

STATE OF MICHIGAN
COURT OF APPEALS

ANGELINE NUTT, Personal Representative of the
ESTATE OF JOSEPH NUTT, Deceased,

UNPUBLISHED
February 28, 1997

Plaintiff-Appellee/Cross-Appellant,

v

No. 177044
Wayne Circuit Court
LC No. 92-206068-NP

OWENS-CORNING FIBERGLAS
CORPORATION,

Defendant-Appellant/Cross-Appellee,

and

ANCHOR PACKING COMPANY; ARMSTRONG
WORLD INDUSTRIES, INC., as successor in
interests to ARMSTRONG CORK COMPANY and
ARMSTRONG CONTRACTING SUPPLY, a/k/a A.
C. & S.; BABCOCK & WILCOX COMPANY;
BROWN INSULATION COMPANY; M. H.
DETRICK COMPANY; FLEXITALLIC GASKET
COMPANY, INC.; GAF CORPORATION, in its
own right and as successor in interest to THE
RUBEROID COMPANY; GARLOCK, INC.; A. P.
GREEN REFRACTORIES COMPANY; HI-TEMP
PRODUCTS, INC., in its own right and as successor
in interest to ASBESTOS SPECIALTIES
COMPANY; JOHN JOHNSON COMPANY;
KEENE CORPORATION, in its own right and as
successor in interest to BALDWIN-EHRET-HILL,
INC., BALDWIN-HILL, INC., and MUNDET
CORK CORPORATION; OWENS-ILLINOIS,
INC.; PITTSBURGH-CORNING CORPORATION;
STANDARD FUEL ENGINEERING COMPANY;
W. R. GRACE & COMPANY - CONN., in its own

right and as successor to ZONOLITE COMPANY;
FIBREBOARD CORPORATION, in its own right and
as successor to PABCO COMPANY; GENERAL
REFRACTORIES; NATIONAL GYPSUM
COMPANY; UNITED STATES GYPSUM
COMPANY; DRESSER INDUSTRIES, a/k/a
HARBISON WALKER REFRACTORIES;
FLINTKOTE; GREENE, TWEED & COMPANY;
A. W. CHESTERTON COMPANY; KENTILE
FLOORS, INCORPORATED; CROWN CORK &
SEAL COMPANY, INC., in its own right and as
successor in interest to MUNDET CORK
CORPORATION; COMBUSTION
ENGINEERING, in its own right and as successor in
interest to COMBUSTION ENGINEERING
REFRACTORIES DIVISION, WALSH
REFRACTORIES and REFRACTORY &
INSULATION CORPORATION; GENERAL
ELECTRIC COMPANY; GRANT WILSON, INC.;
ATLAS ASBESTOS COMPANY and ATLAS
TURNER, INC., as successor to ATLAS ASBESTOS
COMPANY; PRUDENTIAL SUPPLY
CORPORATION; F. B. WRIGHT COMPANY;
SCHAD BOILER SETTING COMPANY, d/b/a
SCHAD REFRACTORY CONSTRUCTION
COMPANY; TOWNSEND & BOTTUM, INC.;
UNITED ENGINEERS & CONSTRUCTORS, INC.;
and LAMONS METAL GASKET COMPANY,

Defendants.

WILLOW IRENE VANEST, Personal Representative
of the ESTATE OF WILLIAM R. VANEST,
Deceased,

Plaintiff- Appellee/Cross- Appellant,

v

OWENS-CORNING FIBERGLAS
CORPORATION,

No. 177045
Wayne Circuit Court
LC No. 92-208292-NP

Defendant-Appellant/Cross-Appellee,

and

ANCHOR PACKING COMPANY; ARMSTRONG WORLD INDUSTRIES, INC., as successor in interests to ARMSTRONG CORK COMPANY and ARMSTRONG CONTRACTING SUPPLY, a/k/a A. C. & S.; BABCOCK & WILCOX COMPANY; BROWN INSULATION COMPANY; M. H. DETRICK COMPANY; FLEXITALLIC GASKET COMPANY, INC.; GAF CORPORATION, in its own right and as successor in interest to THE RUBEROID COMPANY; GARLOCK, INC.; A. P. GREEN REFRACTORIES COMPANY; JOHN JOHNSON COMPANY; KEENE CORPORATION, in its own right and as successor in interest to BALDWIN-EHRET-HILL, INC., BALDWIN-HILL, INC., and MUNDET CORK CORPORATION; OWENS-ILLINOIS, INC.; PITTSBURGH-CORNING CORPORATION; STANDARD FUEL ENGINEERING COMPANY; A. W. CHESTERTON COMPANY; DRESSER INDUSTRIES, a/k/a HARBISON WALKER REFRACTORIES; FIBREBOARD CORPORATION, in its own right and as successor to PABCO COMPANY; GENERAL REFRACTORIES; GREENE, TWEED & COMPANY; NATIONAL GYPSUM COMPANY; UNITED STATES GYPSUM COMPANY; COMBUSTION ENGINEERING, in its own right and as successor in interest to COMBUSTION ENGINEERING REFRACTORIES DIVISION, WALSH REFRACTORIES and REFRACTORY & INSULATION CORPORATION; GENERAL ELECTRIC COMPANY; GRANT WILSON, INC.; ATLAS ASBESTOS COMPANY and ATLAS TURNER, INC., as successor to ATLAS ASBESTOS COMPANY; HI-TEMP PRODUCTS, INC., in its own right and as successor in interest to ASBESTOS SPECIALTIES COMPANY; PRUDENTIAL SUPPLY CORPORATION; F. B. WRIGHT

