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Alabama judge remands mesothelioma death case involving TVA nuclear plant

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"In return for the loan of life, we each owe God a death."

That's the opening line in a majority opinion published this week involving Barbara Bobo, a Florence woman who died from the rare lung disease mesothelioma after inhaling secondhand asbestos fibers while laundering her husband's work clothes.

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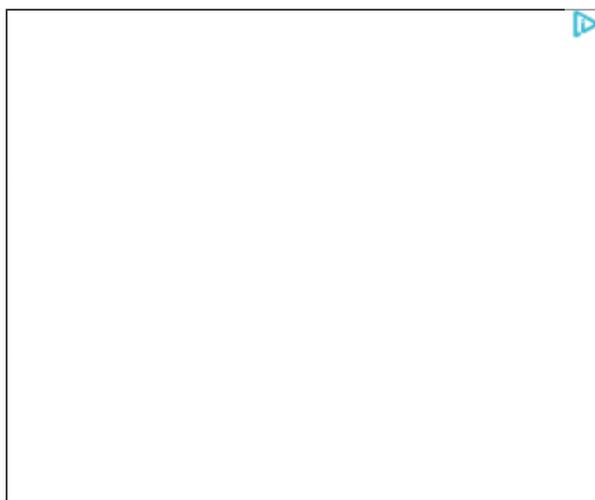
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TVA

Bobo's late husband, James "Neal" Bobo, worked for the Athens-based Browns Ferry Nuclear Plant, which is owned and operated by the Tennessee Valley Authority, for more than two decades. His duties included cleaning up residue left by insulators and asbestos workers, which allowed asbestos fibers to settle on his clothes.

Bobo, who was diagnosed with malignant pleural mesothelioma in 2011, filed a lawsuit before she died claiming TVA's negligence resulted in her being exposed to "take-home" asbestos. Daughters Melissa Ann Bobo and Shannon Jean Bobo Cox were awarded more than \$3 million for their mother's pain and suffering and medical expenses in 2015.



"To answer the question with which we began, TVA did cause Mrs. Bobo to die sooner and suffer more in the course of dying than she otherwise would have," Chief Judge Ed Carnes wrote in a filing issued Wednesday for the 11th Circuit in the U.S. Court of Appeals.

The question at hand is how much damages TVA must pay to Bobo's daughters, who are serving as personal representatives of her estate. Carnes said the only part of the damages that TVA challenges is the portion of the amount for medical expenses.

Bobo was billed \$537,131.82, but "neither she nor her insurers paid [that amount to] the providers because through agreements with the insurers, the providers agreed 'to adjust, reduce, write down or accept a reduced portion'" of the bill amounts. TVA believes the plaintiffs are not entitled to recover any amount that was written off by the providers, while the plaintiffs say they should recover all of the written off amounts, according to Carnes.

"We agree with TVA that amounts that were written off by providers under contractual agreements with insurers are not amounts that a plaintiff has paid or is obligated to pay within the meaning of the Alabama Supreme Court's decisions," he said. "Nor may those amounts be included in a damages award under the collateral source rule."

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Carnes said they are sending the case back to the district court with instructions for it to recalculate the damages to exclude any amounts that were written off by Bobo's providers and to correct any other errors that may appear to the court when the parties have a chance to focus exclusively on the medical expenses component of the award.

TVA spokesman Jim Hopson said they are currently reviewing the court's decision to determine the corporation's future actions.

"The circumstances of this case involve historic asbestos handling work practices that have long been altered, but were common during the period," he said. "We do recognize the tragic impact on the family of our former team member and will continue to work to resolve this situation fairly for all parties involved."

Bobo's husband died in 1997 from a heart attack after he was diagnosed with asbestos-induced lung cancer, the filing said. Before Bobo died in 2013, she underwent thoracentesis, a procedure involving a long needle that removed two liters of fluid from the space between the lining of her outer lungs and the wall of her chest.

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Carnes said Bobo also experienced multiple rounds of chemotherapy, which she called the "Red Devil" due to side effects including pain when drinking fluids and spitting up raw flesh. In 2012, one of her ribs and the pleural lining of one of her lungs were removed.

Jay Stuemke, an attorney at Simon Greenstone Panatier Bartlett in Dallas, represents the Bobo family. He said they are "fully prepared to take up the issue of medical expenses, as directed by the court."

"The 11th Circuit opinion states very clearly that the court saw beyond the course of dying that she otherwise would have," he said. "We're satisfied that the court saw beyond

each of TVA's arguments and put the blame for her death squarely where it belongs, with the TVA and no one else. And we're satisfied that the court affirmed the \$3 million award for Mrs. Bobo's pain and suffering."

Read the full opinion below.

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