

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

MARIE WOOTEN, EXECUTRIX OF THE
ESTATE OF EDDIE JOE WOOTEN, DECEASED

PLAINTIFF

v.

Case No: 07-2004

GEORGIA PACIFIC CORPORATION

DEFENDANT

O R D E R

Currently before the Court is Plaintiff's Motion in Limine (doc. 107). Plaintiff moves this Court in limine to prevent Defendant from impeaching Plaintiff's witness, Vernon Cagle, with his 1990 convictions for fraud and bank fraud. Cagle was released from prison in 1992. Pursuant to Federal Rule of Evidence 609(b), a prior conviction, that otherwise meets the requirements of Rule 609,

is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Fed. R. Evid. 609(b). It is undisputed that ten years have passed since Cagle's release from confinement.

Defendant has responded in opposition to Plaintiff's motion and contends that because the level of asbestos exposure to which the decedent was exposed will be a highly contested issue and Cagle will testify in that regard, the convictions should be admitted. Under the facts and circumstances of this case, the probative value

of his convictions does not substantially outweigh their prejudicial effect. *Id.* There is nothing compelling about either Cagle's convictions or the specific nature of the present case that would force the Court to conclude that admission is proper. Therefore, Plaintiff's Motion in Limine (doc. 107) is **GRANTED**.

Also before the Court is Georgia-Pacific LLC's Motion for Twelve-Person Jury (doc. 99). The Court has substantial discretion when determining whether to grant such a motion. *See generally, Colgrove v. Battin*, 413 U.S. 149 (1973). In the exercise of this discretion and based on the expected duration of this case and the scope of the issues to be covered during trial, Defendant's motion is **GRANTED**.

IT IS SO ORDERED this 24th day of February 2010.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge