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VIRGINIA'S LARGEST VERDICTS OF 2010

FELA suit in Tennessee

Richard N. Shapiro of Virginia Beach and Sidney Gilreath of Knoxville, Tenn., joined forces to win an \$8.6 million verdict in Knoxville Circuit Court for the estate of a CSX railroad brakeman/switchman.

Winston Payne retired in 2002 at age 60 after a 40-year career with the railroad and was diagnosed in 2005 with lung cancer.

He filed suit under the Federal Employer Liability Act alleging that the cancer was caused by exposure to radioactive contamination from enriched uranium and plutonium surface contamination in or near trains on which he worked.

He also alleged that he was exposed to asbestos insulation on diesel locomotives and to the fumes from diesel fuel.

Payne died in February 2010 before the case was tried, and the jury returned its verdict in November. Under FELA's comparative negligence provisions, the jury found that 26 years of smoking was 62 percent responsible for Payne's lung cancer, which would reduce the award to \$3.2 million.

The estate's attorneys contend, however, that it is entitled to the full amount because CSX violated a safety statute. Post-trial motions on that issue and defense requests to set aside or modify the verdict are pending.

The case is *Estate of Winston Payne v. CSX*.



SHAPIRO