

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No. 2005 - 00875
2006 - 04290

Section: 08 - N

CORDES, GEORGE ETAL
versus
ENERGY NEW ORLEANS, INC. ETAL

Date Case Filed: 1/20/2005

NOTICE OF SIGNING OF JUDGMENT

TO:

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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment
in the above entitled and numbered cause was signed on December 27, 2013
New Orleans, Louisiana.
December 27, 2013


MINUTE CLERK

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**STATE OF LOUISIANA****NO. 05-875 c/w 06-4290****DIVISION "N"****SECTION 8****GEORGE CORDES, et al****VERSUS****ENTERGY NEW ORLEANS, INC., et al****JUDGMENT**

This matter was tried without a jury on June 10th, 12th, 13th, and 17th, 2013. At the close of the testimony, the court took the matter under advisement to read the deposition testimony and review the evidence, the last of which was provided in November, 2013. In addition, the court granted counsel leave of court to file post-trial memoranda of law.

PRESENT: Counsel for plaintiff: Cameron R. Waddell and Jody E. Anderman

Counsel for defendant and third party plaintiff: Entergy New Orleans, Inc. f/k/a New Orleans Public Service, Inc.: Erin Fury Parkinson and Jose I. Barro, III

Counsel for defendant and third party defendant, Eagle, Inc.: Susan B. Kohn and Douglas R. Kinler

Considering the law, evidence and stipulations of counsel:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of plaintiff, Karen Cordes and third party plaintiff, Entergy New Orleans, Inc. against defendant and third party defendant, Eagle, Inc. denying Eagle, Inc.'s Motion for Involuntary Dismissal.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of plaintiff, Karen Cordes and against defendants, Entergy New Orleans, Inc. f/k/a New Orleans Public Service, Inc. and Eagle, Inc. awarding plaintiff damages as follows: one million five hundred thousand dollars [\$1,500,000.00] for decedent, George Cordes' pain and suffering; one million five hundred thousand dollars [\$1,500,000.00] for decedent's loss of enjoyment of life; one million dollars [\$1,000,000.00] for decedent's mental anguish; two hundred, fifty six thousand, seven hundred forty-nine dollars and forty-three cents [\$256,749.43] for decedent's medical expenses; eighty-six thousand, seven hundred, eighty five dollars [\$86,785.00] for decedent's loss of earnings; and, nine

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DIVISION "N"

SECTION 8

GEORGE CORDES, et al

VERSUS

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thousand, sixty-eight dollars [\$9,068.00] for loss of personal services from the date of diagnosis, March 8, 2004, through his death on May 21, 2005, plus court costs and interest from the date of judicial demand. This award is reduced by the amount already received by Mrs. Tiffany Cohen.

New Orleans, Louisiana this 27 day of December, 2013.



JUDGE ETHEL S. JULIEN

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**STATE OF LOUISIANA****NO. 05-875 c/w 06-4290****DIVISION "N"****SECTION 8****GEORGE CORDES, et al****VERSUS****ENTERGY NEW ORLEANS, INC., et al****REASONS FOR JUDGMENT****FACTS:**

This is a suit for a survival action filed by decedent, George Cordes' widow, Karen Cordes. Beginning in February, 2004, at the age of fifty-seven [57], George Cordes began complaining of shortness of breath and a cough. He was diagnosed with a respiratory infection but when he did not improve, he underwent a CT scan of his chest. The scan revealed a large left pleural effusion. He was then diagnosed with pneumonia and underwent a thoracentesis.

In, in March, 2004, Mr. Cordes had another chest x-ray which showed that the left pleural effusion had increased in size. He underwent a bronchoscopy and another thoracoscopy. Thereafter, his lung tumor was biopsied and on March 15, 2004, he was diagnosed with malignant mesothelioma.

Between May and September, 2004, Mr. Cordes underwent four cycles of chemotherapy. Unfortunately, his condition continued to deteriorate.

