

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

PATRICK BLANKS, et al.,)	No. ED97810
)	
Respondents,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	
)	Honorable Dennis M. Schaumann
FLUOR CORPORATION, et al.,)	
)	
Appellants.)	Filed: September 16, 2014

Sixteen children who suffered lead poisoning while living in Herculaneum during their early childhood sued the Doe Run Company partnership for negligently exposing them to lead. The children alleged numerous and wide-ranging acts of commission and omission by the partners.

The children proceeded to trial against three partners: Fluor Corporation, A.T. Massey Coal Company, and Doe Run Investment Holding Corporation. The children advanced two theories of liability. They first sought to hold each defendant liable based on the defendant’s negligent conduct while a partner in the Doe Run partnership. Secondly, the children sought to hold Fluor liable due to its domination and control of its subsidiaries that were partners in the Doe Run partnership. The jury awarded the children actual and punitive damages.

Defendants advance seventeen points of alleged trial-court error, which we have divided into the following general categories: (1) the submissibility of the children’s case; (2) trial rulings; (3) jury instructions; (4) punitive damages; and (5) post-trial motions to reduce the compensatory- and punitive-damage awards.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

DIVISION FOUR HOLDS: The children made a submissible case against all defendants on their negligence claim predicated on defendants’ conduct while partners. The children’s domination claim against Fluor, however, is based on a flawed statement of agency law. We therefore reverse the judgment entered against Fluor on this theory of liability.

As to the trial rulings, defendants advance five challenges – three challenge the admission of several of the children’s expert witnesses; one challenges the exclusion of evidence; and one challenges the trial court’s denial of a mistrial after children’s counsel mentioned the Missouri Victims’ Compensation Fund during voir dire. Defendants failed to preserve these points for our review; therefore we deny these allegations of error.

As to the jury instructions, we hold that the children’s compensatory-damage verdict directors neither constituted a roving commission nor permitted the jury to hold defendants liable

for conduct predating their partnership interest, and therefore the trial court did not err in submitting those instructions.

As to punitive damages, we hold that the children made a submissible case for punitive damages against all defendants, and we deny defendants' various contentions regarding the form of the punitive-damage instructions. Nevertheless, we must reverse the punitive-damage awards against Fluor because the instructions required the jury to consider undifferentiated conduct, and we cannot conclude that the jury would have found Fluor liable for punitive damages based solely on Fluor's conduct as a partner.

Lastly, as to defendants' attempts to reduce the awards, we find no abuse of discretion in the trial court denying remittitur of compensatory damages and the punitive-damage awards do not violate the Due Process Clause.

Note: New language appears only on the following pages of the opinion: 76, 152-54, and 167.

Opinion by: Lawrence E. Mooney, P.J. Roy L. Richter, J., and Kurt S. Odenwald, J., concur.

Attorneys for Appellants: Amy Jo Thompson, John H. Quinn, III, Thomas B. Weaver, Jeffery T. McPherson, and Thomas C. Walsh.

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