

\$48 million asbestos verdict includes punitive damages

BY AMANDA BRONSTAD

A Los Angeles jury has awarded \$48 million to a California man and his wife after he was diagnosed with mesothelioma attributed to his exposure to asbestos while working on construction sites in Los Angeles during the 1960s and 1970s.

The verdict, awarded in two phases earlier this month, was the largest in the nation so far this year, according to an attorney at Baron & Budd who represented the plaintiffs, Bobbie and Helen Izell.

"The verdict in this case is outrageous and unsupported by the facts or applicable law," said Scot Wheeler, a spokesman for Union Carbide Corp., which the jury found responsible for \$37.5 million of the verdict.

"While the jury was likely swayed by sympathy for Mr. Izell and his wife, the credible evidence introduced at trial clearly demonstrates that asbestos from Union Carbide did not cause Mr. Izell's disease," Wheeler said. "Union Carbide has strong grounds for appeal and believes the verdict will be completely set aside by post-trial motions or through the appellate process. Union Carbide will continue to vigorously defend all asbestos cases brought against the company."

John Langdoc, a partner at Dallas-based Baron & Budd, said the verdict includes \$18 million in punitive damages against Union Carbide and sends a message.

"The punitive damages don't have anything to do with anybody else in the asbestos litigation, but it does say something about the severity of the corporate conduct with respect to Union Carbide," he said.

Hundreds of asbestos cases were coordinated late last year in Los Angeles in a special proceeding designed to streamline an increasing flood of litigation in that state's courts. The situation has been particularly acute in Los Angeles, because plaintiffs' firms specializing in asbestos litigation, lured by the prospect of juries known to render large verdicts, have opened offices there. Most of the cases involve



Baron & Budd's
John Langdoc

mesothelioma or lung cancer, as opposed to less life-threatening disease.

Izell, 86, was an independent general contractor who built houses and other buildings from 1950 through 1994, according to Langdoc. Between 1964 and 1979, Izell was exposed to products containing asbestos while working as a cement contractor, he said. "He was at work sites where people were using asbestos-containing products."

Izell was diagnosed with mesothelioma on July 7, 2011, Langdoc said. On Sept. 19, he sued more than 20 companies involved in construction at the time, including those that supplied joint compounds used in drywall and stucco. He also sued asbestos maker Union Carbide.

Three of the four companies that supplied joint compounds settled before trial under confidential terms, Langdoc said.

The jury's verdict of \$30 million in compensatory damages, issued on June 14, covered physical pain, mental suffering, loss of enjoyment of life, emotional distress and other non-economic damages, Langdoc said.

Of the total compensatory damages, 1 percent was leveled against Parex USA Inc., part of France's Materis S.A.; 3 percent against CalPortland Co.; 6 percent against Amcord Inc.; 20 percent against Kaiser Gypsum Co. Inc., and 65 percent against Union Carbide, a subsidiary of The Dow Chemical Co.

Two defunct asbestos companies — Philip Carey Canadian and Johns Manville — were each found 1 percent liable, even though they weren't named as defendants. The jury also found each of the settling defendants 1% liable.

Jerry Popovich, a partner in the Santa Ana, Calif., office of Los Angeles-based Selman

Breitman who represents Amcord, called the jury's award against his client "excessive" and ripe for post-trial motions and, if necessary, an appeal.

"We believe this is a jury that was being ruled by passion and prejudice," he said. "There was little evidence his quality of life had been affected so far, other than the fact he knew he had cancer." He noted that Izell had survived prostate cancer in the past.

Bobbie Bailey, a partner at Howard Rome Martin & Ridley in Redwood City, Calif., who represents Parex, which makes La Habra Products, and Todd Suddleson, a partner in the Dallas office of DeHay & Elliston, who represents Kaiser Gypsum, declined to comment.

Robert Berkes of Berkes Carne Robinson & Seal in Los Angeles, an attorney for CalPortland, did not return a call for comment.

In addition to compensatory damages, the jury found that both Kaiser Gypsum and Union Carbide were liable for punitive damages.

Kaiser Gypsum settled for a confidential amount before the jury awarded punitive damages against the company, Langdoc said. On June 19, the jury assessed \$18 million in punitive damages against Union Carbide.

Langdoc credited the punitive damages award to evidence at trial of a 1967 Union Carbide internal memo that revealed knowledge of a link between asbestos and cancer. The jury gave \$1 million for each year the company supplied asbestos following that memo.

"We were really surprised at how severe the 'cover up' of the hazards of asbestos was," he said.

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