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NN jury returns \$10.4M verdict in asbestos case

By ALAN COOPER

A Newport News Circuit Court jury has returned a \$10.4 million verdict for the family of a man who alleged that he had contracted mesothelioma while installing asbestos gaskets and packing in the engine rooms of ships from 1963-1967.

The verdict was entered on July 26 at the end of a three-week trial before Judge C. Peter Tench.

Robert R. Hatten, the attorney for the family of Garland Jones, said evidence showed that three manufacturers—John Crane Inc., Johns Manville and Garlock Sealing Technologies—supplied the asbestos packing and gaskets used in the engine rooms at Newport News Shipbuilding & Dry Dock Co. Hatten won settlements from the Johns Manville Settlement Trust and Garlock before trial, leaving John Crane as the only defendant.

Jones developed mesothelioma in July 2004 and incurred about \$400,000 in medical bills during 10 hospitalizations. He died from respiratory failure at age 60, a year to the day before the jury returned its verdict. Exposure to asbestos is the only known cause of mesothelioma, which can take decades to develop.

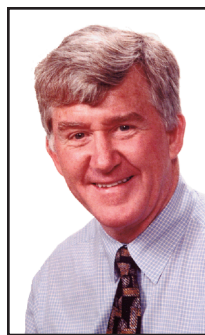
Jones was living in Chesterfield County and working as a computer analyst when he was diagnosed with the disease.

John Crane contended that any asbestos in their products was encapsulated so that no fibers were released. If any fibers were released, the number was too small to have caused Jones's mesothelioma, and the fibers in its product were of a type less likely to cause mesothelioma than the fibers in other asbestos products, the company argued.

It also contended that it could not be held liable because it was not aware of the dangers of asbestos until 1970.

Hatten countered with expert testimony that the type of work Jones did would have produced the fibers that could have caused mesothelioma. The experts testified that there is no safe level of exposure to the fibers.

Hatten also used several advantages of maritime law, which applied in the case rather than traditional Virginia tort law, to rebut the company's contention that it was not aware of the ultrahazardous nature of



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asbestos.

The doctrine of strict liability in tort applies in maritime law, a legal theory yet to be adopted by the Supreme Court of Virginia, and the standard of care for a manufacturer is what an expert in the field should have known. As a result, the jury was instructed that John Crane had a duty to

research and test the product and to anticipate the environment in which it would normally be used, Hatten said.

The maritime law of damages also is more favorable than Virginia law, Hatten noted. Unlike Virginia law, the decedent's estate can recover for his pain and suffering and a spouse can recover damages for loss of consortium.

Whether maritime or Virginia tort law applied in shipyard asbestos cases was a matter of dispute until the Supreme Court decided the issue last fall in *Garlock Sealing Technologies LLC v. Little, Executor* (VLW 005-6-101). In that case, Hatten represented the family of a mesothelioma victim who also had worked with asbestos in the engine rooms of ships.

The damages were much lower in *Little*, \$467,189 with Garlock responsible for \$276,013 of that amount.

Before last month's verdict in *Jones, Administratrix v. John Crane Inc.*, "defendants were laboring under the impression that they weren't in danger of big verdicts in Virginia," Hatten said. "When you have a verdict like this, it provides a great deal of incentive to settle cases."

Under maritime law, the jury was asked to apportion the responsibility of the defendants, and it allocated 34 percent of the blame to John Crane and 33 percent each to Johns Manville and Garlock. That percentage makes John Crane liable for about \$3.5 million.

Because the defendants remain jointly and severally liable, Hatten contends that the company also is responsible for 95 percent of the liability of the Johns Manville Settlement Trust. The trust determined

that it was liable for \$352,000 under a matrix developed for settlements with the trust, but Jones's family received only \$17,500 of that amount because the trust is insolvent and paid only five cents on the dollar. Hatten said the settlement with Garlock was for six figures.

He said John Crane has a policy of defending cases and appealing verdicts in cases it loses at trial. "Whenever you try a case against this company, you've got to be willing to invest a lot of time and money," Hatten said. The investment included retaining experts in five fields to establish the company's liability, he said.

The company originally took the position that it had not had a sample of its products from the 1960s since 1985, Hatten said. When it indicated in discovery that it intended to produce the results of tests conducted between 1985 and 1995, Hatten said he would attempt to have them barred under the doctrine of spoliation of evidence.

Attorneys for the company acknowledged that they had samples from the 1960s that they considered work product. However, his experts were allowed to test the samples and found fibers in them of the type recovered from Jones's lungs, Hatten said.

Hatten said testimony from Jones's widow and two of his three children reflected "the character of the man and the values of the household. He was an extraordinarily good man—rock solid values and a loving and caring person."

Archibald Wallace III of Richmond and Thomas J. Burns of the Illinois firm of O'Connell, Tivin, Miller & Burns represented John Crane.

Edward B. Mueller, the company's corporate counsel in Illinois, said defense attorneys will file post-trial motions to have the verdict set aside and expect to appeal the case if those motions fail.

"We believe the product is safe, and we defend it at trial" in most cases, Mueller said. The company's testing experts have concluded that its products emit less asbestos than is in the ambient air, he said.

Because Jones was exposed for a relatively brief period to the products of other manufacturers as well as John Crane, "This is an example of a case that you would not expect a plaintiff to succeed in," Mueller said.