

Winston & Strawn Successfully Defends Celotex Corporation at Trial

MARCH 30, 2011

On March 31, 2011, a Houston jury rejected a \$40 million lawsuit against Winston & Strawn client, Celotex Corporation, in a verdict that vindicated the former building products manufacturer's sale nearly a decade ago of its local roofing plant on an "AS IS" basis.

Celotex went into bankruptcy in 1990 because of its asbestos liabilities and, starting in 1999, sold a number of its roofing plants. The Houston plant, built in the 1940s by the Asbestos Company of Texas, was purchased by Celotex in 1972 and sold in 2000 to Warehouse Associates, Inc. "AS IS, WHERE IS, WITH ALL FAULTS." The sales contract also required the buyers to rely solely on their own inspections to determine whether there were environmental issues. Nevertheless, the buyer sued Celotex for fraud and other contractual claims in 2001, after finding asbestos, deposited by previous owners prior to 1960, under the plant property.

A motion for summary judgment was granted in 2003 in favor of the defendants, but that judgment was partly reversed on appeal and the case was allowed to go to trial so that a jury could determine whether Celotex had defrauded Warehouse Associates and/or fraudulently induced Warehouse Associates to enter the contract that contained the "AS IS" and "no reliance" clauses. Warehouse Associates had sought lost profits and other damages, as well as attorneys' fees and interest, all totaling over \$40 million.

After a two week trial, the jury deliberated only two hours before dismissing all of Warehouse Associates' claims against Celotex. George Wood, president and general counsel of Celotex stated: "It is good to be vindicated after such a long struggle. The team...worked very hard to achieve a great result for Celotex and for the individual employees who were unfortunately named as defendants in the suit for many years."

Celotex was represented by Steve Lundwall and John Keville of Winston & Strawn and Craig Smyser of Smyser Kaplan and Vyselka.

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