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## **COURTROOM NEWS from HarrisMartin's COLUMNS-Asbestos**

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### **N.Y. Awards \$5 Million in Case Against Foster Wheeler**

SYRACUSE, N.Y. — New York jurors have awarded \$5 million to a former U.S. Navy boiler technician, rejecting a defendant's argument that because it did not affix the asbestos-containing insulation to the boilers, it did not owe the plaintiff a duty to warn. *Pokorney v. Foster Wheeler*, No. 2006-3087 (N.Y. Sup. Ct., Onondaga Cty.).

The Onondaga County Supreme Court jury reached the verdict July 10 after 12 hours of deliberations, sources told HarrisMartin.

The two-week trial was presided over by Judge James W. McCarthy.

Jurors broke down the award into \$2.5 million for past pain and suffering and \$2.5 million for future pain and suffering. Douglas Pokorney was the only plaintiff in the proceedings.

Pokorney alleged that when he entered the U.S. Navy in 1962 as a boiler technician, he was exposed to asbestos on boilers manufactured by Foster Wheeler. This exposure during his four years in the U.S. Navy led to his development of mesothelioma, Pokorney claimed.

Foster Wheeler, the lone remaining defendant at the time of the verdict, argued during trial that it was not responsible for any asbestos insulation affixed to its boilers.

Specifically, the defendant said that it was ordered in 1943 by the U.S. Navy to replicate pre-existing boilers. Any insulation on the newer Foster Wheeler boilers was supplied or bought by the U.S. Navy, Foster Wheeler contended.

Sources told HarrisMartin that court did not allow the U.S. Navy to appear on the verdict sheet, and Foster Wheeler was not permitted to assert the government contractor defense during trial. Foster Wheeler was assessed 31 percent liability by the jury.

Counsel for Foster Wheeler told HarrisMartin that the defendant plans to appeal the verdict.

Testifying on behalf of the plaintiff were Jacqueline Moline, M.D.; Jerrold L. Abraham, M.D.; Dr. David Ozonoff, state-of-the-art; and Arnold Moore, naval architect and engineer.

Testifying on behalf of Foster Wheeler was Lawrence Betts, M.D.

Counsel for Pokorney were Jerome H. Block of Levy, Phillips & Konigsberg in New York and Keith R. Vona of Lipsitz & Ponterio in Buffalo, N.Y.

Foster Wheeler was represented by John M. Fitzpatrick and Erik D. Nadolink of Wheeler Trigg Kennedy in Denver and Stephen Novakidis of Sedgwick Detert Moran & Arnold in Newark, N.J.

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