

***Morgan v. J-M Manufacturing Co., Inc. (2021) 2DCA/1***

Punitive damage award reversed because Plaintiff failed to establish that someone responsible for Defendant's corporate policy had the requisite state of mind to support such an award

**FACTS/PROCEDURE**

Norris Morgan supervised plumbers installing asbestos-cement water and sewer pipe on his worksites in the 1970's and 1980's. After he was diagnosed with mesothelioma in December 2017, Morgan sued a number of defendants, including J-M Manufacturing Company (JM). Plaintiff's wife Lori Morgan also sued for loss of consortium. By the time trial commenced and the case went to the jury, the only remaining defendant was JM because the families settled prior to or during trial. A jury concluded that Morgan was exposed to asbestos from products that JM sold, and that JM was 45 percent responsible for Morgan's mesothelioma. The jury awarded Morgan \$15,270,501 in compensatory damages and also concluded that JM acted with malice, oppression, or fraud, and awarded an additional \$15,000,000 as punitive damages. Based on apportionment of fault the trial court entered judgment for the Morgan's against JM for \$22,213,704.39. During trial JM moved for a directed verdict, then after trial JM moved for judgment notwithstanding the verdict and for a new trial. The trial court denied all of these motions.

JM appealed the trial court's order denying the motion for judgment notwithstanding the verdict, challenging the trial court's punitive damage award and arguing that it was improper because there was no evidence in the record that a JM officer, director, or managing agent authorized or ratified any conduct. JM also appealed on two other grounds, (1) that there is no evidence that Morgan was exposed to pipe supplied by JM, (2) that the trial court erred when it declined JM's request for a jury instruction that JM was not liable for the conduct of another company Johns-Manville Corporation.

**HOLDING/DISCUSSION**

Reversed in part. The court reversed the punitive damage award but affirmed the other two grounds JM sought on appeal.

When an entire organization was involved in the acts giving rise to malice a plaintiff need not introduce clear and convincing evidence that any particular officer, director, or managing agent had the requisite state of mind. However, a plaintiff can satisfy the "managing agent" requirement through evidence showing the information in possession of the corporation and the structure of management decision making that permits an inference that the information in fact moved upward to a point where the corporate policy was formulated. These inferences cannot be based on mere speculation, but that may be established by circumstantial evidence, in accordance with ordinary standards of proof. Here, it *may* be that JM's officers, directors, and managing agents acted with the requisite state of mind to support an award of punitive damages. A plaintiff may be able to provide evidence at trial to piece together knowledge and acts of JM's multitude of JM's managing agents. But that did not happen in this case. That the defendant is a large company does not relax a plaintiff's burden of proof. There was no evidence from which the jury could have concluded that someone responsible for JM's corporate policy had the requisite state of mind to support a punitive damage award. Thus, the punitive damage award was reversed.