NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 2093

RAY F. RANDO

VERSUS

ANCO INSULATIONS, INC., ET AL.

Judgment Rendered: May 2, 2008

* * * * * * *

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 538,254

Honorable Robert J. Burns, Judge Ad Hoc

* * * * * * *

Cameron R. Waddell Jody E. Anderman Baton Rouge, LA and Renée M. Melancon Lisa W. Shirley Dallas, TX	Attorneys for Plaintiff – Appellee Ray F. Rando
Dan Edward West Arthur H. Leith New Orleans, LA	Attorneys for Defendant – 1st Appellant Jacobs Constructors, Inc.
Scott F. Higgins Donovan J. O'Pry, II Lafayette, LA	Attorneys for Defendant – 2nd Appellant Parsons Infrastructure & Technology Group, Inc.

* * * * * *

BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

WELCH, J.

In this appeal, defendants, Parsons Infrastructure & Technology Group, Inc. (Parsons) and Jacobs Constructors, Inc. (Jacobs), challenge a judgment awarding damages in favor of Ray Rando, a former employee who contracted mesothelioma due to asbestos exposure. We affirm.

BACKGROUND

For more than 20 years, beginning in 1965, Mr. Rando worked as a pipefitter and welder at numerous commercial and industrial sites. On September 23, 2005, Mr. Rando was diagnosed with malignant mesothelioma, a rare and fatal cancer caused by exposure to asbestos. On November 22, 2005, Mr. Rando filed this lawsuit seeking damages as a result of his exposure to asbestos against a host of defendants, including his former employers, various premises owners where Mr. Rando was allegedly exposed to asbestos, as well as numerous companies that designed, manufactured, sold, and installed asbestos-containing products.

Two of the defendants, Parsons and Jacobs, contractors for whom Mr. Rando worked in the 1970s, filed motions for summary judgment in which they asserted that Mr. Rando's tort suit was barred by the exclusivity provisions of the Louisiana Workers' Compensation Act. Jacobs additionally urged that Mr. Rando's claim against it was perempted pursuant to La. R.S. 9:2772 because it was filed more than 10 years after completion of construction of the immovable on which Mr. Rando worked while in its employ. The trial court denied the motions for summary judgment, and Parsons sought supervisory review of the denial of its motion for summary judgment. This court declined to exercise supervisory jurisdiction, observing that Parsons could address the issue on appeal after trial on the merits. **Rando v. Anco Insulations, Inc.**, 2007-0020 (La. App. 1st Cir. 1/8/07) (unpublished).

Prior to the trial, Mr. Rando released numerous defendants from the

litigation. The record reflects that prior to the conclusion of the trial, Mr. Rando settled with the following defendants: his former employer, Lou Con, Inc., One Beacon Insurance Group, LLC, as the alleged insurer of Virgil Carson and Bernie Lyons, executive officers of Lou-Con; premises owners Shell Oil Company, Tenneco and Murphy Oil Company, U.S.A., Inc.; and contractors Anco Insulations, Inc., Reilly Benton Co., Inc., Eagle, Inc., and The McCarty Corporation. At the conclusion of the trial, the only defendants remaining in the litigation were Parsons and Jacobs.

Following a bench trial, the trial court determined that Parsons and Jacobs were liable to Mr. Rando for damages due to his exposure to asbestos while in their employ. In connection with the liability determination, the court ruled that: (1) Mr. Rando's tort claims were not barred by the exclusivity provision of the Louisiana Workers' Compensation Act; (2) Mr. Rando was significantly exposed to asbestos from 1970 through 1973 while working for Parsons and Jacobs; and (3) both employers should have known of the dangers of asbestos materials at the time they employed Mr. Rando. The court then awarded general damages to Mr. Rando for pain and suffering, mental anguish, and loss of enjoyment of life in the amount of $2,800,000.00, along with special damages in the amount of $402,000.00. The court determined there was evidence that eight entities were joint tortfeasors, including employers Parsons, Jacobs, and Lou-Con Construction; premises owners Shell, Tenneco, and Murphy Oil; and insulator contractors Eagle and McCarty. The court applied the pre-1980 "virile share" law under which fault is divided among joint tortfeasors into virile or equal shares regardless of whether one played a greater role in causing damages. Judgment was then entered against Parsons for one-eighth of the total amount of the award, or $400,250.00, and against Jacobs for the same amount.

