



Roughneck claimed asbestosis from 'drilling mud' products

Type: Verdict-Plaintiff

Amount: \$322,000,000

State: Mississippi

Venue: Smith County

Court: Smith County Chancery Court, MS

Injury Type(s): • *pulmonary/respiratory* - asbestosis

Case Type: • *Products Liability* - Asbestos; Warnings; Design Defect; Failure to Warn

Case Name: Thomas C. Brown v. Chevron Phillips Chemical Co. and Union Carbide Corp., No. 2006-196

Date: May 04, 2011

Plaintiff(s): • Thomas C. Brown (Male, 40 Years)

Plaintiff Attorney(s):

- D. Allen Hossley; HossleyEmbry; Tyler TX for Thomas C. Brown
- Dawn M. Smith; HossleyEmbry; Dallas TX for Thomas C. Brown
- Raymond Turcotte; HossleyEmbry; Tyler TX for Thomas C. Brown
- Eugene Tullos; Tullos & Tullos; Raleigh MS for Thomas C. Brown
- Gary King; Tullos & Tullos; Raleigh MS for Thomas C. Brown

Plaintiff Expert(s):

- Ed Ziegler P.E.; Safety; Houston, TX called by: D. Allen Hossley, Dawn M. Smith, Raymond Turcotte, Eugene Tullos, Gary King
- Edwin Holstein M.D.; Occupational Medicine; Boston, MA called by: D. Allen Hossley, Dawn M. Smith, Raymond Turcotte, Eugene Tullos, Gary King
- Steven Stogner M.D.; Pulmonary/Respiratory Diseases; Hattiesburg, MS called by: D. Allen Hossley, Dawn M. Smith, Raymond Turcotte, Eugene Tullos, Gary King

Defendant(s):

- Union Carbide Corp.
- Chevron Phillips Chemical Co.

**Defense
Attorney(s):**

- Michael G. Terry; Hartline Dacus Barger Dreyer LLP; Corpus Christi, TX for Union Carbide Corp.
- Alex E. Cosculluela; Adams and Reese LLP; Houston, TX for Chevron Phillips Chemical Co.
- Jeffrey Trotter; Adams and Reese LLP; Ridgeland, MS for Chevron Phillips Chemical Co.
- Robert L. Johnson III; Law Office of Robert L. Johnson III; Natchez, MS for Chevron Phillips Chemical Co.
- S. Robert Hammond Jr.; Attorney at Law; Hattiesburg, MS for Chevron Phillips Chemical Co.
- Marcy B. Croft; Forman Perry Watkins Krutz & Tardy LLP; Jackson, MS for Union Carbide Corp.

**Defendant
Expert(s):**

- James Wallace M.D.; General Surgery; Houston, TX called by: for Michael G. Terry, Alex E. Cosculluela, Jeffrey Trotter, Robert L. Johnson III, S. Robert Hammond Jr., Marcy B. Croft
- Robert B. Ross M.D.; Pulmonology; Houston, TX called by: for Michael G. Terry, Alex E. Cosculluela, Jeffrey Trotter, Robert L. Johnson III, S. Robert Hammond Jr.,
- William L. Dyson Ph.D., C.I.H.; Industrial Hygiene; Greensboro, NC called by: for Michael G. Terry, Alex E. Cosculluela, Jeffrey Trotter, Robert L. Johnson III, S. Robert Hammond Jr.,

Facts:

In 2010, plaintiff Thomas C. Brown, 40s, was diagnosed with asbestosis, a lung disease related to asbestos exposure.

From 1979 until the mid-1980s, Brown worked as a roughneck, mixing drilling mud with products sold and manufactured by Chevron Phillips Chemical Co. and Union Carbide Corp. on rigs in Mississippi and offshore in the Gulf of Mexico. He was 16 years old and couldn't read when he began working.

Brown sued CP Chemical and Union Carbide for products liability (failing to provide an adequate warning and design defect).

Plaintiff's counsel contended that CP Chemical and Union Carbide were aware that their products contained asbestos and they knew of the hazards associated with inhaling asbestos fibers, but they continued selling them without providing an adequate warning to workers like Brown.

The defense responded that CP Chemical and Union Carbide complied with federal regulations as to warning labels at all relevant times. (According to court documents, during the relevant time, the packaging on containers of drilling mud additives had federally mandated warnings about the asbestos fibers and that fact that breathing them could cause health problems.)

Defense counsel contended that Brown failed to inquire about the materials he was working with, and that his employer failed warn him about the materials or provide proper safety equipment.

Counsel for CP Chemical pointed out that Brown was seeking damages allegedly related to exposure to products that were distributed more than two decades ago, many years before CP Chemical was formed.

Injury:

Brown, who was in his late 40s at trial, has asbestosis and requires oxygen 24 hours a day.

Plaintiff's counsel claimed that the disease would progress over time and eventually cause Brown's premature death.

Brown sought payment for future medical expenses, pain and suffering and punitive damages, but his demands were unspecified.

The defense disputed causation, arguing that Brown's shortness of breath was not attributable to asbestos exposure.

Result:

The jury returned a plaintiff verdict, finding design defect and failure to warn against CP Chemical and Union Carbide. Liability was split evenly between both defendants.

The jury awarded \$322 million, which breaks down at \$300 million in punitive damages and \$22 million in actual damages.

Plaintiff attorney Eugene Tullos opined that the large verdict resulted from the jurors' belief that CP Chemical and Union Carbide continued using the product even though they knew it was dangerous.

Thomas C. Brown

\$300,000,000 Personal Injury: Punitive Exemplary Damages

\$22,000,000 Personal Injury: actual damages

Trial Information:

Judge: Eddie Bowen

Trial Length: 11 days

**Trial
Deliberations:** 2 hours

Jury Vote: 10-2

**Jury
Composition:** 5 male, 7 female

Post Trial: On Dec. 27, 2011, Judge William Coleman issued an order vacating the verdict and award.

**Editor's
Comment:** This report is based on information that was provided by plaintiff's counsel and defense counsel for CP Chemical. Counsel for Union Carbide did not respond to the reporter's phone calls.

Writer Rob MacKay

City: chemical co's told dry cleaners to dump carcinogen

Type: Verdict-Mixed

Amount: \$178,248,834

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Case Type:

- *Products Liability - Design Defect; Failure to Warn*

Case Name: City of Modesto v. The Dow Chemical Company; R.R. Street & Co., Inc.; Vulcan Materials Company; PPG Industries, Inc.; Modesto Steam Laundry & Cleaners, Inc.; Occidental Chemical Corporation; Goss Jewett Company of Northern California, Inc. and American Laundry Machinery, Inc., No. 999643 (Consolidated with 999345)

Date: June 13, 2006

Plaintiff(s):

- City of Modesto

Plaintiff Attorney(s):

- Duane C. Miller; Miller, Axline & Sawyer; Sacramento CA for City of Modesto
- Tracey L. O'Reilly; Miller, Axline & Sawyer; Sacramento CA for City of Modesto
- Tamarin E. Austin; Miller, Axline & Sawyer; Sacramento CA for City of Modesto
- Evan Eickmeyer; Miller, Axline & Sawyer; Sacramento CA for City of Modesto
- Daniel Boone; Miller, Axline & Sawyer; Sacramento CA for City of Modesto
- A. Curtis Sawyer, Jr.; Miller, Axline & Sawyer; Sacramento CA for City of Modesto
- Michael Akshline; Miller, Axline & Sawyer; Sacramento CA for City of Modesto

Plaintiff Expert**(s):**

- Jim Mercer; Solvents; Rancho Cordova, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Mark Reitz P.E.; Water Treatment & Sanitation; Fresno, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Bruce Dale; Dry Cleaning Machines & Systems; Mason, MI called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Peter Sinsheimer; Air Contaminants; Los Angeles, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Steve Carlton; Solvents; Rancho Cordova, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Steve Pinkerton; Community Development; Stockton, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Edward Whitelaw Ph.D.; Economics; Eugene, OR called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Gerald Levine; Dry Cleaning Machines & Systems; Palm City, FL called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Martin McIntyre; Hydrogeology; Reno, NV called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Steven Wheatcraft Ph.D.; Hydrogeology; Reno, NV called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Anthony Brown; Hydrology; Huntington Beach, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie
- Dr. Franklin J. Agardy; Environmental Management; San Mateo, CA called by: Duane C. Miller, Tracey L. O'Reilly, Tamarin E. Austin, Evan Eickmeyer, Daniel Boone, A. Curtis Sawyer, Jr., Michael Akslie

Defendant(s):

- Dow Chemical Co.
- PPG Industries Inc.
- Vulcan Materials Co.
- R.R. Street & Co. Inc.
- Occidental Chemical Corp.
- American Laundry Machinery Inc.
- Modesto Steam Laundry & Cleaners Inc.
- Goss Jewett Company of Northern California

**Defense
Attorney(s):**

- Michael Zaleski; Quarles & Brady; Madison, WI for Vulcan Materials Co.
- Edward R. Hugo; Brydon, Hugo & Parker; San Francisco, CA for Goss Jewett Company of Northern California
- John B. Thomas; Hicks, Thomas & Lilienstern; Houston, TX for R.R. Street & Co. Inc.
- Kristin N. Reyna; Gordon & Rees LLP; San Francisco, CA for American Laundry Machinery Inc.
- Frank J. Daily; Quarles & Brady LLP; Madison, WI for Vulcan Materials Co.
- Gennaro Filice; Filice Brown Eassa & McLeod LLP; Oakland, CA for Dow Chemical Co.
- James Colopy; Farella, Braun and Martel; San Francisco, CA for Vulcan Materials Co.
- Stephen Lewis; Barg, Coffin, Lewis & Trapp LLP; San Francisco, CA for Occidental Chemical Corp.
- Gary Smith; Beveridge & Diamond PC; San Francisco, CA for PPG Industries Inc.
- William Noel Edlin; Bassi, Martini, Edlin & Blum LLP; San Francisco, CA for Modesto Steam Laundry & Cleaners Inc.
- Andrew Nelson; Walsworth, Bevins, Franklin & McCall LLP; San Francisco, CA for Modesto Steam Laundry & Cleaners Inc.
- P. Gerhardt Zacher; Gordon & Rees LLP; San Francisco, CA for American Laundry Machinery Inc.
- R. Morgan Gilhuly; Barg, Coffin, Lewis & Trapp LLP; San Francisco, CA for Occidental Chemical Corp.
- Marc Turco; Beveridge & Diamond PC; San Francisco, CA for PPG Industries Inc.
- Alexia Baer; Beveridge & Diamond PC; San Francisco, CA for PPG Industries Inc.
- Eric Grant; Law Office of Eric Grant; Sacramento, CA for R.R. Street & Co. Inc.
- Roland Brydon; Brydon, Hugo & Parker; San Francisco, CA for Goss Jewett Company of Northern California

**Defendant
Expert(s):**

- Ed Prokop; Environmental Engineering; Petulama, CA called by: for William Noel Edlin, Andrew Nelson
- Gaynor Dawson; Solvents; Richland, WA called by: for William Noel Edlin, Andrew Nelson
- George Linkletter; Geology; Irvine, CA called by: for John B. Thomas, Frank J. Daily, Gennaro Filice, James Colopy, Stephen Lewis, Gary Smith
- Joseph Petrella P.E.; Engineering; Ewing, NJ called by: for Kristin N. Reyna, P. Gerhardt Zacher

Facts:

From 1965 to 1997, dry cleaning companies in the City of Modesto, Calif., engaged in a variety of methods to dispose of the waste from their dry cleaning chemicals. The city claimed that the disposal process included separating the water from the chemical base and releasing the residual chemical base into the ground or Modesto's sewer system. The chemical base was an oily black compound composed primarily of perchloroethylene (PERC) (also known as tetrachloroethylene (PCE), a substance identified as a carcinogen by the Department of Health and Human Services in 1985, as well as trichloroethylene. PERC is a central nervous system depressant that can cause dizziness, headaches, nausea, unconsciousness and, potentially, death to people exposed to excessive amounts of the chemical.

Claiming that the companies who produced PERC-based dry cleaning products were

liable for failing to warn the users, namely dry cleaning establishments, of the dangers of releasing PERC into sewers and soil, and for producing a product with a design defect, the City of Modesto and the Modesto Redevelopment Agency sued The Dow Chemical Company, Midland, Mich.; R.R. Street & Company, Naperville, Ill.; Vulcan Materials Company, Birmingham, Ala.; PPG Industries, Pittsburgh; Modesto Steam Laundry & Cleaners, Modesto; Occidental Chemical Corporation, Dallas; Goss Jewett Company of Northern California, Fresno; and American Laundry Machinery, Cincinnati, for damages.

The City of Modesto also named numerous dry cleaning equipment manufacturers and dry cleaner companies in the suit, however, prior to and throughout the trial, all companies named, with the exception of the defendants listed, agreed to pay over \$14 million in court-approved settlements.

Plaintiffs' counsel alleged that during the time period outlined, the manufacturers of the PERC-based dry cleaning products directed the companies that purchased their products how to dispose of the PERC chemical compound, and throughout that time the disposal methods included releasing PERC into Modesto's sewage and soil. The city referred to marketing products, newsletters, brochures and other documents intended to instruct the primary recipients of the PERC-based dry cleaning chemicals on how to dispose of waste associated with the companies' products as evidence that the defendants knowingly recommended the distribution of PERC chemical compounds into Modesto's sewage system and soil.

Plaintiffs' counsel also emphasized that, despite a published 1979 study that identified PERC as a carcinogen and the 1985 listing of PERC as a known carcinogen by HHS, the defendants continued to advise the users of their products to dispose of the residual PERC chemical compounds into Modesto's sewers and soil. Plaintiffs' counsel maintained that the defendants' blatant disregard for addressing a proper method to dispose of PERC led to a system where individual dry cleaners would separate PERC chemical compounds from the water on their premises and distribute them back into Modesto's water system by placing them into the sewage system and soil for over thirty years.

Plaintiffs' hydrogeology site investigation expert Jim Mercer testified that he had been involved in the initial studies of PERC's effect on ground soil and water and that those tests, performed in 1979, alerted all companies that manufactured PERC of the dangers of the chemical and the alacrity with which it could contaminate soil and water.

The defendants denied the allegations. They cited Market Safety Data Sheets (MSDS) and other published material that they provided their clients as evidence that the defendants were properly communicating evolving safety measures as the carcinogenic nature of PERC was becoming better known. Defense counsel pointed out that those MSDS documents told the individual dry cleaners that they were to dispose of PERC in accordance with local, state and federal regulations. They also argued that there was no evidence that the plaintiffs used documents to advise individual dry cleaners to dump PERC into soil or sewers. They asserted that brochures referred to by plaintiffs did not exist because they were never produced and that none of the plaintiffs' expert witnesses could show that the MSDS documents were inadequate or incorrect.

Additionally, the defendants argued that the plaintiffs were liable for their PERC-contaminated water supply because they had negligently maintained their own sewage system, causing the chemicals to leak into the water wells. The defendants brought cross-

suits to that effect against the City of Modesto Redevelopment Agency and the City of Modesto Sewer District No. 1, both of which were dismissed.

Defense counsel for Dow Chemical, Vulcan Materials and R.R. Street argued that their clients should not be held liable for the environmental ramifications caused by the disposal processes that were implemented by the dry cleaning companies that used their products. They had all supplied the companies with the MSDS documentation that advised the dry cleaners to adhere to all federal, state and local regulations when disposing of PERC chemical compounds.

Lastly, the defense maintained that Modesto did not adequately prove how the PERC got into the water system to begin with and that there was no way to know that dumping by the dry cleaning companies was the driving force behind the contamination.

Plaintiffs' counsel contested the defendants' point that the plaintiffs were actually liable by arguing that it is common for a portion of a city's sewage to be interspersed with the water supply. They maintained that, under normal circumstances, where carcinogenic chemicals are not included in the sewage, the sewage dissipates into the water supply and the effect of the mix is negligible.

Injury:

Initially, plaintiffs' hydrogeology expert Stephen Wheatcraft and plaintiffs' site investigation expert Anthony Brown assessed the damage done by the PERC contamination in the City of Modesto at \$100 million. Their figures were based on the cost to remove the PERC from Modesto's water supply, place filters on their wells and clean up the existing water.

Defense counsel contested Brown's testimony as speculative and asserted that it was based on an incomplete investigation. Counsel argued that future cleanup costs could not be quantified. They further argued that the course followed by Modesto in seeking damages was preempted by federal superfund laws that already provided the process for public entities to recoup costs for the clean up of a property.

Specifically, counsel for Modesto Steam Laundry & Cleaners presented environmental consulting expert Gaynor Dawson to testify that the defendant had retained his company, CALIBRE Systems for four years to identify the amounts of PERC in the subsurface of their locations and to consult the company about methods it could implement to remove the chemical from the surrounding water supply.

During the trial, defense counsel filed a motion in limine to challenge Modesto's recovery of the costs associated with cleanup of contamination in ground water. Counsel argued that the city did not need to clean the wells; it just needed to filter the PERC from the ground water. Defense counsel also maintained that the city did not own all the property it was claiming it needed to clean up.

In response to the motion, the judge ruled that Modesto could only recover damages for the investigation costs and the costs incurred to filter the water from the contaminated wells.

The defense further argued that a portion of the investigation costs amounting to \$529,834 was going to be retained by a number of Modesto's expert witnesses and that those experts also testified to the costs of the cleanup. Defense counsel sought to have those costs included with Modesto's expert fees rather than included in the damages. Judge John Munter did not allow that distinction to be made.

Result:

The jury found Dow Chemical, Vulcan Materials, Occidental Chemical Corp., R.R. Street & Co. and American Laundry Machinery jointly and severally liable for compensatory damages for design defect and failure to warn. PPG Industries was found liable for failure to warn.

