IN THE SUPREME COURT
STATE OF FLORIDA

Case No. 92,963

OWENS CORNING,

Petitioner,

v.

DEWARD BALLARD,

Respondent.

REPLY BRIEF ON THE MERITS OF OWENS CORNING

ON REVIEW OF A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE FROM THE FOURTH DISTRICT COURT OF APPEAL

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RECORD REFERENCE ABBREVIATIONS USED IN THIS BRIEF

(1) All references to the record on appeal follow the format used in Owens Corning's initial brief.

(2) "AB" is used to reference Mr. Ballard's answer brief.

(3) "IB" is used to reference Owens Corning's initial brief.

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is "CG Times," 14 point.

SUMMARY OF ARGUMENT

In 1986, the Florida Legislature determined, unequivocally, that a punitive damage award three times greater than an accompanying compensatory damage award presumptively and completely satisfies Florida's interests in punishing a tortfeasor and deterring similar conduct. The Legislature left open the possibility that, in unusual cases, a punitive damage claimant might be able to demonstrate — but only by "clear and convincing evidence" — that punishment exceeding the three-times limit is necessary to vindicate Florida's interests in punishment and deterrence. The central issue presented here is how this legislative proscription applies to $25.825 million of a punitive award of $31 million: Does the evidence at trial convincingly demonstrate that $25.825 million is necessary to vindicate Florida's interest in punishment and deterrence? What this record shows is that a punishment of $5.175 million is more than adequate to vindicate Florida's interest in punishment, and the record is devoid of any support for additional deterrence.

The Florida courts are clogged with thousands of cases that the Court, in 1996, held do not belong here, like Mr. Ballard's. Contrary to Mr. Ballard's defensive contention, there is no record support for the district court's conclusion that the trial court apparently believed Owens Corning had "agreed" to the trial of Mr. Ballard's lawsuit when its *forum non conveniens* motion to dismiss was considered by the trial court. Under the standard for evaluating *forum non* motions that both Owens Corning and Mr. Ballard have proposed, the discovery in his lawsuit was not then substantially completed, and his lawsuit was nowhere near ready for trial.

ARGUMENT

I. Mr. Ballard has not overcome the statutory presumption that Florida's interests in punishment and deterrence are satisfied by a $5.175 million punitive damage award.

Prior to 1986, the question of how large a punitive exaction must be in order adequately to punish a tortfeasor and deter similar misconduct in Florida admitted of no easy answer, but the critical ground rules were clear: "Since the degree of punishment to be inflicted on the defendant is peculiarly within the province of the jury, courts will hold punitive damages excessive only in unusual circumstances." *Wackenhut Corp. v. Canty*, 359 So. 2d 430, 436 (Fla. 1978). The Legislature's enactment in 1986 of the three-times limit in section 768.73(1)(b), Fla. Stat. (1987), set *Wackenhut* aside and altered the ground rules by giving the Florida courts a substantive touchstone by which to exercise their substantially expanded responsibility to police the size of jury verdicts imposed by that 1986 legislation. *See* IB 13-14. Under that touchstone, a punitive damage award more than three times the accompanying compensatory award is presumed to be excessive and therefore that award, reduced to three times the compensatory award, presumptively vindicates Florida's legitimate interests in punishment and deterrence.

In its certification, the Fourth District recognized the absence of precedent for interpreting and applying the 1986 legislation to particular cases. Seeking guidance, the Fourth District asked this Court to interpret and apply section 768.73 in light of the fact that the $31 million punitive award is almost 18 times the compensatory award, and in light of the Fourth District's conclusions that there is "clear and convincing" evidence in the trial record: (1) that the $31 million award "was less than 2% of [Owens Corning's] net worth [of $2.5 billion]"; and (2) that Owens Corning's "conduct was more egregious than the

standard of wanton and willful disregard for the safety of the plaintiff." 23 Fla. L. Weekly at D1078.

In its initial brief, Owens Corning showed that at the time of trial, the only evidence of Owens Corning's net worth established that net worth as a negative $563 million. IB 24. Mr. Ballard's response abandons any pretense of challenging Owens Corning's negative $563 million net worth, and defends this clearly erroneous and material factual finding of the courts below by arguing that the $31 million award "represents only 2% of [Owens Corning's] *wealth*." AB 22 (emphasis added). The "wealth" used by Mr. Ballard and the lower courts — the market value of Owens Corning's common stock *in the hands of the public* — is not a proper criterion for testing a punitive damage award because it says nothing about funds available for the payment of a punitive damage award.