This appeal followed, in which Parsons and Jacobs assert numerous

challenges to the trial court's liability and quantum determinations. Mr. Rando initially answered the appeal to contest the trial court's virile share reduction of damages with respect to McCarthy, but later withdrew the assignment of error in its brief to this court.

LIABILITY

Tort Immunity

Louisiana Revised Statutes 23:1032 makes workers' compensation the exclusive remedy for a compensable injury or disease for which an employee is entitled to compensation. Louisiana Revised Statutes 23:1031.1 sets forth those occupational diseases that are compensable under the workers' compensation act. Parsons and Jacobs argue that mesothelioma was a compensable disease under the 1952 version of La. R.S. 23:1031.1, which was in effect at the time they employed Mr. Rando, and therefore, Mr. Rando's tort suit is barred by exclusivity provision of the compensation act.

This court recently addressed the identical issue in **Terrance v. Dow Chemical Co.**, 2006-2234 (La. App. 1st Cir. 9/14/07), 971 So.2d 1058, writ denied, 2007-2042 (La. 12/14/07), 970 So.2d 534. In **Terrance**, 2006-2234 at pp. 10-13, 971 So.2d 1065-166, this court squarely held that the 1952 version of La. R.S. 23:1031.1 did not include mesothelioma as a covered disease or asbestos as a covered substance that caused a disease. Therefore, this court held, because mesothelioma was not compensable under the workers' compensation law at the time of the employee's exposure, a tort action against the employer for damages arising because of that exposure was not precluded. *Id.* In so doing, this court rejected the same arguments advanced by Parsons and Jacobs in this appeal. We decline appellants' request to revisit **Terrance** and conclude that the trial court correctly held that Mr. Rando's claims were not barred by the exclusive remedy provision of the Workers' Compensation Act.

Peremption

At trial, Jacobs moved for summary judgment on the issue of whether Mr. Rando's claims against it were barred by La. R.S. 9:2772, which, at the time Mr. Rando worked for H.E. Weise, Inc,[1] Jacobs' predecessor, provided a peremptive period of 10 years for actions involving deficiencies in design, supervision or constructions of improvements to immovables. The 1964 version of La. R.S. 9:2772, in effect at the time Mr. Rando worked for Jacobs, provided that no action to recover damages could be brought against any person performing or furnishing the design, planning, supervision, inspection or observation of construction or the construction of an improvement to immovable more than 10 years after the date of registry in the mortgage office of acceptance of the work by the owner, or if no such acceptance was recorded, more than ten years after the improvement has been occupied by the owner. Like its present version, La. R.S. 9:2772 as originally enacted contained an exception, however, precluding a person in possession or control, as owner, lessor, tenant, or "otherwise" of such an improvement, at the time of the deficiency, from asserting the defense if the deficiency constituted a proximate cause of the injury or damage sued upon. 1964 La. Acts No. 189, § 5.

The parties do not dispute that the work performed by Jacobs at Shell in the early 1970s constituted a construction of an improvement to immovable property, and that more than 10 years elapsed from the completion of the construction and the filing of this lawsuit. Instead, they dispute whether the exception from the peremptive effect of La. R.S. 9:2772 for those defendants who possessed or controlled the improvement at the time the injury was proximately caused applies in this case.

Jacobs submits that the exception applies only to those persons who have an

[1] For the purpose of this appeal, Weise and Jacobs will be collectively referred to as "Jacobs."

ownership or leasehold interest in the immovable being constructed. It insists that the legislature intended to put a definite end to the exposure of a contractor, but not to that of an owner, lessor, or other person having control of the property, to claims arising out of a construction project.

