

DRI Members Share Their Victories

December 2023, Union County, KY: *Baird v. Greenwell Brothers Farm, LLC, et al.*

Melissa Richardson successfully obtained a unanimous defense verdict on liability for her clients, Greenwell Brothers Farm, LLC, Thomas Randall Greenwell, and James Neal Greenwell, in a unique case involving a negligence action filed by a farm employee after he contracted a rare fungal infection. Plaintiff is a life-long farmer who was hired by Greenwell Brothers Farm as a farmhand in 2018.

In or around August 17, 2020, Greenwell Brothers underwent the task of replacing the floor of a grain bin located on the property. The Greenwells, several of the Greenwell children, and Plaintiff, among others, first removed the perforated floor of the grain bin. Thereafter, they worked to remove the grain remnants that had accumulated under the floor. The Greenwells would shovel the grain remnants into buckets, hand the bucket through an opening in the grain bin to Plaintiff who was standing outside, and Plaintiff would then empty the bucket into a wagon.

No one wore respiratory protection while working on the grain bin. Greenwell Brothers did not require employees to use respiratory protection for this particular type of work. However, various respirators, including N-95 masks, were readily available for employees to use at their discretion. Respirators were kept in the grainery control room, the office shop, and in most service trucks, all of which were located beside of the grain bin. Greenwell Brothers contended that all employees knew where the respirators were kept and had access to them.

While Plaintiff initially denied that respiratory protection was available, he later acknowledged that he had used respirators provided by Greenwell Brothers in the past and that he could have found one had he looked. He indicated he used his extensive experience as a farmer to determine whether or not to wear a respirator. In this instance, and based on his experience, he did not believe a respirator was necessary for the grain

bin project. As such, he did not use a respirator and testified that he would not have worn one if it were handed to him due to the August heat.

Less than two weeks after completing the work on the grain bin, Plaintiff was hospitalized and diagnosed with disseminated blastomycosis, a rare fungal infection caused by the organism *blastomyces*. *Blastomyces* is primarily found in soil and is endemic to the Ohio River Valley, Mississippi River Valley, and the Southeastern United States. Plaintiff alleged he inhaled *blastomyces* spores during the grain bin project. Plaintiff filed suit alleging that the Greenwell Brothers were negligent for failing to provide proper respiratory protection and a grain vacuum. Plaintiff elicited testimony from an industrial hygienist who claimed that Greenwell Brothers should have, at a minimum, required its employees to wear half-face respirators with P-100 filters. She acknowledged that N-95 respirators were designed to protect against airborne particulates, such as grain dust; however, she would not recommend them due to the potential for leakage.

Among other things, Greenwell Brothers asserted that Plaintiff could not link his infection to the grain bin project. Plaintiff's expert, Plaintiff's treating infectious disease doctor, and Greenwell Brother's expert all agreed that *blastomyces* spores are endemic to the area and that Plaintiff could have been exposed to *blastomyces* spores virtually anywhere in the general environment. This was determined to be particularly true in areas where the soil is being plowed. Plaintiff, who worked on a farm and lived on his own farm that was actively being farmed, was routinely exposed to this type of environment. Moreover, Greenwell Brothers' expert, Dr. Keith Armitage, opined that the normal incubation period for blastomycosis is greater than 30 days. Because Plaintiff began experience symptoms less than two weeks after the grain bin project, it was unlikely that the grain bin project work was the source of the infection. She further noted that no other employee who worked in or around the grain bin became ill. Moreover, Greenwell Brothers relied on Plaintiff's medical records which noted that he had been losing weight, had sores on his body that would not heal, and had been feeling fatigued for a couple of months prior to the grain bin work, as all of those complaints are symptoms associated with blastomycosis. According to Dr. Armitage, this suggested that Plaintiff likely contracted his infection at least months before the grain bin project was started.

Greenwell Brothers further contended that they complied with any duty they may have owed Plaintiff by providing N-95 respirators for employees to use on a voluntary basis. Greenwell Brothers' agriculture operations expert, Bob McIndoo, opined that it is industry standard for farming operations to have N-95 respirators available for voluntary use when cleaning the interior of a grain bin. Additionally, Greenwell Brothers' industrial hygienist, James McIntosh, opined that the N-95 respirators made available by Greenwell Brothers would have offered adequate protection against airborne particulates had Plaintiff chosen to wear one.

Following his infection, Plaintiff asserted that he was experiencing ongoing respiratory

issues, severe depression due to his alleged inability to work, chronic headaches and migraines, ambulation issues, nausea, fatigue, and a general inability to engage in any activity without becoming sick. Plaintiff claimed that these alleged symptoms prevented him from returning to work. However, Plaintiff's treating infectious disease doctor opined that Plaintiff had made a full recovery from his infection and there was no indication that Plaintiff should be experiencing lingering symptoms. In fact, Plaintiff's own expert acknowledged that from a pulmonary and physical standpoint, Plaintiff was able to return to work. Further, Plaintiff had an extensive history of pre-existing health issues that were playing a role in his alleged ongoing complaints, including an extensive history of anxiety, depression, diabetes, COPD. In fact, Plaintiff had reported to his primary care physician just months before trial that his depression was in full remission and that he had been performing work outside on his house.

After a four-day trial, the jury returned a unanimous defense verdict within 30 minutes of deliberation.