By January, 2005, the mesothelioma had spread to his hips and spine. In early May, 2005, he was hospitalized due to his pain. He was discharged under hospice care and he passed away two weeks later on May 21, 2005.

Plaintiff, Karen Cordes asserts that decedent developed mesothelioma after being exposed to asbestos and/or asbestos containing products or equipment while employed by defendant, Entergy from 1967 through 2005. He was hired as a helper and by the time he retired, he was a senior mechanic. He worked at all three of Entergy's facilities, Market Street, Patterson, and Michoud.

Entergy filed a Third Party Demand against various entities who either manufactured or supplied the turbines and boilers at its' facilities, and those entities that supplied or manufactured asbestos products used on the turbines and boilers at its'

facilities. Prior to trial, Karen Cordes settled her claims with many of these parties.

Entergy asserts that many of these entities are liable for decedent's mesothelioma; and, as such, Entergy is entitled to a credit for each of their virile shares.

In addition, shortly before this matter came to trial, defendant and third party plaintiff, Entergy New Orleans, Inc. settled with decedent's major child, Tiffany Cordes Cohen. Mrs. Cohen is the only other individual entitled to bring a survival action claim. Entergy asserts that as it settled with one of the two possible claimants, any award to Mrs. Karen Cordes must be divided in half.

The court finds no support for Entergy's assertion and holds as follows: Damages in a survival action are based upon decedent's suffering. To the extent Entergy has settled with one of the two potential claimants, after setting the total award for the survival claim, the court will deduct the sum paid to Mrs. Cohen. Mrs. Cordes will then receive the remainder of the award.

ENTERGY'S LIABILITY:

Considering the law and evidence, this court holds that plaintiff, Mrs. Karen Cordes has established by a preponderance of the evidence that Entergy is strictly liable as the premises owner and custodian of the injury causing thing i.e. the asbestos pursuant to LSA-CC article 2317 and that Entergy is also liable in negligence pursuant to LSA-CC article 2315.

Mr. Cordes passed away before he could be deposed. However, his exposure and working conditions at Entergy were established by two of his former co-workers, Mr. Howard Dempsey and Mr. Edward Oatis. Both witnesses gave similar descriptions of the working conditions.

Mr. Oatis worked at Entergy from 1965 through 1995. He described their working environment when removing insulation. They used "a screwdriver, chipping hammer, whatever, to just break it apart." [Plaintiff's Ex. 96 at p. 126.] When reinsulating the equipment, they used band saws to cut the insulation. [Plaintiff's Ex. 89 at p. 53.] It was very dusty. In fact, he stated "I looked like the Pillsbury Dough Boy because it was all over you. You couldn't help but get it on your clothes." [Plaintiff's Ex. 89 at p.10 and Ex. 96 at p.

34.]

Mr. Dempsey testified that it was extremely dusty until the early seventies, at least.

[Plaintiff's Ex. 97 at p. 158.]

Entergy's own internal documents reflect that decedent, Mr. Cordes, was exposed to asbestos. [Plaintiff's Ex. 45.]

In survival actions, the applicable law is the law that is in effect when the plaintiff suffers exposures that are "significant and later result in the manifestation of damages." Cole v. Celotex Corp., 599 So.2d 1058 (La. 1992) and Austin v. Abney Mills, Inc., 824 So.2d 1137 (La. 2002). The comparative fault law did not go into effect until August 1, 1980. And, the parties have stipulated that plaintiff is only pursuing a survival claim and seeking compensable damages relating to that claim, arising from decedent's alleged exposure to asbestos prior to September, 1976. Therefore, the applicable law is contributory negligence and virile shares.

As to plaintiff's assertion that decedent's mesothelioma resulted from his exposure to asbestos while working for Entergy at various Entergy facilities, Dr. Richard Lemen testified that asbestos causes injury soon after inhaling the asbestos fibers and the disease process begins shortly after inhalation. It is a latent disease and it is not unusual for the disease to develop decades later.