We disagree with Jacobs' narrow interpretation of the peremption exception contained in La. R.S. 9:2772. It is well settled that peremptive statutes are strictly construed against peremption and in favor of the claim that is said to be extinguished. Of the possible constructions, the one that maintains enforcement of the claim or action, rather than the one that bars enforcement, should be adopted. **Albach v. Kennedy**, 2000-0636, p. 9 (La. App. 1st Cir. 8/6/01), 801 So.2d 476, 482, writ denied, 2001-2499 (La. 10/12/01), 799 So.2d 1138.

The exception, by its clear terms, precludes assertion of the peremption defense by a person "in possession or control," and gives examples such as an owner, lessor, tenant, "or otherwise." The phrase "or otherwise" obviously encompasses persons involved in the construction of an improvement other than the owner, lessor or tenant. Therefore, we construe the exception to apply to those defendants who were in possession or control of the improvement at the time the injury was caused.

On the control issue, the record reflects that in 1970, 1971, and 1973, the time period during which Mr. Rando worked for Jacobs, Jacobs was engaged in a major construction project at Shell Oil's chemical plant in Norco, Louisiana. Jacobs, an engineering and construction company specializing in construction in chemical and refining industries, contracted with Shell sometime around 1970 to construct a fractionation plant at Shell's existing chemical facility. Mr. Gayle Carnahan, Jacobs' engineering purchasing agent at that time, who had some personal knowledge of the project in question, also testified regarding Jacobs' general contracting practices. Mr. Carnahan attested that typically, the owner

would turn the entire project over to the Jacobs as the general contractor, and it was Jacobs' responsibility to design, fabricate, and install the unit it was hired to construct and to provide the materials necessary for construction, including insulation. To Mr. Carnahan's knowledge, the project in question followed this standard procedure. Mr. Carnahan described the type of work performed by Jacobs at the Shell refinery as a "turn-key" project, meaning that Jacobs would turn over the keys to Shell upon completion of the construction, and Shell would start up the unit and manufacture its product. Mr. Carnahan attested that Jacobs' job superintendent had the ultimate responsibility for the safety of workers at the job site. Mr. Carnahan could not recall if Shell also had a representative inspecting the work at the time it was being performed.

Mr. Carnahan testified that typically, Jacobs coordinated all of the subcontractors work at the site. According to the documentation introduced at trial, Jacobs subcontracted the insulation work to B&B Engineering & Supply Company, Louisiana, Inc. Under the subcontract, B&B Engineering was required to supply installation materials in accordance with Shell's plans and specifications. Mr. Carnahan acknowledged that Shell's specifications for the unit in question called for high temperature insulation, which contained asbestos, and that Jacobs knew that asbestos-containing insulation would be used on the project.

Jacobs argues it did not exercise the requisite control over the construction on Shell's property to bring its activities within the peremption exception. It submits that the evidence at trial demonstrated that Shell maintained control of the project through its specifications and work practices. In support of this argument, Jacobs points to Mr. Rando's testimony in which he stated that Shell had the ultimate authority over the methods, construction, and use of materials, including asbestos, and that he believed Shell controlled the work he performed for Jacobs at the Shell facility. Jacobs also focuses on the fact that Shell's specifications called

for the use of asbestos-containing insulation on the project.

We find, however, that the evidence established that Jacobs had the ultimate control over the construction project on which Mr. Rando worked. Jacobs was ultimately responsible for the installation work that was subcontracted. The fact that Shell required insulation containing asbestos on the project, a fact known to Jacobs, does not relieve Jacobs from control over the methods of installation or its responsibility to protect its workers from the dangers of asbestos exposure. Under these circumstances, we conclude that Jacobs failed to meet its burden to prove peremption under La. R.S. 9:2772.

