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WLF Asks California High Court to Ensure Fairness In Trials Focused Solely on Punitive Damages

(Casey v. Kaiser Gypsum Co.)

“When a tort defendant is found liable for a plaintiff’s injuries, a second jury is frequently convened to decide whether the defendant should also be required to pay punitive damages. All too often, however, the trial judge fails to provide proper guidance to the jury—with the result that the defendant is unprotected from irrationally large awards.”—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today filed a brief urging the California Supreme Court to review and reverse a lower-court decision that upheld a massive punitive-damage award against a manufacturer that 40 years ago marketed a product containing asbestos—even though the courts had previously determined that the manufacturer was only responsible for 3.5% of the plaintiffs’ injuries. WLF’s *amicus* brief in *Casey v. Kaiser Gypsum Co.* argued that lower courts are in urgent need of guidance regarding how they can conduct punitive-damages-only retrials in a manner that provides fundamental fairness to all litigants.

John Casey was exposed to a broad range of asbestos products during his career as a plumber and pipefitter at numerous construction sites. He eventually contracted mesothelioma, a form of cancer associated with exposure to asbestos. Because most of the manufacturers of asbestos-laden products with which pipefitters frequently work (*e.g.*, gaskets and packing) have long since been driven into bankruptcy, Casey was forced to go to trial against Kaiser Gypsum, which until the 1970s produced an asbestos-containing joint compound used in putting up wallboard.

Although Casey had no recollection of ever having been exposed to a Kaiser Gypsum product, a fellow employee recalled that nearby workers installing wallboard at several construction sites used Kaiser’s product. Based on that evidence, the jury at an initial trial awarded \$21 million in damages, but concluded that Kaiser was only 3.5% responsible. The jury was deadlocked on whether Kaiser acted with sufficient maliciousness to warrant a punitive-damage award.

At a retrial before a second jury limited to the punitive-damage issue, the trial judge refused to tell the second jury that the first jury allocated only a 3.5% share of comparative fault to Kaiser, and that Casey was exposed to scores of other asbestos products. The second jury then awarded \$24 million in punitive damages. WLF’s brief argued that fundamental fairness required that the second jury be provided that information; otherwise, the second jury was likely to conclude that Kaiser was solely responsible for Casey’s injuries.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “When a tort defendant is found liable for a plaintiff’s injuries, a second jury is frequently convened to decide whether the defendant should also be required to pay punitive damages. All too often, however, the trial judge fails to provide proper guidance to the jury—with the result that the defendant is unprotected from irrationally large awards. Awards of punitive damages ought to be reserved for cases involving particularly reprehensible conduct, and juries need guidance regarding when those circumstances exist.”

WLF is a public-interest law firm and policy center that seeks to ensure that economic liberty is not impeded by excessive litigation.

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