Based upon the testimony of Mr. Dempsey and Mr. Oatis, Dr. Richard Kradin opined that decedent's significant exposures to asbestos while working for Entergy, on Entergy's premises were "a substantial contributing factor" in his developing mesothelioma.

[Plaintiff's Ex. 84 at p. 37-38.]

As to strict liability, the evidence demonstrated that Entergy had care, custody, and control over the construction and maintenance of its facilities. Initially, the court notes that all of the facilities with the exception of Michoud No. 3 were completed well before decedent began his employment with Entergy. And, as for Michoud No. 3, decedent did not work there during its construction.

Furthermore, contrary to Entergy's assertion that it lacked care, custody, and control of the asbestos in and on its premises, the evidence demonstrate that it did. As to the construction of the facilities, Entergy had its own Engineering Department and the

general contractor worked from the specifications provided by Entergy's Engineering Department. [Plaintiff's Ex. 92, p. 63 and Ex. 42, p.7-8 and p.25.] These specifications included the type of thermal insulation that was to be used for the piping. [Plaintiff's Ex. 92 at p. 63 and 64.]

In addition, Entergy hired an agent to perform engineering and construction management services. All of the agent's work required Entergy's approval. Furthermore, Entergy had to approve the list of vendors, the drawings, the specifications, the products to be used, and how the products were to be used. There were "no deviation" provisions in the contracts which meant that any deviations had to be approved by Entergy. [Plaintiff's Ex. 42, Michoud #3 - Ebasco Specification Thermal Insulation, Purchaser's Identification Spec. No. NOPS-M3-M1-1, issue date October 3, 1966, No. 18 at p. 17.]

The evidence demonstrated that it was Entergy's choice to install asbestos in its facilities, even after it had knowledge of the hazards. It not only specified asbestos, it gave detailed instructions on how the asbestos insulation was to be applied. [Plaintiff's Ex. 42, Michoud #3-Ebasco Specification Thermal Insulation Purchaser's Identification Spec. No. NOPS-M3-M1-1, issue date October 3, 1966, Rev 1 December 9, 1966 No. 9.9 at p. 8.]

As to whether the condition - the asbestos- posed an unreasonable risk of harm, the court finds that it did. Although asbestos is a good insulator, Dr. Lemen opined that asbestos posed an unreasonable risk of harm due its propensity to cause disease and death.

As to whether the defect - asbestos- caused decedent's harm, both Dr. Kradin, an expert in pulmonology, pulmonary pathology, and in the diagnosis and treatment of asbestos-related diseases, and Dr. Janine Parker, an expert in pulmonology, testified that it did. [See Plaintiff's Ex. 84 at p. 15 and 23-24, and Plaintiff's Ex. 85 at p. 16-17, 26 and 60-61.]

As to negligence, the court finds that Entergy breached its duty to provide a safe place to work and this breach was a substantial contributing cause of decedent's injuries. As decedent's employer, Entergy owed him a duty to furnish and use safety devices and safety guards and to adopt and use methods and processes that were reasonably adequate to render such employment and the place of employment safe in accordance with the accepted and approved practice in such or similar industry or places of employment

considering the normal hazard of such employment, and to do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees. Rando v. Anco Ins. Inc., et al, 16 So.3d 1065 (La. 2009), citing LSA-RS 23:13. As the premises owner, Entergy owed a duty to keep its property in a reasonably safe condition, to discover any unreasonably dangerous condition on the premises, and to correct such dangerous condition or warn potential victims of its existence. Williams v. Exxon Corp., 541 So.2d 910 (La. App. 1 Cir. 1989).