Negligence

To prove negligence, a plaintiff must show four elements: (1) the conduct in question was the cause-in-fact of the resulting harm; (2) the defendant owed a duty to the plaintiff; (3) the defendant breached the requisite duty; and (4) the risk of harm was within the scope of protection afforded by the duty breached. **Pitre v. Louisiana Tech University**, 95-1466, p. 8 (La. 5/10/96), 673 So.2d 585, 589-590, cert. denied, 519 U.S. 1007, 117 S.Ct. 509, 136 L.Ed.2d 399 (1996). On the causation issue, a plaintiff in an asbestos case must show, by a preponderance of the evidence, that he was exposed to asbestos from the defendant's conduct and that he received an injury that was substantially caused by that exposure. See **Adams v. Owens-Corning Fiberglass Corp.**, 2004-1589, p. 4 (La. App. 1st Cir. 9/23/05), 923 So.2d 118, 122, writ denied, 2005-2318 (La. 3/10/06), 925 So.2d 519. When multiple causes of injury are present, a defendant's conduct is a cause in fact if it is a substantial factor generating plaintiff's harm. *Id.*

Parsons contends that the trial court erred with respect to its negligence determination by: (1) finding that Mr. Rando had significant exposure to asbestos while in its employ; (2) finding that his exposure was a substantial factor in the development of the disease; (3) finding that Parsons should have known that Mr.

Rando was at risk for developing mesothelioma as a result of his exposure to asbestos during its employ; and (4) by applying an adverse presumption due to Parsons' failure to present testimony of a corporate representative. Jacobs contends that Mr. Rando did not demonstrate that it breached a duty to him, and also failed to prove that Jacobs knew or should have known at the time of Mr. Rando's employ that pipefitters could contract mesothelioma.

Parsons' and Jacobs' assignments of error essentially challenge the trial court's causation and knowledge rulings. These factual findings may not be reversed on appeal absent manifest error. Under the manifest error standard of review, this court may only disturb the trial court's rulings if the rulings are not reasonably supported by the record, and the findings are clearly wrong or manifestly erroneous. **Stobart v. State, DOTD**, 617 So.2d 880, 882 (La. 1993). Where two permissible views of the evidence exist, the fact finders choice between them cannot be manifestly erroneous or clearly wrong. **Stobart**, 617 So.2d at 883.

We first address the causation issues raised by Parsons. The evidence at trial reflected that Mr. Rando was employed as a pipefitter by Parsons from April 1, 1972 through December 1, 1972. Mr. Rando testified at that time, Parsons was working on constructing a new unit at Shell's chemical plant. He stated that the entire time he performed his job for Parsons, insulators sawed block insulation on scaffolds above his work area to insulate 100-foot vessels, and other workers cut insulation and pipe covering near where he was working. Mr. Rando testified that as a result of the insulation work, the work area was dusty and particles of insulation were visible in the air. Mr. Rando attested that he breathed the dust from the insulation and that the insulation particles literally "snowed" on him constantly during the work day and during the entire time he worked for Parsons. He testified that Parsons did not provide him with any information about the dangers of asbestos and that Parsons took no measures to separate him from the

insulators or to reduce or protect him from exposure to asbestos. Experts testifying for Parsons and Mr. Rando acknowledged that there was no evidence that Parsons took any preventative measures to reduce Mr. Rando's risk of exposure to asbestos.

To demonstrate that the insulation used on the construction job he worked on for Parsons contained asbestos, Mr. Rando offered evidence showing that in 1982, samples taken by Shell on the insulation in the VCM unit revealed that asbestos-containing insulation had been used on the construction project. The trial court was presented with Shell's abatement records through the testimony of an expert showing that from 1985 through 1993, huge amounts of asbestos-containing materials were removed by Shell from the VCM plant. The evidence also showed that in 1972, asbestos was commonly utilized on high temperature insulation lines. Dr. Richard Lemen, who testified for Mr. Rando as an expert in the field of industrial hygiene and epidemiology (the study of diseases), opined that the abatement records, along with Mr. Rando's testimony regarding the description of the work he performed for Parsons, demonstrated that asbestos was used on the job site and that Mr. Rando was exposed to asbestos while working for Parsons. He also opined that the exposures Mr. Rando described at the job site substantially increased his risk of developing mesothelioma.

