Union Carbide Asbestos Lawsuit Continues

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JACKSON, Miss. (AP) — Union Carbide Corporation has until Jan. 27 to file a motion asking the Mississippi Supreme Court to review an unfavorable ruling in an asbestos case.

The Supreme Court on Dec. 12 overruled a Smith County judge who threw out a $3.85 million judgment for the family of Larry Smith. Smith died of lung cancer in 2002. His wife argued in a lawsuit that her husband was exposed to drilling additives made by Union Carbide that contained asbestos.

The Smith County judge said the plaintiffs failed to show Larry Smith had been exposed to a specific product on a regular basis in proximity to his work.

The Supreme Court, in a 4-3 vote, said the trial judge's ruling was flawed and sent the case back to Smith County.

Union Carbide said it wants to file briefs replying to the Supreme Court's decision.

Smith worked on petroleum drilling rigs from the 1960s until the early 1990s. At the time, it commonplace in the industry to use chemical drilling additives containing asbestos.

He was diagnosed with lung cancer in August 2002 and died three months later. Court records also show that Smith was a heavy smoker.

The family filed suit in March 2006.

In May 2009 after a 3-week trial, a jury in Smith County returned a verdict in favor of the Smith family and assessed damages of $3.85 million.

But in January 2010, the trial judge threw out the verdict.

The Supreme Court said the "frequency, regularity, and proximity of exposure" test used by the trial judge in overturning the verdict is limited to motions for summary judgment — directed verdicts — before a case goes to a jury.

"At the jury-consideration stage, the 'frequency, regularity, and proximity' test falls away, and a plaintiff must demonstrate the elements of a design defect product liability claim," Justice Josiah Coleman said in the ruling.

"Instead, the trial court should have matched the plaintiffs' proof against the statutory elements of a design defect products liability claim, just as would be required in any non-asbestos negligent design litigation," Coleman said.

Union Carbide attorneys said in the motion to the Supreme Court that the "frequency, regularity, and proximity" standard was not presented in the appeal.

"The parties have not had the opportunity to fully brief this issue before the court," the company wrote in a filing.

"Due to the latent nature of asbestos-related disease, the 'frequency, regularity, and proximity' test is used by courts across the country for establishing proximate causation in products liability actions involving asbestos-related injuries.

The company said the Supreme Court's December opinion will affect other asbestos cases pending in Mississippi and possible future filings.

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