The jury fixed compensatory damages at \$3,173,834.

They jury also awarded punitive damages against Dow Chemical, (\$75 million); Vulcan Materials (\$100 million) and R.R. Street & Co. (\$75,000).

The total amount of the jury award was \$178,248,834.

The jury did not find Goss Jewett and Modesto Steam Laundry & Cleaners liable for design defects or failure to warn.

City of Modesto

\$3,173,834 Commercial: compensatory

\$175,075,000 Commercial: punitive

Trial Information:

Judge: John Munter

Demand: \$3,000,000 CCP 998 from Modesto Steam Laundry; \$7,500,000 CCP 998 from Occidental Chemical; \$15,000,000 CCP 998 from PPG Industries; \$9,000,000 CCP 998 from R.R. Street & Co.; \$15,000,000 CCP 998 from Vulcan Materials; \$15,000,000 CCP 998 from Dow Chemical; \$2,000,000 CCP 998 from Goss Jewett

Offer: \$2 million from all defendants and a number of defendants who were not included in the trial or dismissed during trial.

Trial Length: 4 months

Trial Deliberations: 7.5 days

Jury Vote: 12-0 for Dow Chemical, Vulcan Materials and R.R. Street on liability; 9-3 on punitive damages

Jury Composition: 4 male, 8 female

Post Trial: Following the trial, Judge John Munter reduced Dow Chemical's punitive damages to \$5,441,221 and Vulcan Materials' punitive damages to \$7,254,115; the final award after remittitur was \$15,944,170. Defendants appealed and Modesto cross-appealed the remittitur decision. On Dec. 20, 2006, the appellate court dismissed the appeals as premature. Afterward, Judge Munter held a bench trial on certain California statutory claims under the Hazardous Substances Account Act and the Polanco Redevelopment Ac

Writer Joshua Couzens

Tire tread separated before minivan rolled over, ejected 7

Type: Verdict-Mixed

Amount: \$32,848,946

State: Iowa

Venue: Polk County

Court: Polk County District Court, Des Moines, IA

Injury Type(s):

- *leg* - fracture, leg; fracture, femur; crush injury, leg
- *head* - fracture, skull; blunt force trauma to the head
- *neck* - fracture, neck; fracture, C2; fracture, neck; fracture, C5; fracture, vertebra; fracture, C2; fracture, vertebra; fracture, C5
- *chest* - fracture, rib
- *other* - death; soft tissue; back and neck; multiple trauma; loss of consortium; loss of parental guidance; aggravation of pre-existing condition
- *wrist* - fracture, wrist
- *pelvis* - crush injury, pelvis
- *shoulder* - fracture, shoulder; fracture, collarbone
- *hand/finger* - crush injury, hand
- *mental/psychological* - depression; cognition, impairment; memory, impairment; post-traumatic stress disorder
- *paralysis/quadriplegia* - quadriplegia
- *gastrointestinal/digestive* - spleen

Case Type:

- *Wrongful Death*
- *Strict Liability*
- *Motor Vehicle* - Rollover
- *Products Liability* - Tires; Automobiles; Design Defect; Manufacturing Defect

Case Name: Ivon Toe, individually and as next friend of Yanfor Wright, Nyansa Wright, Richmond Wright and Pauleen Toe, minors; Achol Deng Mawien; Sekou Jai, individually and as next friend of Hassan Jai, a minor; Jalah Nayou, individually and as next friend of Sunday Nayou, Gee Nayou, and Isaih Nayou, minors; Evelyn Nayou; Josephine Cole, individually and as next friend of Homphrey Vanie and Vanessa Vanie, minors; and the Estate of Assata Karlar, by its administrator Gaye Karlar and Gaye Karlar, individually and as father and next friend of Tarley Karlar, Ester Karlar, Nionbiao Karlar, Kuley Karlar and Lovetta Karlar, minor children of Assata Karlar v. Cooper Tire and Rubber Co.; Cooper Tire and Rubber Co. v. Alfred Lang; Cooper Tire and Rubber Co. v. Achol Deng Mawien, No. LACL 106914

Date: March 19, 2010

Plaintiff(s):

- Ivon Toe (Female, 30 Years)
- Gee Nayou (Female)
- Sekou Jai (Male, 51 Years)
- Hassan Jai (Male)
- Plaintiffs
- Gaye Karlar (Male)
- Pauleen Toe (Female)
- Ester Karlar (Female)
- Evelyn Nayou (Female)
- Ishaih Nayou (Male)
- Jailah Nayou (Male, 47 Years)
- Kuley Karlar (Male)
- Sunday Nayou (Female)
- Nyansa Wright (Female)
- Tarley Karlar (Female)
- Vanessa Vanie (Female)
- Yanfor Wright
- Homphrey Vanie (Male)
- Josephine Cole (Female, 35 Years)
- Lovetta Karlar (Female)
- Nionbiao Karlar (Female)
- Richmond Wright (Male)
- Achol Deng Mawien (Female, 23 Years)
- Estate of Assata Karlar (Female, 27 Years)

**Plaintiff
Attorney(s):**

- Wesley Todd Ball; Farrar & Ball, LLP; Houston TX for Ivon Toe, Yanfor Wright, Nyansa Wright, Richmond Wright, Pauleen Toe, Achol Deng Mawien, Sekou Jai, Hassan Jai, Jailah Nayou, Sunday Nayou, Gee Nayou, Josephine Cole, Homphrey Vanie, Vanessa Vanie, Estate of Assata Karlar, Gaye Karlar, Tarley Karlar, Ester Karlar, Nionbiao Karlar, Kuley Karlar, Lovetta Karlar
- Kyle Farrar; Farrar & Ball, LLP; Houston TX for Ivon Toe, Yanfor Wright, Nyansa Wright, Richmond Wright, Pauleen Toe, Achol Deng Mawien, Sekou Jai, Hassan Jai, Jailah Nayou, Sunday Nayou, Gee Nayou, Josephine Cole, Homphrey Vanie, Vanessa Vanie, Estate of Assata Karlar, Gaye Karlar, Tarley Karlar, Ester Karlar, Nionbiao Karlar, Kuley Karlar, Lovetta Karlar
- Fred W. James; James Law Firm; Des Moines IA for Ivon Toe, Yanfor Wright, Nyansa Wright, Richmond Wright, Pauleen Toe, Achol Deng Mawien, Sekou Jai, Hassan Jai, Jailah Nayou, Sunday Nayou, Gee Nayou, Josephine Cole, Homphrey Vanie, Vanessa Vanie, Estate of Assata Karlar, Gaye Karlar, Tarley Karlar, Ester Karlar, Nionbiao Karlar, Kuley Karlar, Lovetta Karlar

**Plaintiff Expert
(s):**

- Stan Andrews; Accident Reconstruction; Little Rock, AL called by: Wesley Todd Ball, Kyle Farrar, Fred W. James
- Troy Cottles; Tire Design; Troy, AL called by: Wesley Todd Ball, Kyle Farrar, Fred W. James
- Craig H. Lichtblau M.D.; Life Care Planning; West Palm Beach, FL called by: Wesley Todd Ball, Kyle Farrar, Fred W. James
- Jerry Sherman Ph.D.; Economics; Omaha, NE called by: Wesley Todd Ball, Kyle Farrar, Fred W. James
- Micky G. Gilbert; Automotive; Golden, CO called by: Wesley Todd Ball, Kyle Farrar, Fred W. James
- Daniel Tranel Ph.D.; Neuropsychology; Iowa City, IA called by: Wesley Todd Ball, Kyle Farrar, Fred W. James
- Bernard F. Pettingill Ph.D.; Economics; West Palm Beach, FL called by: Wesley Todd Ball, Kyle Farrar, Fred W. James

Defendant(s):

- Alfred Lang
- Achol Deng Mawien
- Cooper Tire and Rubber Co.

**Defense
Attorney(s):**

- Terrance M. Miller; Columbus, OH for Cooper Tire and Rubber Co.
- Stephen A. Rothschild; Shumaker, Loop & Kendrick, LLP; Toledo, OH for Cooper Tire and Rubber Co.
- Brett C. Redenbaugh; Lewis, Webster, Van Winkle & Knoshaug, L.L.P.; Des Moines, IA for Alfred Lang
- Richard J. Sapp; Nyemaster Goode West Hansell & O'Brien PC; Des Moines, IA for Cooper Tire and Rubber Co.

**Defendant
Expert(s):**

- Joe Grant; Tires; Charlotte, NC called by: for , Stephen A. Rothschild
- Robert Rucoba; Accident Reconstruction; Houston, TX called by: for , Stephen A. Rothschild
- Christopher Randolph Ph.D.; Neuropsychology; Chicago, IL called by: for , Stephen A. Rothschild

Facts:

On Sept. 17, 2007, plaintiff passengers Achol Deng Mawien, 26, who sat in the front seat;

and Assata Karlar, 27; Ivon Toe, mid 30s; Sekou Jai, 51; Jailah Nayou, 47; and Josephine Cole, 35, all of whom were in the backseat, were in a 1997 Plymouth Grand Voyager minivan in the left lane heading north on U.S. Highway 65 between Des Moines and Marshalltown. The driver was Alfred Lang who was going 64 to 71 mph in a 65-mph zone.

The seven individuals were U.S. citizens/political refugees (either from Sudan or Libya) who were carpooling to work at the Swift & Co. meatpacking plant in Marshalltown. The tread of the minivan's left rear tire separated and detached, which forced the vehicle to pull to the left toward the highway's concrete median, causing Lang to steer to the right.

Lang alleged that, due to the diminished capacity of the minivan resulting from the de-treaded tire, his correction caused the vehicle to lose control and veer off the road to the right, at which point the minivan rolled 2.5 times until it came to a rest on its wheels. All seven occupants were ejected from the vehicle and landed nearby the minivan. Karlar died on impact, and the others suffered multiple injuries.

The plaintiffs and their family members sued tire manufacturer Cooper Tire and Rubber Co. for products liability and strict liability that resulted in wrongful death. They also sued Lang and car owner Mawien for his vehicular negligence.

Plaintiffs' counsel argued that that in 1995, the defendant discovered the antioxidant package included in the belt skim stock of its tires was inadequate, which allowed premature degradation in the skim rubber, which holds the belts together, and caused the steel belt to rust and weaken over time. Despite Cooper Tire's knowledge of this, it was not until 2000 that the defendant decided to upgrade the antioxidant package. However, the upgrade was done after the subject tire on Mawien's 1997 Plymouth Grand Voyager was manufactured in late March 2000. Plaintiffs' counsel argued that Cooper Tire executives delayed necessary changes to avoid additional costs of updating the tire's design.

Plaintiffs' counsel further argued that the tire was defectively manufactured because the defendant negligently stacked belt one and belt two of its tires, as opposed to staggering the two belts. By stacking the belts as Cooper Tire did, higher stress was created at the belt edges, which is where 99.9 percent of all tire separation occurs. Although the manufacturing defect may or may have not caused the accident, it was the tire's design defect, compounded by the way it was manufactured, that caused the tire to de-tread, according to plaintiffs' counsel, whose theories were supported by the plaintiffs' tire analysis and vehicle dynamics experts.

Cooper Tire denied the allegations. Defense counsel argued that that a nail in the tire caused chronic under inflation, which was a cause of the tire failure, and that the tire suffered significant impact damage between 500 and 1,000 miles prior to the tread separation. Cooper argued that the impact damage caused the internal components to come apart, leading to the tread separation. The defendant's theories were supported by its accident reconstruction expert, tire expert and vehicle dynamics expert.

Cooper Tire argued that Lang was driving too fast and that his hard braking and over-steering in reaction to the tire separation caused the accident. Counsel cited that Lang was inexperienced with only a one-year-old driver's license.

Cooper Tire also counterclaimed that Mawien improperly maintained her minivan because she failed to consistently check her tires.

Lang's defense was that, given the sudden emergency the driver was faced, he reacted in a manner that was reasonable and expected of a driver in such a situation. Counsel argued that Lang's actions were not negligent but were proper, due to the diminished capacity of the vehicle caused by dilapidation of its left rear wheel.

Counsel for Mawien maintained that she owned the minivan for only one month, which was insufficient time to regularly check the vehicle's tires.

Injury:

The plaintiffs were taken by ambulances to various nearby hospitals for treatment. Toe suffered a C2 disc fracture that rendered her paralyzed from the neck down. After six months of hospitalization she was transferred to a rehabilitation facility and then to a nursing home, which, according to counsel, is ill-equipped to properly treat her. Toe hopes to return to her home with 24-hour nursing care. She sought a \$21-million to \$26-million life care plan, and her four children sought damages for loss of parental consortium.

Mawien suffered a C5 fracture and was discharged from the hospital the next day and immediately began ongoing physical therapy. She eventually returned to her meatpacking position but was later terminated for her failure to perform job duties due to physical limitations. She sought \$12,000 in past medical expenses. Mawien, who had a child after the accident, said that her persistent pain and limited range of motion in her neck create challenges raising her child. She sought to recover damages for past loss of use of body and past and future pain and suffering.

Jai, who was conscious at the accident scene, was treated and released for soft-tissue injuries to his back and neck. He claimed that his main injury was severe depression and post-traumatic stress caused by witnessing Karlar, his good friend, lay dead after the accident. Moreover, the accident exacerbated his already mental disorders caused by political prosecution and torture in Sudan. Jai, who continued psychological treatment at the time of trial, sought \$20,267.12 in past medical bills and damages for pain and suffering. His son sought to recover damages for loss of parental consortium.

Nayou sustained a ruptured spleen and fractures to his skull, right femur, right collar bone and right ribs. Hospitalized for five to six weeks, he subsequently underwent extensive rehabilitation to relearn how to walk and talk and cultivate his communication skills and executive functions. Permanently disabled, Nayou expressed frustration over his difficulty of raising his three children (as well not being able to remember their past and what they do on a daily basis) with his wife, who is the family's sole breadwinner. He sought millions for past medical expenses and past and future lost income, as well as damages for pain and suffering and loss of use of his body. His wife claimed loss of consortium, while his children sought loss of parental consortium.

Cole was hospitalized for two weeks for severe crush injuries to her right leg, pelvis and left wrist, which required reconstructive surgeries to her leg and wrist. At the time of trial, the plaintiff continued ongoing rehabilitation for her wrist and leg. She sought \$45,731.91 in past medical bills. Due to her diminished labor capacity, particularly in her left wrist and hand, Cole left her meatpacking position and began schooling for a potential administrative career. She sought to recover damages for pain and suffering and loss of use of body.

On behalf of her estate, Karlar's husband sought to recover \$39,000 for past lost income, \$400,000 for future lost income, and \$210,000 in loss of value of household services. He also sought to recover damages for loss of consortium, while the couple's five children sought damages for loss of parental consortium.

The defense's neuropsychologist testified that Nayou did not have a brain injury.

Result: Jurors found Cooper Tire and Rubber Co. at fault and that its fault caused the accident and damage to the plaintiffs; that the tire did not comply with the state of the art at the time it was designed and manufactured; and that Lang and Mawien were not at fault. The plaintiffs were awarded \$32,847,947.77.

Josephine Cole

\$45,732 Personal Injury: Past Medical Cost

\$120,000 Personal Injury: Past Pain And Suffering

\$30,000 Personal Injury: Future Pain And Suffering

\$30,000 Personal Injury: past loss of use of body

Estate of Assata Karlar

\$39,000 Personal Injury: Past Medical Cost

\$400,000 Personal Injury: Future Medical Cost

\$210,000 Personal Injury: loss of value of household services

Sekou Jai

\$20,267 Personal Injury: Past Medical Cost

\$10,000 Personal Injury: Past Pain And Suffering

Ester Karlar

\$216,000 Personal Injury: loss of parental consortium

Gaye Karlar

\$420,000 Personal Injury: loss of consortium

Kuley Karlar

\$144,000 Personal Injury: loss of parental consortium

Lovetta Karlar

\$288,000 Personal Injury: loss of parental consortium

Nionbiao Karlar

\$244,800 Personal Injury: loss of parental consortium

\$172,800 Personal Injury: loss of parental consortium

Achol Deng Mawien

\$4,705 Personal Injury: Past Medical Cost

\$30,000 Personal Injury: Past Pain And Suffering

\$5,000 Personal Injury: Future Pain And Suffering

\$10,000 Personal Injury: past loss of use of body

Evelyn Nayou

\$5,000 Personal Injury: loss of consortium

Gee Nayou

\$2,000 Personal Injury: loss of parental consortium

Ishaih Nayou

\$2,000 Personal Injury: loss of parental consortium

Jailah Nayou

\$27,980 Personal Injury: Past Medical Cost

\$57,200 Personal Injury: Past Lost Earnings Capability

\$100,000 Personal Injury: FutureLostEarningsCapability

\$120,000 Personal Injury: Past Pain And Suffering

\$25,000 Personal Injury: Future Pain And Suffering

\$50,000 Personal Injury: past loss of use of body

\$30,000 Personal Injury: future loss of use of body

Sunday Nayou

\$2,000 Personal Injury: loss of parental consortium

Plaintiffs

\$1,500,000 Personal Injury: Punitive Exemplary Damages

Ivon Toe

\$24,543,375 Personal Injury: Future Medical Cost

\$55,678 Personal Injury: Past Lost Earnings Capability

\$550,000 Personal Injury: FutureLostEarningsCapability

\$1,000,000 Personal Injury: Past Pain And Suffering

\$250,000 Personal Injury: Future Pain And Suffering

\$250,000 Personal Injury: past loss of use of body

\$1,500,000 Personal Injury: future loss of use of body

Pauleen Toe

\$35,000 Personal Injury: loss of parental consortium

Richmond Wright

\$30,000 Personal Injury: loss of parental consortium

Trial Information:

Judge: Carla T. Schemmel

Trial Length: 4 weeks

**Trial
Deliberations:** 4 days

Jury Vote: 7-1

**Jury
Composition:** 6 male, 2 female

Post Trial: Cooper Tire and Rubber Co. is appealing the verdict.

