

Chicago Daily Law Bulletin

3 injured workers get \$180M

June 4, 2012

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The \$180 million verdict handed down by a federal jury in East St. Louis Friday to three men injured in a grain elevator explosion will be upheld on appeal, attorney Robert A. Clifford said Monday.

Clifford also said the likelihood is "very high" that the plaintiffs will get all the money they are entitled to.

Clifford said the jury assessed the damages at about 60 percent against ConAgra Foods, based in Omaha, Neb., and about 40 percent against West Side Salvage, of Atkins, Iowa.

The trial lasted for a month before U.S. District Judge Michael J. Reagan.

The three victims were injured while on the site of a ConAgra grain facility in Chester, Ill., on April 27, 2010, to clean out a clogged grain bin.

The bin exploded, burning all three — one man over 75 percent of his body.

Two of the victims were represented by Clifford and two of Clifford's partners in Clifford Law Offices, Kevin P. Durkin and Colin H. Dunn. They were also represented by Brad L. Badgley of Belleville, Ill.

Those two plaintiffs appeared at a press conference Monday in Clifford's offices at 120 N. LaSalle St.

John W. Jentz, 38, of St. Peter, Minn., who was burned over 75 percent of his body in the accident, said:

"What ConAgra did was so wrong they should be punished. ... No amount of money will take away the pain that I suffered and will continue to suffer. ... At least my belief in the jury system remains strong."

Robert Schmidt, 35, of Hutchinson, Minn., said, "Like John Jentz, I also feel great confidence in the civil justice system and the power of the jury to speak for all of us."

The third victim, Justin Becker, of Cedar Rapids, Iowa, was represented by Marc A. Taxman, Sean P. Murray and Julie A. Levinson-Pustilnik of Anesi, Ozmon, Rodin, Novak & Kohen Ltd.

Of the total of about \$180 million, \$112 million was awarded to Clifford Law Offices' clients Jentz and Schmidt.

ConAgra issued a statement after the trial that said in part:

"Clearly, this accident was tragic. However, we do not agree with the verdict or the damages. Specifically, we do not believe our actions caused the injuries, and we will appeal this outcome."

Clifford said the three men got hired to clean out a clogged grain bin that was filled with wheat middling pellets, which are feed for livestock or pets.

Because the pellets were too hot and too wet, they "clumped up" and stopped the flow of grain. The victims were hired to break up the clumps through physical labor.

ConAgra hired West Side Salvage, which employed Becker. West Side Salvage hired A & J Bin Cleaning from Minnesota to help. That firm employed Jentz and Schmidt.

"For a six-week period from March 13, 2010, up until the date of the explosion, the bin itself was smoking at various times," and temperature levels were very high, Clifford said.

Workers testified at the trial, Clifford said, that hourly temperatures were taken at ConAgra's request that showed that the temperatures were too high in the bin. The temperature records disappeared before trial, but the workers testified from their memories, Clifford said.

Several ConAgra workers testified that they "repeatedly told their management to call the fire department; an explosion can occur here. And those employees were ignored," Clifford said.

"Company officials knew the seriousness of what was happening and never conveyed that information" to the victims "or provided them with the proper precautions so that they would avoid injury."

He said the company may have believed the fire department would shut down that grain bin and the product inside would be lost.

"We argued that ConAgra put money over safety," he said.

On April 27, a ConAgra executive finally called the fire department on a nonemergency line. But the bin exploded while he was on the phone, Clifford said.

The remainder of ConAgra's statement said:

"Safety has been and continues to be absolute first priority for ConAgra Foods. While we have insurance policies that we believe cover the full amount of this judgment, we will further defend our actions and practices as this case continues."

Jentz was awarded the highest amount, \$41.5 million in compensatory damages and \$34.3 million in punitive damages, for a total of \$75.8 million.

John L. Kirkton, editor of the Illinois Jury Verdict Reporter, said the prior high nondeath, burn verdict in Illinois was between \$31 and \$38 million.

Efforts to get comments from a variety of defense lawyers were unsuccessful. Clifford's office listed the defense lawyers as follows:

ConAgra was defended by John W. Patton Jr., David F. Ryan, John A. Ouska III and David W. Gray of Patton & Ryan LLC in Chicago, and by Joseph C. Orlet, Brandan P. Mueller and Joseph A. Kilpatrick of Husch, Blackwell LLP in St. Louis.

West Side Salvage and A & J Bin Cleaning were defended by John G. Schultz and Jason B. Moore of Franke, Schultz & Mullen P.C. of Kansas City, Mo.

Stephen I. Beimdiek and Sarah J. Hugg of Lashly & Baer P.C. of St. Louis also represented A & J Bin Cleaning as did Storrs W. Downey and Barry C. Brotine of Bryce, Downey & Lenkov LLC in Chicago.