This Court's cases are unmistakably clear in their reference to the adoption of the concept of "net worth." *See, e.g., Bould v. Touchette*, 349 So. 2d 1181, 1186 (Fla. 1977). "Net worth," as the members of this Court are quite aware, is determined by subtracting liabilities of an enterprise (or an individual) from its assets.[1] *See* Fla. Admin. Code Rules 34-7.010(1)(c); 34-8.002 and 34-8.004 (referencing CE FORM 6-REV. 1/98, FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS 1997 (directing state officers in Florida that: "In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities." (p. 3)). The concept of

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[1] The $2.5 billion net worth found by the courts below is in fact the total market value of Owens Corning's shares of common stock at the time of trial. No precedent remotely suggests that "net worth" and "market value" are fungible concepts for purposes of evaluating the excessiveness of punitive damage awards.

"wealth" as a value put on a company by investors has been coined by Mr. Ballard to disguise the fact that Owens Corning's net worth is a negative one that can hardly justify a $31 million punitive award.[2]

Owens Corning does not claim that its publicly reported negative net worth precludes the imposition of any punitive damages. Owens Corning, as a publicly held company, has anticipated the long-term costs of its potential liability for asbestos-related injuries and, as Mr. Ballard is forced to recognize, "has taken 'charges' of approximately $2 billion for this and other asbestos cases." AB 32. The company's negative net worth is not a fiction, it is a reality that reflects the serious problems the company faces every day in dealing with massive numbers of asbestos-related actions filed and to be filed against it. Mr. Ballard utterly fails to explain why a punitive damage award of $5.175 million is not adequate in these circumstances to vindicate Florida's interest in punishment.[3] In sum, the

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2 Mr. Ballard invokes *Dunn v. HOVIC*, 1 F.3d 1371 (3d Cir.), *cert. denied*, 510 U.S. 1031 (1993), to argue that the court there accepted Owens Corning's "value" as $2.2 billion. AB 32. Mr. Ballard misleads the Court, however. For one thing, that case was tried in 1991 at a time when the charges taken by Owens Corning that gave it a negative net worth had to do with Owens Corning's fending off a hostile takeover, as the *Dunn* court points out. For another, the plaintiff in *Dunn* presented an expert who testified that Owens Corning had a $2.2 billion "value" as of 1991. Mr. Ballard, however, presented no expert testimony — indeed no evidence at all — on this issue. His so-called "net worth" number came from the argument of his counsel, not from evidence, in an attempt to redefine the term "net worth."

3 Mr. Ballard makes much of the statement by Mr. Greg Peterson, an accountant of Owens Corning, "that a $10 million punitive damage award in this case would not significantly impact [Owens Corning] financially." AB 35, 40. That was, however, not Mr. Peterson's testimony. Mr. Ballard's counsel, examining Mr. Peterson, noted a statement in Owens

(continued . . .)

district court was wrong in trivializing the impact of the $31 million punitive award as a mere 2% of Owens Corning's net worth. If $31 million were necessary to fulfill Florida's interests in punishment and deterrence in this one case, then similar jury verdicts in other pending cases would quickly generate a multi-billion dollar liability that would destroy Owens Corning many times over.

The other pillar of the Fourth District's decision was its conclusion that the record showed that Owens Corning had engaged in conduct "more egregious" than that necessary to sustain a punitive damage award below the three-times limit. As Owens Corning explains (IB 19-20), this conclusion begets a threshold issue whether a plaintiff is entitled to have all inferences from the evidence drawn in its favor when it is trying to meet its heavy burden of showing, by clear and convincing evidence, that a punishment equal to three times the compensatory award does not satisfy Florida's interests in punishment and deterrence.

In his answer, Mr. Ballard appears to concede, at the very least, that he is *not* entitled to have the evidence viewed in a light favorable to him. AB 34 ("§ 90.301(3), expressly provides that . . . only appropriate inferences may be drawn when a presumption is created.").[4] Where the legislature has stripped a

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Corning's 1995 annual report that the company's asbestos liability "would not have a material adverse affect on the company's financial position." (1/21/97 Tr. 156). When asked whether a punitive damage award of $10 million would impact the accuracy of that statement, Mr. Peterson responded that it would not. The term "material adverse impact" is, like "net worth," an accounting term of precise meaning that Mr. Ballard chooses to ignore, or to re-define to suit his own needs. Mr. Peterson gave an accountant's answer to an accounting question.