**Editor's
Comment:** This report is based on information that was provided by plaintiffs' counsel and counsel for defendant Alfred Lang. Counsel for Cooper Tire and Rubber Co. did not respond to the reporter's phone calls.

Writer

Aaron Jenkins

Fuel pump's defects blamed for premature failure: plaintiffs

Type: Settlement

Amount: \$20,700,000

Actual Award: \$20,700,000

State: Illinois

Venue: Cook County

Court: Cook County Circuit Court, IL

Injury Type(s):

- *leg* - fracture, leg
- *other* - death
- *sensory/speech* - vision, partial loss of
- *paralysis/quadriplegia* - hemiparesis

Case Type:

- *Motor Vehicle* - Minivan; Rear-ender
- *Products Liability* - Automobiles; Design Defect

Case Name: Jane Doe, individually and on behalf of the Estate of her Daughter Doe v. Daimler Chrysler Corporation and Walbro Corporation and Corner Heating, No. 02L9174

Date: September 19, 2005

Plaintiff(s):

- Jane Doe (Female, 30 Years)
- Estate of Daughter Doe (Female, 2 Years)

Plaintiff Attorney(s):

- John P. Scanlon; The Healy Law Firm; Chicago IL for Jane Doe, Estate of Daughter Doe
- Martin Healy; Healy Law Firm; Chicago IL for Jane Doe, Estate of Daughter Doe
- David Huber; The Healy Law Firm; Chicago IL for Jane Doe, Estate of Daughter Doe

**Plaintiff Expert
(s):**

- Allan J. Kam; Transportation Regulations; Bethesda, MD called by: John P. Scanlon, Martin Healy, David Huber
- Glenn Stevick PhD; Automotive; Berkley, CA called by: John P. Scanlon, Martin Healy, David Huber
- George Mourdain; Quality Control; Detroit, MI called by: John P. Scanlon, Martin Healy, David Huber
- Satish Agarwal Ph.D.; Metallurgy; Harrisburg, PA called by: John P. Scanlon, Martin Healy, David Huber
- Christopher W. Ferrone; Mechanical; Chicago, IL called by: John P. Scanlon, Martin Healy, David Huber

Defendant(s):

- Corner Heating
- Walbro Corporation
- Daimler Chrysler Corporation

**Defense
Attorney(s):**

- Thomas F. Cameli; Radogno, Cameli & Hoag, P.C.; Chicago, IL for Corner Heating
- Manny Sanchez; Sanchez Daniels & Hoffman LLP; Chicago, IL for Daimler Chrysler Corporation
- Hugh O'Donnell; Sanchez Daniels & Hoffman LLP; Chicago, IL for Daimler Chrysler Corporation
- Jeramiah Connolly; Bollinger, Ruberry & Garvey; Chicago, IL for Walbro Corporation
- Chris Dallavo; Schueler, Dallavo & Casieri; Chicago, IL for Walbro Corporation
- Matt Schueler; Schueler, Dallavo & Casieri; Chicago, IL for Walbro Corporation

**Defendant
Expert(s):**

- Joe Gormely; Quality Control; Detroit, MI called by: for Thomas F. Cameli, Manny Sanchez, Hugh O'Donnell, Jeramiah Connolly, Chris Dallavo, Matt Schueler
- Frank Sonye; Electronic; Detroit, MI called by: for Thomas F. Cameli, Manny Sanchez, Hugh O'Donnell, Jeramiah Connolly, Chris Dallavo, Matt Schueler

Facts:

On April 18, 1999, the plaintiff, a mother, 30s, and plaintiff's decedent, her 2-year-old daughter, were traveling with her husband and their two other children on I-294 outside of Chicago in a 1995 Chrysler minivan, which was owned by Corner Heating, Chicago, that employed the father. Without warning, the minivan stalled. The minivan was rear-ended by another vehicle. The child was killed instantly and the mother suffered injuries.

Individually and on behalf of her daughter's estate, the mother sued Daimler Chrysler Corp., fuel pump manufacturer, Walbro Corp., Cass City, Mich., and Corner Heating for products liability, claiming that they provided a defective fuel pump.

Plaintiff's engineering expert, Glenn Stevick, reported that the fuel pump had defective carbon brushes--these deliver power to the engine--that wore down prematurely. The fuel pump was wearing out after the first 30,000 miles of use which is below the industry standards for the replacement of a fuel pump. Plaintiff's metallurgy expert, Satish Agarwal, testified that the carbon brushes were porous and subject to early failure.

Allan Kam, an expert in highway safety issues reported that NHTSA documents demonstrated consumer complaints about similar fuel pump failures.

George Mourdain, a quality control expert for the plaintiff, reported that the quality control systems were deficient in that they failed to pick up any defects in the manufacturing process of the fuel pump.

The defense contended that the family should have replaced the battery in their minivan. Defense expert Joe Gormely, an electrical engineer, believed that a worn car battery could have been the cause of the stall.

The defense also argued that the complaints filed with the NHTSA did not provide the defendants with notice of a defect in the fuel pump. Defense highway safety issues expert Frank Sonye, testified that the complaints on file with the NHTSA were not specific enough to place the defendants on notice of a defect. Sonye said the complaints didn't specify what caused a stall or specifically what is wrong with the fuel pump.

Injury:

The 2-year-old daughter died instantly in the accident. She leave a mother, father and two siblings. The mother has permanent hemiparesis on the left side of her body. She'll walk for the rest of her life with a cane. She has partial loss of vision in her left eye. She suffered multiple fractures on her lower left extremity and was in the hospital for three weeks.

The defense alleged that the cause of the injuries was the driver who rear- ended the Plaintiffs.

Result:

The defendants settled for \$20.7 million. Chrysler and Walbro paid \$20 million and Corner Heating paid \$700,000.

Trial Information:**Judge:**

Kathy M. Flanagan

Writer

Stephen DiPerte

Smoking caused mom's lung cancer death, daughter claimed

Type: Verdict-Plaintiff

Amount: \$20,004,029

State: Florida

Venue: Palm Beach County

Court: Palm Beach County Circuit Court, 15th, FL

Injury Type(s):

- *other* - death; loss of society
- *cancer* - lung

Case Type:

- *Products Liability* - Tobacco; Failure to Warn
- *Fraud* - Fraudulent Concealment
- *Intentional Torts* - Conspiracy

Case Name: Gwendolyn Odom, personal representative of the Estate of Juanita Thurston, deceased, v. R.J. Reynolds Tobacco Company, Philip Morris USA, Inc., Lorillard Tobacco Company, Lorillard, Inc., Liggett Group LLC and Vector Group LTD, Inc., No. 50-2008-CA-38863

Date: June 23, 2014

Plaintiff(s):

- Gwendolyn Odom (Female)
- Estate of Juanita Thurston (Female, 50 Years)

Plaintiff Attorney(s):

- Rosalyn Sia Baker-Barnes; Searcy Denney Scarola Barnhart & Shipley P.A.; West Palm Beach FL for Gwendolyn Odom, Estate of Juanita Thurston
- T. Hardee Bass III; Searcy Denney Scarola Barnhart & Shipley P.A.; West Palm Beach FL for Gwendolyn Odom, Estate of Juanita Thurston
- Mariano Garcia; Searcy Denney Scarola Barnhart & Shipley P.A.; West Palm Beach FL for Gwendolyn Odom, Estate of Juanita Thurston

**Plaintiff Expert
(s):**

- K. Michael Cummings Ph.D.; Tobacco; Charleston, SC called by: Rosalyn Sia Baker-Barnes, T. Hardee Bass III, Mariano Garcia
- Paul Winokur M.D.; Thoracic Surgery; West Palm Beach, FL called by: Rosalyn Sia Baker-Barnes, T. Hardee Bass III, Mariano Garcia
- David M. Burns M.D.; Pulmonology; San Diego, CA called by: Rosalyn Sia Baker-Barnes, T. Hardee Bass III, Mariano Garcia
- Joseph DiFranza M.D.; Addiction Behavior; Worcester, MA called by: Rosalyn Sia Baker-Barnes, T. Hardee Bass III, Mariano Garcia
- Victor Koo M.D.; Oncology; Boynton Beach, FL called by: Rosalyn Sia Baker-Barnes, T. Hardee Bass III, Mariano Garcia

Defendant(s):

- Lorillard Inc.
- Liggett Group LLC
- Lorillard Tobacco Co.
- Vector Group LTD Inc.
- Philip Morris USA Inc.
- R.J. Reynolds Tobacco Co.

**Defense
Attorney(s):**

- Jeffrey L. Furr; King & Spalding LLP; Charlotte, NC for R.J. Reynolds Tobacco Co.
- Maria H. Ruiz; Kasowitz, Benson, Torres, Friedman, LLP; Miami, FL for Liggett Group LLC, Vector Group LTD Inc.
- None reported for Lorillard Tobacco Co., Lorillard Inc.
- Jason E. Keehfus; King & Spalding LLP; Atlanta, GA for R.J. Reynolds Tobacco Co.
- Philip R. Green; King & Spalding, LLC; Atlanta, GA for R.J. Reynolds Tobacco Co.
- Scott D. Kaiser; Shook, Hardy & Bacon L.L.P.; Kansas City, MO for Philip Morris USA Inc.

**Defendant
Expert(s):**

- Roger Samuel M.D.; Psychiatry; Boca Raton, FL called by: for Jeffrey L. Furr, Jason E. Keehfus, Philip R. Green

Facts:

In 1991, plaintiff's decedent Juanita Thurston was diagnosed with squamous cell lung cancer. In 1993, Thurston died of lung cancer in Boynton Beach at the age of 58.

Gwendolyn Odom, as personal representative of the estate of her mother, sued R.J. Reynolds Tobacco Co., Philip Morris USA Inc., Lorillard Tobacco Co., Lorillard Inc., Liggett Group LLC. and Vector Group LTD Inc. alleging products liability. All the defendants except R.J. Reynolds were dismissed before trial after it was determined that Thurston mainly smoked cigarettes manufactured by R.J. Reynolds.

The case stemmed from the Florida state court class-action case, *Engle v. R.J. Reynolds Tobacco Co.* In 2000, a jury in *Engle* rendered a \$145 billion punitive damages verdict in favor of a class of Florida smokers allegedly harmed by their addiction to nicotine. In 2006, the Florida Supreme Court reversed that award and decertified the class action, but allowed potentially thousands of lawsuits to be filed.

The estate's counsel alleged that negligence on the part of the tobacco companies caused Thurston's death as a result of being addicted to nicotine. They also alleged that the defendants conspired to fraudulently conceal that cigarettes were addictive and caused lung cancer. They further alleged that as a result of using the defendants' products, Thurston suffered from cancer, which caused her death.

The estate's counsel claimed that Thurston began smoking while a teenager before the package warnings of the health hazards and addictive nature of cigarettes were required. The estate's expert tobacco historian testified that R.J. Reynolds engaged in fraud and conspired to conceal the health effects of cigarettes and their addictive nature. The estate's medical expert, a pulmonologist, testified that smoking caused Thurston's lung cancer. He testified that Thurston's type of cancer, squamous cell, was a primary cancer of the lungs that has been shown to be caused only by smoking. He further testified that there was no alternative cause for her cancer other than smoking. The estate's addiction experts testified that Thurston was addicted to cigarettes. They also testified that her addiction to cigarettes containing nicotine caused her lung cancer.

Defense counsel contended that Thurston was not addicted to smoking. They further claimed that Thurston chose to smoke knowing the risks and bore personal responsibility for the consequences of that decision. They also claimed that Thurston's lung cancer was not caused by smoking. The defense's addiction expert testified that Thurston did not meet the DSM-IV criteria for addiction for substance dependence set by the American Psychiatric Association.

Injury: Thurston died of lung cancer in 1993.

Odom sought to recover damages for loss of society, comfort, and companionship resulting from the death of her mother, as well as the resulting pain and suffering of watching her mother die from lung cancer. Odom testified that she was born when her mother was 16 and she grew up having a very close relationship with her mother. She also testified that after she got a divorce, she moved in with her mother and her mother helped her through a very difficult time. She further testified that her mother was her best friend and confidante.

The estate's counsel suggested the jury award Odom \$5 million in compensatory damages. They also alleged the estate incurred funeral expenses as a result of Thurston's premature death. They also suggested the jury award \$18 million in punitive damages, which they claimed was equivalent to one day of R.J. Reynolds' total global cigarette sales.

Defense counsel argued that R.J. Reynolds is a changed company and that because it has been working to make cigarettes safer, punitive damages were not warranted.

Result: The jury found that Thurston was addicted to cigarettes containing nicotine. It also found that her addiction was a cause of her lung cancer. It further found that Thurston relied to her detriment on R.J.Reynolds' concealment or omission of material information from its representatives regarding the health effects or addictive nature of smoking cigarettes, the concealment or omission of which had the effect of making those representations false or misleading.

The jury found R.J. Reynolds 75 percent negligent and Thurston 25 percent negligent. It determined that Odom's compensatory damages totaled \$6 million and the estate's damages totaled \$4,209, for funeral costs. It also determined that punitive damages totaled \$14 million. Compensatory damages were not reduced for comparative negligence because there was a jury finding of an intentional tort on the part of R.J. Reynolds. Thus, the total award was \$20,004,209.

Gwendolyn Odom

\$6,000,000 Personal Injury: compensatory damages

Estate of Juanita Thurston

\$14,000,000 Personal Injury: Punitive Exemplary Damages

\$4,209 Personal Injury: funeral costs

Trial Information:

Judge: Timothy McCarthy

Trial Length: 3 weeks

**Trial
Deliberations:** 3.5 hours

**Jury
Composition:** 2 male, 4 female

**Editor's
Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Gary Raynaldo

Plastic molder contracted meso from sealant, other products

Type: Verdict-Plaintiff

Amount: \$18,523,450

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s): • *cancer - mesothelioma*

Case Type: • *Products Liability - Asbestos; Design Defect; Failure to Warn*

Case Name: David Bakkie v. Union Carbide Corp., Dexter Hysol, AutoZone West Inc., Ram Auto Parts Inc., No. 445300

Date: September 01, 2006

Plaintiff(s): • David Bakkie (Male, 49 Years)

Plaintiff Attorney(s): • John B. Goldstein; Brayton Purcell; Novato CA for David Bakkie
• Gilbert L. Purcell; Brayton Purcell; Novato CA for David Bakkie

Plaintiff Expert (s): • Allan R. Smith M.D.; Epidemiology (Cancer); Oakland, CA called by: John B. Goldstein, Gilbert L. Purcell
• Barry R. Horn M.D.; Pulmonary/Respiratory Diseases; Berkeley, CA called by: John B. Goldstein, Gilbert L. Purcell
• Arnold R. Brody M.D.; Cell Biology; New Orleans, LA called by: John B. Goldstein, Gilbert L. Purcell
• Samuel P. Hammar M.D.; Pulmonology; Bremerton, WA called by: John B. Goldstein, Gilbert L. Purcell
• Kenneth S. Cohen; Industrial Hygiene; El Cajon, CA called by: John B. Goldstein, Gilbert L. Purcell
• Richard J. Cohen M.D.; Preventive Medicine; Santa Clara, CA called by: John B. Goldstein, Gilbert L. Purcell

Defendant(s):

- Dexter Hysol
- AutoZone West Inc.
- Ram Auto Parts Inc.
- Union Carbide Corp.

Defense**Attorney(s):**

- Mark G. Intrieri; Chapman & Intrieri LLP; Alameda, CA for Dexter Hysol
- John A. Brydon; Brydon Hugo & Parker; San Francisco, CA for Union Carbide Corp.
- Morton D. Dubin; Orrick, Herrington & Sutcliffe LLP; New York, NY for Union Carbide Corp.
- Judith B. Anderson; Archer Norris; Walnut Creek, CA for AutoZone West Inc.
- Catherine Morris Krow; Orrick, Herrington & Sutcliffe LLP; San Francisco, CA for Union Carbide Corp.
- Katherine K. Ikeda; Orrick, Herrington & Sutcliffe LLP; San Francisco, CA for Union Carbide Corp.
- Shepard M. Remis; Goodwin Procter LLP; Boston, MA for Dexter Hysol
- Christopher J. Garvey; Goodwin Procter LLP; New York, NY for Dexter Hysol
- Christopher M. Harnett Jr.; Archer Norris; Walnut Creek, CA for AutoZone West Inc.
- Eric Bergstrom; McKenna Long & Aldridge LLP; San Francisco, CA for Ram Auto Parts Inc.
- Paul Lannus; McKenna Long & Aldridge LLP; San Francisco, CA for Ram Auto Parts Inc.
- L. Christopher Vejnaska; Orrick, Herrington & Sutcliffe LLP; San Francisco, CA for Union Carbide Corp.

Defendant**Expert(s):**

- John Myers; Asbestos; Fresno, CA called by: for John A. Brydon, Morton D. Dubin, , Catherine Morris Krow, Katherine K. Ikeda
- James Crapo M.D.; Asbestos-related Lung Disease; Denver, CO called by: for Mark G. Intrieri, John A. Brydon, Morton D. Dubin, Judith B. Anderson, , Catherine Morris Krow, Katherine K. Ikeda, Shepard M. Remis, Christopher J. Garvey, Christopher M. Harnett Jr., Eric Bergstrom, Paul Lannus
- William Dyson CIH; Industrial Hygiene; Greensboro, NC called by: for John A. Brydon, Morton D. Dubin, , Catherine Morris Krow, Katherine K. Ikeda
- William G. Hughson M.D.; Industrial Hygiene; San Diego, CA called by: for John A. Brydon, Morton D. Dubin, , Catherine Morris Krow, Katherine K. Ikeda

Facts:

In September 2005, plaintiff David Bakkie, 49, a former plastic molder, was diagnosed with malignant mesothelioma.