With respect to Jacobs, the evidence reflects that Mr. Rando worked for Jacobs as a pipefitter in 1970, 1971, and 1973 at Shell's chemical facility in Norco. Mr. Rando testified that he worked in the vicinity of insulators every day during his employ with Jacobs. He attested that on these jobs, insulators cut block insulation to be used on vessels at the site and cut insulation for pipes, causing insulation waste to fall onto the ground or onto scaffolds. Mr. Rando stated that he breathed the dust resulting from the insulation waste falling to the ground and that workers cleaning the area never vacuumed the dust, making the work area even

more dusty. He stated that the insulation dust was visible, blew around the work area, and that he inhaled this dust throughout the work day. During this time, Mr. Rando attested Jacobs never warned him of the dangers of asbestos exposure and did not take any steps to control or reduce his exposure to the insulation products being used on the worksite.

Jacobs submits that it did not breach its duty to provide Mr. Rando with a reasonably safe work place. Jacobs predicates this argument on the fact that Mr. Rando's employment pre-dated the first federal regulations setting forth minimum standards with respect to asbestos exposure. Jacobs also urges that Mr. Rando failed to demonstrate that it violated any standards or state of the art practices in effect before 1971 for contractors in the Baton Rouge area. However, the fact that a federal safety standard on asbestos exposure was not promulgated until 1971, as well as the absence of evidence as to the practices of other Baton Rouge contractors, is not determinative of the duty issue. Rather, whether Jacobs had a duty to take steps to protect Mr. Rando from asbestos exposure is dependent on whether Jacobs knew or should have known of the dangers of asbestos exposure at the time Mr. Rando was in its employ. See **Roberts v. Owens-Corning Fiberglas Corp.**, 2003-0248, pp. 6-7 (La. App. 1st Cir. 4/2/04), 878 So.2d 631, 639, writ denied, 2004-1834 (La. 12/17/04), 888 So.2d 863.

On the knowledge issue, it was established that in 1970, Congress passed the Occupational Safety and Health Act, and created OSHA, the Occupational Safety and Health Administration. In 1971, OSHA implemented an emergency temporary threshold limit with respect to asbestos exposure and promulgated a permit standard in July of 1972 that remained in effect for the next four years. However, it was known long before this standard was implemented that workers exposed to asbestos in the workplace were at risk for developing asbestos-related diseases from such exposure.

Dr. Lemen, Mr. Rando's expert, attested that by the 1930s, it was established by a medical study that asbestos could cause disabling disease or death in humans who inhaled it. He testified regarding a 1930 report by Dr. E.R.A. Merewether on the effects of asbestos dust on the lungs of workers in the asbestos textile manufacturing industry. The study concluded that asbestos fibers caused the disease asbestosis. In the 1930 study, the author developed a "hierarchy of controls" for controlling asbestos exposure to workers, including ventilation, segregation of workers, wetting the dust, warning workers about the danger, and how to protect themselves, as well as vacuuming the work area so that no dust would be replaced into the air by methods such as sweeping. Surveying literature on the subject, Dr. Lemen attested that it was established in 1930 that asbestos inhalation could cause asbestosis and that there were ways to prevent the disease; that it was established between 1935 and 1955 that asbestos inhalation could cause lung cancer; and that between 1960 and 1964 it was established that asbestos exposure could cause mesothelioma.

