

11.19.15



Philadelphia Jury Awards \$1.7 Million to Deceased Former Employee Against Employer: Sounds Alarm for all Employers

In what is believed to be the first ever verdict against an employer in a Philadelphia County asbestos case, the jury in *Busbey v. ESAB Group* awarded \$1.7 million to the estate of a deceased worker and his wife. Before his death, the plaintiff's husband was an employee of the defendant, ESAB Group, from 1962 through 2001. Busbey, the deceased employee, was diagnosed with mesothelioma in January 2012. He died in July 2012.

This jury verdict comes on the heels of the Pennsylvania Supreme Court's landmark decision in *Tooev v. AK Steel Corp.*, 81 A.3d 851 (Pa. 2013). *Tooev* held that the Workers' Compensation Act (WCA) does not bar a common law claim where the claims are not recoverable under the WCA. The exclusivity provision does not apply where more than 300 weeks have passed since the last employment based exposure.

Comment: This verdict, while the first by a former employee against his former employer, is most likely not going to be the last against an employer for asbestos-related injuries. Based on the Pennsylvania Supreme Court's decision in *Tooev*, it was only a matter of time before the right case with the right set of facts (workplace exposure that ended more than 300 weeks before diagnosis) came to trial. All employers should be on notice that if any of their former employees were exposed to asbestos, asbestos containing products or worked in close proximity of other persons working with or on asbestos-containing products, then those employers may be vulnerable to similar lawsuits.

For more information, please contact [Richard S. Ranieri](mailto:rranieri@wglaw.com) at rranieri@wglaw.com or 973.242.2230 or [Frederick W. Brown](mailto:fbrown@wglaw.com) at fbrown@wglaw.com or 215.972.7902.