[4] Owens Corning demonstrates that, because the statutory cap applies unless the plaintiff demonstrates by clear and convincing evidence that it does not apply, all evidentiary inferences should be drawn in favor of the defendant.
(continued . . .)

jury verdict of its legitimacy, it is clear that no deference can be paid to the "facts" found by the jury, and the plaintiff cannot enjoy the same benefit of inferences as he would enjoy had the question of excessiveness been left to the jury. Owens Corning's meticulous dismantling of the factual "findings" of the courts below on which those courts expressly relied to set aside the three-times limit (IB 22-26), is not seriously challenged by Mr. Ballard even giving him the benefit of the inferences. Unable to defend the stated bases for those courts' decisions, Mr. Ballard takes the Court on a truncated trip through the record that leads Mr. Ballard to conclude that the testimony of one of Owens Corning's witnesses was "unbelievable." AB 27. That conclusion, even were it correct, offers no basis for imposing an additional $25.825 million punishment on Owens Corning.

As for the standard-of-conduct issue, Mr. Ballard does not offer any explanation for the legislature's exclusion of intentional torts from the operation of the three-times limit. Unable to explain that decision, Mr. Ballard contends that imposing an actual malice standard would somehow require a punitive damage claim to be submitted to the jury under that higher standard so the jury

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(. . . continued)

IB 19-20. Mr. Ballard contends that argument was not properly preserved for review by this court. AB 33, citing *Trushin v. State*, 425 So. 2d 1126 (Fla. 1982), and *Morales v. Sperry Rand Corp.*, 601 So. 2d 538 (Fla. 1992). His argument, however, fundamentally misconstrues the doctrine of waiver. The issue before the Court is whether the courts below erred in setting aside the statutory presumption. That issue was indisputably presented to both lower courts and was expressly passed on by them. The allocation of evidentiary burden for a punitive damage award that exceeds the presumptive limitation constitutes a point of law subsumed within the appellate responsibility of determining whether the lower courts erroneously interpreted the statute.

could "properly determine whether more than treble punitive damages were warranted." AB 39. That contention is nonsensical, because it is to the Florida courts — not Florida juries — that the legislature has entrusted this important inquiry.

Mr. Ballard also contends that the legislature cannot have intended this result because some cases may involve facts justifying a greater punishment "even though actual malice and specific intent are lacking." *Id.* Mr. Ballard relies on a hypothetical under which, because of the operation of Florida's Wrongful Death Act, the non-intentional taking of a life might result in a very low compensatory award that, when trebled, would yield a punitive damage award so low that application of the three-times limit would assertedly defeat the goals of punishment and deterrence. But that is a *non sequitur*. The legislature drew absolutely no distinction in 1986 between cases involving large compensatory damage awards and very small compensatory damage awards. Instead, the legislature apparently decided that the three-times limit should not apply to intentional torts because such intentional misconduct was deemed not to warrant the safe harbor of the three-times limit.[5]

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[5] Mr. Ballard contends that Owens Corning's position is "inconsistent" with *Poole v. Veterans Auto Sales and Leasing Co.*, 668 So. 2d 189, 191 (Fla. 1996), in which the Court stated that section 768.74 did not alter "the longstanding principles applicable to the granting of new trials on damages." AB 40. That statement in *Poole* is facially irrelevant to this case, because section 768.73 strips of its legitimacy any punitive damage award over three times the compensatory award, and gives to the courts the responsibility to determine whether the excess should be reinstated notwithstanding the presumption of excessiveness. There is no new trial alternative under section 768.73.

Mr. Ballard is unable to explain why a punishment of $25.825 million over and above the three-times limit of $5.175 million is necessary to punish a company (i) that ceased to manufacture Kaylo over 25 years ago; (ii) that realized a profit of only $1.4 million on its sale of Kaylo; (iii) that paid out $57 million to resolve asbestos claims in the third quarter of 1996 alone; and (iv) that anticipates spending more than $1.7 billion to resolve over 150,000 asbestos-related claims in the future.[6] Those are factors which must necessarily be balanced against any consideration of alleged "more egregious" behavior (the Fourth District's alternate justification for allowing the excess punitive award), yet Mr. Ballard offers no sufficient explanation as to why a $5.175 million punitive award is insufficient to vindicate Florida's interest in punishment, much less deterrence.[7]

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[6] This Court construes criminal statutes of limitations liberally in order "to minimize the danger of official punishment because of acts in the far-distant past." *Reino v. State*, 352 So. 2d 853, 860 (Fla. 1977) (quoting *Toussie v. United States*, 397 U.S. 112, 114-15 (1970). This principle should inform and guide the Court's application of the three-times limit to this case.

