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VERDICTS, SETTLEMENTS & TACTICS

Nelson v. Lincoln Electric, Hobart Brothers and Crane Co.

No. 1335

Date: April 6, 2010

TOPIC: PRODUCTS LIABILITY - Asbestos

TITLE: \$ 14.5 Million Verdict In Suit Alleging Asbestos Exposure From Welding Rods

RESULT: \$ 14,500,000 jury verdict, consisting of \$ 1,000,000 economic damages; \$ 7,000,000 for pain and suffering; and \$ 6,500,000 for loss of consortium.

Posttrial motions have been filed and an appeal is expected.

INJURY: Mesothelioma; death.

Lost wages: \$ 1 million.

STATE: Pennsylvania

PLAINTIFF ATTORNEY: John M. DiDonato, David B. Halpern and Steven J. Cooperstein of **Brookman, Rosenberg**, Brown & Sandler, Philadelphia, PA

DEFENDANT ATTORNEY: Christopher Santoro; Kurt Rasmussen and Jeffrey Ring

SUMMARY: During the course of his employment as a welder at Lukens Steel from 1973 until 2006, James Nelson was exposed on a regular and frequent basis to numerous asbestos-containing products, including asbestos-coated welding rods, asbestos-containing sheet packing and asbestos pipecovering. In October 2008, at age 53, Mr. Nelson contracted mesothelioma as a result of his exposure to asbestos while working at Lukens Steel. He died on October 30, 2009.

Numerous defendants were named in plaintiff's lawsuit, although most defendants settled before trial. Plaintiff argued that the defendants manufactured and/or sold a defective product (asbestos). The product was alleged to be defective because it failed to contain a warning.

Lincoln Electric and Hobart argued that their welding rods did not admit any respirable fibers. Crane Co. argued that their asbestos-containing sheet gasket material admitted low levels of respirable fibers that could not have contributed to plaintiff's disease.

The case was reversed bifurcated, with damages tried first. The jury returned a damages verdict in the sum of \$ 14.5 million. Following the damages verdict, the only defendants left in the case were Lincoln Electric, Hobart Brothers and Crane Co.

In the liability phase of the case, the jury found that 11 defendants were responsible for plaintiff's disease, including Lincoln Electric, Hobart Brothers and Crane Co.

NOTE: Plaintiff's attorneys comment that defendants contended that plaintiff's mesothelioma was caused by inhalation of respirable fibers from pipecovering. Defendants Lincoln and Hobart argued that it was chemically and physically impossible for their asbestos-coated welding rods to give off respirable asbestos fibers; therefore, use of their product could not have contributed to plaintiff's disease. Defendant Crane Co.

argued that their asbestos-containing gaskets were encapsulated; therefore, the product admitted little or no respirable fibers that could have contributed to plaintiff's disease. The jury appeared to accept plaintiff's testimony that he observed visible airborne dust while using the products in question and he inhaled the dust. Plaintiff's expert testified that it was reasonable to assume that respirable asbestos fibers were included in the visible dust.

PLAINTIFF EXPERT WITNESSES: Daniel Dupont, M.D., pulmonologist.

DEFENDANT EXPERT WITNESSES: John Dupont, metallurgist; Charles Blake, industrial hygienist; Donna Ringo, industrial hygienist; and two pulmonary specialists and a pathologist.

SETTLEMENT NEGOTIATIONS: Lincoln Electric and Hobart never submitted a settlement offer prior to the verdict.

COURT: Nelson v. Lincoln Electric, Hobart Brothers and Crane Co., No. 1335 December Term 2008 (Philadelphia Cty. Ct. of Common Pleas, PA April 6, 2010)

PUBLICATION-DATE: May 2010