In 1974 and 1975, Bakkie worked for American Polytherm, an aerospace plastics molding company in Sacramento, Calif. During that time, he frequently worked with open fiber asbestos product RG-144 while creating a canal sealant used to fill seams between concrete sections on aqueducts. After leaving American Polytherm, Bakkie worked as an electrical utility lineman for the city of Roseville and the Sacramento Municipal Utility District.

Claiming that he was exposed to asbestos while working with RG-144, Bakkie sued the product's manufacturer, Union Carbide Co., Houston, for products liability (design defect and failure to warn) and negligence. Union Carbide was a leading manufacturer of asbestos from its King City mine near Fresno, Calif. The company supplied manufacturers of various asbestos-containing products including floor tile, epoxy adhesives, sealants and wallboard joint and taping compounds.

Three other entities were originally included as defendants: AutoZone West Inc., Memphis, Tenn., and Ram Auto Parts Inc., West Sacramento, both of which sold asbestos-containing parts that Bakkie used to repair his cars; and Dexter Hysol, Bay Point, which made an epoxy resin adhesive sold to American Polytherm during the time that Bakkie worked there. Each of the three entities settled out for a confidential amount after plaintiff's case in chief.

Plaintiff pathology expert Sam Hammar testified that Bakkie's mesothelioma was caused by exposure to asbestos and that the exposure occurred when working with RG-144.

Plaintiff epidemiology expert Allan Smith testified that Bakkie's exposure to asbestos via RG-144 was significant enough to cause mesothelioma. His occupational medicine expert Richard J. Cohen testified that there was plenty of available literature and general medical knowledge about asbestos hazards in the 1970s. Cohen claimed that asbestosis was recognized by the late 1920s, and that lung cancer was first linked to asbestos in the 1930s.

Union Carbide did not dispute that Bakkie had mesothelioma, but insisted that he did not get the disease solely as a result of his working with RG-144.

Defense industrial hygiene expert William G. Hughson testified that Bakkie never had a significant exposure to asbestos via RG-144, opining that the asbestos found in RG-144 doesn't even cause mesothelioma. These claims were supported by another defense industrial hygiene expert, William Dyson, who claimed that Bakkie wasn't exposed to any asbestos through his mixing of the powdered ingredients into the canal sealant. Defense pulmonary medicine expert James Crapo described Bakkie's exposure as periodic and casual, saying it couldn't have caused mesothelioma.

Plaintiff cell biology expert Arnold Brody countered that each exposure to asbestos contributed to the development of Bakkie's mesothelioma.

Injury:

Bakkie had mesothelioma, a fatal cancer of the linings of the lungs, which he treated with chemotherapy.

At trial, Bakkie was suffering from extreme shortness of breath, and engaging in physical activity was very difficult. He was working part time as an electrical lineman.

Plaintiff pulmonology expert Barry Horn testified that the average life expectancy for mesothelioma patients is 12-18 months after diagnosis. He predicted that Bakkie would die about nine months after trial, losing about 25 years of life expectancy.

Bakkie sought medical specials of \$385,000.

Bakkie demanded \$2,838,450 for future loss of earnings capacity, based on salary and Social Security benefits that he was currently receiving but wouldn't receive if he suffered a premature death.

Bakkie also claimed \$1.2 million in past pain and suffering and \$14.1 million for future pain and suffering.

Union Carbide agreed with the medical and economic damages, but disputed the pain and suffering demands, arguing that Bakkie was not in tremendous pain.

Result:

The jury returned a plaintiff verdict, finding that Union Carbide was 20% liable for Bakkie's mesothelioma, while other factors--including the three defendants who settled during trial and other parties, unknown or not served in this action but who may have in some way contributed to Bakkie's exposure to asbestos--consisted of the remaining 80%.

The jury awarded Bakkie all of what he sought for a total of \$18,523,450.

Pursuant to California statute and case law, since Union Carbide has joint and several liability, the 20% apportionment is applicable only to the non-economic damages, according to Gilbert Purcell, counsel for the plaintiff. Purcell said that the judgment entered against Union Carbide, taking into account settlements and various offsets is approximately \$6.1 million.

David Bakkie

\$1,200,000 Personal Injury: Past Pain And Suffering

\$14,100,000 Personal Injury: Future Pain And Suffering

\$385,000 Personal Injury: medical expenses

\$2,838,450 Personal Injury: future loss of earning capacity

Trial Information:

Judge: Gail DeKreon

Offer: \$3 million as per CCP 998

Trial Length: 7 weeks

**Trial
Deliberations:** 1.5 days

Jury Vote: 12-0 on design defect, 11-1 on failure to warn

**Jury
Composition:** 7 male, 5 female

Post Trial: Union Carbide's motions for a new trial and judgment notwithstanding the verdict were denied. The company posted a bond to stay judgment while the case is on appeal and is perfecting its appeal.

Writer Rob MacKay

Products Liability: Tire Blow-Out/Head-On

Type: Settlement

Amount: \$18,000,000

State: California

Venue: San Bernardino County

Court: Superior Court of San Bernardino County, Rancho Cucamonga, CA

Case Type:

- *Motor Vehicle - Head-On*
- *Products Liability*

Case Name: Confidential, No. S00-04-01

Date: August 07, 1999

Plaintiff(s):

- Family I (0 Years)
- Family II (0 Years)
- Plaintiff (0 Years)

Plaintiff Attorney(s):

- Michael Alder; Law Offices of Michael J. Piuze; Los Angeles CA for Family I
- Michael Piuze; Law Offices of Michael J. Piuze; Los Angeles CA for Family I
- Paul Fine; Daniels, Barrata & Fine; Los Angeles CA for Family II
- Tim Hughes; Daniels, Barrata & Fine; Los Angeles CA for Family II
- Michael Goldstein; Law Offices of Michael Goldstein; San Diego CA for Plaintiff

Plaintiff Expert (s):

- Jan Roughan; Physical Rehabilitation; Los Angeles, CA called by:
- Rex Grogan; Tires; United Kingdom, called by:
- John Sidwell; Chemistry; London, called by:
- John F. Kerkhoff; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Somis, CA called by:
- Lean Ellenberg Ph.D.; Neuropsychology; Beverly Hills, CA called by:
- James Heinrich M.D.; Neurosurgery; Loma Linda, CA called by:
- Peter Formuzis; Economics; Santa Ana, CA called by:
- Andrea Morrison; Pediatric Neurology; Tarzana, CA called by:
- Philip Reiswig M.D.; Orthopedic Surgery; Loma Linda, CA called by:
- Lawrence S. Miller; Physical Rehabilitation; Glendale, CA called by:

Defendant(s): • Confidential

Defense Attorney(s): • Confidential; Confidential for Confidential

Defendant Expert(s):

- Gene Bruno; Physical Rehabilitation; Los Angeles, CA called by: for
- Jerry Leyden; Chemistry; Akron, OH called by: for
- Perry Lubens; Pediatric Neurology; Long Beach, CA called by: for
- Dennis Schneider; Biomechanics; San Diego, CA called by: for
- Thomas Dodson; Tires; Akron, OH called by: for
- Barbara Moyer; Neuropsychology; Long Beach, CA called by: for
- Richard X Hanson; Economics; Lakewood, CA called by: for

Facts: Plaintiff Family I was driving from Las Vegas to Los Angeles on I-15 near Victorville. The left front tire on Plaintiffs' 1973 Blazer blew-out and lost part of its tread. The Blazer went out of control, crossed over the center median and struck the two oncoming vehicles containing Plaintiff Family II.

Contentions:

Plaintiff claimed Defendant's tire was defectively manufactured. Contamination during the vulcanization process caused a defect in the tire, which caused a slow, tread separation.

Defendant argued the tire was not defective. The tread separation was caused by a prior impact to the tire. Plaintiff Family I was speeding and could have controlled the Blazer following the blowout if they had not been speeding. Many deaths and serious injuries would have been prevented if seat belts were used by all occupants.

Injury: Family I: Death of driver of Blazer, a 21-year-old construction worker. Pregnant wife, age 21, suffered fractured tibial plateau and gave premature birth the day after the accident. The child was in intensive care for 38 days. Family II: Death of 3 occupants, 2 children suffered brain damage and one had serious facial scarring.

Medical Costs: Family I: \$205,000 past, \$70,000 future; Family II: \$500,000 past, \$6,500,000 future

Loss of Support: Family I: \$250,000; Family II: \$500,000

Result: **1st Offer:** None

1st Demand: Not Firm

Settlement: \$18,000,000 total: \$4,000,000 for Family I and \$14,000,000 for Family II.

Note: The case was bifurcated. After an 8 week trial on liability, the jury found the Defendant 82% at fault. The poll was 12-0 on the issue of liability. The case settled after a 3 week trial on damages, just before closing statements.

Trial Information:

Judge: None Given

Trial Length: 0

**Trial
Deliberations:** 0

Writer

Parts man alleged exposure to asbestos led to mesothelioma

Type: Verdict-Plaintiff

Amount: \$17,470,000

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):

- *other* - loss of consortium
- *cancer* - chemotherapy; mesothelioma

Case Type:

- *Toxic Torts* - Asbestos
- *Products Liability* - Asbestos; Failure to Warn

Case Name: Gordon Bankhead and Emily Bankhead v. ArvinMeritor Inc., Carlisle Corporation, Kelsey-Hayes and Pneumo Abex LLC, No. RG10502243

Date: January 06, 2011

Plaintiff(s):

- Emily Bankhead (Female)
- Gordon Bankhead (Male, 66 Years)

Plaintiff Attorney(s):

- Joseph D. Satterley; Sales & Satterley; Louisville KY for Emily Bankhead, Gordon Bankhead
- Justin Bosl; Kazan, McClain, Lyons, Greenwood & Harley; Oakland CA for Emily Bankhead, Gordon Bankhead
- Leigh Kirmsse; Kazan, McClain, Lyons, Greenwood & Harley; Oakland CA for Emily Bankhead, Gordon Bankhead

**Plaintiff Expert
(s):**

- Allan H. Smith M.D., Ph.D.; Epidemiology (Cancer); Oakland, CA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse
- Barry R. Horn M.D.; Pulmonology; Berkeley, CA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse,
- David M. Egilman M.D., M.P.H.; Occupational Medicine; Attleboro, MA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse,
- Prasad Dighe M.D.; Oncology; Stockton, CA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse,
- Robert D. Johnson C.P.A., C.F.E.; Economics; Los Altos, CA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse,
- Samuel P. Hammar M.D.; Pathology; Bremerton, WA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse,
- Michael Ellenbecker Ph.D.; Industrial Hygiene; Lowell, MA called by: Joseph D. Satterley, Justin Bosl, Leigh Kirmsse,

Defendant(s):

- Kelsey-Hayes
- Pneumo Abex LLC
- ArvinMeritor Inc.
- Carlisle Corporation

**Defense
Attorney(s):**

- John A. Brydon; Brydon Hugo & Parker; San Francisco, CA for ArvinMeritor Inc.
- Frank K. Berfield; McKenna, Long & Aldridge; San Francisco, CA for ArvinMeritor Inc.
- Joseph L. Dioszeghy; Rasmussen Firm; Kansas City, MO for Carlisle Corporation
- Joseph McGuire; Rasmussen Firm; Mt. Laurel, NJ for Carlisle Corporation

**Defendant
Expert(s):**

- Mary A. Finn Ph.D., C.I.H; Industrial Hygiene; Des Moines, IA called by: for John A. Brydon, Frank K. Berfield, Joseph L. Dioszeghy, Joseph McGuire
- David H. Garabrant M.D.; Epidemiology; Ann Arbor, MI called by: for John A. Brydon, Frank K. Berfield, Joseph L. Dioszeghy, Joseph McGuire
- James C. Crapo M.D.; Pulmonology; Denver, CO called by: for John A. Brydon, Frank K. Berfield, Joseph L. Dioszeghy, Joseph McGuire
- Victor Roggli M.D.; Pathology; Durham, NC called by: for John A. Brydon, Frank K. Berfield, Joseph L. Dioszeghy, Joseph McGuire

Facts:

In January 2010, plaintiff Gordon Bankhead, 66, was diagnosed with mesothelioma, a potentially fatal cancer of the lung's outer lining.

From 1965 to 1999, Bankhead was a parts man working around heavy-duty vehicles. He spent most of his career at Sea-Land Shipping Company in Oakland, where he regularly handled asbestos-containing brakes, and was present for the inspection, replacement, grinding and blowing out of asbestos-containing brakes. According to allegations, these activities caused him to breathe asbestos dust.

Pneumo Abex LLC and Carlisle Corporation manufactured the vast majority of the brake linings that Bankhead was exposed to, which in turn ArvinMeritor Inc. attached to brake shoes and axles that were sold to Bankhead's employers.

Bankhead and his wife sued ArvinMeritor, Carlisle and Pneumo Abex for products liability. (Another original defendant, Kelsey-Hayes, settled out for a confidential amount during jury deliberations, while Carlisle settled out for a confidential amount before the start of the punitive damages phase.)

Plaintiffs' counsel contended that Pneumo Abex had been aware of the deadly health effects of breathing asbestos dust since at least the 1940s, but that the company did not begin warning its customers of those effects, if at all, until years after Bankhead was exposed to the asbestos-containing brakes it made and sold.

Plaintiffs' counsel also charged that Pneumo Abex and Carlisle were involved in discussions within the Friction Materials Standards Institute in the 1970s about whether to warn about the health hazards from its brakes. Counsel claimed that Rockwell, ArvinMeritor's predecessor, knew starting in the early 1970s that its employees were exposed to dust from Pneumo Abex and Carlisle brakes, but did nothing to warn its customers of the hazards.

As early as 1977, the lawyers claimed that Rockwell learned that one of its employees who handled brakes was diagnosed with mesothelioma, the same disease Bankhead developed. Plaintiffs' counsel alleged that, despite their knowledge of the hazards of asbestos, Carlisle and Pneumo Abex continued to sell asbestos-containing brakes until 1987; ArvinMeritor did not cease selling asbestos brakes until 2000.

The defense argued that brake mechanics are not at increased risk of developing mesothelioma and therefore a parts man would have experienced even less risk than the mechanics who were manipulating the brakes. The defendants further contended that the chrysotile asbestos in their brakes does not cause mesothelioma, and that Bankhead's exposure to their products was de minimis.

Injury: Bankhead was diagnosed with mesothelioma, which he treated with chemotherapy.

At trial, Bankhead testified that he was suffering from shortness of breath, and that engaging in physical activity was very difficult.

The plaintiff's pulmonology expert testified that the average life expectancy for mesothelioma patients is 12-18 months after diagnosis. He predicted that Bankhead would die about six months after trial, losing about 20 years of life expectancy.

Bankhead made an unspecified demand for medical specials and future loss of earnings capacity, based on Social Security benefits that he was currently receiving but wouldn't receive if he suffered a premature death. He also claimed past and future pain and suffering.

Bankhead's wife, plaintiff Emily Bankhead, made an unspecified demand for loss of consortium.

Result: The jury returned a plaintiff verdict, assigning liability as follows: 30 percent each to Carlisle and Pneumo Abex; and 15 percent to ArvinMeritor. (The judge refused to instruct the jury that Kelsey-Hayes was out and the verdict had an allocation of fault to that defendant. Kelsey-Hayes was not a party to the case at the time the verdict was returned.)

The jury awarded \$17,470,000 in damages to the plaintiffs.

Emily Bankhead

\$1,000,000 Personal Injury: loss of consortium

Gordon Bankhead

\$9,000,000 Personal Injury: punitives against Pneumo Abex

\$1,470,000 Personal Injury: economic loss

\$1,500,000 Personal Injury: pain and suffering

\$4,500,000 Personal Injury: punitives against ArvinMeritor

Trial Information:

Judge: Robert B. Freedman

Trial Length: 33 days

**Trial
Deliberations:** 5 days

**Editor's
Comment:** This report is based on information that was provided by plaintiffs' counsel and counsel for ArvinMeritor. Counsel for the other defendants did not respond to the reporter's phone calls.

Writer Rob MacKay

Contaminated tire caused fatal crash, plaintiffs claimed

Type: Verdict-Plaintiff

Amount: \$16,276,242

State: Texas

Venue: Presidio County

Court: Presidio County District Court, 394th, TX

Injury Type(s):

- *other - death*
- *paralysis/quadriplegia - quadriplegia*

Case Type:

- *Wrongful Death*
- *Damages - Lost Earnings; Pain and Suffering*
- *Motor Vehicle - Passenger; Single Vehicle*
- *Products Liability - Tires; Manufacturing Defect*

Case Name: Jose Ervey Hernandez, Aniceto Alvarez Galindo & Severa Alvarez Lujan, Individually and on behalf of the Estate of Rafael Alvarez Lujan v. Continental Tire North America Inc., No. 6746

Date: January 27, 2006

Plaintiff(s):

- Jose Ervey Hernandez (Male, 18 Years)
- Severa Alvarez Lujan (Female, 52 Years)
- Aniceto Alvarez Galindo (Male, 52 Years)
- Rafael Alvarez Lujan [estate] (Male, 21 Years)

Plaintiff Attorney(s):

- John R. Griffith; Griffith & Garza, LP; McAllen TX for Aniceto Alvarez Galindo, Severa Alvarez Lujan, Rafael Alvarez Lujan [estate]
- Larry W. Lawrence Jr.; Lawrence Law Firm; Austin TX for Jose Ervey Hernandez
- Juan V. Silva; Juan V. Silva, Esq.; Big Spring TX for Jose Ervey Hernandez, Aniceto Alvarez Galindo, Severa Alvarez Lujan, Rafael Alvarez Lujan [estate]

**Plaintiff Expert
(s):**

- V. Albert Sternthal; Tire Design; Wimberly, TX called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva
- Don C. Stevens; Accident Reconstruction; Phoenix, AZ called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva
- Joe Peles Ph.D.; Biodynamical; Tempe, AZ called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva
- Jon M. Crate; Polymers; Marietta, GA called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva
- Steve Arndt; Vehicle; Phoenix, AZ called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva
- Walter Harrell Ph.D., ABPP; Life Care Planning; Austin, TX called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva
- Everett G. Dillman Ph.D.; Economic Analysis; El Paso, TX called by: John R. Griffith, Larry W. Lawrence Jr., Juan V. Silva

Defendant(s):

- Antonio Sanchez
- Continental Tire North America Inc.