COMPANY; SCHAD BOILER SETTING
COMPANY, d/b/a SCHAD REFRACTORY
CONSTRUCTION COMPANY; TOWNSEND &
BOTTUM, INC.; UNITED ENGINEERS &
CONSTRUCTORS, INC.;

CROWN CORK & SEAL COMPANY, INC., in its
own right and as successor in interest to MUNDET
CORK CORPORATION; FOSTER WHEELER
CORPORATION; and LAMONS METAL GASKET
COMPANY,

Defendants.

Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiffs sued defendant Owens-Corning Fiberglas Corporation, along with the other defendants, for asbestos-related diseases contracted by plaintiffs' decedents. All of the defendants, except defendant Owens-Corning, settled before trial. This case went to trial before a jury against defendant Owens-Corning only. The jury found for both plaintiffs in the amount of \$650,000. Plaintiff Nutt's award was reduced, though, because her decedent was found to be forty-five percent contributorily negligent. The jury also awarded each plaintiff exemplary damages. Plaintiff Nutt received \$150,000, while plaintiff Vanest received \$250,000. The trial court vacated the jury's award of exemplary damages on the ground that such damages are not available in wrongful death actions as a matter of law. Defendant filed separate appeals as of right, which were consolidated for our review. Plaintiffs have each filed a cross-appeal. We affirm.

Defendant's only issue on appeal concerns the trial court's decision to allow three of plaintiffs' witnesses to testify that they had lawsuits pending for their own asbestos-related diseases. The witnesses, each coworkers of one or both of plaintiffs' decedents, testified regarding the working conditions in the power plants where plaintiffs' decedents worked. At the end of the examination of each witness, plaintiffs' counsel asked the witnesses if they had their own lawsuit pending for asbestos-related diseases. Each witness responded affirmatively.

Defendant objected to the testimony on the grounds of relevance and unfair prejudice. The trial court, however, ruled that the witnesses' answers were relevant because the evidence related to their interest or bias in testifying in this matter. We find no error with the trial court's decision.

A trial court's decision to admit evidence will not be disturbed absent an abuse of discretion. *Cole v Eckstein*, 202 Mich App 111, 113; 507 NW2d 792 (1993). An abuse of discretion exists only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the court's ruling. *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1993).

* Circuit judge, sitting on the Court of Appeals by assignment.

In general, examination of a witness is permissible on any facts that would tend to show that the witness is biased or prejudiced either for or against a party. *US Fire Ins Co v Citizens Ins Co of America*, 156 Mich App 588, 592; 402 NW2d 11 (1986). If a witness has a pecuniary interest in the outcome of a case, such evidence goes directly to the witness' bias and, therefore, that evidence is relevant to the witness' credibility. *Id.*; MRE 401. Accordingly, if each of the witnesses had his own lawsuit against defendant and other asbestos manufacturers, the evidence would tend to show that the witnesses were biased against defendant.

It is apparent that plaintiff's counsel asked the witnesses about the lawsuits in anticipation that defense counsel would use this same evidence in cross-examination. The record supports plaintiffs' counsel's decision when defendant had files on these witnesses as a result of the lawsuits the witnesses had filed. Moreover, the witnesses were only asked if they had filed lawsuits for asbestos-related injuries. The details of those suits or injuries were not discussed during plaintiffs' direct examination. We do not believe that the prejudicial effect of the evidence outweighed its probative value. *Popp v Crittenton Hosp*, 181 Mich App 662, 664; 449 NW2d 678 (1989).

In their cross-appeals, plaintiffs argue that the trial court erred in vacating the jury's awards for exemplary damages because the court was required to follow this Court's decision in *Fellows v Superior Products Co*, 201 Mich App 155, 157-158; 506 NW2d 534 (1993). Pursuant to Administrative Order No. 1996-4, 451 Mich xxxii, we are also required to follow *Fellows* on this issue. However, in light of the Michigan Supreme Court's decision in *Currie v Fiting*, 375 Mich 440, 455-456; 134 NW2d 611 (1965), and the current version of the Wrongful Death Act, MCL 600.2922; MSA 27A.2922, we do not believe that *Fellows* was wrongly decided. Had the Legislature intended to allow for exemplary damages in wrongful death cases, it could have expressly provided so in the statute. The fact that it did not is indicative of an intent not to allow exemplary damages. *Eide v Kelsey-Hayes Co*, 431 Mich 26, 28-29, 55-56; 427 NW2d 488 (1988). If there is to be a change in this area of the law, it must be made by the Legislature or by the Michigan Supreme Court.

Affirmed.

/s/ Kathleen Jansen
/s/ Meyer Warshawsky

I concur in the result only.

/s/ Marilyn Kelly