

**January 26, 2005**

COURT OVERTURNS RECORD ASBESTOS LIABILITY AWARD

(3M Company v. Johnson)

The Mississippi Supreme Court this week overturned a record \$150 million asbestos product liability judgment awarded to six men, none of whom were injured. The decision in *3M Company v. Johnson* was a victory for WLF, which filed a brief in the case urging reversal. WLF argued that the award was a textbook example of the tort system run amok, with damages being freely awarded even in the absence of any credible evidence of exposure to asbestos or negligence on the part of the defendants, proof that any alleged negligence caused the plaintiffs' alleged injuries, or proof that the plaintiffs suffered any damages.

The Mississippi court agreed with WLF that a prime deficiency in the trial was the trial judge's willingness to permit the unrelated cases of numerous plaintiffs to be consolidated for trial against numerous unrelated defendants. The court ruled that consolidated trials of this sort inevitably lead to jury confusion and deny each defendant its right to have its case adjudged on an individual basis.

The decision is particularly significant because the Mississippi court system has long been viewed as being hostile to out-of-state corporate defendants and unwilling to provide fair trials to those sued for asbestos-related personal injury claims. This week's decision, and several others like it in the past several months, suggest that the Mississippi Supreme Court is taking great strides to improve the administration of justice within the State.

The case involved six of the many asbestos claimants in Holmes County, Mississippi, an impoverished, rural Mississippi county targeted by plaintiffs' lawyers. Those lawyers offered free asbestos "screening" to hundreds of county residents. Any resident found to be suffering from even minor lung impairments was offered legal representation in litigation against numerous companies with at least some involvement in the asbestos quagmire. For some companies such as 3M Company, that involvement was quite minor. For example, 3M was not brought into the lawsuits based on its role in manufacturing asbestos-containing products; rather, for many years it made dust masks worn by industrial workers. Although most of those masks were not intended to protect workers from airborne asbestos, 3M nonetheless has found itself named as a defendant in thousands of asbestos product liability suits. The plaintiffs in those suits contend that their asbestos-related injuries were caused in part by defectively-designed 3M masks.

In the asbestos case before the Mississippi Supreme Court, the six plaintiffs were diagnosed with a minor lung impairment known as pleural thickening; this impairment was not sufficient to result in any medical treatment or to impair any of their daily activities. Each of the six testified that, for at least a portion of their careers, they worked at facilities at which asbestos was thought to be present. Four of the six testified that, for brief periods of their careers, they wore masks while on the job -- and they said that the masks might have been 3M masks.

Based on that evidence, the jury awarded \$25 million to each plaintiff, apportioning the verdicts among 3M and several manufacturers of asbestos-containing products. 3M's share of the judgment was \$22.5 million. All of the defendants other than 3M later either settled or declared bankruptcy; 3M appealed to the Mississippi Supreme Court. In overturning the \$150 million jury verdict, the Mississippi Supreme Court held that the trial court should have dismissed the case for lack of evidence, because the plaintiffs failed to demonstrate exposure to asbestos, any defect in 3M's products, a causal relationship between any alleged defect and any injury, or that they had suffered any injury at all.

The court also agreed with WLF that the trial was fundamentally unfair to the defendants because the claims of numerous unrelated plaintiffs against numerous unrelated defendants were consolidated into a single trial. WLF argued that such consolidation violates both state law and the U.S. Constitution. WLF noted that the plaintiffs all worked for different companies, and claimed to have been exposed to different asbestos products in different ways and for widely different durations. WLF also noted that the plaintiffs were proceeding against 3M under a theory wholly different from their theory involving the other defendants; 3M was the only defendant not claimed to have manufactured asbestos-containing products, and the sole basis for the claim against 3M was that its protective gear did not prevent the plaintiffs from inhaling asbestos. WLF argued that had the trials not been consolidated, the jury most likely would not have overlooked such details as the fact that 3M dust masks were never intended to protect against asbestos.

WLF is a public interest law and policy center with supporters in all 50 states, including many in Mississippi. WLF devotes a significant portion of its resources to tort reform issues. WLF filed its brief with the pro bono assistance of R. Pepper Crutcher, Jr., an attorney with the Jackson, Mississippi law firm of Balch & Bingham, LLP.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.