**Defense
Attorney(s):**

- T. Christopher Trent; Johnson, Spalding, Doyle, West & Trent; Houston, TX for Continental Tire North America Inc.
- None reported for Antonio Sanchez
- Raphael C. Taylor; Johnson, Spalding, Doyle, West & Trent; Houston, TX for Continental Tire North America Inc.
- Jim Darnell; Jim Darnell, Attorney at Law; El Paso, TX for Continental Tire North America Inc.

**Defendant
Expert(s):**

- Juan Manuel Herrera Ph.D.; Accident Reconstruction; El Paso, TX called by: for T. Christopher Trent, Raphael C. Taylor, Jim Darnell
- Chris Shapley Ph.D.; Vehicle; Las Vegas, NV called by: for T. Christopher Trent, Raphael C. Taylor, Jim Darnell
- James Gardner; Tires; Akron, OH called by: for T. Christopher Trent, Raphael C. Taylor, Jim Darnell
- James Rancourt Ph.D.; Polymers; Blacksburg, VA called by: for T. Christopher Trent, Raphael C. Taylor, Jim Darnell
- Joseph Grant; Tires; Charlotte, NC called by: for T. Christopher Trent, Raphael C. Taylor, Jim Darnell
- Richard Harding Ph.D.; Biodynamical; San Antonio, TX called by: for T. Christopher Trent, Raphael C. Taylor, Jim Darnell

Facts:

On Sept. 13, 2003, plaintiff Jose Ervey Hernandez, 18, a student, was driving in Ojinaga, Mexico, five miles south of the Texas-Mexico border crossing at Presidio. Plaintiff's decedent Rafael Alvarez Lujan, 21, a refrigerator repairman, was a passenger. Neither man was wearing a seat belt. The pickup truck's rear passenger-side tire failed, and Hernandez lost control of the vehicle, which veered off of the road and rolled three times. Hernandez sustained a paralyzing injury. Lujan was killed.

Hernandez and Lujan's estate commenced a products liability suit against the tire's manufacturer, Charlotte, N.C.-based Continental Tire North America Inc. They alleged that the tire was defectively manufactured. The plaintiffs also sued a state automotive inspector who had inspected and approved the tire, Antonio Sanchez. They alleged that Sanchez was negligent in his inspection of the tire, but Sanchez was nonsuited before the trial began.

Plaintiffs' counsel claimed that the Conti-Trac 2000 GT tire suffered a catastrophic separation of its tread and its top belt. The plaintiffs' tire experts contended that the separation partially stemmed from contamination that was caused by a wood particle that was unknowingly introduced during the tire's manufacturing process. Plaintiffs' counsel noted that the tire was manufactured about four years prior to the accident, and they claimed that the contamination spread during those four years.

Plaintiffs' counsel further claimed that the tire's failure was also a result of premature cracking of its sidewall. They noted that the manufacturing process included the application of an anti-degradation wax, but they contended that test results indicated that the wax had deteriorated.

The court heard testimony from four tire builders who were formerly employed by Continental Tire North America. The builders claimed that the company had instituted a zero-tolerance policy that was intended to eliminate the presence of wood and other contaminants. The company contended that the wood particle was microscopic and that it was a naturally occurring remnant of the widely used TSR-20 rubber that composes the Conti-Trac 2000 GT tire. It also contended that the particle was not a contaminant and that its presence would not cause contamination.

Defense counsel contended that the tire's integrity was previously compromised by a puncture. They noted that someone had attempted to patch the puncture, but they claimed that the puncture's size and location precluded an effective repair. They claimed that the tire had been discarded, but that the pickup truck's former owner retrieved it and utilized it. Defense counsel attempted to implead the person who had repaired the puncture, but the person was never identified, and Judge Kenneth DeHart would not permit the introduction of an unknown defendant.

Injury:

Lujan died instantly.

Hernandez was transported to a hospital, where doctors determined that he had sustained an injury of his spinal cord's C4 level. The injury caused permanent quadriplegia.

Hernandez endured a two-month-long hospitalization, and his past medical expenses totaled \$548,972.85. Hernandez's life-care expert opined that Hernandez will require daily fulfillment of hygienic, medical and other needs. The expert also opined that those services will produce total costs of \$12,355,897. Hernandez sought recovery of \$28 million, which included his past medical expenses, his future life-care expenses, \$1,121,372 for his diminished earning capacity, and unspecified damages for his past and future disfigurement, impairment and mental and physical anguish.

Lujan died instantly. His estate sought recovery of \$20 million for his wrongful death, its past and future mental anguish, and its past and future loss of affection, companionship and society. Lujan's parents, Aniceto Alvarez Galindo and Severa Alvarez Lujan, also presented derivative claims.

Defense counsel contended that the plaintiffs' physical injuries were products of their failure to wear seat belts and Hernandez's negligent operation of the pickup truck. Specifically, they contended that Hernandez was speeding and that he overreacted when the tire failed. Defense counsel also contended that Hernandez's future economic needs could be fulfilled via funding of low-cost annuities.

Result:

The jury rendered a plaintiff's verdict. The plaintiffs were awarded a total of \$16,276,242.

Aniceto Alvarez Galindo

\$625,000 Personal Injury: past/future mental anguish, loss of companionship, society

Jose Ervey Hernandez

\$548,973 Personal Injury: Past Medical Cost

\$1,121,372 Personal Injury: FutureLostEarningsCapability

\$250,000 Personal Injury: Past Disfigurement

\$12,355,897 Personal Injury: life-care expenses (present value)

\$250,000 Personal Injury: past physical pain and mental anguish

\$500,000 Personal Injury: future physical pain and mental anguish

Severa Alvarez Lujan

\$625,000 Personal Injury: past/future mental anguish, loss of companionship, society

Trial Information:

Judge: Kenneth D. DeHart

Trial Length: 3 weeks

Trial Deliberations: 6 hours

Jury Vote: 11-1

Jury Composition: 6 male, 6 female

Editor's Comment: Sanchez's counsel was not asked to contribute to this report.

Writer Monte Holman

Meso sufferer exposed to two forms of asbestos in jobs

Type: Verdict-Plaintiff

Amount: \$15,250,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Los Angeles, CA

Injury Type(s):

- *other* - death; loss of society
- *cancer* - mesothelioma

Case Type:

- *Products Liability* - Asbestos; Design Defect; Failure to Warn

Case Name: Doris Silvestro, Joyce Gold, the Estate of Salvatore Silvestro v. Kelly-Moore Paint Co., Kaiser Gypsum Co. Inc., No. BC253974

Date: September 04, 2006

Plaintiff(s):

- Joyce Gold (Female, 46 Years)
- Doris Silvestro (Female, 74 Years)
- Salvatore Silvestro (Male, 74 Years)

Plaintiff Attorney(s):

- John S. Janofsky; Water & Kraus LLP; for Doris Silvestro, Salvatore Silvestro, Joyce Gold
- Michael H. Doran; Doran & Murphy LLP; Buffalo NY for Doris Silvestro, Salvatore Silvestro, Joyce Gold
- Michael L. Armitage; Waters & Kraus LLP; for Doris Silvestro, Salvatore Silvestro, Joyce Gold
- Gary M. Paul; Water & Kraus LLP; El Segundo CA for Doris Silvestro, Salvatore Silvestro, Joyce Gold

**Plaintiff Expert
(s):**

- Arnold R. Brody M.D.; Cell Biology; New Orleans, LA called by: John S. Janofsky, Michael H. Doran, Michael L. Armitage, Gary M. Paul
- Dr. Samuel P. Hammar; Pathology; Bremerton, WA called by: John S. Janofsky, Michael H. Doran, Michael L. Armitage, Gary M. Paul
- Michael Solendar; Construction Defects; Los Angeles, CA called by: John S. Janofsky, Michael H. Doran, Michael L. Armitage, Gary M. Paul
- Lawrence Coskey M.D.; Pulmonology; Burlingame, CA called by: John S. Janofsky, Michael H. Doran, Michael L. Armitage, Gary M. Paul

Defendant(s):

- Kaiser Gypsum Co. Inc.
- The Kelly-Moore Paint Co.

**Defense
Attorney(s):**

- Mark D. Sayre; Jackson & Wallace LLP; Sherman Oaks, CA for Kaiser Gypsum Co. Inc.
- John B. Loomis; Foley & Mansfield PLLP for The Kelly-Moore Paint Co.
- Stephen J. Foley; Foley & Mansfield PLLP for The Kelly-Moore Paint Co.
- Jessica Stepp; Jackson & Wallace LLP; Sherman Oaks, CA for Kaiser Gypsum Co. Inc.

**Defendant
Expert(s):**

- I. Allan Feingold; Pulmonology; Miami, FL called by: for Mark D. Sayre, John B. Loomis, Stephen J. Foley, Jessica Stepp
- Arthur Langer Ph.D.; Geology; New York, NY called by: for Mark D. Sayre, John B. Loomis, Stephen J. Foley, Jessica Stepp
- William Dyson CIH; Industrial Hygiene; Greensboro, NC called by: for Mark D. Sayre, John B. Loomis, Stephen J. Foley, Jessica Stepp
- William G. Hughson M.D.; Pulmonology; San Diego, CA called by: for Mark D. Sayre, John B. Loomis, Stephen J. Foley, Jessica Stepp

Facts:

In May 2001, plaintiff's decedent Salvatore Silvestro, 74, a retired construction laborer, was diagnosed with malignant mesothelioma. Seven months later, he died.

From 1965 to 1996, Mr. Silvestro was exposed almost daily to chrysotile asbestos contained in joint compound materials for drywall and cement products manufactured by Kelly-Moore Paint Co., San Carlos, and Kaiser Gypsum Co. Inc., San Francisco. None of the products contained warnings, and he did not wear protective gear at any time.

Claiming wrongful death, Mr. Silvestro's widow, Doris Silvestro, and his daughter, Joyce Gold, sued Kelly-Morris and Kaiser Gypsum for products liability (design defect and failure to warn) and negligence.

This case was originally filed in 2001 by Mr. Silvestro, but he died about two weeks before the trial was going to begin. In October 2005, the action was re-opened as a wrongful death case with Ms. Silvestro and Gold as the plaintiffs.

Plaintiff pathology expert Samuel Hammer testified that Mr. Silvestro's mesothelioma was caused by exposure to asbestos, and that substantial exposure occurred when he was working with joint compound products while drywalling. Hammer also said that Mr. Silvestro's exposure was sufficient enough to cause mesothelioma.

Plaintiff cell biology expert Arnold Brody opined that each exposure to asbestos

contributed to the development of Mr. Silvestro's mesothelioma.

Plaintiff construction expert Michael Solendar explained how asbestos-containing products were used on construction sites at the time Mr. Silvestro was working in the field.

Plaintiffs' counsel argued that Mr. Silvestro's death could have been prevented, if Kelly-Moore and Kaiser Gypsum had changed their joint compound products. The lawyers claimed that, as early as the 1950s, both companies were aware that their products contained asbestos, but Kelly-Moore didn't develop asbestos-free joint compound products until 1978 and Kaiser Gypsum delayed making such products until 1975 due to cost concerns.

The defense disputed the allegations, arguing that Mr. Silvestro's illness resulted from exposure to amosite asbestos, a type of asbestos fiber that is used in insulation and fireproofing, from 1966 to 1971. For those five years, Mr. Silvestro took a break from construction and worked as a boilermaker on 100 different commercial and naval ships in a shipyard. Defense counsel argued that he was exposed to amosite asbestos in the ships' boiler rooms.

Defense witnesses explained that Kelly-Moore and Kaiser Gypsum's drywall products contained chrysotile asbestos, which is considered a less potent carcinogen than amosite asbestos. Defense epidemiology expert William G. Hughson and industrial hygiene expert William Dyson testified that chrysotile asbestos is less friable than other types of asbestos, meaning that it is less likely to break into little pieces and be inhaled. Defense pulmonology expert I. Allan Feingold also opined that chrysotile asbestos did not cause mesothelioma.

Plaintiffs' counsel responded that even if amosite asbestos is a more toxic carcinogen than chrysotile asbestos, Mr. Silvestro worked with it for just five years, while he had more than 30 years of daily exposure to the chrysotile asbestos in the defendants' products.

Injury:

Mr. Silvestro died of mesothelioma, as confirmed by plaintiff treating pulmonology expert Lawrence Coskey.

Ms. Silvestro, 74, and Gold, 46, asked the jury for \$17 million for loss of his care, comfort and society. Ms. Silvestro pointed out that she got married to Mr. Silvestro at age 16.

After claiming that Mr. Silvestro's life was shortened by about 10 years due to mesothelioma, Ms. Silvestro and Gold demanded \$250,000 for future loss of medical expenses and benefits, based on pension, Social Security and medical benefits that they would have received if Mr. Silvestro hadn't suffered a premature death.

Result: The jury apportioned liability as follows: 30 percent to Kelly-Moore; 30 percent to Kaiser Gypsum; and 40 percent to other former manufacturers of asbestos-containing products that were not included in the lawsuit but might have contributed to Mr. Silvestro's exposure to asbestos.

The jury then awarded \$15,250,000, broken down into \$15 million for loss of care, comfort and society, and \$250,000 for medical expenses and lost benefits. After apportionment of liability, each defendant had to pay \$4,575,000.

The jury also found malice, but the Judge Judith Chirlin determined that the malice was not significant enough to merit consideration of punitive damages.

In post-trial interviews, jurors reported that they accepted the theory that long-term exposure to a less-potent form of asbestos, such as chrysotile, could cause mesothelioma, even when the victim is exposed to a more toxic type of asbestos, such as amosite.

Trial Information:

Judge: Judith Chirlin

Offer: \$75,000 from Kelly-Moore

Trial Length: 14 days

**Trial
Deliberations:** 3 days

Jury Vote: 11-1 on every vote (same person was in minority on each vote)

**Jury
Composition:** 3 male, 9 female

Post Trial: Plaintiff's counsel will file a cost bill.

Writer Rob MacKay

Son alleged loss of love and affection from father's death

Type: Verdict-Plaintiff

Amount: \$12,800,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Central, CA

Injury Type(s):

- *other* - loss of parental guidance

Case Type:

- *Products Liability* - Tobacco; Failure to Warn
- *Wrongful Death* - Survivorship Action

Case Name: Dylan Boeken and Judy Boeken as legal guardian v. Philip Morris USA and International House of Pancakes, No. BC353365

Date: August 09, 2011

Plaintiff(s):

- Dylan Boeken (Male, 10 Years)

Plaintiff Attorney(s):

- Michael J. Piuze; Law Offices of Michael J. Piuze; Los Angeles CA for Dylan Boeken
- Geraldine Weiss; Law Offices of Michael J. Piuze; Los Angeles CA for Dylan Boeken

Defendant(s):

- Philip Morris USA
- International House of Pancakes

Defense Attorney(s):

- Frank P. Kelly; Shook, Hardy & Bacon L.L.P.; San Francisco, CA for Philip Morris USA
- Patrick Gregory; Shook, Hardy & Bacon L.L.P.; San Francisco, CA for Philip Morris USA
- Daryl Crone; Crone Hawxhurst LLP; Los Angeles, CA for International House of Pancakes

Facts:

On Jan. 16, 2002, plaintiff Dylan Boeken, 10, a student, lost his father, Richard Boeken, to lung cancer. Dylan claimed his father developed the cancer as a result of smoking cigarettes.

A prior personal injury suit regarding Dylan's father's cancer was already won against Philip Morris USA in 2001, prior to Richard Boeken's death.

Judy Boeken, acting as the legal guardian of Dylan, sued Philip Morris and International House of Pancakes, alleging wrongful death and Dylan's permanent loss of his father's companionship and affection.

International House of Pancakes, which was included in the suit because it was where Dylan's father purchased his cigarettes, was dismissed early on demurrer. Ms. Boeken's individual claim was also dismissed. Thus, the matter proceeded to trial on Dylan's claim against Philip Morris only.

Plaintiffs' counsel informed the jury that Philip Morris was previously sued for Richard Boeken's personal injury, and that he won. The jury was also informed that the case had been appealed in March 2006, which resulted in a decision that the total amount of approximately \$80 million had been paid by Philip Morris. Thus, plaintiffs' counsel argued that liability and causation had already been upheld in the California Supreme Court, and that the jury just had to decide on Mr. Boeken's wrongful death, and Dylan's loss of love and affection from his father.

Injury:

Richard Boeken developed lung cancer died on Jan. 16, 2002. He left behind a wife and a 10-year-old son.

