JGT:jsh 10-14-71

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
NOV 30 1971
____M. _____ 19____
James R. Cooney, Clerk, U. S. Court
By Hazel E. Studdard DEPUTY

CLARENCE BOREL	§	
VS.	§	CIVIL ACTION NO. 6449
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	§	

JUDGMENT

THIS action came on regularly for trial on the 20th day of September, 1971, before the Court and a jury, Honorable Joe J. Fisher, District Judge, presiding. A jury of twelve persons was regularly impaneled and sworn to try said action, and witnesses on the part of plaintiff and defendants were sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider their verdict and subsequently returned into Court with the verdict signed by the foreman as follows:

"VERDICT OF THE JURY

SPECIAL INTERROGATORY NO. 1

Do you find from a preponderance of the evidence that any of the Defendants listed below was negligent in any of the respects contended by Plaintiff, which negligence was a proximate cause of the injuries and death of the deceased?

Answer "Yes" or "No" opposite the named defendant.

ANSWER:

Pittsburgh Corning Corporation	No
Armstrong Cork Company	No
Philip Carey Corporation	Yes
Ruberoid Company, Division of GAF Corporation	Yes
Johns-Manville Products Corporation	Yes
Fibreboard Paper Products Corporation	Yes

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SPECIAL INTERROGATORY NO. 2

Do you find from a preponderance of the evidence that any of the Defendants listed below committed some act of gross negligence as contended by the Plaintiff and that such act of gross negligence was a proximate cause of the death of the deceased?

Answer "Yes" or "No" opposite the named Defendant.

ANSWER:

Pittsburgh Corning Corporation	No
Armstrong Cork Company	No
Philip Carey Corporation	No
Ruberoid Company, Division of GAF Corporation	No
Johns-Manville Products Corporation	No
Fibreboard Paper Products Corporation	No

"Gross negligence" is defined as a heedless and reckless disregard for the rights of others.

"Heedless and reckless disregard" means that such an entire want of care as to indicate that the act, or failure to act, in question was a result of conscious indifference to the rights, welfare, or safety of the persons affected by it, and in order to establish "gross negligence" the burden is on the plaintiffs to show that defendant could or should have foreseen and prevented the injury and that the defendant acted with a degree of negligence which brought about the accident and injury.

If you have answered either Special Interrogatory 1 or 2 "Yes" and in that event only, you will answer the following interrogatory.

SPECIAL INTERROGATORY NO. 3

Do you find from a preponderance of the evidence that the deceased was guilty of contributory negligence and that such negligence was a proximate cause of the injuries and death of the deceased?

Answer "Yes" or "No."

ANSWER: Yes

SPECIAL INTERROGATORY NO. 4

Do you find from a preponderance of the evidence that the warranties as contended for by the Plaintiff were violated by any of the Defendants listed below, which breach of warranty was a proximate cause of the injuries and death of the deceased?

Answer "Yes" or "No" opposite the named Defendant.

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ANSWER:

Pittsburgh Corning Corporation	Yes
Armstrong Cork Company	Yes
Philip Carey Corporation	Yes
Ruberoid Company, Division of GAF Corporation	Yes
Johns-Manville Products Corporation	Yes
Fibreboard Paper Products Corporation	Yes

SPECIAL INTERROGATORY NO. 5:

What amount of money, if paid now in cash, would fairly and reasonably compensate the Plaintiff, Freida Borel, for the damages sustained by virtue of the death of her husband?

Answer in dollars and cents, if any.

ANSWER:

Actual Damages

$68,000.00

Damages for Gross Negligence

None

We, the jury, return the above answers to the special interrogatories propounded to us herein as our verdict in this case.

September 29, 1971
Date

/s/ Roy Jenkins
FOREMAN OF THE JURY"

It further appearing to the Court that the medical expenses of the deceased were in the amount of $9,783.30, and the parties having stipulated that funeral expenses amounted to $1652.94 and that the same should be added to the actual damages of $68,000.00 awarded by the jury;

It further appearing to the Court and the Court having found that four of the original defendants, who were also named as cross-defendants in cross-actions seeking contribution or indemnity, had effected compromises and settlements with the plaintiff, Thelma Freida Borel, whereby she finally released each of the settling defendants but reserving all claims and causes of action against the remaining defendants, those having settled and compromised being Standard Asbestos Manufacturing &

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Insulating Company, Unarco Industries, Inc., Owens-Corning Fiberglas Corporation and Eagle-Picher Industries, Inc., and the Court having found and determined that Clarence Borel worked with and was exposed to asbestos and asbestos dust and fibers from the products manufactured by each of the settling defendants, which contributed to his injury and death, and the Court having found and determined that such settling defendants were each and all negligent in one or more of the respects alleged in plaintiff's complaint, and each and all breached their respective warranties, and that such negligence and breach of warranty on the part of each of the settling defendants constituted a proximate cause of the injury and death of Clarence Borel; and the Court having concluded that such settling defendants were joint tort feasors and having overruled defendants' motions to reduce the damages assessed plaintiff by 4/10ths of the total damages, but having determined that the total damages of $79.436.24 should be reduced by the sum paid by the settling defendants, which according to the stipulation of the parties amounted to a total of $20,902.20, leaving the sum of $58,534.04 which plaintiff was entitled to recover against the remaining defendants, jointly and severally;

It is accordingly ORDERED, ADJUDGED and DECREED by the Court that the plaintiff, Thelma Freida Borel, do have and recover over and against the remaining defendants, Fibreboard Corporation, Pittsburgh-Corning Corporation, Johns-Manville Products Corporation, Philip Carey Corporation, Armstrong Cork Company and Ruberoid Company, jointly and severally, the sum of $58,534.04, together with interest thereon at the rate of six per cent (6%) per annum from date of entry hereof, as well as all costs of court.

It is further ORDERED that each of the remaining defendants do have and recover on their respective cross-actions contribution under the provisions of Article 2212, Vernon's Annotated Statutes, and that any

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of said remaining defendants paying any sum in excess of $9,755.67 do have and recover against the other defendants any excess so paid for which they are entitled to execution.

It further appearing to the Court that out of the sum recovered by plaintiff, Thelma Freida Borel, that intervenor, National Surety Company, was entitled to judgment for the sum of $8,578.85;

It is, therefore, further ORDERED that intervenor, National Surety Company, do have and recover over and against the plaintiff, Thelma Freida Borel, said sum of $8,578.85 out of the sum herein decreed.

It further appearing that at the close of all of the evidence, Combustion Engineering, Inc., duly and timely presented its motion for an instructed verdict, which was granted by the Court;

It is ORDERED, ADJUDGED and DECREED that the plaintiff, Thelma Freida Borel, take nothing against the defendant, Combustion Engineering, Inc., and that this defendant recover its costs against the plaintiff.

It is further ORDERED that the remaining defendants, Fibreboard Corporation, Pittsburgh Corning Corporation, Johns-Manville Products Corporation, Philip Carey Corporation, Armstrong Cork Company and Ruberoid Company, do have and recover nothing on their cross-action for contribution against Combustion Engineering, Inc.

SIGNED AND ENTERED this 30th day of November, 1971.

Judge Presiding

APPROVED AS TO FORM:

Attorney for Plaintiff

For Defendants

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