[7] Mr. Ballard cites Owens Corning cases in which the total amount of punitive damages ultimately awarded to a total of nine plaintiffs was $8.2 million, or an average award of about $911,000 for each plaintiff. *See* AB 32, 35, 36, citing *Dunn v. HOVIC*, 1 F.3d 1371 (3d Cir.), *cert. denied*, 510 U.S. 1031 (1993); *Owens-Corning Fiberglas Corp. v. Malone*, 1998 WL 288690 (Tex. Sup. Ct. June 5, 1998); and *Stevens v. Owens-Corning Fiberglas Corp.*, 49 Cal. App. 4th 1645 (1996). These awards illustrate how utterly out of line is the $31 million award in this case, making it precisely the type of case to which the legislature intended the three-times limit would apply. The punitive damage issue against Owens Corning gets litigated in case after case on essentially the same testimony and old documentary evidence. (2/27 Tr. 73). This case is no exception.

Mr. Ballard correctly contends that Florida's interest in deterrence focuses not on Owens Corning or its product, Kaylo, but on the need to deter the marketing of any and all products "in such a manner that human lives are knowingly subordinated to the corporate appetite for profits." AB 41. The question, however, is whether an additional punishment of $25.875 million is necessary to vindicate Florida's interest in deterrence. On that question, Mr. Ballard did not introduce at trial *any* evidence to support his thesis that manufacturers of potentially dangerous products will not sit up and take notice of a $5.175 million punitive damage award, let alone an award of that magnitude against a company faced with tens of thousands of unresolved claims against it.

Mr. Ballard invokes *W.R. Grace & Co. v. Waters*, 638 So. 2d 502 (Fla. 1994), for his argument that Florida's interest in deterrence has not been exhausted by the repetitive imposition of punitive damage awards against Owens Corning and other manufacturers. Owens Corning does not contend here, however, that no punitive damages may be imposed on it. Owens Corning has contended only that punishment to the extent of $5.175 million is sufficient to satisfy Florida's interests, thereby implementing, as *Waters* put it, "the limitations on punitive damages set forth by the Legislature . . . ." *Id.* at 506.[8]

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[8] Apparently anxious to minimize the impact of prior punitive damage awards on Owens Corning, Mr. Ballard asserts that in *Owens-Corning Fiberglas Corp. v. Malone*, 1998 WL 288690 (Tex. Sup. Ct. June 5, 1998), Owens Corning "was forced to admit at oral argument that it really had only paid $3 million in punitive damages." AB 36. That figure was historically accurate five years ago, at the time of the trial of the cases adjudicated in *Malone*. That figure does not reflect the explosion in punitive damage judgments paid by Owens Corning since 1993, as documented in unrejected appendices attached to Owens Corning's briefs in the district court.

II. Mr. Ballard's lawsuit should have been dismissed on the principles of *forum non conveniens* set forth in *Kinney*.

In *Kinney Systems, Inc. v. Continental Ins. Co.*, 674 So. 2d 86 (Fla. 1996), the Court expressed its dismay over then-prevailing principles of *forum non conveniens* which made Florida a haven for lawsuits which had no justifiable call on the judicial resources of the state. Acting decisively to stop the blatant forum shopping, the Court directed the application of the newly-adopted *forum non* principles to cases then pending in Florida's trial courts. Indisputably, Mr. Ballard is precisely the type of plaintiff that the Court sought to oust,[9] Owens Corning's first opportunity to bring about his ouster did not occur until after *Kinney* was decided,[10] and Owens Corning filed its motion before discovery was substantially complete or the case was ready for trial.

Today, the civil dockets of courts throughout this state are clogged with thousands of pre-*Kinney* cases with no conceivable justification for being in Florida, like Mr. Ballard's.[11] The reasons which prompted the Court to command *Kinney's* application to then-pending cases are no less pressing today

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9 Having conceded in the district court that the *forum non* principles of *Kinney* would require the ouster of his Florida lawsuit (IB, App. 4), Mr. Ballard does not even mention the subject in his answer brief here.

