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Man gets \$25M asbestos verdict

Exxon had a 'duty to warn' repair crews on NN tankers

BY ALAN COOPER

A Newport News Circuit Court jury has awarded \$25 million to a ship repair coordinator who had contracted mesothelioma.

The predecessors of Exxon Mobil, the defendant in the case, had taken steps to protect their refinery workers from the dangers of asbestos since the 1930s.

But the company did nothing to shield its employees or the repair crews that worked on oil tankers at Newport News Shipbuilding in the 1960s and 1970s, personal injury attorney Robert R. Hatten told a Newport News jury earlier this month.

Because of its knowledge of the hidden, ultrahazardous properties of asbestos, the company had a duty to intervene but took no action, Hatten argued.

The jury agreed and awarded \$12.5 million in compensatory damages and \$12.5 million in punitive damages.

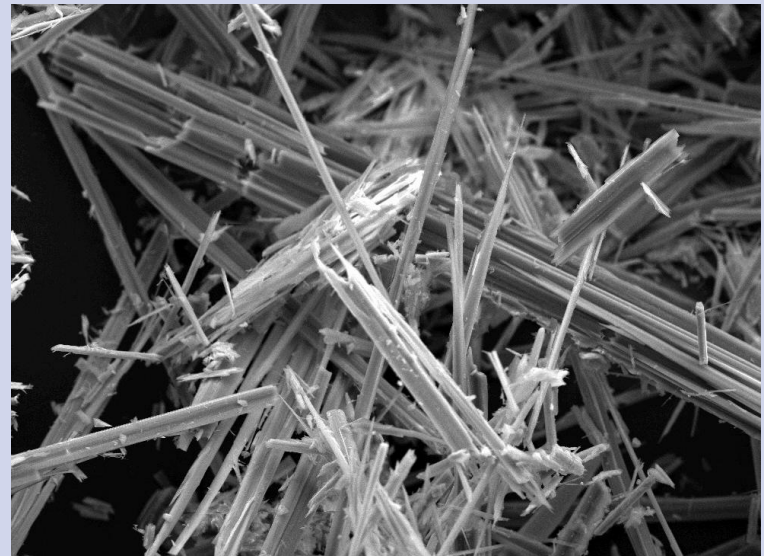
The plaintiff, Rubert "Bert" Minton, worked on 17 tankers between 1966 and 1977, some of them more than once. He encountered asbestos insulation and packing in the ships' engine and boiler rooms and along pipes that carried steam from one end of the ships to the other.

He developed mesothelioma, a rare form of cancer usually caused by asbestos that can occur years or decades after exposure to the silicate mineral. It was widely used in brake linings, in roofing and building materials and in industrial settings because of its superior insulating properties.

In 2009, Minton, 72, underwent surgery, which physicians said extended his life from a projected six to 18 months to three to five years; he



HATTEN



still faces a premature and painful death, Hatten argued.

Hatten previously brought a similar claim on behalf of a different shipworker, but he lost. Both suits were brought under § 905(b) of the Longshore and Harbor Workers Compensation Act, in late 2008.

The provision allows a worker who is eligible for benefits from his employer for job-related injuries and illnesses to pursue a separate claim based on the negligence of a ship owner.

Hatten said he believed a jury decided against him in the earlier case because he had failed to establish that Exxon Mobil participated in and controlled the repair process, even though the plaintiff's employer had been hired to do the work.

This time, "we virtually buried them with their own documents on control," he said.

Hatten said somewhat sheepishly that he underestimated the force of that argument.

Because he asked for "only" \$5 million in punitive damages in the Minton case, the award will be reduced to that amount. "It was very obvious from the verdict that they were upset with Exxon," he said. "I had not anticipated how upset they would be."

Hatten's adversary in both cases was William H. Armstrong from Oakland, Calif., who did not respond to a request for comment.

Raymond Botto, a spokesman for Exxon Mobil, said the company already has filed motions to set aside or reduce the verdict and is considering all its options, including an appeal.

Botto said the repairs were under the supervision of Newport News Shipbuilding and its personnel, so that they were responsible for using the protective practices of the industry.

Hatten said Judge Timothy Foster made a key pretrial ruling that the knowledge of the shipyard about the hazards of asbestos could not be considered by the jury.

"The person with superior knowledge has a duty to warn," and the protection from asbestos that Exxon Mobil provided its employees in other contexts showed such knowledge, Hatten contended.

He said he has filed "no more than half a dozen" other lawsuits against Exxon Mobil in Newport News Circuit on behalf of other shipyard workers.

Most asbestos manufacturers are out of business or have shifted their liability to settlement trusts, but Hatten won a seven-figure verdict against John Crane, one of the few companies still solvent or not protected by a settlement trust, in each of the previous five years.

Botto said he had no information on how many suits are pending against Exxon or on whether other asbestos verdicts have been returned against it.

As one of the largest and most profitable companies in the world, it is an attractive target for attorneys, like Hatten, who have a history of representing victims of asbestos-related diseases.

"There's a lot of fault to go around for all the misery and death that asbestos has caused," Hatten said.