



## The Voice

### And The Defense Wins

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[Joshua J. Metcalf](#) and [Nick Giallourakis](#) of **Forman Watkins & Krutz** in Jackson, Mississippi, and [Dan Lindahl](#) of **Bullivant Houser Bailey** in Portland, Oregon, persuaded the trial judge to grant a new trial based on attorney misconduct in an Oregon wrongful death action arising from decedent's alleged exposure to asbestos.

The decedent allegedly died because of mesothelioma caused by exposure to asbestos 50 years ago when the decedent briefly worked as an independent contractor applying insulation at defendant's mill. The jury returned a verdict for the decedent. After the trial was over, defendant discovered that, although plaintiff's counsel had represented in discovery that all bankruptcy-related materials had been produced, plaintiff's counsel had failed to produce numerous bankruptcy trust documents, including exposure affidavits, discovery responses, and alternative exposure depositions. The documents were discovered only after the court ordered—over plaintiff's counsel's objection—that plaintiff must sign authorizations permitting defendant to obtain complete information directly from the bankruptcy trusts. After discovering the documents, defendant moved for a new trial, arguing that the failure to produce the documents constituted misconduct warranting a new trial. The trial judge agreed and set aside the verdict and ordered a new trial based on misconduct by plaintiff's counsel. Plaintiff has appealed the order granting a new trial.

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