In the case at bar, the evidence demonstrated that Entergy took some measures to provide its employees and mechanics with safety training and equipment. [Plaintiff's Ex. 97 at p. 28-29, and Ex. 91 at p. 147-148 and Defendant's T.E. No. 1 at p. 001114-0001116, 001122 and 001123.] However, it appears that these measures were not instituted until decedent had already been exposed to asbestos. Specifically, decedent's former co-worker, Mr. Oatis testified that they were not told about the dangers of asbestos until the late 1980s. [Plaintiff's Ex. 96 at p. 42.] It was then that they were told to wear protective gear and masks. Id. Entergy's position on notice is also contradicted by its other corporate representative, Mr. Edgar Kimball who testified that he did not know of the dangers of asbestos until it was his job to read and learn about the OSHA laws that went into effect in 1972. [Plaintiff's Ex. 93 at p. 68.] While decedent's other co-worker, Mr. Dempsey testified that he thought he had learned of the dangers of asbestos in 1968, he also testified that it was Mr. Kimball who had told him about it and that it was around the time that Entergy did medical evaluations on certain employees. [Plaintiff's Ex. 97 at p. 27-28 and p. 138.] However, based upon Mr. Kimball's testimony, it could not have been in 1968 but had to be after 1973. This also comports with the evidence that the medical evaluations began in the first quarter of 1973. [Plaintiff's Ex. 45.]

As to what and when Entergy should have known about the dangers of asbestos, Dr. Lemen testified that the Merewether report was published in 1930 and it confirmed that asbestos causes asbestosis. [Plaintiff's Ex. 4.] The report recommended ways to produce asbestos exposure by suppressing dust, using exhaust ventilation, using wet methods, wearing respirators, and warning workers about the risks of asbestosis. Id. Two other studies were published in the 1940's. [Plaintiff's Ex. 6.] By 1952, asbestosis was covered in

the Worker's Compensation Act in Louisiana. Then, in 1960 and definitely by the mid-1960s, it was established that mesothelioma was also attributable to asbestos exposure. [Plaintiff's Ex. 12 and 15.]

There is also evidence that Entergy had actual knowledge of the dangers of asbestos as early as 1962. [Plaintiff's Ex. 90 at p. 76-78.] Furthermore, by July, 1972, OSHA required employers to take certain minimum actions to protect their employees from asbestos. It does not appear that Entergy complied with those requirements. [Plaintiff's Ex. 90 at p. 86, 121-126 and 165-166.]

EAGLE

Eagle supplied Entergy with gaskets, asbestos rope, and Kaylo insulation which contained asbestos. [ENOI T.E. 1 at p. 000199, 001830, 001833-001834, and 002283-002284 a letter and internal forms used at NOPSI, dated from November, 1947 through April, 1949, requesting that certain asbestos containing products be ordered from Eagle.]

Furthermore, in answers to Interrogatories, decedent recalled white insulation material and stated that he was exposed to asbestos while removing insulation and worked with asbestos materials including pipe covering. [ENOI T.E. 3 at Answer to Interrogatory No. 2 and T.E. 4 at Answer to Interrogatory No. 15.]

Finally, decedent's co-worker, Mr. Dempsey recalled decedent working on a turbine high-pressure cell covered with asbestos-containing kaowool and webbing on the turbines at the Patterson plant. [Plaintiff's Exhibit No. 97 at p. 33-34.] The Kaylo, Cerablanket, and rockwool was supplied by Eagle. [Plaintiff's Exhibit No.97 at p. 33-35 and 77.] He also testified that it was "constant" that Eagle trucks made deliveries to Entergy. [Plaintiff's Exhibit No. 97 at p. 74.] In addition, he stated that Eagle employees were at Entergy sites "three to four months out of the year" in the "sixties and seventies." [Plaintiff's Exhibit No. 97 at p. 76.]

Considering the law and evidence, the court finds that there is sufficient evidence to find that decedent was exposed to respirable asbestos fibers from asbestos containing products supplied or installed by Eagle and that such exposure was a substantial factor in causing decedent's mesothelioma.

VIRILE SHARES:

Under Raley v. Carter, 412 So.2d 1045 (La 1982), pre-trial settlements shift the burden of proof from plaintiff to the remaining defendants.

GE

All of Entergy's turbines except for the No. 4 turbine at Patterson were manufactured by GE. [Plaintiff's Ex. 97 at p. 37 and 127.] However, as previously noted, all of the turbines were erected, constructed, completely insulated, operational and totally under Entergy's care, custody, and control before decedent came to work for Entergy. Therefore, decedent was not exposed to asbestos during the original construction.

