

Defense defeats \$65M claim that asbestos caused mesothelioma

By Laurinda Keys
Daily Journal Staff Writer

A Yukevich Cavanaugh team has won a complete defense verdict for a brake parts manufacturer against a \$65 million claim for the death of a 57-year-old mother from alleged asbestos transfer after 29 other defendant companies had settled.

The fundamentals of the defense were that exposure to the type of asbestos in the Brake Parts Inc. product was very low and doesn't cause mesothelioma. Yukevich Cavanaugh called witness experts to testify that this decedent's mesothelioma was caused by intrinsic factors including aging.

"You can get any type of cancer the older you get," Steven Smelser of Yukevich Cavanaugh, said in an interview Monday after "a weekend of rest."

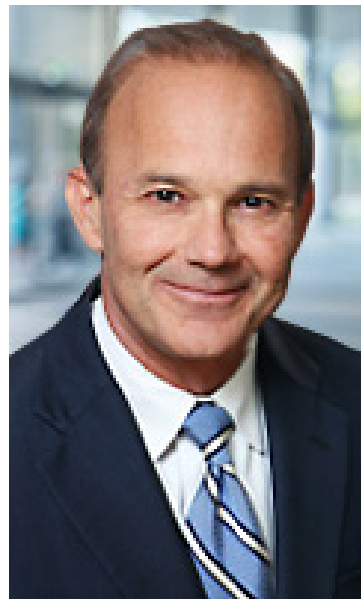
The trial before Los Angeles County Superior Court Judge Mary Ann Murphy took three weeks. The jury returned the 34-question verdict on Thursday after one day of deliberation.

The plaintiffs told the jury in closing arguments that the defendants should pay \$65 million, including punitive damages. Brake Parts Inc. was the last of 30 defendants; the others had settled, Smelser said. *Solis v. BrakePartsInc.*, 20STCV-41475, (L.A. Super. Ct., filed Oct. 27, 2020.)

Smelser acknowledged that the woman's age was a challenge in the trial in which he and James Ostertag of the same firm defended Brake Parts Inc., but said the jury was shown "she had a 10 times greater



SMELSER



OSTERTAG

risk of cancer between 30 and 57 just by the fact she was aging."

Although it was not the defense's burden to offer an alternate explanation for the mesothelioma, they presented witnesses anyway to explain to the jury that just because someone has cancer doesn't mean it was caused by something external.

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— Steven Smelser
Yukevich Cavanaugh

Smelser also noted that Brake Parts Inc. carried an OSHA warning of potential cancer risk on all its packages.

The lawsuit, part of *LAOSD Asbestos Action, JCCP No. 4674*, was filed a year ago on behalf of Leon Solis, his son, and two daughters, for the death of the plaintiffs' wife and mother, Sylvia Solis. Solis and his son transported agricultural produce in the Central Valley and had a business repairing trucks

and vehicles, including replacing brakes and gaskets.

Scott Frost and Andrew Seitz of Scott Law Firm in San Pedro filed

the complaint. Frost did not respond to emailed questions.

Joseph Trunk of Meiorowitz and Wasserberg LLP in Chicago joined the case for trial, in which the plaintiffs claimed that Leon Solis and his son got asbestos on their clothes from this work, which transferred to Sylvia Solis as she did the laundry. She also was sometimes a bystander as their shop was near the family home.

She died of peritoneal mesothelioma, cancer of the lining in the pelvic area. Most asbestos cases relate to lung cancer.

"This was a part of our defense, that this type of asbestos does not make it to the peritoneum," Smelser said.

The challenges included the relatively young decedent "in a situation where we are one of many friction parts defendants.

"The plaintiffs had good experts and had a very simple theory that she was exposed to asbestos, got cancer and passed away from it," Smelser said.

"Generally, those are very difficult to defend unless you can point to she worked at a facility that had an affable type of exposure. We didn't have that to shift to ... but people get cancer, even without exposure. We had very good experts who were able to explain that process in great detail," he said.

The plaintiffs went to the jury on five causes of action: Strict liability design defect, negligence, strict liability failure to warn, negligent failure to warn, and concealment.

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