Parsons' expert, John Pendergrass, an expert in industrial hygiene, opined that Parsons did not, and should not, have known that Mr. Rando would be exposed to excessive levels of asbestos while he was in Parsons' employ in 1972. According to Mr. Pendergrass, there was a great deal of confusion as to the acceptable level of asbestos exposure in the early 1970s. Mr. Pendergrass discounted the studies relied on by Dr. Lemen, stressing that those studies were done on persons actually handling asbestos-containing products. He acknowledged that six years before the OSHA regulations went into effect, in the 1960s, it was known that workers who handled asbestos products were getting mesothelioma in greater incidences than among the general population. However, Mr. Pendergrass stated, it was the general understanding of the industrial hygiene community around the 1970s that "onlookers," such as Mr. Rando, who worked

along-side workers handling asbestos-containing products, were not at risk for developing asbestos-related diseases. Mr. Pendergrass also opined that Mr. Rando was not significantly exposed to asbestos while working for Parsons. He admitted, however, that this opinion was based on the fact that he did not believe Mr. Rando's statements regarding his exposure to asbestos at the work-site, as well as the lack of scientific evidence as to what level of asbestos Mr. Rando was actually exposed to.

Dr. Lemen offered contradictory testimony regarding "onlooker" or "bystander" exposure to asbestos. Dr. Lemen testified that it was possible that a worker standing next to another worker who is handling asbestos-containing materials could receive a higher dosage of exposure than the worker actually handling the materials. He noted that settled asbestos dust could be reintroduced into the atmosphere and become airborne again if proper precautions, such as vacuuming, were not taken. Dr. Lemen testified it was known at the time Mr. Rando was employed by Jacobs and Parsons that a worker doing his job near workers handling asbestos-containing insulation faced a health risk from asbestos exposure. He cited Dr. Merewether's 1930 warning that exposure to asbestos fibers could affect other trades, along with a 1964 article published in a medical journal entitled "Asbestos Exposure and Neoplasia" written by Dr. Irving J. Selikoff, in which the author studied insulation workers in the building trades. Therein, the author stated: "[a] particular variety of environmental exposure may be of even greater concern. Asbestos exposure in industry will not be limited to the particular craft that utilizes the material. The floating fibers do not respect job classifications. Thus, for example, insulation workers undoubtedly share their exposure with their workmates in other trades." Dr. Lemen testified that it was known, dating back to the 1930s, that it did not matter what the worker's job title was for determining the risk of danger from asbestos exposure; rather, it was

known that if the worker breathed in asbestos in a sufficient amount, the worker could be at risk for developing an asbestos-related disease.

Additionally, Dr. Lemen testified that the uncontrolled exposure to asbestos dust encountered by Mr. Rando while working for Parsons and Jacobs presented an unreasonable danger of developing an asbestos-related disease. According to Dr. Lemen, the fact that Mr. Rando could see clouds of dust at the worksite was extremely significant, noting that the asbestos particles would have to be concentrated in a large amount before it could actually be seen. He estimated that a cloud of dust would probably contain asbestos particles in a concentration of four to five times the initial minimum standard set forth by OSHA as originally promulgated in 1971. He added that the medical community has never been able to determine a "safe level" of asbestos exposure, or that level of exposure below which a worker would not be at risk for developing the disease mesothelioma. Dr. Lemen ultimately opined that Mr. Rando's employers did not provide him with a reasonably safe area to work as they did not take any steps to control or reduce Mr. Rando's exposure to asbestos, despite the fact that basic prevention methods had been known since 1930.

In finding that Parsons and Jacobs should have known that Mr. Rando was at risk for contracting mesothelioma while in their employ, the trial court accepted the testimony of Dr. Lemen. Furthermore, in finding that Mr. Rando was in fact exposed to asbestos at those work-sites, in finding that the exposures significantly contributed to Mr. Rando's disease, and in finding that Mr. Rando's work environment presented an unreasonable risk of harm to Mr. Rando, the trial court accepted Dr. Lemen's testimony and Mr. Rando's testimony regarding such exposures. The trial court was clearly within its discretion to accept this testimony over that offered by the defense. Considering the record as a whole, we find that all of the trial court's factual determinations leading to its ultimate conclusion that

Parsons and Jacobs were negligent in this case are reasonably supported by the record and therefore may not be disturbed by this court.[2]

Parsons next submits that the trial court erred in failing to assign virile shares to three executive officers of Tenneco, one of the premises defendants Mr. Rando settled with prior to the conclusion of the trial, and urges that the virile shares should be apportioned between eleven tortfeasors. The court did assign virile share liability to Tenneco for the role that company played in connection with Mr. Rando's asbestos exposure, and we find the trial court's decision not to additionally allocate fault among Tenneco's executive officers was not unreasonably wrong or manifestly erroneous.

