

SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

In the Matter of the Eighth Judicial District Asbestos Litigation

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JAMES STOCK , Jr. and LYNN M. STOCK

DECISION AND ORDER

Index No: 807846/2017

Plaintiffs

vs.

AIR & LIQUID SYSTEMS CORP.,as
Successor by Merger to
Buffalo Pumps, Inc. et al.,

Defendants

The court has considered the following papers: Notice of Post-Trial Motion of Defendant Jenkins Bros., dated November 13, 2018; Affirmation in Support of Jeffrey C. Fegan, Esq, with attached exhibits, dated November 13, 2018; Affirmation in Opposition to Defendant Jenkins Bros.' Motion of Seth A. Dymond, Esq., dated December 10, 2018, with attached exhibits; Reply Affirmation in Further Support of Jeffrey C. Fegan, Esq, with attached exhibits, dated December 21, 2018;

Notice of Motion of Plaintiffs for Post-Verdict Relief, dated November 13, 2018; Affirmation in Support of Plaintiffs' Motion of Seth A. Dymond, Esq, with attached

James Stock, Jr. and Lynn M. Stock v Air and Liquid Systems Corp.,
Erie County Index No. 807846/2017

exhibits, dated November 13, 2018; Affirmation in Opposition to Plaintiffs' Motion of Jeffrey C. Fegan, Esq., with attached exhibits, dated December 10, 2018; Reply Affirmation in Further Support of Plaintiffs' Motion of Seth A. Dymond, Esq, with attached exhibit, dated December 21, 2018.

Joint Request to Supplement the Record of Settled Third Parties Warren Pumps, LLC, Crane Co. and Flowserve US, Inc. regarding Defendant Jenkins Bros. Motion, dated December 11, 2018; Affirmation of David J. Goodearl, Esq. in Support of the Joint Request, with attached exhibits, dated December 10, 2019 ; Affirmation of David Oxamendi, Esq., in Support of the Joint Request, dated December 7, 2018, with attached exhibits, Affirmation of Joseph P. LaSala ,Esq., in Support of the Joint Request, with attached exhibit, dated December 7, 2018.

At the trial of this action, plaintiffs¹ recovered for James Stock, Jr.'s personal injuries from mesothelioma caused by exposure to asbestos which occurred while Mr. Stock was employed at New York Wire Mills (Wire Mills) in Tonawanda, N. Y. from 1979 until 1986. Plaintiffs contended at trial that plaintiff's work with asbestos-containing materials used in and on valves manufactured and supplied by defendant Jenkins Bros. (Jenkins) was a substantial factor in the development of his illness.

The jury trial in this matter, in which Jenkins was the sole remaining defendant, began on August 24, 2018. On September 14, 2018, a verdict was rendered which

¹This decision and order uses plaintiffs to include both spouses and plaintiff to mean James Stock, Jr., as the context requires.

*James Stock, Jr. and Lynn M. Stock v Air and Liquid Systems Corp.,
Erie County Index No. 807846/2017*

found that decedent was exposed to asbestos-containing gaskets or packing used in connection with Jenkins valves ; that Jenkins failed to exercise reasonable care by not providing a warning about the hazards of asbestos-containing gaskets or packing used in connection with its valves; and that the failure to warn plaintiff was a substantial factor in causing his injuries. The jury awarded \$4,500,000.00 for James Stock's past pain and suffering, including loss of enjoyment of life, \$1,500,000 in future pain and suffering for a period of one year, \$66,000 for past loss of earnings, \$400,000 for future loss of earnings for period of six years, \$50,000 for past loss of consortium to Lynn M. Stock and \$450,000 for future loss of consortium for a period of 22 years. The jury found that Jenkins was fifty percent responsible for plaintiff's injuries. The jury also found four co-defendant valve and pump manufacturers responsible and allocated the following shares of responsibility: Bell & Gossett Company (Bell & Gossett), Rockwell Manufacturing Company (Rockwell) and Warren Pumps, LLC (Warren) at 12 % each and Crane Co. (Crane) for 14%.

Defendant takes issue with the verdict in all its particulars and moves, in the alternative: for judgment notwithstanding the verdict and dismissal of the complaint; for a new trial; and remittitur to cure an excessive verdict.

Plaintiffs move for judgment as a matter of law awarding \$376,307 in damages for loss of household services in the future, or in the alternative, for a new trial on that issue.

Jenkins argues that plaintiffs, in order to recover, had to prove that the Jenkins

*James Stock, Jr. and Lynn M. Stock v Air and Liquid Systems Corp.,
Erie County Index No. 807846/2017*

valves plaintiff worked with and around contained asbestos or used asbestos-containing components when they left the factory. Further, defendant maintains that plaintiffs failed to establish that Mr. Stock's asbestos-related disease was caused by his work with Jenkins valves. Defendant's proposed remedy is judgment notwithstanding the verdict.

Jenkins seeks a new trial, asserting that it was deprived of a fair trial because co-defendant pump and valve manufacturers Crane, Rockwell and Warren failed to comply with its subpoena for trial testimony of their corporate representatives. This testimony was sought, Jenkins explains, on issues of liability, including allocation.

Defendant also contends that the jury's allocation of fault was against the weight of the evidence, mandating a new trial.

Further, defendant claims that the court made evidentiary errors, each requiring a new trial: the court erred in refusing to allow defendant to introduce a 1973 paper by Barry Castleman, Sc D., during the cross-examination of plaintiffs' expert David Rosner, Ph.D.; the court erred in failing to preclude the testimony of plaintiffs' economic expert, Larry Spizman, Ph.D.; and the court erred in refusing to permit Jenkins' expert industrial hygienist, Gayle McCluskey, to testify concerning a study she conducted in the 1980's.

Finally, Jenkins asserts that the jury's award for plaintiff's past and future pain and suffering is excessive and should be reduced.

Plaintiffs oppose the motion for judgment notwithstanding the verdict, asserting

*James Stock, Jr. and Lynn M. Stock v Air and Liquid Systems Corp.,
Erie County Index No. 807846/2017*

that plaintiff's direct testimony, the testimony of David Boisvert, Jenkins' corporate representative, Jenkins' own product catalogs and literature and the testimony of their occupational medical expert, Jacqueline Moline, M.D. are more than sufficient for plaintiffs to meet their burden of establishing that plaintiff was exposed to asbestos used in, on and with Jenkins valves and that defendant was liable to plaintiff for injuries resulting from its failure to warn of asbestos' dangers. Further, plaintiffs argue that the testimony of its experts Dr. Moline and Dr. Rosner established specific causation.

Plaintiffs contend that it was Jenkins' own choice and a matter of trial strategy to use a summary of past deposition testimony of corporate representatives, rather than live testimony, to prove the shares of responsibility of the co-defendants and this decision does not afford a basis upon which to grant a new trial.

Plaintiffs also contend that the jury's allocation of liability was based on a fair interpretation of the evidence.

Finally, plaintiffs contend that the Court's evidentiary rulings were correct and that even if they were erroneous, they were harmless as they had no impact on the verdict and the claimed errors afford no basis for a new trial.

CPLR 4404 (a) provides that after a trial, the court may either set aside the verdict or judgment and direct judgment as a matter of law or order a new trial where the verdict is contrary to the weight of evidence or contrary to the interest of justice. A court may not set aside a verdict as a matter of law based upon insufficiency of the evidence unless no valid line of reasoning and permissible inferences could possibly

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.