

New Jersey Asbestos Litigation / Defense Verdict

March 16, 2012

Yesterday a defense verdict was handed down in a five week long Middlesex County, New Jersey asbestos case. The defense verdict, in favor of R. T. Vanderbilt, Inc. was in the Armin and Patricia Lou Thoma matter. The case was tried on behalf of the Plaintiff by Moshe Maimon of Levy Philips. R.T. Vanderbilt was represented by R. Thomas Radcliffe, Jr. of Dehay & Elliston and by its local counsel, O'Toole Fernandez Weiner Van Lieu. The trial began with Union Carbide Corporation and R.T. Vanderbilt as defendants, however at the time of verdict, only R. T. Vanderbilt remained. Union Carbide Corporation was successful on a Motion for Directed Verdict. R.T. Vanderbilt's main argument was that the talc to which Plaintiff was allegedly exposed, was not asbestos containing.

The Plaintiff seventy-two (72) years old resided in Germany prior to moving to New Jersey at the age of twenty-three (23). Mr. Thoma was diagnosed with peritoneal mesothelioma on 8/31/2010. Specifically, a pathology report indicates he has a malignant mesothelioma, epithelioid type, involving the serosal aspect of the small bowel and extensively involving the peritoneum. He smoked a half, to one pack of cigarettes per day from 1958-2008. The Plaintiff is retired and did not make a lost wage claim.

By way of brief history, Plaintiff worked in New Jersey from the 1950s-1970s and did home repair work, as well as repairs on his cars at home. Plaintiff was a member of the Paint Worker's Union in Newark, New Jersey from 1959-1965. From 1959-1968, he was a raw materials tester and buyer at Sherwin-Williams in Newark, and through this work he alleged exposure to raw asbestos fiber and talc. In the late 1960s through 1970s, he also alleged that he was exposed to asbestos and talc as a purchaser for cosmetics companies, including A.R. Winarick, Inc., and Packaging Products & Design Corp. His home repairs involved work with drywall and sheetrock in the 1970s, and his home brake repairs took place in the 1950s-1960s.

Closing summations were heard on March 8, 2012. Defendant, R.T. Vanderbilt gave a two (2) hour closing argument, followed by a four (4) and a half hour closing by Moshe Maimon, on behalf of the Plaintiff. R.T. Vanderbilt moved for two (2) separate Motions to Dismiss based on Mr. Maimon's closing. One based on an improper colloquy with a member of the jury, which was denied. The other was regarding improper statements, which the Judge gave a curative instruction to.

The Jury began their deliberations on Thursday, March 9, 2012, after Her Honor read the Jury Charges. The Jury deliberated for three (3) and a half days before reaching a verdict. During their deliberation they asked three (3) questions that they wanted further clarification on. Of note, they asked to hear back their own questions and responses that they asked to Plaintiff's expert, Dr. Moline. Also, they asked for a definition of the term "intended and reasonable foreseeable use." Her Honor and counsel defined the term as it is defined in the model jury charge.

Ultimately the Jury found that R.T. Vanderbilt's talc was unsafe for its intended use, but Plaintiff could not prove, by a preponderance of the evidence, that he was exposed to it. Therefore, the Jury returned a defense verdict in favor of R.T. Vanderbilt.