QUANTUM

In their final assignments of error, Parsons and Jacobs contest the trial court's damage award. Specifically, Parsons submits that the general damage award of $2,800,000.00 and the special damage award of $400,250.00 were excessive, while Jacobs argues that the trial court's award for future medical expenses is not supported by the record.

It is well settled that in entering a general damage award, the discretion vested in the trier of fact is "great" and even "vast," so that an appellate court should rarely disturb an award of general damages. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994). It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court may increase or reduce a general damage award. *Id.*

In entering the general damage award, the trial court stressed that before his

---

[2] In view of our ruling that the record supports the trial court's negligence determinations with respect to Parsons, we need not address Parsons' argument regarding the corporate representative issues raised in its brief.

cancer diagnosis, Mr. Rando was in good health, enjoying retirement, and was leading a very active and full life with his family. However, since the diagnosis, Mr. Rando has to rely on others to care for him, has no energy, and has endured painful medical treatments and five surgical procedures. The court observed that not only has the disease caused Mr. Rando tremendous physical and emotional pain, which will only worsen over time, the medication and chemotherapy treatments Mr. Rando received, and will continue to receive, caused numerous side effects. The court noted that since his diagnosis, Mr. Rando suffered from nausea, nerve pain, stabbing back and chest pain, muscle pain, headaches, and vision loss.

The trial court's factual basis for setting the damage award is amply supported by the record. We find no abuse of the trial court's vast discretion in entering the general damage award, and we may not disturb the award.

Lastly, we consider Jacobs' challenge to the special damage award. Jacobs notes that the plaintiff did prove past medical expenses in the amount of $342,449.28, and subtracting that amount from the actual amount awarded, leaves an award of future medical expenses of nearly $60,000.00. Jacobs contends that this award is speculative because Mr. Rando did not call his treating physician or an oncologist at trial to establish his future medical expenses.

We find no merit to Jacobs' challenge to the future medical expense award. Mr. Rando called Dr. Victor L. Roggli, who was accepted by the court as an expert in the field of pathology of asbestos-associated disease. When Dr. Roggli attempted to testify regarding Mr. Rando's projected future cancer treatment, Jacobs' attorney objected on the basis that Dr. Roggli was not Mr. Rando's treating physician. The trial court, however, found that Dr. Roggli was qualified to testify regarding projected future medical expenses of a cancer patient given his experience. Dr. Roggli arrived at a average future monthly medical expense of $14,150.00, taking into account chemotherapy, testing procedures necessary to

monitor the progress of the disease, medications, and weekly visits to an oncologist. Dr. Roggli attested that Mr. Rando was receiving all of these medical treatments and procedures at the time of the trial. Dr. Roggli noted that Mr. Rando had almost reached the two-year while life expectancy of most mesothelioma patients.

Dr. Roggli, a medical expert in asbestos-related diseases, was clearly qualified to offer an opinion regarding Mr. Rando's projected future medical expenses. Dr. Roggli based his opinion in part on the medical treatments and procedures Mr. Rando had since the cancer diagnosis and would continue to need in the future. We find the trial court's future medical expense award to be abundantly supported by the record, and we therefore decline to disturb the award.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. Costs of this appeal are assessed 50% to appellant Parsons Infrastructure & Technology Group, Inc. and 50% to appellant Jacobs Constructors, Inc.

AFFIRMED.