In answers to Interrogatories, decedent stated that he was exposed to asbestos while working on GE turbines at the Patterson facility. [ENOI T.E. 3, at Answer to Interrogatory No. 2.] In addition, both Mr. Dempsey and Mr. Oatis testified that decedent was working with or around asbestos during an overhaul of the No. 13 turbine on Market St., during an overhaul of the No. 2 turbine and generator at Michoud, and during an overhaul of the steam turbine at Michoud Unit 1, and he was a helper in the disassembly of the No. 3 turbine at the Patterson facility. [Plaintiff's Ex. 97 at p. 12-14, 39, 131-133, and 144-145; Plaintiff's Ex. 89 at p. 23-24, and Plaintiff's Ex. 96 at p. 38.] These jobs involved taking the asbestos coverings off of the units and removing or reinstalling asbestos containing products. While GE may have had representatives on site when the overhauls were done, this was to oversee the mechanical/technical aspects of the overhaul, not the removal and reapplication of the asbestos. [Plaintiff's Ex. 89 at p. 28-29, and 49-50.]

Decedent's co-worker, Mr. Dempsey testified that these major overhauls occurred every four years. [Plaintiff's Ex. 97 at p. 98.] This is significant because it means that there is no evidence that the original asbestos on the boilers and turbines was original.

Furthermore, while the specifications regarding the GE equipment in use at Michoud Unit No. 3 required the installation of thermal insulation, Entergy has not established that asbestos insulation was required or that the insulation on the GE boilers was manufactured or supplied by GE. [ENOI T.E. 1 at p. 003702-003720.]

Considering this evidence the court finds that Entergy has not established that GE is strictly liable for plaintiff's damages as there is no evidence that GE had the care, custody or

control of the asbestos at any time when decedent may have been exposed. Furthermore, the court finds that Entergy has not established that GE either owed or breached any duty to decedent as the evidence has established that the removal and replacement of the asbestos insulation was done under Entergy's supervision, not GE's. Therefore, Entergy has not established that GE was negligent.

Finally, as to the issue of preemption, Entergy's asserts that its claims against the equipment manufacturers are not preempted. However, considering the law and evidence, the court holds that these claims are preempted. LSA-RS 9:5607 provides that any and all causes of action against design professionals are preempted if the claim is not brought within five years from either the "date of registry in the mortgage office of acceptance of the work by the owner" or in the absence of such recorded acceptance, "the date the owner has occupied or taken possession of the improvement." The court finds that the claims against GE and the other equipment manufacturers are preempted because Entergy failed to prove by a preponderance of the evidence that these equipment manufacturers had the care, custody, or control of the defect - the asbestos - when the decedent was exposed.

Rando. supra.

Foster Wheeler

Foster Wheeler manufactured the boilers at Patterson Units No. 1 and 2 and Michoud No. 3. [Plaintiff's Ex. 38 Final Construction Report at p. 75 and 81 and ENOI T.E. Ex. 1, p. 000261-000396.] Foster Wheeler specified the use of high temperature thermal insulation material, including Johns-Manville products, for use on its boiler at Patterson. [Plaintiff's Ex. 38.] However, as previously noted, all of these boilers except for Michoud No. 3 were constructed before decedent was employed by Entergy and he did not work near Michoud No. 3 during its construction. Therefore, decedent was not exposed to asbestos during the original construction.

Decedent's former co-workers, Mr. Dempsey and Mr. Oatis each testified that decedent worked on all of the boilers at the Patterson and Michoud facilities working with or around asbestos during maintenance and repair jobs. [Plaintiff's Ex. 97 at p. 47-49 and Plaintiff's Ex. 89 at p. 20-23.] However, there was no evidence that Foster Wheeler representatives manufactured or supplied the asbestos containing insulation on its boilers,

or that its representatives were present such that it had care, custody, or control of the asbestos containing insulation during these maintenance and repair jobs. Therefore, there is no evidence that Foster Wheeler is strictly liable for decedent's damages. Finally, based on these facts, there is no evidence that Foster Wheeler breached any duty to decedent such that it could be found negligent.

