

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

IN RE ASBESTOS LITIGATION:

PHYLLIS P. MELTON,

Limited to Kerr Corp.

)
)
)
)
)

C.A. No. N10C-06-123 ASB

ORDER

Defendant, Kerr Corporation, moved for summary judgment on several grounds including on the issue of punitive damages. The court held a supplemental argument on the issue of punitive damages and reserved its decision on that issue. This is the court's decision.

While the Georgia Supreme Court has not addressed the issue of the summary judgment standard for punitive damages, the Court of Appeals has addressed it. The court's research indicates "punitive damages is generally a jury question" in Georgia.¹ In reversing summary judgment on the issue of punitive damages, the Court of Appeals explained "a jury may award punitive damages even where the clear and convincing evidence only creates an inference of the defendant's conscious indifference to the consequence of his acts."² Again reversing summary judgment the Court found that the mere fact "[a] jury could infer a conscious disregard for the safety of others" was sufficient for a claim on punitive damages.³

¹ *Tookes v. Murray*, 297 Ga. App. 765, 768 (Ga. App. 2009) (certiorari denied Oct. 5, 2009).

² *Id.*

³ *Zeigler v. Clowhite Co.*, 234 Ga. App. 627, 629 (Ga. App. 1999) (certiorari denied Feb. 5, 1999).

Considering the evidence in the light most favorable to Plaintiff, a genuine issue of material fact exists as to whether Defendant was consciously indifferent to the consequence of its acts. Accordingly, Summary Judgment as to punitive damages is **DENIED**.

IT IS SO ORDERED.

John A. Parkins, Jr.
Superior Court Judge

Dated: January 24, 2012

oc: Prothonotary
cc: A. Dale Bowers, Esquire, Wilmington, Delaware, Attorney for Plaintiff
Sherry Ruggiero Fallon, Esquire, and Sarah A. Roberts, Esquire,
Wilmington, Delaware, Attorneys for Defendant