Dylan, who is 19 and in college at the time of trial, claimed that he went through part of his childhood, and all of his teenage years, without his father and will be without his father for the rest of his life. Thus, he sought recovery of damages for the loss of his father's comfort, care, assistance, moral support and guidance, as well as the loss of love and affection from his father.

Defense counsel argued that Philip Morris had already settled its debt with the family of Richard Boeken, and that it did not owe the Boeken family anything more. They further argued that the plaintiffs were denied consortium in the previous trial, and that the prior finding should be upheld.

In addition, defense counsel also argued that Dylan was a good student and citizen despite his father's premature death. They claimed that Dylan didn't lose what his father had given him, but accepted it and built upon it, and that the gifts Dylan was given didn't just disappear.

Result:

The jury rendered a plaintiff's verdict, finding that Philip Morris was liable for the death of Richard Boeken. It awarded Dylan the total of \$12.8 million.

Trial Information:

Judge: David J. Minning

Demand: \$4,950,000

Offer: None

Trial Length: 3 days

**Trial
Deliberations:** 2 days

**Jury
Composition:** 9-3

**Editor's
Comment:** This report is based on information that was gleaned from an article that was published by the Southwest Riverside News Network, and from interviews of plaintiffs' and defense counsel.

Writer Mark Collins

Former Navy mechanic claimed asbestos mnf liable for lung disease

Type: Verdict-Plaintiff

Amount: \$11,578,294

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):

- *chest*
- *other* - pleural plaques
- *pulmonary/respiratory* - asbestosis

Case Type:

- *Products Liability* - Asbestos; Design Defect; Failure to Warn

Case Name: Joseph Garza, Mary Garza v. Asbestos Corporation Ltd., No. 438144

Date: July 11, 2006

Plaintiff(s):

- Mary Garza (Female, 75 Years)
- Joseph Garza (Male, 75 Years)

Plaintiff Attorney(s):

- Christopher E. Andreas; Brayton & Purcell LLP; Novato CA for Mary Garza, Joseph Garza
- Paul Vaillancourt; Brayton & Purcell LLP; Novato CA for Mary Garza, Joseph Garza

Plaintiff Expert(s):

- Barry Ben-Zion Ph.D.; Accounting (Forensic); Santa Rosa, CA called by: Christopher E. Andreas, Paul Vaillancourt
- Daniel M. Raybin M.D.; Critical Care; San Francisco, CA called by: Christopher E. Andreas, Paul Vaillancourt
- Donald Breyer M.D.; Radiology; Oakland, CA called by: Christopher E. Andreas, Paul Vaillancourt
- Charles W. Ay; Asbestos; Trabuco Canyon, CA called by: Christopher E. Andreas, Paul Vaillancourt
- Kenneth S. Cohen; Industrial Hygiene; El Cajon, CA called by: Christopher E. Andreas, Paul Vaillancourt
- Richard J. Cohen M.D.; Occupational Medicine; Saratoga, CA called by: Christopher E. Andreas, Paul Vaillancourt

Defendant(s):

- Asbestos Corporation Ltd.

Defense Attorney(s):

- Randall Bernard; Wilson Elser Moskowitz Edelman & Dicker LLP; San Francisco, CA for Asbestos Corporation Ltd.

Defendant Expert(s):

- Joel Cohen Ph.D.; Industrial Hygiene; Foster City, CA called by: for Randall Bernard
- Mark R. Newton CPA; Accounting (Forensic); San Francisco, CA called by: for Randall Bernard

Facts:

In early 2004, plaintiff Joseph Garza, 75, a retired maintenance mechanic, was diagnosed with asbestos pleural disease and asbestosis.

From 1948 to 1957, Garza served in the U.S. Navy, starting as a fireman in the engine rooms of the aircraft carrier USS Antietam. He then worked as a boilerman on the USS Randall and the USS Agerholm. After an honorable discharge, he worked as a tester of steam turbines for 15 years with Westinghouse Corporation in Sunnyvale, and from 1973 to 1993, he worked for various employers as a boiler operator and maintenance mechanic. Garza retired in 1993.

Claiming he was exposed to asbestos during his Navy service, Garza sued Asbestos Corporation Ltd., Thetford Mines, Quebec, for strict products liability (design defect and failure to warn) and negligent design and failure to warn. ACL is the owner and former operator of asbestos mines in Canada.

Plaintiff's industrial hygiene expert Kenneth Cohen testified that, while assigned to the USS Antietam, Garza was exposed to asbestos insulation debris while sweeping up after repairs and also through removing and installing asbestos gaskets and packing from pumps and valves. Cohen added that, while assigned to the USS Randall and the USS Agerholm, Garza was exposed on a regular basis to insulation products, including asbestos insulating cements and pipe and boiler insulation, as well as gaskets and packing.

Cohen testified that Garza's exposure to asbestos aboard these ships was significant and substantial and was a main contributor to the dose that caused Garza's asbestos pleural disease and asbestosis.

Garza stated that one of the most prevalent asbestos insulating cements he and other sailors used during his Navy service was Eagle Picher Super 66, manufactured by Eagle Picher Industries. Cohen testified that the mixing, application and cleanup of this dry powder material released extremely high levels of asbestos in the confined spaces of the engine and boiler rooms aboard vessels.

Plaintiff's asbestos expert Charles Ay, a former Navy shipyard insulator, also described the widespread use of Eagle Picher Super 66 insulating cement aboard Navy ships and at Navy shipyards during the 1940s and 1950s.

Plaintiff's counsel claimed that ACL was the exclusive supplier of asbestos fiber to Eagle Picher Industries from 1935 to 1957, and that the asbestos used in Eagle Picher's Super 66 insulating cement was entirely comprised of ACL's chrysotile asbestos fiber.

Plaintiff's occupational medicine expert Richard J. Cohen testified that there was plenty of available literature and medical knowledge about asbestos hazards before and during the years that Garza was in the Navy. He claimed that articles about asbestos were published as early as 1898, that asbestosis was recognized by the late 1920s, and that lung cancer was first linked to asbestos in the 1930s. (In 1925, ACL began operating its asbestos mines in Thetford Mines.)

ACL executives admitted in sworn interrogatory responses that the company was aware of the health hazards posed by inhalation of asbestos by the 1940s. It shipped its raw asbestos fiber to manufacturers of finished goods in jute bags (akin to canvas) until the 1960s, when it switched to paper (later plastic) to reduce dust emissions. The first warning label regarding asbestos health hazards appeared on ACL bags in early 1970. ACL sales brochures from 1935, 1956 and 1961 were introduced into evidence and established that the company never warned its customers of the known health hazards of its product and didn't otherwise advise of safe work practices with asbestos.

Defense counsel agreed that Garza had asbestos pleural disease and asbestosis, but disputed that ACL was solely responsible for his diseases.

Defense industrial hygiene expert Joel Cohen talked about Garza's other exposures, pointing out that he never wore protection when working in civilian jobs where he was also exposed to asbestos intermittently.

Injury:

After his diagnosis of asbestos pleural disease and asbestosis, Garza was placed on supplemental oxygen on a 24-hour basis and was prescribed medication to control the anxiety caused by his breathing problems and to alleviate his chest discomfort. Garza asked for \$127,294 in medical specials.

Plaintiff's pulmonology expert Daniel M. Raybin testified that Garza would likely die within five years due to his lung diseases, which he claimed were worsening. Raybin added that Garza's condition made him highly susceptible to other communicable diseases like pneumonia. Garza asked for \$50,000 to \$70,000 a year for future medical costs. Raybin also noted that an unforeseen lengthy hospital stay could cost \$100,000.

Garza also made an unspecified demand for future loss of earning capacity, based on the Social Security benefits that he was currently receiving but wouldn't receive if he suffered a premature death. He also made an unspecified demand for future pain and suffering.

Garza's wife, Mary, 75, made an unspecified loss of consortium claim. Garza claimed that, due to his wife's disabilities, he did all the household chores, and his lung diseases had reduced his ability to perform those services by 80%.

Defense counsel disputed the loss of future earnings claim, arguing that there was no valid proof that Garza's life would end prematurely.

Defense counsel also disputed the loss of household services claim, saying it was exaggerated.

Result:

The jury found that ACL's product had a design defect; that ACL failed to warn of its defective product; and that ACL was negligent. The jury awarded the Garzas \$1,578,294.

The jury then awarded an additional \$10 million in punitive damages in the second phase of the trial.

Joseph Garza

\$127,294 Personal Injury: Past Medical Cost

\$325,000 Personal Injury: Future Medical Cost

\$66,700 Personal Injury: FutureLostEarningsCapability

\$160,000 Personal Injury: past and future loss of household services

\$500,000 Personal Injury: past and future pain & suffering

\$10,000,000 Personal Injury: punitive damages

Mary Garza

\$400,000 Personal Injury: past and future loss of consortium

Trial Information:

Judge: Suzanne Bolanos

Demand: \$50,000

Offer: \$1,000

Trial Length: 4 weeks

**Trial
Deliberations:** 8 hours

Jury Vote: 12-0 on design defect; 9-3 on failure to warn; 10-2 on negligence; 9-3 on punitive damages

**Jury
Composition:** 3 male, 9 female

Writer Rob MacKay

Asbestos Exposure/Employee Deaths

Type: Verdict-Plaintiff

Amount: \$6,245,000

State: California

Venue: Solano County

Court: Superior Court of Solano County, Fairfield, CA

Case Type:

- *Toxic Torts - Asbestos*
- *Products Liability - Asbestos*

Case Name: Gerald August; Andrew Beasley; Billy Brown; Allan Fortes; Pedro Gallegos; Stanley Lucien; Alfred Schooley; Samuel Allen; Dora Davidson; Kaye Mullins; Frank Palagi; Hubert Walker; Louis Wallace; and Ralph Yarbrough v. Raymark Industries, Inc., No. L085642

Date: February 24, 1998

Plaintiff(s):

- Billy Brown (Male, 0 Years)
- Allan Fortes (Male, 0 Years)
- Frank Palagi (Male, 0 Years)
- Kaye Mullins (Female, 0 Years)
- Samuel Allen (Male, 0 Years)
- Dora Davidson (Female, 0 Years)
- Gerald August (Male, 0 Years)
- Hubert Walker (Male, 0 Years)
- Louis Wallace (Male, 0 Years)
- Andrew Beasley (Male, 0 Years)
- Pedro Gallegos (Male, 0 Years)
- Stanley Lucien (Male, 0 Years)
- Alfred Schooley (Male, 0 Years)
- Ralph Yarbrough (Male, 0 Years)

**Plaintiff
Attorney(s):**

- Christopher E. Andreas; Brayton, Harley & Curtis; Novato CA for Gerald August, Andrew Beasley, Billy Brown, Allan Fortes, Pedro Gallegos, Stanley Lucien, Alfred Schooley, Samuel Allen, Dora Davidson, Kaye Mullins, Frank Palagi, Hubert Walker, Louis Wallace, Ralph Yarbrough
- Gilbert L. Purcell; Brayton, Harley & Curtis; Novato CA for Gerald August, Andrew Beasley, Billy Brown, Allan Fortes, Pedro Gallegos, Stanley Lucien, Alfred Schooley, Samuel Allen, Dora Davidson, Kaye Mullins, Frank Palagi, Hubert Walker, Louis Wallace, Ralph Yarbrough
- Joanne E. K. Larson; Brayton, Harley & Curtis; Novato CA for Gerald August, Andrew Beasley, Billy Brown, Allan Fortes, Pedro Gallegos, Stanley Lucien, Alfred Schooley, Samuel Allen, Dora Davidson, Kaye Mullins, Frank Palagi, Hubert Walker, Louis Wallace, Ralph Yarbrough

**Plaintiff Expert
(s):**

- Allen Smith Ph.D.; Epidemiology; Berkeley, CA called by:
- Barry R. Horn M.D.; Pulmonology; Berkeley, CA called by:
- Barry Castleman Ph.D.; Asbestos; Baltimore, MD called by:
- Donald Breyer M.D.; Radiology; Oakland, CA called by:
- Dr. Samuel P. Hammar; Pathology; Bremerton, WA called by:
- Carolyn Ray; Pulmonology; San Pablo, CA called by:
- Charlie Ay; Building Materials; Trabuco Canyon, CA called by:
- Kenneth S. Cohen; Industrial Hygiene; El Cajon, CA called by:
- Dr. William S. Breall; Cardiology; San Francisco, CA called by:

Defendant(s):

- Raymark Industries, Inc.

**Defense
Attorney(s):**

- Dorine R. Kohn; Bjork, Lawrence, Poeschl & Kohn; Oakland, CA for Raymark Industries, Inc.

**Defendant
Expert(s):**

- Jack Peterson Ph.D.; Industrial Hygiene; Alpine, CA called by: for
- Gerald C. Meyers M.D.; Internal Medicine; Berkeley, CA called by: for
- Norman Moscow M.D.; Radiology; Berkeley, CA called by: for
- Colleen J. Bergin M.D.; Radiology; San Diego, CA called by: for
- Dr. Elliott Hinkes; Expert Testimony; Inglewood, CA called by: for
- William G. Hughson M.D.; Expert Testimony; San Diego, CA called by: for

Facts:

Plaintiffs in this case were seven injured workers and the families of seven deceased workers who were employed as shipwrights, electricians, laborers, plumbers, or inspectors from the 1940s to the 1980s. During the course of their employment, plaintiff workers and decedents were exposed to hazardous asbestos dust from defendant's products that caused them lung damage or cancer.

Four of the decedents died from mesothelioma, a fatal cancer involving the lining of the lung. Although this cancer is rare in the general population, about 1,500 to 2,000 cases each year in people exposed to even relatively small amounts of asbestos, with the average life expectancy after diagnosis to be between 12 and 18 months. The three other decedents suffered from lung cancer and cor pulmonale, a failure of the right heart ventricle due to asbestotic lungs.

Plaintiffs' pretrial settlements exceeded \$2.7 million with other defendants.

Plaintiffs contended that defendant concealed information about the dangers of asbestos known to it since the early 1930s; and that punitive damages were warranted.

Defendant contended that the asbestos used in its cloth (chrysotile) did not cause mesothelioma; that if any exposure to its product occurred, it was negligible; that the seven living plaintiffs did not have asbestosis; and that the lung cancer of two decedents was caused by cigarette smoking.

Plaintiff attorney asked the jury to award \$12 million+ in compensatory damages, according to defense attorney.

Result:

\$6,245,000 TOTAL AWARD with the jury apportioning 75% of the award to Raymark and the alleged American Textile Institute conspirators, including Johns-Manville, reduced by offsets for pretrial settlements to \$3,600,000.

\$290,000 PLAINTIFF VERDICT to Gerald August.

\$504,000 PLAINTIFF VERDICT to Andrew Beasley.

\$276,000 PLAINTIFF VERDICT to Billy Brown.

\$403,000 PLAINTIFF VERDICT to Allan Fortes, including \$93,000 for loss of consortium.

\$208,000 PLAINTIFF VERDICT to Pedro Gallegos.

\$140,000 PLAINTIFF VERDICT to Stanley Lucien.

\$350,000 PLAINTIFF VERDICT to Alfred Schooley, including \$50,000 for loss of consortium.

WRONGFUL DEATH CASES:

\$753,024 PLAINTIFF VERDICT as to Samuel Allen.

\$508,432 PLAINTIFF VERDICT as to Dora Davidson.

\$235,960 PLAINTIFF VERDICT as to Kaye Mullins.

\$487,184 PLAINTIFF VERDICT as to Frank Palagi.

\$650,223 PLAINTIFF VERDICT as to Hubert Walker.

\$798,816 PLAINTIFF VERDICT as to Louis Wallace.

\$652,424 PLAINTIFF VERDICT as to Ralph Yarbrough.

All awards were compensatory damages only. (Strict liability, negligence, fraud) (Malice/oppression) The same injury will begin hearing 37 more asbestos cases against Raymark on March 24, 1998. Once they have determined the compensatory damages in these cases, they will make an assessment of punitive damages. Defense attorney reports that the Solano court consolidated 51 cases for trial over defendant's objection, and the results of this trial were inconsistent with results defendant has achieved in California jurisdictions in which the court has conducted separate trials for each plaintiff. Defense attorney also reports that post-trial motions are premature and must await the conclusion of the remaining 37 trials. Defendant plans to file post-trial motions regarding the more than \$750,000 in economic damages awarded for loss of financial support to the heirs of five decedents. The awards were made to surviving adult children who claimed only burial expenses. Defendant also plans to appeal the consolidation of the trials.

SETTLEMENT TALKS: Not reported.

