

## PRODUCT LIABILITY

## Lawyer overcomes obstacles to get asbestos verdict

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Attorney Juan P. Bauta III wasn't allowed to tell jurors that his still-healthy client had been diagnosed with mesothelioma before suffering any symptoms only because he was tested after watching his mother's painful suffocation death from the same disease.

Both mother and son had worked for the Aubin family's construction business that built nearly 70 homes in southwest Florida. That's where they were exposed to Georgia-Pacific drywall made with asbestos from Union Carbide more than 20 years ago.

Miami-Dade Circuit Judge Joseph Farina ruled testimony about the shared family cancer would be too prejudicial and refused to let a jury decide both cases at once. Aubin's mother's case is scheduled to be tried next year.

But not knowing how intimately familiar William Aubin was with the pain he will eventually suffer with his terminal diagnosis did not keep the jurors from deciding in his favor. The Sarasota man's parents founded Aubin Construction on Key Biscayne in the 1960s.

In May, the jury awarded the retired firefighter \$6.66 million in damages after a three-week trial and only four hours of deliberation.

Bauta said it is a victory against defense tactics that have grown more sophisticated in the 30-year-history of asbestos litigation.

"They've created new science," he said. "They've sponsored scientific studies that say asbestos wasn't as dangerous as we once thought. For the most part, it's hard to find a government agency other than in Canada who will say asbestos doesn't

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J. ALBERT DIAZ

Juan P. Bauta III said his client's victory came against defense tactics that have grown sophisticated in 30 years of asbestos litigation.

cause disease."

Asbestos is still produced in Canada. It was used in drywall as a fire retardant and because it absorbed moisture it was also used in adhesives like spackling compound, which allowed them to dry and bond more effectively.

Bauta defeated the "it's not so hazardous" defense by showing jurors internal company documents revealing Union Carbide required employees at its California asbestos plant to wear protective clothing and respirators.

"They were concerned about their employees because they didn't want to pay worker's compensation claims," he said.

At the same time, lawyers for Union Carbide, now owned by Dow Chemical, defended the case by saying they told drywall manufacturer Georgia-Pacific about the dangers of asbestos. They claimed Georgia-Pacific had a duty to warn the Aubins and others like them about any possible dangers.

The drywall sheets did not indicate the product contained asbestos, Bauta said.

"It's always an interesting thing to me that they say it's safe," he said. "But then they're also saying if you don't think it's safe, we told Georgia-Pacific that it was

dangerous, too. They're the ones who sold the plaintiff the materials.

"And the farther away you get from a manufacturer, the tougher these cases are," he said.

Georgia-Pacific executives testified they were never told asbestos could cause cancer. The company and two others reached a confidential settlement with Aubin in the weeks before trial, leaving Union Carbide as the lone defendant.

Several manufacturers that were not defendants were listed on the jury form and were found partially responsible. Union Carbide was blamed for the largest share at 46 percent, reducing its liability on the \$14.19 million award to \$6.66 million.

Federal regulators required warnings to accompany sales of asbestos after Aubin was exposed. But Bauta told jurors, "They told their salesmen to tell customers that they don't know anyone who's been sick and to basically disregard the warning."

Studies have shown symptoms of mesothelioma take up to 20 years to manifest. The average patient dies within a year of diagnosis, according to the American Cancer Society. Aubin was diagnosed in 2008.

His mother had tumors in her lungs, but doctors found cancer in Aubin's abdomen — the even more rare form of peritoneal mesothelioma. Bauta said his client's treatment to shrink the tumors have been successful — so far.

"It's a terminal disease," he said. "He's waiting for it to kick into high gear, and then they'll see what they can do."

Union Carbide has appealed the verdict and award to the 3rd District Court of Appeal. Attorneys for Union Carbide did not return calls seeking comment.