10 Remarkably, Mr. Ballard repeats the district court's misguided emphasis on the three-year pendency of Mr. Ballard's lawsuit as a sign that Owens Corning's dismissal motion was not timely. AB 44-45. As Owens Corning was at pains to point out (IB 30), no motion was ***possible*** in this case for the first two years of its life, until *Kinney* overruled *Houston v. Caldwell,* 359 So. 2d 858 (Fla. 1978).

11 Mr. Ballard does not dispute Owens Corning's representation to the Court (*see* IB 1, 29) that the district court's decision affects untold thousands of cases that are presently pending in the Florida courts.

than they were when *Kinney* was decided. The Court has every reason to reiterate that judges in Florida should purge from their dockets those improperly lodged cases which were not ready for trial, and in which discovery was not substantially complete, when *Kinney* was decided.

Mr. Ballard's mesothelioma lawsuit was indisputably not ready for trial, and discovery was certainly not complete, when Owens Corning moved on October 1, 1996, to dismiss on the basis of *Kinney*. Mr. Ballard's entire argument to the Court is that those facts don't matter because Owens Corning "agreed" it was ready for trial when its *forum non* motion was heard at the end of October. But there is no record foundation for his argument![12] Mr. Ballard puts the shoe on the wrong foot when he argues that Owens Corning failed to provide the district court with record support for its position — it was ***he*** who failed to provide a record in support of his claim of "agreement."

Mr. Ballard identifies no ***record*** foundation for his claim of "agreement." There is no transcript of that hearing to back his contention, admittedly, and Owens Corning's counsel vigorously denied having "agreed" to try the case. (2/27 Tr. 59, 62-63). Mr. Ballard's reliance on the trial court's after-the-fact recollection of "agreement" (AB 44, referencing 2/27 Tr. 62) is an absolute

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[12] It ill-behooves Mr. Ballard to point out (*see* AB 44) that the district court purported to rely for an absence-of-record ruling on *Carenza v. Sun Int'l Hotels, Ltd.*, 699 So. 2d 830 (Fla. 4th DCA 1997). That case indeed involved an absence of an adequate record for appellate review, but the panel did not resort to guesswork to decide that case, as did the panel here when it speculated on what "the trial court ***apparently*** concluded." 23 Fla. L. Weekly at D1077 (emphasis added). Unlike the panel here, the panel in *Carenza* reversed and remanded precisely because it lacked sufficient record information to make a proper decision on the merits. The record here is complete, and it evinces ***no*** agreement for trial by Owens Corning.

misstatement of the record. At that referenced hearing, the trial judge was not discussing his recollection of the *forum non* hearing on October 31; *he was talking about an August 1996 hearing in the master "In Re" docket at which he set twenty asbestosis cases selected by plaintiffs' counsel for trial in January.* (*See* 2/27 Tr. 49-53, 58-65).[13] That August hearing ***preceded*** the filing of Owens Corning's *forum non* motion, as well as Mr. Ballard's conversion of his lawsuit from one for "asbestosis" into one for "mesothelioma."

There was never any agreement by Owens Corning to try this case in January 1997. When its *forum non* motion was filed, discovery was not substantially complete in the case and it was not ready for trial. Indeed, dating all the way back to February **1994** and continuing through the date on which *Kinney* was decided and the date on which Owens Corning filed its motion to dismiss, there had been ***no*** disclosure of witnesses or experts, and ***no*** discovery on damages or apportionment issues as to Mr. Ballard's then-undisclosed claim of "mesothelioma" derived from exposure at previously-undisclosed work sites.[14] Nor had there been any utilization of the resources of the judiciary for trial-preparation matters.

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[13] The recollection of a trial judge is not, in any event, evidence to support an "agreement" on which a court can rely. *Smith v. State*, 345 So. 2d 1117 (Fla. 2d DCA 1977) (reversing trial court action supported solely by the recollection of the trial judge); *Burton v. State*, 442 So. 2d 355 (Fla. 1st DCA 1983) (trial judge's stated recollection shown to be incorrect).

[14] When the motion was filed, Mr. Ballard was on record as having represented to Owens Corning that he was suing for "asbestosis" injuries derived from exposure to Kaylo at only three work sites. His list was substantially expanded *after* the motion was filed.

