

[Products Liability Law Daily Wrap Up, TOP STORY—ASBESTOS—Fla. Dist. App.: \\$8M verdict for mesothelioma plaintiff against Crane and R.J. Reynolds reversed for new trial, \(Sept. 15, 2016\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

An \$8 million verdict against Crane Co. and R.J. Reynolds was reversed by a Florida appellate court and a new trial ordered because the opinions of three of the plaintiff's experts on causation had not been shown to be reliable and should not have been admitted by the trial court. Counsel for the plaintiff also improperly suggested an arbitrary and improper means for the jury to use in calculating the plaintiff's damages ([Crane Co. v. DeLisle](#), September 14, 2016; motion for rehearing denied, previous opinion withdrawn and substituted, November 9, 2016, Warner, M.).

After he was diagnosed with mesothelioma, the plaintiff brought negligence and strict liability failure-to-warn and design defect claims against 16 defendants, alleging that they had caused him to be exposed to asbestos. Only the claims against Lorillard Tobacco Co. and Hollingsworth & Vose Co. (R.J. Reynolds was successor by merger to these two defendants) and Crane Co. went to trial. At trial, the plaintiff presented evidence that from 1962 to 1966 he was exposed to Crane's Cranite sheet gaskets, which contained chrysotile asbestos fibers, and also testified that from 1952 to 1956 he had smoked Original Kent cigarettes with asbestos-containing Micronite filters. The defendants challenged each of the plaintiff's experts, but their opinions were admitted by the trial court, which also denied the defendants' motions for a directed verdict. The jury awarded \$8 million in damages to the plaintiff, apportioning 16 percent of the liability to Crane, 22 percent to Lorillard, 22 percent to H&V, and 40 percent to two other companies. The trial court denied the defendants' post-trial motions, and they appealed.

R.J. Reynolds. A new trial was ordered for R.J. Reynolds because the causation opinions of two of the plaintiff's experts should not have been admitted by the trial court. The causation testimony of a pulmonologist for the plaintiff should have been excluded because he did not provide an adequate basis for his opinion that the plaintiff's smoking of Kent Micronite cigarettes containing crocidolite asbestos, rather than his exposures to chrysotile asbestos, was a substantial contributing cause for his mesothelioma. He relied upon the testimony of two other experts for the plaintiff to assume a level of fiber release, but not to establish the dose; otherwise he relied only upon his experiences but did not explain how they applied, and the "weight of the medical literature" but did not identify any specific literature.

The opinion of an industrial hygienist and toxicologist originally called by Crane on general causation regarding low-level exposure to crocidolite asbestos was reliable and would be helpful to a jury, but he did not demonstrate the reliability of his opinion on Kent cigarettes. A study by an expert for the plaintiff was the sole study upon which he relied in forming the basis for his opinion that smoking Kent cigarettes would constitute a significant exposure to crocidolite asbestos, but he did not know whether the methodology underlying that study was unreliable or whether it had been peer reviewed.

Crane Co. A directed verdict on all claims was ordered for Crane Co. because the testimony of the plaintiff's only expert on causation regarding the link between its products and the plaintiff's mesothelioma should have been excluded by the trial court. Although this expert testified that he had followed the Bradford Hill criteria in formulating his opinions, he did not explain these criteria or how they applied in this case. The studies upon which he relied involved mixed types of asbestos even though in this case he was opining on products containing only chrysotile asbestos. His assumptions that all commercial types of asbestos were "probably" of the same potency were unsupported by reliable data, and his theory that "every exposure" to asbestos is a substantial contributing factor in causing injury has been rejected repeatedly by the courts.

Other issues. The trial court properly allowed the opinions of an environmental scientist who tested asbestos-containing products for fiber release. The appellate court did not believe the jury was misled by the trial court's refusal to submit to the jury the question of whether the plaintiff actually smoked Kent cigarettes, which was at issue at trial, but observed that the trial court should consider giving an appropriate instruction on product use at the new trial. Finally, remittur or a new trial on damages was warranted by the plaintiff's counsel's improper suggestion that the plaintiff be compensated for his injuries at an hourly rate based upon the rates at which the parties' experts were compensated, with the court further noting that the \$8 million awarded to the plaintiff was much higher than any previous award to a mesothelioma or asbestos plaintiff.

The case is Nos. [4D13-4351](#) and [4D14-146](#).

Attorneys: Rebecca C. Kibbe (K&L Gates LLP) for Crane Co. Elliot H. Scherker (Greenberg Traurig, P.A.) for R.J. Reynolds Tobacco Co. and Hollingsworth & Vose Co. Gary M. Farmer, Sr. (Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.) and David A. Jagolinzer (The Ferraro Law Firm, P.A.) for Richard DeLisle.

Companies: R.J. Reynolds Tobacco Co.; Hollingsworth & Vose Co.; Crane Co.

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