Riley Stoker

Riley Stoker manufactured the boilers at Michoud No. 1 and 2 and was also involved in erecting these boilers. [ENOI- T.E. 1 at p. 000735-000736 and 001429.] Again, this work was completed prior to decedent's employment with Entergy. Therefore, decedent was not exposed to asbestos during the original construction.

As for exposures at other times, decedent's former co-workers testified that decedent worked on all the boilers at Michoud and was exposed to asbestos while doing this work. [Plaintiff's Ex. 97 at p. 45 - 46, and Plaintiff's Ex. 89 at p. 22-25 and 27.]

For the reasons previously given, this court finds that Energy has not established by a preponderance of the evidence that Riley Stoker is liable for decedent's damages.

Babcock & Wilcox

Babcock & Wilcox manufactured the boiler at Patterson No. 3. [Plaintiff's Ex. 39 at p. 75 and 81.] Again, this work was completed prior to decedent's employment with Entergy. Therefore, decedent was not exposed to asbestos during the original construction.

Both Mr. Dempsey and Mr. Oatis testified that decedent worked on the boilers at Patterson. [Plaintiff's Exhibit No. 97 at p. 53 and 128 and Plaintiff's Exhibit No. 89 at p. 20-22.]

Considering this evidence and for the same reasons as stated above, the court finds that Entergy has not established that Foster Wheeler is liable under either theories of strictly liability or negligence.

Combustion Engineering

Combustion Engineering manufactured and installed the boiler at Michoud No. 3. [Plaintiff's Exhibit No. 42, Ebasco specification Start Up Boiler and Accessories.] Both Mr. Oatis and Mr. Dempsey testified that decedent worked with or around boilers at Michoud which would have exposed him to asbestos. [Plaintiff's Exhibit No. 97 at p. 47-49 and

Plaintiff's Exhibit No.89 at p. 22-23.]

There is no evidence that Combustion Engineering manufactured asbestos or that decedent was exposed to asbestos during construction. As previously noted, the boiler representatives never returned to Entergy. Therefore, any exposure that decedent had to asbestos from the Michoud No. 3 boiler occurred during overhauls, maintenance, and repair work.

Considering this evidence and for the same reasons as stated above, the court finds that Entergy has not established that Combustion Engineering is liable under either theories of strictly liability or negligence.

Reilly Benton

In 1968, one [1] year after decedent began working for Entergy, Reilly Benton furnished and installed heat insulation material on the boiler, turbine, and related piping at Michoud No. 3. [ENOI T.E. 1 at 003946-004212, ENOI T.E. 8 at Response to Request for Admission No. 3, and Plaintiff's Exhibit No. 42.] However, decedent's co-workers Mr. Dempsey and Mr. Oatis either did not recognize Reilly Benton or did not know what the company sold. [Plaintiff's Exhibit No. 97 at p. 136-137 and Plaintiff's Exhibit No. 89 at p. 32.]

Based upon the above, the court finds that Entergy has not established by a preponderance of the evidence that Reilly Benton is liable for decedent's damages.

Philip Carey (Celotex)

As evidenced from two [2] of Entergy's invoices, Philip Carey insulation products were purchased by Entergy. [ENOI T.E. 1 at 001195 and 001199.] In addition, Entergy cites decedent's Answer to Interrogatory No. 15 wherein decedent stated that while employed at Entergy, he was exposed to asbestos containing materials including pipe covering and a claims admission by decedent wherein it states that decedent was exposed to asbestos products manufactured by Philip Carey. [ENOI T.E. 4 and T.E. 2.]

However, there is no evidence that decedent signed this Claim Form. [ENOI T.E. 2.] In fact, he was deceased when this Claim Form was submitted on April 7, 2007. Id.