Worse, Mr. Ballard's essentially new cause of action for mesothelioma was only one of two critical facts that he had concealed from both Owens Corning and the trial court. He also hid from both that he had formulated and was about to file another asbestos lawsuit in Louisiana — a deceit of which the trial court declared it "should have been made aware," as something to take into account when considering whether there is "really another convenient forum." (2/27 Tr. 44-45).

The district court was in error when it failed to hold that the trial judge abused his discretion in denying Owens Corning's *forum non* motion. The court's decision is incompatible with *Sun & Sea Estates, Ltd. v. Kelly*, 707 So. 2d 863 (Fla. 3d DCA 1998), which found an abuse of discretion in a trial court's failure to dismiss a case in which there had been considerably more discovery than here.

Owens Corning has proposed a practical test to reconcile *Sun & Sea Estates* with this case, and to determine generally whether pre-*Kinney* lawsuits are ready for trial when *Kinney*-based, *forum non* motions are considered — completion of the parties' identification of the nature of the injury, the extent of damages, the essential witnesses, third parties, and the persons to whom fault can be apportioned. IB 38-39. Mr. Ballard offers no criticism of the Owens Corning test. He argues only that motions to dismiss should be made "promptly," so that courts do not unduly "prosecut[e] cases for years" and so that plaintiffs are not prejudiced by delay. AB 46-47.

Owens Corning's test, though, just like Mr. Ballard's, contemplates the filing of motions to dismiss "promptly," ***whatever that may mean in the context of any particular case***. In this case, for example, the motion was filed promptly after *Kinney* ***given that no trial preparation took place in the lawsuit between Kinney and the filing of the motion***. The inference that Owens Corning delayed

its motion is false; it was Mr. Ballard himself who allowed his lawsuit to stagnate for almost three years, including eight months in which he hid the fact that the case had converted to a mesothelioma case until ***after*** Owens Corning's *forum non* motion had been filed. It was only then that he moved to expedite a trial, changed the fundamental nature of his suit, and provided his expanded list of exposure sites — conveniently for him, but prejudicial to Owens Corning.[15]

Mr. Ballard's seeming concern for possible misuse of the resources of the judiciary is also misguided. If parties were in fact to "prosecute" a case "for years," the progression of the lawsuit would of necessity render it ready for trial, with discovery substantially complete, under Owens Corning's proposed test.

Finally, Mr. Ballard cannot plausibly argue that Owens Corning's readiness for trial in October is evidenced by its failure to pursue extensive discovery prior to the January trial. The discovery that Owens Corning did pursue prior to trial, including the taking of Mr. Ballard's deposition, is itself "extensive" relative to the total absence of any meaningful discovery as of October 1, 1996. Furthermore, Owens Corning's discovery was curtailed ***by the court***. Adequate discovery was simply not possible for a mesothelioma trial on two-month's notice (2/27 Tr. 101-02, 104), and the court's "Catch-22" ruling (IB 37, n.26) effectively foreclosed any apportionment defense which, under ordinary circumstances, would have prompted considerable discovery.

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[15] Mr. Ballard cannot legitimately argue (as he attempts at AB 47) that Owens Corning exposed him to an inability to try his case elsewhere by not filing its *forum non* until eight months after *Kinney*. His "survival" to sue in a legitimate forum was never an issue in the case until ***after*** the motion was filed, because ***he*** allowed his case to languish in a Florida court under a claim of non-fatal "asbestosis."

CONCLUSION

Mr. Ballard's lawsuit should have been dismissed by the trial court under *Kinney*, and it should be dismissed now and consigned for pursuit elsewhere. It is equally important that the Court provide the lower courts of Florida with guidance regarding the rigorous implementation of the legislature's stricture on punitive damages and that, in so doing, the Court direct the circuit court to remit that portion of Mr. Ballard's punitive damage award that exceeds three times his compensatory award if it is determined that Mr. Ballard's lawsuit is not to be dismissed under *Kinney*.

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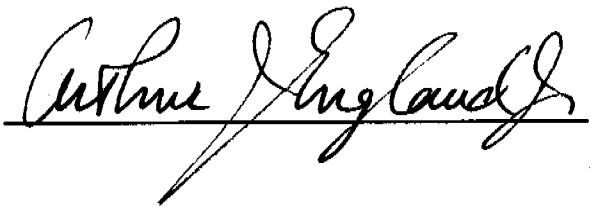

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