

Daily Journal

January 8, 2010

VERDICTS & SETTLEMENTS

TORTS

PRODUCT LIABILITY

Asbestos Exposure

VERDICT: Defense.

CASE/NUMBER: Willie Martin, Betty Martin v. Caterpillar Inc., Dana Companies LLC, et al. / BC378790.

COURT/DATE: Los Angeles Superior Central / June 23, 2009.

JUDGE: Hon. Kevin C. Brazile.

ATTORNEYS: Plaintiff - Stephen M. Fishback, Diran H. Tashjian (Keller, Fishback & Jackson, LLP, Tarzana); J. Bruce Jackson (Keller, Fishback & Jackson, LLP, San Francisco); Daniel L. Keller (Keller, Fishback & Jackson, LLP, New York, N.Y.).

Defendant - Mark S. Geraghty, Kevin Wyles (McKenna, Long & Aldridge, LLP, Los Angeles) for Dana Companies LLC; Reynold M. Martinez, Gregory C. Read, Michael C. Scanlon, Steven D. Wasserman (Sedgwick, Detert, Moran & Arnold, LLP, San Francisco) for Caterpillar Inc.

MEDICAL EXPERTS: Plaintiff - Carl A. Brodtkin, M.D., MPH, occupational medicine, Seattle, Wash.; Barry Horn, M.D., pulmonology, Berkeley.

Defendant - Victor Roggli, M.D., pulmonary pathology, Durham, N.C.; David Weill, M.D., pulmonology, Palo Alto.

TECHNICAL EXPERTS: Plaintiff - Barry Castleman, Sc.D., public health, Baltimore, Md.; William M. Ewing, C.I.H., industrial hygiene,

Kennesaw, Ga.; Joseph H. Guth, Ph.D., industrial hygiene, Norfolk, Va.

Defendant - Michael Connor, C.I.H., industrial hygiene, San Francisco; Patrick Hessel, Ph.D., epidemiology, Alberta, Canada; John Spencer, C.I.H., industrial hygiene, Columbia, Md.

FACTS: Plaintiff Willie Martin was diagnosed with lung cancer in March 2006. Martin had been employed as a heavy equipment mechanic at a Caterpillar Inc. dealership from the 1960s to the 1990s. During this time, Martin claimed to have been exposed to asbestos-containing products at this dealership, as well as at other jobs.

Martin filed suit against Caterpillar Inc. (Caterpillar), Dana Companies LLC (Dana), a gasket manufacturer and seller, as well as other asbestos-containing product manufacturers and sellers, claiming his exposure to asbestos at work were partly the cause of his cancer. Except for Caterpillar and Dana, the other defendants were dismissed or settled before trial. The court granted the defendants' motion to limit the testimony of Martin's experts to how asbestos might have been a contributing factor to Martin's lung cancer.

At trial, Caterpillar and Dana evidenced numerous studies that showed auto mechanics were not at an increased risk for lung cancer and mesothelioma, nor was there an increased risk for lung cancer from working on heavy equipment.

PLAINTIFF'S CONTENTIONS:

Martin alleged that his lung cancer was the result of his exposure to asbestos contained in the gaskets and brakes he worked on at the Caterpillar dealership. He claimed the gaskets and brakes were manufactured and sold by Dana. Martin admitted that his smoking habit was one cause of his cancer; he maintained, however, that asbestos-exposure contributed substantially to his cancer, as well. Martin contended that his excluded experts planned on testifying that each exposure to asbestos was a substantial factor in contributing to his cancer.

DEFENDANTS' CONTENTIONS:

The defense contended that Martin's smoking habit was the sole cause of his lung cancer, arguing that he smoked heavily throughout his lifetime. They also argued that Martin's exposure to asbestos from their products was insufficient to have caused his cancer.

INJURIES: After being diagnosed with lung cancer, Martin had a portion of one lung removed. Martin still experiences significant breathing problems, and alleges a significant decrease in his life expectancy. Martin's wife also filed a loss of consortium claim. The defense stated that Martin's anticipated future medical treatment was minimal.

RESULT: The jury decided for the defense.