



Copyright 2010 West Group  
VERDICTS, SETTLEMENTS & TACTICS

Campbell v. A.W. Chesterton; Ottoviani v. A.W. Chesterton, et al.; Russo v.  
A.W. Chesterton, et al.

No. 060403347, No. 0741, P.C.C.P., June Term, 2006, No. 2104, September  
Term, 2006

Date: April 9, 2010

**TOPIC:** PRODUCTS LIABILITY - Asbestos

**TITLE:** \$ 1,293,800 Verdict/Defense Verdicts In Three Suits Alleging Asbestos Exposure From Welding  
Rods

**RESULT:** Jury verdict in favor of the plaintiff in the Campbell case in the amount of \$ 1,293,800 against  
defendant Hobart Brothers Company.

Jury verdicts in favor of the defense in the Ottoviani and Russo cases.

**INJURY:** Lung cancer; death.

**STATE:** Pennsylvania

**PLAINTIFF ATTORNEY:** Neil Kitrosser and Riki Redente from **Brookman, Rosenberg,** Brown &  
Sandler, Philadelphia, PA

**DEFENDANT ATTORNEY:** Timothy D. Rau, John J. Hare, and Carol Vanderwoude from Marshall  
Dennehey's Philadelphia office, as well as national counsel Bruce Bishop and John Bridger representing  
defendants Lincoln Electric Company and Hobart Brothers Company--both welding rod manufacturers.

**SUMMARY:** Mr. Campbell worked a total of 30 years at the Budd Company where he spent nearly the  
first 20 years on the assembly line performing electric arc welding in the automotive department. Mr.  
Campbell was diagnosed with lung cancer in December 2005 and died on January 13, 2006, at the age of  
76.

Mr. Ottoviani worked for several years in the early 1970s as a boiler repairman and welder. He was  
diagnosed with lung cancer in April 2006 and died on February 1, 2007, at the age of 58.

Mr. Russo was a welder his entire life starting in the U.S. Navy in the mid 1940s. Mr. Russo's career  
included welding at Sun Shipyard, Pennsylvania Railroad, Baldwin Ironworks and Baldwin Locomotive  
and Boeing Vertol. Mr. Russo was diagnosed with lung cancer on August 9, 2006, and died on August 27,  
2006, at age 83.

In addition to their occupational asbestos exposure, all three plaintiffs had significant smoking  
histories, which plaintiffs conceded also contributed to their lung cancer.

Suit was brought against Lincoln Electric Company and Hobart Brothers Company--both welding rod  
manufacturers.

Plaintiffs conceded that smoking was a factor in the decedent's development of lung cancer, but argued  
that their asbestos exposure combined with their smoking created a synergistic effect which greatly  
increased their risk of getting cancer and ultimately contributed to each of them getting lung cancer.

Plaintiffs provided evidence that they were exposed to dust from the asbestos-containing flux coatings on the rods prior to their being used in the electric arc welding process when they hammered the flux off the rods to use some of these "bare" rods as filler for gaps and holes, as well as when they bent these rods to use as "S-hooks." A coworker of Mr. Campbell's testified that he worked on the Budd Company assembly line with Mr. Campbell for nearly 20 years and that they routinely hammered the flux coating off the welding rods which created dust in their vicinity on a daily basis during that time period. A coworker in Mr. Russo's case from the Boeing plant testified that they also used welding rods and were exposed to dust when they used them for filler or made "S-hooks" out of them, however this coworker only worked in close proximity to Mr. Russo for a year at Boeing, and although he testified they used the same kind of welding rods all over the plant at Boeing, plaintiff's had no additional testimony regarding Mr. Russo's use and exposure to specific welding rods in his case. Mr. Ottoviani testified via a video deposition that was made prior to his death, however, his case had the least amount of evidence regarding his use and exposure to asbestos welding rods during approximately three years when he worked as a boiler repairman during which time he testified he was also exposed to asbestos from many other sources.

Defendants presented the following defense arguments: 1.) That asbestos did not contribute in any way to causing any of the plaintiffs' lung cancer--this was solely attributable to the plaintiffs' smoking histories (because of the lack of pleural plaques on the plaintiff's lungs-- any pulmonary fibrosis was attributed to "idiopathic pulmonary fibrosis" rather than asbestosis); 2.) Their welding rods were not defective and did not require any warnings concerning their asbestos content because the asbestos was encapsulated in the rods during the manufacturing process and could not release respirable asbestos fibers; and 3.) Therefore the asbestos in the welding rods could not have been a substantial contributing factor to causing plaintiffs' lung cancers or death.

Defendants conceded that some of their welding rods contained asbestos in the outer flux coating from approximately 1940 through 1981.

**NOTE:** Plaintiffs' attorneys comment that an interesting twist in these trials is the fact that Judge Smith granted defendant's Motion in Limine objecting to reverse bifurcation, thereby making this a straight through trial where liability and damages were tried together--instead of being tried in a reverse bifurcated fashion, which is routinely done in asbestos trials in Philadelphia, with damages decided initially in Phase I and liability decided second in Phase II.

It should be noted that lung cancer cases are some of the most difficult to win in asbestos litigation, especially when you have a significant smoking history of the plaintiff. These cases are much harder to win than mesothelioma cases due to the fact that mesothelioma is almost always caused by asbestos exposure, which is usually conceded by defendants and mesothelioma can be caused by a relatively small dose of exposure to asbestos--where in lung cancer cases causation of the asbestos disease is almost always contested and one also has to prove a significant exposure to asbestos fibers by the plaintiff in order to establish causation.

The jury began deliberations on April 8, 2010, and after three hours sent a note to Judge Smith stating that they were deadlocked and could not reach a verdict, being split five to three. Judge Smith instructed them to continue their deliberations. A verdict was reached in all three cases the following day on April 9, 2010. The jury provided verdicts in favor of the defense in the Ottoviani and Russo cases and in favor of the plaintiff in the Campbell case in the amount of \$ 1,293,800 against defendant Hobart Brothers Company. Jurors told the attorneys that the previous day they were deadlocked five to three in favor of the defense. When polled all 8 jurors found unanimously in favor of the Campbell case and for the defendants in the other two cases. Plaintiffs expect that the defendant will appeal and plaintiff will file a motion for delay damages.

**PLAINTIFF EXPERT WITNESSES:** Daniel Dupont, D.O., a pulmonary expert specializing in asbestos diseases of the lungs; David Hopkins, an actuarial expert who provided lost earnings information in the case of Andrew Ottoviani.

**DEFENDANT EXPERT WITNESSES:** During the trial defendants Hobart Brothers and Lincoln Electric Companies' presented a total of nine defense experts, comprising of four medical experts (Lee Sider, M.D.,

Allen Gibbs, M.D., Alan Pope, M.D. and James D. Crapo, M.D.), two material science engineers (John Dupont and Thomas Eager), one industrial hygienist (Mary Finn, P.I.H.) and two company representatives.

**COURT:** Campbell v. A.W. Chesterton, 060403347 (Philadelphia Cty. Ct. of Common Pleas, PA, April 9, 2010); Ottoviani v. A.W. Chesterton, et al., P.C.C.P., June Term, 2006, No. 0741 (Philadelphia Cty. Ct. of Common Pleas, PA, April 9, 2010); Russo v. A.W. Chesterton, et al., September Term, 2006, No. 2104 (Philadelphia Cty. Ct. of Common Pleas, PA, April 9, 2010)

**PUBLICATION-DATE:** May 2010