

Wheeler Trigg O'Donnell's John Fitzpatrick Defends Rising Asbestos Litigation Claims

News

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DENVER: In April 2009, the United States Centers for Disease Control and Prevention (CDC) issued a report on mortality related to mesothelioma, a fatal cancer primarily associated with exposure to asbestos. The report indicated the number of malignant mesothelioma deaths is continuing to increase each year despite the ban since 1982 on most uses of asbestos. Given the long latency period for asbestos-related disease, the CDC estimates the number of mesothelioma deaths will continue to rise for a short time before beginning a slow decline.

John Fitzpatrick, a partner with the civil litigation defense firm of Wheeler Trigg O'Donnell (WTO), sees a corollary rise in the number of liability lawsuits being filed by plaintiffs' attorneys on behalf of those who have developed malignant mesothelioma.

As Fitzpatrick explains, these are complex cases, and not only because of the science and disease maturation time involved.

Many asbestos cases have settled before trial, most in the three to seven million dollar range - at least according to the Web sites of plaintiff firms fiercely competing for business. Indeed, on *voir dire* most jurors

acknowledge that they have seen the barrage of plaintiff commercials seeking new mesothelioma clients. As a result, many, if not most, manufacturers of insulation and related products have gone bankrupt over the years. This has led plaintiffs' attorneys to go after any and all remaining players associated with the asbestos-containing products to which plaintiffs were exposed. Plaintiffs' attorneys are claiming that third parties, such as equipment manufacturers who used asbestos gaskets or packing in their equipment, and often had their equipment insulated with pipe covering or block insulation manufactured and sold by others, should have foreseen and forewarned about the risks of asbestos exposure.

As plaintiffs' attorneys increase their efforts to develop new liability claims, Fitzpatrick encourages defendants, and especially equipment manufacturers, to challenge the claims at trial rather than settle.

Fitzpatrick has taken more than 40 asbestos cases to trial in some of the toughest jurisdictions in the United States. In just the past four months, WTO trial teams led by Fitzpatrick and his partner [Erik Nadolink](#) obtained defense jury verdicts for their clients in two separate asbestos litigation matters.

One case was heard in Cook County, Illinois, a traditionally plaintiff-friendly jurisdiction. The WTO litigation defense team argued that its client, General Electric, was not liable and did not have a duty to warn of the risk of exposure to asbestos-containing insulation that was made by another company and used to insulate six power plant land turbines manufactured by GE. Fitzpatrick argued that Commonwealth Edison, the owner of the facility, along with the various unions such as the Asbestos Workers Union and the International Brotherhood of Electrical Workers were well

aware of the potential hazards - so much so that no warning was required by GE. Further, even if a warning had been given, it would not have changed any work condition at the plant.

The jury issued a verdict in favor of GE on September 4, 2009 after a two-week trial. The plaintiff requested \$16MM in damages. The jury found there was no duty for GE to warn about any asbestos hazards. Over 25 lawyers from multiple law firms were in the gallery watching Fitzpatrick deliver the closing argument in this case, the first asbestos case to go to trial in Cook County in the last six years and the first asbestos trial for GE in the last three years.

In the second case, *Pelletier, et al. v. Alfa Laval Inc., et al.*, No. BC381497 (Calif. Super. Ct., Los Angeles Cty.), a jury deliberated for less than 20 minutes before deciding that WTO's client, Leslie Controls, was not liable for the plaintiff's mesothelioma. After the other original defendants reached pre-trial settlements with the plaintiff, Leslie Controls was the sole remaining defendant at trial.

The claims were made on behalf of Gerard Pelletier who was allegedly exposed to asbestos-containing gaskets and packing incorporated in the Leslie valves and asbestos-containing insulation manufactured by another company and applied by the Navy shipyard. The claims were related to Pelletier's period of service on a U.S. Navy destroyer from 1957 to 1961.

During trial, WTO lawyers argued three main points. One, there was no reason for a valve manufacturer to warn about the hazards of asbestos gaskets or packing contained in their valves based on the medical and scientific literature at the time which concluded there was no danger of exposure to these materials. Secondly, the Navy was aware of asbestos hazards from insulation, had concluded there was no danger to asbestos gaskets and packing, and, consequently, made no changes to standard operating procedures, even as late as the mid 1990s. Thirdly, the plaintiff was never exposed to the asbestos in the valves Leslie Controls supplied to the U.S.

Navy during World War II because the asbestos-filled gaskets in the valves were clad in copper.

The plaintiff had requested \$16MM in damages with 30% liability assigned to Leslie Controls. On June 26, 2009, after a two-week trial, the jury issued a verdict in favor of Leslie Controls finding that Leslie had no duty to warn about the dangers of asbestos and that the plaintiff was not exposed to asbestos-containing gaskets or packing materials in a Leslie valve.