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Jury Holds Trade Association Responsible for Tile-Setter's Mesothelioma

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Toxic Tort Alert

On May 22, 2012, a Fairfield County, Connecticut, jury awarded plaintiffs in *Gail S. Acquarulo, Executrix of the Estate of Hannibal Saldibar, et al. v. Tile Council of North America, Inc.,* Civil Action No. ASB-FBT-CV-09-5024498-S, $1.6 million in compensatory damages and found that defendant trade association acted with reckless disregard for product users, leading to an $800,000 punitive award from the court. After a hearing on August 24, 2012, the trial judge denied the trade association's post-trial motions to set aside the verdict, for judgment notwithstanding the verdict, and for remittitur and entered judgment in favor of plaintiffs for $2.4 million.

Plaintiffs claimed that their decedent contracted mesothelioma as a result of his exposure to asbestos while serving in the U.S. Navy, during his six years working as a boiler maintenance mechanic, and during his 30 years working as a tile-setter. They contended that the trade association was at least partly responsible for the decedent's death because it created the formulas for some of the asbestos-containing dry-set mortar that the decedent used during his career as a tile-setter. Although plaintiffs conceded that the trade association neither manufactured nor sold the dry-set mortar, they argued that the trade association should be held responsible because it designed the formula for the mortar at issue, took steps to market the product, and collected royalties from manufacturers that made and sold the mortar.

The defense contended that the trade association could not be held liable because it was a trade association and was neither a manufacturer nor product seller within the meaning of Connecticut's Product Liability Act § 52-572m *et seq.* (CPLA). In essence, the trade association argued that it created the recipe but did not make the product.

The trade association's executive director testified that the trade association was a nonprofit trade association created in the 1950s to promote the use of ceramic tile. The trade association did so primarily through the development of national standards for tile-setting, researching and developing methods for more efficient uses of ceramic tile, as well as a small amount of advertising. The executive director conceded that the trade association required any manufacturer that made and sold dry-set mortar according to the trade association's formula or that met the organization's adhesion standards to pay licensing fees and royalties in exchange for using the trade association's logo on its products

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Plaintiffs argued that the trade association was a manufacturer under the CPLA because it designed the dry-set mortar that the decedent used, marketed the dry-set mortar through published articles and correspondence to the construction industry, and allowed licensees to use the trade association's logo on bags of dry-set mortar in exchange for royalties and licensing fees. In essence, plaintiffs argued that the trade association was a manufacturer and/or product seller under the CPLA because it did everything but actually manufacture and sell the product and, importantly, that construction engineers would specify the use of the trade association approved products.

The plaintiffs bar representing those alleged to suffer from asbestos-related diseases continues to creatively and aggressively pursue alternative avenues of recovery for their clients. This verdict is unique in that plaintiffs were able to convince a judge and jury to hold liable a trade association that was not directly in the "stream of commerce" since it neither manufactured nor sold the product responsible for their client's mesothelioma.

For more information, please contact Craig T. Liljestrand or your regular Hinshaw attorney.

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