendant."

But the panel said Foster Wheeler had ample time to adjust its trial strategy after J. Graves' settlement, which occurred right before a long holiday weekend, but failed to do so, nor did it object to resuming the trial after the break.

"On appeal, Foster Wheeler does not allege any specific prejudice — what other evidence it would have offered, or other strategy it would have pursued, had J. Graves not settled," it said.

Lisa Shirley, an attorney for Berry told Law360 on Wednesday that they are gratified by the ruling.

"We are hopeful that our client ... will have the ability to get some closure now, and we hope that Foster Wheeler will allow that to happen," she said.

An attorney for Foster Wheeler did not immediately respond to a request for comment.

Judges Milton Moore III, Jeanette G. Garrett and Jay McCallum sat on the panel for the Court of Appeal.

Berry is represented by Lisa Shirley of Dean Omar Branham Shirley LLP and Jody E. Anderman of Waddell Anderman LLC.

Foster Wheeler is represented by John J. Hainkel III, Angela M. Bowlin and Lacey T. McCoy of Frilot LLC, and Christopher S. Marks of Tanenbaum Keale LLP.

The case is Berry v. Anco Insulations et al., case number 52,671-CA, in the Court of Appeal, Second Circuit, of the State of Louisiana.

--Editing by Jay Jackson Jr.