

## **APPENDIX**

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**APPENDIX A**

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IN THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT  
DIVISION TWO

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No. ED103953

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JEANETTE G. POAGE,

*Respondent,*

v.

CRANE CO.,

*Appellant.*

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Appeal from the Circuit Court of the City of St.  
Louis in Cause No. 1322-CC00059. Honorable Rex  
M. Burlison.

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Filed: May 2, 2017

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**OPINION**

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Jeanette G. Poage (“Mrs. Poage”) filed a products liability suit against Crane Co. (“Crane”) alleging that her husband, James E. Poage (“Mr. Poage”) suffered personal injuries and wrongful death from mesothelioma, which was caused by Crane’s asbestos-containing products. Mrs. Poage’s claims were based on Crane’s (1) failure to warn and (2) defective design under strict liability and negligence

theories. After a trial, the jury returned a verdict in favor of Mrs. Poage, awarding her compensatory damages and punitive damages. Crane now appeals arguing there was insufficient evidence to find Crane liable, and alternatively, that even if Crane could be found liable, the amount of punitive damages should be reduced because the award violates Crane's due process, goes beyond "fair and reasonable compensation," and exceeds Missouri's statutory cap. Additionally, Crane argues the trial court erred in failing to reduce the judgment by amounts available in the asbestos trust under § 537.060 and the common law.<sup>1</sup>

### **I. Factual and Procedural Background**

The relevant facts adduced at trial will be discussed under the relevant points on appeal. Nonetheless, we will briefly discuss the uncontroverted factual background and the procedural history of this case here.

Mr. Poage joined the Navy in April of 1954. From 1954 until 1958, Mr. Poage served as a machinist on a World War-II era ship named the *USS Haynsworth*. During his service, he helped upkeep the valves on the Haynsworth, which required replacing gaskets and packing. Mrs. Poage alleged some of the gaskets and packing were asbestos-laden products produced by Crane, which caused Mr. Poage to inhale asbestos dust and eventually develop mesothelioma. Mr. Poage died from mesothelioma in May 2012. Mr. Poage was never deposed, as Mrs. Poage filed the lawsuit after Mr. Poage's death.

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<sup>1</sup> All statutory reference are to RSMo 2000 unless otherwise specified.

On January 10, 2013, Mrs. Poage filed her petition in the Twenty-Second Judicial Circuit Court claiming that that Crane was liable to her for damages under two different theories: (1) strict liability and (2) negligence, both of which were based on defective design and failure to warn. *See Magnuson by Mabe v. Kelsey-Hayes Co.*, 844 S.W.2d 448, 455 (Mo. App. W.D. 1992) (explaining that a products liability claim can arise from (1) a design defect, (2) a manufacturing defect, and/or (3) a failure to warn of danger).

A jury trial was held from June 23, 2015 to July 2, 2015. On July 2, 2015, the jury returned a verdict in favor of Mrs. Poage, awarding her \$1,500,000 in compensatory damages and \$10,000,000 in punitive damages. On September 14, 2015, pursuant to § 537.060, the trial court reduced the compensatory award to \$822,250 based on Mrs. Poage's settlement agreements with joint tortfeasors, and it entered judgment against Crane for that amount, as well as \$10,000,000 in punitive damages.

Crane then filed post-trial motions for judgment notwithstanding the verdict, a new trial, remittitur, and/or an amendment to the judgment on October 14, 2015. Crane's motion for judgment notwithstanding the verdict was based on its contention that Mrs. Poage failed to make a submissible case by failing to present sufficient evidence to support a verdict in her favor. On January 12, 2016, all of Crane's post-trial motions were overruled pursuant to Rule 78.06 and deemed "final" for purposes of appeal pursuant to

Rule 81.05(a)(2)(A), because the trial court did not rule on them within 90 days.<sup>2</sup>

Crane now appeals and is seeking (1) “reversal of the judgment as a matter of law, or at a minimum a new trial, based upon [Mrs. Poage’s] failure to meet her burden of proving necessary factual prerequisites of the breach-of-duty and causation elements of her claims”; and (2) reversal, or at least a substantial reduction, of Mrs. Poage’s award of punitive damages.

## **II. Discussion**

**Point I: The trial court did not err in overruling Crane’s motion for judgment notwithstanding the verdict because Mrs. Poage made a submissible claim.**

In Crane’s first point on appeal, it argues that Mrs. Poage failed to make a submissible claim because (1) she failed to establish cause in fact, (2) she failed to establish proximate cause, and (3) Crane owed no duty to Mr. Poage because any gaskets or packing on the *Haynsworth* at the time Mr. Poage served were not manufactured or supplied by Crane. Accordingly, Crane contends that the trial court erred by denying its judgment notwithstanding the verdict.

### **a. Standard of Review for Judgment Notwithstanding the Verdict**

To determine whether a judgment notwithstanding the verdict should have been granted, appellate courts apply “essentially the same standard” as a *de*

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<sup>2</sup> All references to Rules are to Missouri Supreme Court Rules (2015).

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