POLL: (Strict liability, negligence, fraud) 12-0; (Malice/oppression) Range of 12-0 to 9-3

Trial Information:

Trial Length: 14 weeks

**Trial
Deliberations:** 9 days

Writer JV Temp1

Plaintiffs' estate alleged failed crankshaft led to fatal crash

Type: Settlement

Amount: \$5,000,000

State: Texas

Venue: Dallas County

Court: Dallas County District Court, 192nd, TX

Injury Type(s):

- *other* - death

Case Type:

- *Aviation* - Airplane Accidents
- *Wrongful Death* - Survival Damages
- *Products Liability* - Design Defect; Manufacturing Defect

Case Name: Julie Ann Kos, Individually, as as Personal Representative of the Estate of James Maurice Kos, Deceased; Jason Kos, Individually; Eric Kos, Individually; and Allison Atha, Individually v. Superior Air Parts, Inc.; Barrett Precision Engines, Inc.; and Kyle W. Sheahen as Executor of the Estate of Dane Sheahen, Deceased, No. DC-18-03265

Date: December 24, 2019

Plaintiff(s):

- Eric Kos
- Jason Kos
- Allison Atha
- Julie Ann Kos
- Kyle W. Sheahen
- Kristen M. Sheahen
- Estate of Dane E. Sheahen (Male, 63 Years)
- Estate of James Maurice Kos (Male, 58 Years)

**Plaintiff
Attorney(s):**

- Ladd Sanger; Slack Davis Sanger LLP; Dallas TX for Julie Ann Kos, Estate of James Maurice Kos, Jason Kos, Eric Kos, Allison Atha, Kyle W. Sheahen, Estate of Dane E. Sheahen, Kristen M. Sheahen
- Joe Bosco; LaRose & Bosco Ltd.; Chicago IL for Kyle W. Sheahen, Estate of Dane E. Sheahen, Kristen M. Sheahen
- Kevin R. Boyle; Panish, Shea & Boyle LLP; Los Angeles CA for Julie Ann Kos, Estate of James Maurice Kos, Jason Kos, Eric Kos, Allison Atha
- Fred Begy; Law Offices of Fred Begy III P.C.; Chicago IL for Kyle W. Sheahen, Estate of Dane E. Sheahen, Kristen M. Sheahen
- Matt Stumpf; Panish, Shea & Boyle LLP; Los Angeles CA for Julie Ann Kos, Estate of James Maurice Kos, Jason Kos, Eric Kos, Allison Atha

Defendant(s):

- Estate of Dane Sheahen
- Superior Air Parts Inc.
- Barrett Precision Engines Inc.
- Ruhrtaler Gesenkschmiede F.W. Wengeler GmbH & Company KG

**Defense
Attorney(s):**

- Michael H. Hull; Maloney, Bean, Horn & Hull; Irving, TX for Superior Air Parts Inc.
- Annie Jo Jacobs; Clark Hill Strasburger; Dallas, TX for Ruhrtaler Gesenkschmiede F.W. Wengeler GmbH & Company KG
- None reported; Los Angeles, CA for Barrett Precision Engines Inc., Estate of Dane Sheahen

Insurers:

- Allianz

Facts:

On March 12, 2016, plaintiffs' decedent Dane Sheahen, 63, an owner of hardware stores, was piloting a Van's RV-8 amateur-built, single-engine aircraft from Port Orange, Fla., to Winter Haven, Fla. Plaintiffs' decedent James Maurice Kos, 58, a machinist, was a passenger. Sheahen, who held a private pilot certificate, built the plane from a kit. He bought the engine separately from Barrett Precision Engines Inc. The engine was designed and assembled by Superior Air Parts Inc., headquartered in Coppell, Texas. The engine's crankshaft was designed by Superior and forged by Ruhrtaler Gesenkschmiede F.W. Wengeler GmbH & Company KG. During the flight, the crankshaft fractured. The result was a complete loss of power. The plane crashed in a field. Sheahen and Kos were killed.

The Kos and Sheahen families and estates sued Superior. The Kos family and estate were the original plaintiffs and the Sheahen family and estate were intervening plaintiffs. The lawsuit alleged that Superior was liable for manufacturing defects and design defects in the crankshaft. Superior designated Ruhrtaler as a responsible third party, and the plaintiffs then added it as a defendant, alleging that it was also liable for manufacturing defects.

Superior asserted a claim against Ruhrtaler for contribution and indemnity

In the original petition, the defendants were Superior, Barrett and Sheahen's estate. The Kos plaintiffs subsequently resolved their claims against Sheahen's estate via a confidential settlement. Barrett was granted an unopposed summary judgment.

The crankshaft in Sheahen's engine had been in operation for a total of only 20 hours when it failed. The plaintiffs alleged that the failure resulted from internal stress caused either by detonation or by the materials and temperatures used in forging the crankshaft. The plaintiffs further alleged that Superior failed to test the engine, model XP-400, adequately before releasing it to the market. The plaintiffs also alleged that, after the engine was released to the market, Superior learned of premature failures but was slow to react. In March 2019, Superior voluntarily announced a grounding and mandatory buyback of XP-400 engines.

The defendants denied any defect or wrongdoing. According to Superior, there were only two premature failures of the XP-400 engine prior to the accident, and both were due to the owner adding a nitrous oxide system to boost horsepower, which increased stresses on the crankshaft.

Superior said that, in the three years after the Sheahen crash, it learned of several other crankshaft failures, and although none involved injury, it implemented a mandatory buyback in the interest of customer safety.

The defendants also alleged that Sheahen's negligence proximately caused the incident and the resulting injuries and deaths. The National Transportation Safety Board concluded that the probable cause of the accident was "[t]he pilot's exceedance of the airplane's critical angle of attack while maneuvering for a forced landing; which resulted in an aerodynamic stall and loss of control. Contributing to the accident was the fatigue failure of the crankshaft for reasons that could not be determined based on the available information."

Injury: Sheahen and Kos died in the crash. Sheahen was survived by his adult son, plaintiff Kyle W. Sheahen, and adult daughter, plaintiff Kristen M. Sheahen. Kos was survived by his wife, plaintiff Julie Ann Kos, and three adult children, plaintiffs Jason Kos, Eric Kos and Allison Atha.

Both Sheahen and Kos were close to their families.

The estates sought damages for the decedents' funeral and burial expenses and conscious physical pain and mental anguish. Their families sought damages for past and future pecuniary loss, loss of companionship and society and mental anguish.

In addition, Kyle Sheahen had recently become co-owner of his father's hardware business, which had been in their family for generations. Kyle alleged that his father's death caused Kyle significant past lost earnings and future lost earning capacity.

Result: The plaintiffs settled with Superior and Ruhrtaler for a total of \$5 million, consisting of \$4,950,000 from Superior's insurer and \$50,000 from Ruhrtaler. Superior's policy limit was \$5 million.

As part of the settlement agreement, Superior dropped its claim against Ruhrtaler for contribution and indemnity.

Trial Information:

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel, Superior's counsel and Ruhrtaler's counsel. The remaining defendants' counsel were not asked to contribute.

Writer John Schneider

Cessna crashed after left engine's power was reduced

Type:	Settlement
Amount:	\$1,500,000
Actual Award:	\$1,500,000
State:	Missouri
Venue:	Federal
Court:	U.S. District Court for the Western District, MO
Case Type:	<ul style="list-style-type: none">• <i>Negligence</i>• <i>Wrongful Death</i>• <i>Aviation - Airplane Accidents</i>• <i>Products Liability - Design Defect</i>
Case Name:	Brandon Schulte, by and through His Natural Father and Next Friend, Robert Schulte, and Robert Schulte individually v. Teledyne Technologies, Inc., J&J Air Parts, Inc., Superior Air Parts, Inc., No. 01-4103-CV-C
Date:	August 22, 2003
Plaintiff(s):	<ul style="list-style-type: none">• Robert Schulte (Male)• Brandon Schulte (Male)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• James P. Frickleton; Bartimus, Frickleton, Robertson & Obetz; Kansas City MO for Brandon Schulte, Robert Schulte• Stephen M. Gorny; Bartimus, Frickleton, Robertson & Obetz; Kansas City MO for Brandon Schulte, Robert Schulte
Plaintiff Expert(s):	<ul style="list-style-type: none">• Mark Hood; Metallurgy; Pensacola, FL called by: Stephen M. Gorny• Omar Benn; Pilot Performance/Error; Champaign, IL called by: Stephen M. Gorny• Larry Cox; economics; Springfield, MO called by: Stephen M. Gorny• Weldon Garrelts; Automobile Sales & Repairs; Savoy, IL called by: Stephen M. Gorny

Defendant(s):

- J&J Air Parts, Inc.
- Superior Air Parts, Inc.
- Teledyne Technologies, Inc.

Defense Attorney(s):

- Drew Coats; Coats and Evans; Houston, TX for J&J Air Parts, Inc.
- Michael G. McQuillen; Adler, Murphy & McQuillen; Chicago, IL for Teledyne Technologies, Inc.
- Michael Hull; Houston, TX for Superior Air Parts, Inc.

Defendant Expert(s):

- J. Patrick McNamara; Valves/Valve Stems; Houston, TX called by: for Drew Coats, Michael G. McQuillen, Michael Hull, ,
- Alfred Fischer; Pilot Performance/Error; Addison, TX called by: for Drew Coats, Michael G. McQuillen, Michael Hull
- Charles Morin; Metallurgy; Chicago, IL called by: for Drew Coats, Michael G. McQuillen, Michael Hull

Insurers:

- Lloyd's of London

Facts:

On May 27, 1999, plaintiff's decedent Summer Schulte, a 22-year-old account assistant for Wallstreet Insurance, was flying in a co-worker's Cessna 421 twin engine back to Jefferson City, Mo., from a business meeting in Poplar Bluff, Mo. One mile from the Jefferson City Memorial Airport, the Cessna's No. 2 exhaust valve fractured, causing significant damage and reduction of power in the left engine. The pilot lost control of the Cessna and it crashed in a sod farm. All four people on board died instantly.

Schulte's family sued Superior Air Parts Inc., Dallas; J&J Air Parts Inc., Pleasonton, Texas; and Teledyne Technologies Inc., Mobile, Ala., for wrongful death.

Against Superior Air Parts, the manufacturer of the engine's valve guide, the plaintiffs claimed products liability design defect. They claimed that the valve guide was designed such that excessive and premature wear would cause the valve, which was supposed to have a 1,600-hour life, to fail after only 205 hours. They alleged that this failure prevented the valve from moving straight up and down within the guide, and that the resulting sideways motion caused the exhaust valve to fatigue and fracture.

The plaintiffs claimed that J&J Air Parts negligently pressure-fitted the valve guide into the engine cylinder.

The plaintiffs also claimed that Teledyne Technologies published a service manual that J&J Air Parts used to pressure-fit the valve guide into the engine cylinder, and that the manual, therefore, could be considered a component of the aircraft.

The defendants all contended that the crash was in part caused by pilot error.

Superior Air Parts argued that the sole cause of the valve's premature wear was J&J Air Parts negligently pressure-fitting the valve guide into the engine cylinder.

Teledyne disputed the role of its service manual, and argued that its service manuals could not be considered components of aircrafts.

Injury: The plaintiffs sought wrongful death damages for loss of household services.

Result: Before trial, Superior Air Parts settled for \$1.5 million. As part of the settlement, the plaintiffs agreed to drop their case against J&J Air Parts. Teledyne Technologies reached a confidential resolution with the plaintiffs.

Trial Information:

Judge: Nanette K Laughrey

Editor's Comment: Defense counsel did not contribute to this report.

Writer Peter Scoolidge

Sandblaster argued company didn't warn of mineral's dangers

Type: Verdict-Plaintiff

Amount: \$900,000

Actual Award: \$500,000

State: Mississippi

Venue: Jefferson County

Court: Circuit Court of Jefferson County, MS

Injury Type(s):

- *other* - death
- *pulmonary/respiratory* - silicosis

Case Type:

- *Toxic Torts*
- *Wrongful Death* - Survival Damages
- *Products Liability* - Failure to Warn

Case Name: Linda Sampson and Dale Sampson, individually and as wrongful Death beneficiaries of Rivers Sampson, deceased, and on behalf of all wrongful death beneficiaries of Rivers Sampson, deceased v. Pangborn Corporation, Clark Sand Company, Inc., Southern Silica of Louisiana, Dependable Abrasives, Inc., Precision Packaging, Inc., Quikrete Materials, Inc., Pearl Sands, Inc., Pearl Specialty Sands, Inc., Lone Star Industries, Custom Aggregates and Grinding, Inc., Specialty Sand Co., Hanson Aggregates Central, Inc. f/k/a Pioneer Concrete of Texas, Inc. f/k/a Pioneer South Central Humble Sand & Gravel, Inc., Pulmosan Safety Equipment Corp., E. D. Bullard Company, American Optical Corporation, Empire Abrasive Equipment Corporation, Mine Safety Appliances Company, Clemco Industries, Inc., Schmidt Manufacturing, Inc., Bob Schmidt, Inc., Pauli & Griffin Company, Kelco Sales & Engineering Company, and Mississippi Valley Silica Company, No. 2014-90

Date: February 28, 2017

Plaintiff(s):

- Dale Sampson (Male, 56 Years)
- Linda Sampson (Female, 50 Years)
- Rivers Sampson (Male, 77 Years)

**Plaintiff
Attorney(s):**

- Dennis C. Sweet, III; Sweet & Associates; Jackson MS for Linda Sampson, Dale Sampson, Rivers Sampson
- Patrick C. Malouf; Porter & Malouf, P.A.; Ridgeland MS for Linda Sampson, Dale Sampson, Rivers Sampson
- John T. Givens; Porter & Malouf, P.A.; Ridgeland MS for Linda Sampson, Dale Sampson, Rivers Sampson

**Plaintiff Expert
(s):**

- Obie M. McNair M.D.; Pulmonary/Respiratory Diseases; Jackson, MS called by: Dennis C. Sweet, III, Patrick C. Malouf,
- Edward W. Karnes Ph.D.; Human Factors -- See also TECHNICAL-Engineering-Ergonomics; Morrison, CO called by: Dennis C. Sweet, III, Patrick C. Malouf,

Defendant(s):

- Pangborn Corp.
- Bob Schmidt Inc.
- E.D. Bullard Co.
- Pearl Sands Inc.
- Specialty Sand Co.
- Clark Sand Co. Inc.
- Pauli & Griffin Co.
- Lone Star Industries
- American Optical Corp.
- Clemco Industries Inc.
- Precision Packaging Inc.
- Quickrete Materials Inc.
- Dependable Abrasives Inc.
- Mine Safety Appliances Co.
- Pearl Specialty Sands Inc.
- Schmidt Manufacturing Inc.
- Southern Silica Of Louisiana
- Kelco Sales & Engineering Co.
- Mississippi Valley Silica Co.
- Hanson Aggregates Central Inc.
- Empire Abrasive Equipment Corp.
- Pulmosan Safety Equipment Corp.
- Custom Aggregates and Grinding Inc.

**Defense
Attorney(s):**

- None reported for Pangborn Corp., Lone Star Industries, Mine Safety Appliances Co., E.D. Bullard Co., Clark Sand Co. Inc., Southern Silica Of Louisiana, Dependable Abrasives Inc., Precision Packaging Inc., Quickrete Materials Inc., Pearl Sands Inc., Pearl Specialty Sands Inc., Custom Aggregates and Grinding Inc., Specialty Sand Co., Hanson Aggregates Central Inc., Pulmosan Safety Equipment Corp., American Optical Corp., Empire Abrasive Equipment Corp., Clemco Industries Inc., Schmidt Manufacturing Inc., Bob Schmidt Inc., Pauli & Griffin Co., Kelco Sales & Engineering Co.
- LaKeysha Greer Isaac; Cosmich, Simmons & Brown; Jackson, MS for Mississippi Valley Silica Co.
- Mark Goldberg; Cosmich Simmons & Brown PLLC; Jackson, MS for Mississippi Valley Silica Co.
- Michael D. Simmons; Cosmich Simmons & Brown PLLC; Jackson, MS for Mississippi Valley Silica Co.

**Defendant
Expert(s):**

- Timothy Usey M.D.; Diagnostic Radiology; Ridgeland, MS called by: for LaKeysha Greer Isaac, , Mark Goldberg
- Demondes Haynes M.D.; Pulmonology; Jackson, MS called by: for LaKeysha Greer Isaac, , Mark Goldberg

Facts:

On Aug. 18, 2013, Rivers Sampson, a manual laborer, died at age 77, in Texas, of silicosis, a lung disease caused by breathing in silica, a mineral found in sand, rock, and minerals. He had worked as a sandblaster from 1959 through 1964, using sand containing silica as an abrasive agent. Sampson's two adult children attributed their father's death to exposure to silica products used in sandblasting.

Linda and Dale Sampson, 53 and 59, respectively, brought a wrongful death action against 23 mining companies that extracted silica, processed it, and sold it commercially for use in sandblasting. The lawsuit was based on a products liability theory, asserting a claim for failure to warn of the health hazards of the products.

All the companies except Mississippi Valley Silica Co. either negotiated settlements or achieved dismissals on confidential terms.

The case proceeded to trial against Mississippi Valley Silica only, on the issue of failure to warn of the hazard its sand-product presented when used for its intended purpose as an abrasive agent for sandblasting.

The suit established that Sampson used Mississippi Valley Silica products extensively from 1959 through 1964 without any warnings provided. The suit further contended that the risks presented by the company's products were well known in the industry during that time, but Mississippi Valley Silica did not put any warnings on its product until 1972.

Mississippi Valley Silica challenged the claims as to causation. The company contended that Rivers Sampson did not die from silicosis.

Alternatively, it argued that even if silicosis was a contributing factor to Sampson's death, there were comorbidities that contributed to it.

The company further argued that such silica exposure that Sampson incurred was also attributable to the other defendants in the case. In addition to his five years of work as a sandblaster, Sampson worked in various industries and trades that might have resulted in exposures to silica, such as construction, ship yards, and other heavy industries throughout the United States.

Counsel, in addition, pointed to the fact that Sampson was a fairly heavy smoker for over 30 years.

Injury:

The disease that caused Rivers Sampson's death, silicosis, was not diagnosed until after his death. He received no medical treatment.

The two adult children of the decedent sought compensatory and punitive damages. Linda Sampson and Dale Sampson were respectively 53 and 59 at the time of trial. They filed claims for loss of society and companionship from the premature death of their father. No specific dollar amount was sought.

Silicosis is progressive, often fatal, and untreatable. Symptoms become more acute over time and can include coughing, fever, chest pain and difficulty breathing. Bronchitis-like symptoms can occur, along with wheezing for breath. The lungs can become extensively scarred, leading to symptoms of lung disease, such as swelling of the legs, difficulty breathing, and discoloration of the lips. Silicosis occurs when silica dust becomes trapped in the lungs, resulting in the death of white blood cells and inflammation. The disease may accelerate and destroy swaths of the lungs, even after exposure to silica has ended.

