

Florida Jury Awards \$20M to Mesothelioma Plaintiff

By Correy Stephenson
Staff writer

A Florida jury has awarded more than \$20 million to a man who developed mesothelioma after a brief but intensive four-month window of exposure to asbestos.

Charles Garrison spent one summer remodeling an attic apartment and was exposed to asbestos from the joint compound he used, explained his attorney, Juan P. Bauta of The Ferraro Law Firm in Miami.

While his exposure window was limited, it was also intensive, Bauta noted, because Garrison was living and sleeping in the apartment he was working on.

At trial, Bauta argued that Union Carbide, the maker of the asbestos found in the Georgia-Pacific product Garrison used, failed to warn him about the dangers and hazards of asbestos. The plaintiff also claimed that Union Carbide was strictly liable for his injuries.

Georgia-Pacific settled prior to trial for a confidential amount, Bauta said, but Union Carbide offered up a “kitchen sink” defense, contesting every element of the plaintiff’s case.

“They disputed that Garrison had mesothelioma but said that if he has mesothelioma, it wasn’t caused by asbestos. If it was caused by asbestos, then it wasn’t caused by [Union Carbide’s] asbestos; if it was caused by our asbestos, well, Georgia-Pacific is also at fault, and also, since [Garrison] is in remission, no harm, no foul,” Bauta said.

A call requesting comment from Union Carbide’s attorney Michael Terry, a partner at Hartline Dacus Barger Dreyer in Corpus Christi, Texas, was not returned.

A spokesperson for Union Carbide called the verdict “grossly excessive and completely unsupported by the facts or applicable law.”

“The credible evidence introduced at trial clearly demonstrated that Mr. Garrison was not exposed to asbestos from Union Carbide and that he suffers from a cancer unrelated to any asbestos exposure. His cancer is currently in complete remission based on the testimony of his treating physicians,” spokesperson Scot Wheeler said, adding that the company plans to appeal and “believes that this verdict will be completely set aside by post-trial



Juan P. Bauta, II



Bauta said Garrison saw no warning labels on the joint compound and had no idea the product contained asbestos.

Garrison and his wife Cynthia both testified during the two-week trial, as did three of his treating physicians. Bauta also called three experts, one in cell biology who testified about how asbestos moves to the pleura and causes cancer, another in biomedical science who told jurors about the effects of asbestos exposure and a pathologist who confirmed Garrison’s mesothelioma diagnosis.

The defense contested every aspect of the plaintiff’s case, Bauta said, including his diagnosis of mesothelioma.

Garrison’s disease had an unusual presentation, he said, with the cancer having metastasized to his esophagus; difficulty in swallowing is what sent Garrison to the doctor in the first place.

motions or through the appellate process.”

Remodeling for rent

Charles Garrison, now 61, was diagnosed with mesothelioma in 2008.

During a roughly four-month period in college, Garrison cut a deal with a cousin who owned a small apartment building near the University of New Hampshire.

In exchange for free rent, Garrison agreed to remodel an attic apartment. During the process, he used a Georgia-Pacific joint compound product, which contained asbestos manufactured by Union Carbide.

“That was his only exposure,” Bauta said. “He never worked directly with the product again.”

Doctors initially suspected esophageal cancer, but a sample of the tumor – which was outside the esophagus – revealed mesothelioma cells.

At trial, the defense had a pathologist testify that he was uncertain whether Garrison really suffered from mesothelioma and needed more tissue to be certain, Bauta said. They also called a pulmonologist who testified that Garrison's disease was not mesothelioma.

Interestingly, neither doctor testified definitively about what Garrison suffered from if it wasn't mesothelioma, Bauta said.

"They muddied the waters a bit," he said.

Overcoming the multifaceted defense forced Bauta to "spend a lot of time [addressing] all these little issues," he

explained. "And when the diagnosis is in question, that's a big wrinkle. If the plaintiff doesn't have mesothelioma the case ends right there."

Bauta said the defense's approach failed to convince jurors.

"When you dilute your message by blaming everything under the sun, it creates a real problem for the case," he said.

Damages reflect current lifestyle

Bauta said the size of the award reflected Garrison's inability to work and "nonstop" chemotherapy treatments over the last two years.

"Every four weeks, he gets a chemo treatment and spends the next three weeks recovering from the effects," he said. "He feels okay for about one week and then goes back in for the next treatment."

One of Garrison's treating doctors testified at trial that while he is currently in remission, he would "be in trouble" if he stopped the chemotherapy treatments, which are keeping him alive.

Bauta suggested jurors award Garrison \$15 million and his wife \$7 million, apportioning 30 percent of the fault to Georgia-Pacific and the rest to Union Carbide. He said Union Carbide proposed the reverse – telling jurors to apportion 80 percent of the fault to Georgia-Pacific.

After just one and a half hours of deliberations, the jury awarded Garrison \$16 million and change and his wife \$4 million, apportioning 80 percent of the fault to Union Carbide.

Because Georgia-Pacific settled prior to trial, Garrison's total award was reduced to \$16,646,000.

The entire award is compensatory damages. Under Florida law, punitive damages are not available in asbestos cases.

Plaintiff's attorneys: Juan P. Bauta and Case Dam of The Ferraro Law Firm in Miami.

Defense attorneys: Michael Terry of Hartline Dacus Barger Dreyer in Corpus Christi, Texas; Bruce Bishop of Wilcox & Savage in Norfolk, Va.; Colin Kelly of Alston & Bird in Atlanta, Ga.

The case: Garrison v. Union Carbide; Sept. 16, 2011; 17th Judicial Circuit Court, Broward County, Fla., Judge John Murphy III.

Questions or comments
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