

VERDICTS & SETTLEMENTS

Ferraro Team Links Asbestosis Death to FPL

Case: Magaly Fernandez as personal representative of the estate of Alfredo G. Fernandez v. Florida Power & Light
Case no: 11-17044CA59

Description: Premises liability and wrongful death

Filing date: June 2, 2011

Trial dates: Nov. 3-18, 2014

Judge: Miami-Dade Circuit Jacqueline Hogan Scola

Plaintiffs attorneys: Juan Bauta and Janpaul Portal, Ferraro Law Firm, Miami

Defense attorneys: Howard M. Acosta, Howard M. Acosta Law Offices, St. Petersburg; Charles Schlumberger, Florida Power & Light Co., Juno Beach

Verdict amount: \$5.67 million

Details: Miami resident Magaly Fernandez filed a lawsuit on behalf of her husband, Alfredo, who died of asbestosis in 2013 at 88.

He worked as a boilermaker for Foster Wheeler Energy Corp. and other FPL subcontractors in the 1970s and 1980s. The complaint alleged he was exposed to asbestos-containing products at numerous FPL power plants. He was diagnosed with asbestosis, a potentially fatal scarring of the lungs, in 2011.

The plaintiffs lawyers alleged FPL knew or reasonably should have known of the dangers of occupational exposure to asbestos by craft laborers like Fernandez performing work on FPL's premises from as early as 1967 through the 1970s.

Fernandez also alleged FPL negligently failed to maintain its power plants in a reasonably safe condition and failed to warn him of the dangers associated with asbestos.

Foster Wheeler settled the first week of trial for a confidential amount. FPL did not offer a settlement, according to the plaintiffs lawyers.

Plaintiffs case: Plaintiffs called a number of expert witnesses. They included Dr. Humberto J. Hernandez of Hialeah, Fernandez's treating pulmonologist; Dr. Murray Finkelstein, a Canadian epidemiologist and occupational medicine expert; Dr. Alvin Schonfeld, a Chicago internal and pulmonary medicine expert; and David Rosner, a New York public health expert. Hernandez testified about the diagnosis, care and treatment of Fernandez. Finkelstein testified about numerous studies linking asbestos exposure to asbestosis. Schonfeld testified that Fernandez's exposure at FPL power plants caused his disease. Rosner testified about the historic knowledge of asbestosis.

Defense case: The defense called James Poole, a Tampa industrial hygienist; Louis Kyriakoudes, a Hattiesburg, Miss., historian; and Dr. Allan Feingold, a Miami pulmonologist. Poole testified that any exposure Fernandez received at the power plants would not be enough to cause the disease. Kyriakoudes talked about trade union knowledge of asbestosis and argued they should have warned him of the dangers. Feingold testified Fernandez did not have asbestosis.

Outcome: After a trial that began Nov. 3, jurors deliberated for four hours on Nov. 18 before finding FPL plants caused Fernandez's asbestosis. Jurors awarded Magaly Fernandez



J. ALBERT DIAZ

Janpaul Portal and Juan Bauta of the Ferraro Law Firm won a \$5.67 million verdict on behalf of a Miami widow whose husband died of asbestosis in 2013 at 88.

\$5.635 million in compensatory damages plus \$37,771 in medical and funeral expenses.

Comments: "I think the judge did a great job, and it was a pretty clean trial," Bauta said. "She did a great job managing all the players and all the experts. I'm pretty confident that there's nothing to appeal."

Post-verdict: The judge entered final judgment Nov. 24.

FPL spokeswoman Heather Kirkendall said the company disagrees with the jury's decision and intends to appeal.

—Julie Kay