Experts for the Sampson children opined that exposure to the Mississippi Valley Silica sandblasting product causes silicosis, and based on a review of the decedent's work history and medical records, including the death certificate (there was no autopsy), decedent died of silicosis.

Medical experts for the defense said the evidence was insufficient to conclude with certainty that Sampson, who was a smoker, died of silicosis, and particularly that he died of silicosis caused by products by Mississippi Valley Silica. It was only clear that he died from pulmonary complications.

Result:

The jury apportioned 50 percent fault to Mississippi Valley Silica, finding that Sampson's death was due to silicosis attributable to the company's failure to warn about the risks of its product. The jury was not asked to allocate fault for the other 50 percent.

The jury also found that Mississippi Valley Silica's failure to warn was sufficiently egregious so as to warrant an award of punitive damages.

The jury returned a compensatory damages award of \$800,000, providing \$400,000 to each child. It awarded punitive damages of \$100,000.

The compensatory damages award will be reduced by half, reflecting the 50 percent allocation of liability attributable to Mississippi Valley Silica, resulting in an anticipated judgment of \$500,000 after addition of the \$100,000 punitive damages award. However, the court indicated it has reserved decision as to whether the award of punitive damages was appropriate and may not include those damages in the final judgment. Judgment has not been entered as of the time of this report.

Dale Sampson

\$50,000 Personal Injury: Punitive Exemplary Damages

\$400,000 Personal Injury: Compensatory Damage

\$50,000 Wrongful Death: Punitive Exemplary Damages

\$400,000 Wrongful Death: Compensatory Damage

Linda Sampson

\$50,000 Wrongful Death: Punitive Exemplary Damages

\$400,000 Wrongful Death: Compensatory Damages

Trial Information:

Judge: Lamar Pickard

Trial Length: 4 days

**Trial
Deliberations:** 2.75 hours

Jury Vote: 10-2, liability and compensatory damages; 9-3 punitive damages.

Post Trial: An appeal of the verdict is anticipated.

**Editor's
Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

Writer Jon Steiger

Girl passenger died after ejected from SUV in crash

Type:	Decision-Defendant
Amount:	\$0
State:	Florida
Venue:	Federal
Court:	United States District Court, Middle District of Florida, Jacksonville, FL
Injury Type(s):	<ul style="list-style-type: none">• <i>other - death</i>
Case Type:	<ul style="list-style-type: none">• <i>Products Liability - Tires</i>
Case Name:	William Beauregard, as personal representative of the estate of Sarah Dawn Beauregard, plaintiff v. Continental Tire North America Inc., No. 3:08-cv-37-J-32TEM
Date:	March 17, 2010
Plaintiff(s):	<ul style="list-style-type: none">• Adam Beauregard (Male)• William Beauregard (Male)• Estate of Sarah Beauregard (Female, 7 Years)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• Aaron Metcalf; Wilner Hartley & Metcalf, P.A.; Jacksonville FL for William Beauregard, Estate of Sarah Beauregard, Adam Beauregard
Defendant(s):	<ul style="list-style-type: none">• Continental Tire North America Inc.
Defense Attorney(s):	<ul style="list-style-type: none">• Daniel R. Lever; Thornton, Davis & Fein, P.A.; Miami, FL for Continental Tire North America Inc.

Facts: On April 30, 2006, Sarah Dawn Beauregard, age 7, was a passenger in a 1987 Jeep Grand Wagoneer driven by her father, William Beauregard, when he lost control and struck a guardrail. The family claimed that the tire experienced a catastrophic tread and belt separation. Sarah was ejected from the truck and died.

Beauregard sued tire manufacturer Continental Tire North America Inc. for products liability, alleging negligent design, manufacture, testing, marketing and/or selling of the tire. Plaintiff's counsel alleged that Continental should be held strictly liable.

Continental Tire denied liability and moved for summary judgment. The defendant contended that no jury could find the manufacturer liable for Sarah's death.

Injury: Sarah was ejected from the vehicle and died. Her family sought survivorship damages for the emotional distress of dealing with her premature death. The plaintiffs also sought damages on behalf of her estate.

Result: Judge Timothy J. Corrigan granted summary judgment for the defendant.

Trial Information:

Editor's Comment: This report is based on information gleaned from court documents. Plaintiff's and defense counsel did not respond to the reporter's phone calls.

Writer Shannon Green

Warnings complied with federal regulations, defense argued

Type: Verdict-Defendant

Amount: \$0

State: Mississippi

Venue: Jones County

Court: Jones County Circuit Court, MS

Injury Type(s):

- *cancer*
- *pulmonary/respiratory* - asbestosis

Case Type:

- *Products Liability* - Asbestos; Warnings; Design Defect; Failure to Warn

Case Name: Thomas C. Brown, Jr. v. Chevron Phillips Chemical Co. and Union Carbide Corp., No. 2006-196

Date: April 30, 2012

Plaintiff(s):

- Thomas C. Brown, Jr. (Male, 40 Years)

Plaintiff Attorney(s):

- D. Allen Hossley; HossleyEmbry; Tyler TX for Thomas C. Brown, Jr.
- Dawn M. Smith; HossleyEmbry; Dallas TX for Thomas C. Brown, Jr.
- Raymond Turcotte; HossleyEmbry; Tyler TX for Thomas C. Brown, Jr.
- Eugene Tullos; Tullos & Tullos; Raleigh MS for Thomas C. Brown, Jr.
- Gary King; Tullos & Tullos; Raleigh MS for Thomas C. Brown, Jr.

Defendant(s):

- Union Carbide Corp.
- Chevron Phillips Chemical Co.

**Defense
Attorney(s):**

- Alex E. Cosculluela; Adams & Reese LLP; Houston, TX for Chevron Phillips Chemical Co.
- Jeffrey Trotter; Adams and Reese LLP; Ridgeland, MS for Chevron Phillips Chemical Co.
- Robert L. Johnson III; Law Office of Robert L. Johnson III; Natchez, MS for Chevron Phillips Chemical Co.
- Michael G. Terry; Hartline Dacus Barger Dreyer LLP; Corpus Christi, TX for Union Carbide Corp.
- Marcy B. Croft; Forman Perry Watkins Krutz & Tardy; Jackson, MS for Union Carbide Corp.
- G. David Garner; Law Office of G. David Garner; Raleigh, MS for Chevron Phillips Chemical Co.

Facts:

In 2010, plaintiff Thomas C. Brown, 40s, was diagnosed with asbestosis, a lung disease related to asbestos exposure. From 1979 until the mid-1980s, Brown worked as a roughneck, mixing drilling mud with products sold and manufactured by Chevron Phillips Chemical Co. and Union Carbide Corp. on rigs in Mississippi and offshore in the Gulf of Mexico. He was 16 years old and couldn't read when he began working.

Brown sued CP Chemical and Union Carbide for products liability, alleging failure to provide an adequate warning and design defect. Plaintiff's counsel contended that CP Chemical and Union Carbide were aware that their products contained asbestos and they knew of the hazards associated with inhaling asbestos fibers, but they continued selling them without providing an adequate warning to workers like Brown.

The defense responded that CP Chemical and Union Carbide complied with federal regulations as to warning labels at all relevant times. (According to court documents, during the relevant time, the packaging on containers of drilling mud additives had federally mandated warnings about the asbestos fibers and the fact that breathing them could cause health problems.)

Defense counsel contended that Brown failed to inquire about the materials he was working with, and that his employer failed to warn him about the materials or provide proper safety equipment.

Injury:

Brown, who was in his late 40s at trial, has asbestosis and requires oxygen 24 hours a day. Plaintiff's counsel claimed that the disease would progress over time and eventually cause Brown's premature death. He sought payment for future medical expenses, pain and suffering and punitive damages, but his demands were unspecified.

The defense disputed causation, arguing that Brown's shortness of breath was not attributable to asbestos exposure.

Result: Initially, the jury returned a plaintiff's verdict, finding design defect and failure to warn against CP Chemical and Union Carbide. Liability was split evenly between both defendants, It awarded \$322 million.

The verdict was overturned in state Supreme Court due to undisclosed judicial prejudice, as the presiding judge's parents had been involved in an asbestos related to a lawsuit against Union Carbide. The matter went to trial again in April 2012, and the jury rendered a defense verdict.

Trial Information:

Judge: William Coleman

**Trial
Deliberations:** 3 hours

Jury Vote: Unanimous

**Editor's
Comment:** This report is based on information that was published by The Litigation Daily, The Associated Press, VerdictSearch and Thomson Reuters. Plaintiff's and defense counsels did not respond to the reporter's phone calls. The reporter was unable to contact attorney Robert C. Johnson and attorney Raymond Turcotte.

Writer Max Mitchell

Estate blamed drywall-sealing products for plumber's meso

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Los Angeles, CA

Injury Type(s):

- *other* - death; loss of society

Case Type:

- *Negligence*
- *Toxic Torts* - Asbestos
- *Products Liability* - Design Defect; Failure to Warn

Case Name: Melody A. Dean, individually and as Personal Representative of the Estate of Michael Mikul, Holly Mikul and Paul Mikul v. Bondex International; CertainTeed Corporation; Dowman's Product Inc.; Georgia-Pacific; Kaiser Gypsum and P.E. O'Hair., No. BC 332247

Date: November 28, 2006

Plaintiff(s):

- Estate of Michael Mikul
- Melody A. Dean, Holly Mikul and Paul Mikul

Plaintiff Attorney(s):

- Gary M. Paul; Waters & Kraus; El Segundo CA for Estate of Michael Mikul, Melody A. Dean, Holly Mikul and Paul Mikul
- Kevin Loew; Waters & Kraus; El Segundo CA for Estate of Michael Mikul, Melody A. Dean, Holly Mikul and Paul Mikul

Plaintiff Expert (s):

- John Philip Templin C.I.H.; Industrial Hygiene; Seal Beach, CA called by: Gary M. Paul,
- James Dahlgren M.D.; Toxicology; Santa Monica, CA called by: Gary M. Paul,
- Arnold R. Brody M.D.; Cell Biology; New Orleans, LA called by: Gary M. Paul,

Defendant(s):

- CertainTeed
- P.E. O'Hair
- Kaiser Gypsum
- Georgia Pacific
- Dowman's Product
- Bondex International

**Defense
Attorney(s):**

- Sharla J. Frost; Powers & Frost; Houston, TX for Georgia Pacific
- Stephen M. Nichols; Walsworth, Franklin, Bevins & McCall LLP; Orange, CA for Bondex International
- Mark D. Sayre; Jackson & Wallace LLP; Sherman Oaks, CA for Kaiser Gypsum
- John P. Katerndahl; Hassard Bonnington LLP; San Francisco, CA for Kaiser Gypsum
- William J. Sayers; McKenna, Long & Aldridge; Los Angeles, CA for CertainTeed
- Karen P. Agelson; Walsworth, Franklin Bevins & McCall LLP; Orange, CA for Dowman's Product
- Chip Adams; Powers & Frost; Houston, TX for Georgia Pacific
- Lucy Galek; Powers & Frost; Houston, TX for Georgia Pacific
- Linda S. Votaw; Steefel, Levitt & Weiss; San Francisco, CA for P.E. O'Hair

**Defendant
Expert(s):**

- Tom McCaffrey; Historian; Alexandria, VA called by: for Sharla J. Frost, Stephen M. Nichols, Mark D. Sayre, John P. Katerndahl, William J. Sayers, Karen P. Agelson, Chip Adams, Lucy Galek, Linda S. Votaw,
- John Craighead M.D.; Pathology; Gainesville, FL called by: for Sharla J. Frost, Stephen M. Nichols, Mark D. Sayre, John P. Katerndahl, William J. Sayers, Karen P. Agelson, Chip Adams, Lucy Galek, Linda S. Votaw,
- Arthur Langer Ph.D.; Minerals; New York, NY called by: for Sharla J. Frost, Stephen M. Nichols, Mark D. Sayre, John P. Katerndahl, William J. Sayers, Karen P. Agelson, Chip Adams, Lucy Galek, Linda S. Votaw,
- Robert Spence; Industrial Hygiene; Portola Valley, CA called by: for Sharla J. Frost, Stephen M. Nichols, Mark D. Sayre, John P. Katerndahl, William J. Sayers, Karen P. Agelson, Chip Adams, Lucy Galek, Linda S. Votaw,
- William G. Hughson M.D.; Pulmonary/Respiratory Diseases; San Diego, CA called by: for Sharla J. Frost, Stephen M. Nichols, Mark D. Sayre, John P. Katerndahl, William J. Sayers, Karen P. Agelson, Chip Adams, Lucy Galek, Linda S. Votaw,

Insurers:

- not reported

Facts:

On Oct. 16, 2005, plaintiffs' decedent Michael Mikul, a 78-year-old former plumber, died from malignant mesothelioma.

Mikul's estate and three surviving children sued the manufacturers of drywall-sealing products--Bondex International, St. Louis; Dowman's Product, Inc., San Bernardino; Kaiser Gypsum, Oakland; Georgia-Pacific, Atlanta; cement-pipe manufacturer -- Certainteed, Valley Forge, Pa. and cement-pipe product distributor, P.E. O'Hair & Co., San Francisco, for negligence, failure to warn and strict products liability for the period of time that plaintiffs' counsel alleged that Mikul was exposed to the asbestos products. Plaintiff's counsel sued several other companies that manufactured asbestos-based products that Mikul may have been exposed to when he was a plumber and worked for the

U.S. Navy, but all of those companies either settled with the plaintiffs or were dismissed prior to trial.

Mikul's estate claimed that Mikul was exposed to asbestos for over twenty years from the early 1950s through the mid-1970s, when he used the four brands of drywall sealant that contained asbestos and an asbestos-containing cement pipe product in connection with his work as a plumber. Counsel for the estate asserted that Mikul would combine dry mix with water and apply it to the drywall where it would adhere as it dried. Counsel further argued that Mikul performed that task on many occasions when he had to demolish walls and repair them in order to install plumbing at job sites and that it was likely that he inhaled dust from the dry mixture.

Plaintiff's counsel presented the testimony of Mikul's son Paul, who claimed that he had witnessed Mikul use all of the products when he was a child and later when he worked alongside Mikul as a plumber. During the trial, Mikul's taped deposition was played indicating that Mikul could not remember whose joint-compound and cement pipe products he used when he was working as a plumber.

Counsel for the defense claimed that Mikul had contracted mesothelioma from products he came in contact with when he was stationed on an aircraft carrier as a ship fitter in the 1940s. Counsel asserted that Mikul came in contact with amosite fibers while working for the U.S. Navy, and that it was likely that the amosite fibers present on the aircraft carrier entered his lungs and eventually caused him to contract mesothelioma. They presented expert mineralogist, Arthur Langer, who had been a member of the Selikoff group that first studied the carcinogenic effects of asbestos in insulation workers in the 1960s. Langer opined that Selikoff's studies indicated that type of amosite fibers, that would have been present on the aircraft carrier, affected a person's lungs differently than the chrysotile fibers that were used in the joint-compound and cement-pipe products that Mikul was later exposed to when he worked as a plumber. According to Langer, the tests that Selikoff performed indicated that the amosite fibers were significantly more likely to cause mesothelioma than the chrysotile fibers that plaintiff's counsel was attributing to Mikul's death. Langer opined that Mikul's risks of contracting mesothelioma from the chrysotile-based joint-compound present in the defendants' joint-compound products were minimal.

Plaintiffs' counsel conceded that Mikul likely came in contact with the amosite fibers that were present on the aircraft carrier and that the fibers likely contributed to the mesothelioma that he contracted later in his life. However, plaintiff's counsel argued that those fibers were not the sole cause of his cancer and that an appropriate level of liability should be attributed to the defendants that manufactured the joint-compounds and cement pipe products that he came in contact with when he worked as a plumber.

Counsel for the defendants presented pulmonary expert, William Hughson, who testified that there were no epidemiological studies that showed that dry wall workers are at increased risk of contracting mesothelioma.

In response, plaintiffs' counsel presented experts who testified that chrysotile asbestos does cause mesothelioma, and that the EPA, WHO and other environmental groups had had corroborated their assertion.

Injury: Mesothelioma is characterized as a malignant tumor that encases the lining of the lungs and serves to suffocate the patient until they die because they are unable to breathe. Plaintiff's counsel argued that Mikul's surviving family members were entitled to compensatory wrongful death damages given the debilitating circumstances of Mikul's death from mesothelioma. Counsel further argued that his surviving family members were entitled to compensatory loss of society damages for the premature death of their loved one as well as punitive damages because the companies had continued to create the asbestos-based products after they knew about the dangers of the asbestos products and that the defendants failed to warn their consumers of the risks. Plaintiffs' counsel requested \$15 million in damages from the jury and suggested that the appropriate allocation of fault to the U.S. Navy should be 10%

Counsel for the defense did not dispute that Mikul died from malignant mesothelioma. However, the defense contested the plaintiffs' assertions that the defendants' products were the cause of Mikul's cancer.

Result: The jury found that there was no design defect in the products that the defendants manufactured and sold. They further found that the defendants were not negligent in making and selling the products and that they did not fail to warn Mikul of any potential dangers associated with the products.

Trial Information:

Judge: Ronald Shohigian

Demand: \$15 million from all defendants

Offer: various

Trial Length: 4 weeks

Trial Deliberations: 1.5 days

Jury Vote: 12-0 or 11-1 depending on defendant

Jury Composition: 7 female, 5 male

Post Trial: Plaintiff's counsel has filed a motion for a new trial.

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer

Joshua Couzens