

# Q&A with Kate Mercer-Lawson: How WTO Won a \$63 Million Asbestos Trial

News

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Mercer-Lawson

*We asked WTO partner Kate Mercer-Lawson to share some highlights of her recent defense verdict for Foster Wheeler Energy Corporation in a federal asbestos trial in Boston. Kate served as second chair alongside WTO's John Fitzpatrick.*

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### What were the biggest challenges of this trial?

At first glance, things looked dire. Most people today hear the word “asbestos,” know it causes mesothelioma, and don’t have a single moment of patience for any defendant that incorporated asbestos into its products over the years. And that’s what our client did: made a boiler for a Navy warship that, at the Navy’s behest, contained asbestos insulation. Our client also—again, operating under strict Navy specifications—didn’t place a warning on the boiler pertaining to potential asbestos hazards. It was our job to explain why, and why this was perfectly reasonable during the relevant time period. We faced the much simpler story presented by the plaintiff: If a warning would have been on the boiler, and the plaintiff’s late husband—a Navy veteran—had followed that warning, he would not have developed the devastating disease we know mesothelioma to be.

We were up against a grieving widow represented by a high-profile plaintiff firm. Our client was a manufacturer unknown to most people in Boston. During jury selection, anti-corporate sentiment had us worried. We knew we would have to address that head-on during trial.

And the jury charge was a huge challenge due to confusion about a 2019 Supreme Court case that instructs when a manufacturer may have a duty to warn about component parts, like insulation, that it did not specify or supply. We had to explain how this case applied in the plaintiff's breach-of-warranty claim, too, which was new territory.

### **How did you overcome those obstacles to win the verdict?**

We told the jurors, "Forget everything you know, and step into a time machine. The year is 1956, the year this Navy warship was built. You cannot judge the conduct of Foster Wheeler based on what you know today." Because of our significant trial experience with asbestos cases, we had amassed quite a database on the plaintiff's experts. We had crossed those experts on multiple occasions over the years, and we used that to our advantage here by showing that they've become "professional witnesses" for plaintiff attorneys. No matter the case, they provide opinions implicating any company that incorporated any amount or type of asbestos into a product, ensuring a "litigation lottery—everybody must pay" situation for their client. We did not hold back in challenging their opinions, many of which found absolutely no support in the peer-reviewed, published scientific literature. Once they rested, we presented our unimpeachable experts with impressive credentials.

Persistence and vigilance were critical to prevailing on the jury charge. We did successfully argue for the proper standard, although the plaintiff's lawyers kept trying to suggest a different standard, one the Supreme Court expressly rejected. We called this out and stopped it in its

tracks—over and over again. At one point, I said, “Your Honor, I feel like we’re beating a dead horse.”

**This three-week trial was highly watched, with daily audiences. What can other trial attorneys learn from the result?**

There were attorneys sitting in the courtroom, thinking, “Should we tell our own clients facing asbestos allegations to stay the course?” Our result has shown them that the answer can be “yes.”

We modeled what it means to take a stand for your client. Asbestos cases fall into a group called “pattern litigation,” but that should never stop you from telling the story of your specific case. You don’t set the pattern and forget it. You can and must ask the jury to do hard things. You have the skills to fight for your client with energy and passion. We proved trial experience is critical to prevail in this litigation. In the end, your client will benefit and be grateful.

Find more information about the case [here](#).

*Wheeler Trigg O'Donnell lawyers have taken more than 1,100 trials and arbitrations to verdict or award and 300 appeals to opinion all across the nation, with exceptional results for our clients.*

*Established in 1998, WTO today numbers more than 110 trial lawyers and litigators. The firm represents sophisticated clients in high-stakes civil trials, appeals, and related litigation ranging from complex commercial to class actions to catastrophic torts.*