Based upon the above, the court finds that Entergy has not established by a preponderance of the evidence that Philip Carey (Celotex) is liable for decedent's damages.

Armstrong World Industries

Entergy asserts that Armstrong supplied it with various asbestos containing products such as gaskets, and pipes. And, in an answer to an Interrogatory, decedent stated that while employed by Entergy, he was exposed to asbestos containing products while changing gaskets on turbines and working around pipe covering and cements. [ENOI T.E. 4 at Answer to Interrogatory No. 15.] However, decedent's co-worker at Entergy, Mr. Oatis had no recollection of working with or around any products supplied by Armstrong. [Plaintiff's Exhibit No. 89 at p.40.]

Based upon the above, the court finds that Entergy has not established by a preponderance of the evidence that Armstrong World Industries is liable for decedent's damages.

Garlock

In an answer to an Interrogatory, decedent stated that while employed by Entergy, he was exposed to asbestos while changing gaskets. [ENOI T.E. 4 at Answer to Interrogatory No. 15.] Decedent's co-workers, Mr. Dempsey and Mr. Oatis confirmed that decedent was exposed to Garlock's asbestos containing packing, valve packing, and gasket material at all three of Entergy's plants. [Plaintiff's Exhibit No. 97 at p. 58-59 and 100, and No. 96 at p. 54 and 152.]

In cases such as this, Entergy must show that decedent's exposure to Garlock's products was significant and that the exposure was a "substantial contributing cause" of decedent's damages. Abadie v. Metropolitan Life Ins. Co., 784 So.2d 46, 63-64 (La. App. 5th Cir 3/28/01), writs denied, 804 So.2d 642, 643 and 644 (La. 12/14/01). Based upon the above, the court finds that Entergy did not meet its burden of proof as to Garlock.

Johns-Manville

Johns-Manville provided asbestos cement to Entergy in the 1950s and 1960s, and insulation work including the piping at Michod Unit No. 1, and piping heat insulation for pipes, valves, and fittings at Michoud Unit No. 3. [ENOI T.E. 1 at 002873 and 002583 and Plaintiff's Exhibit No. 42 "Ebasco Specification - Thermal Insulation", Michoud Unit 3- Contract Specifications - Foster Wheeler Corporation; Ebasco 57-62T - Michoud Steam Electric Station Unit 3 - Steam Generating Unit and Accessories (Foster Wheeler.)]

Decedent's co-worker, Mr. Oatis testified that Johns-Manville's products - including gaskets - were present at Entergy's plants. [Plaintiff's Exhibit No. 96 at p. 109 and 145.] He also recalled decedent working with Johns-Manville packing at the Michoud and Patterson plants. [Plaintiff's Exhibit No. 89 at p. 33-35.]

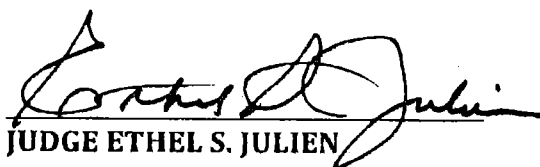
The court holds that Entergy has not met its burden of proof as to Johns Manville. Specifically, it is not clear from the evidence and testimony which of the products supplied by Johns-Manville contained asbestos; and, as to the asbestos cement, it is not clear if it was even used or in place when decedent was employed by Entergy.

DAMAGES

Counsel entered into stipulations regarding the authenticity and admissibility of decedent's medical bills; decedent's medical expenses of \$256,749.43; his loss of earnings of \$86,785.00; and the present value of loss of the personal services from date of diagnosis on March 8, 2004 through his death on May 21, 2005 of \$9,068.00.

As for decedent's pain and suffering, the court awards the sum of \$1,500,000.00 for decedent, George Cordes' pain and suffering; \$1,500,000.00 for decedent's loss of enjoyment of life; and \$1,000,000.00 for decedent's mental anguish.

New Orleans, Louisiana this 27 day of December, 2013.


JUDGE ETHEL S. JULIEN