

Legal NEWS

Immediate Release

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First U.S. Jury Verdict Linking Asbestos From Welding Rods To Mesothelioma And Lung Cancer Affirmed By New York Appeals Court; Billions Were Sold Over Five Decades; Consolidated-Case Jury Verdict That Found Welding Companies Liable Was Won In 2003 By Nationally Known Mass Toxic Tort Firm

Levy Phillips & Konigsberg, LLP Victory Was Second Major Blow To Welding Industry In Nine Days; On Dec. 20 An Illinois Appeals Court Upheld Verdict That Welding Rod Fumes Cause Parkinson's Disease

NEW YORK CITY — In the second major verdict against the U.S. welding industry in little more than a week, a New York State appeals court on Dec. 29th affirmed the first-ever jury finding that asbestos-containing welding rods, sold in the billions up to the early 1980's, had caused lung cancer and mesothelioma, Attorney Jerome H. Block of the nationally known mass toxic tort law firm of Levy Phillips and Konigsberg, LLP announced.

The New York Supreme Court, Appellate Division, First Department, in a published decision upheld the July 2003 jury verdict in favor of two persons, Angel Gomez, who died following the trial, and the late Daniel Tucker. Both men worked with and around asbestos-containing welding rods. The jury awarded:

- Gomez a total of approximately \$3.19 million against Lincoln Electric Company ("Lincoln"), reduced 25 percent since Gomez was a cigarette smoker; and
- Tucker's estate a total of approximately \$3.5 million split between Lincoln and Hobart Brothers Company ("Hobart").

Lincoln, publicly traded, and Hobart, a wholly owned subsidiary of publicly traded Illinois Tool Works, Inc., "had argued that their asbestos product was different and incapable of causing lung cancer and mesothelioma. The jury rejected these arguments, and now their verdict has been unanimously upheld by the appellate court," Block said.

The landmark New York appellate decision came on the heels of a Dec. 20th Illinois appellate court decision upholding a 2001, \$1 million negligence and product liability award to Lawrence E. Elam against Lincoln, Hobart, and Airco/The BOC Group, Inc. After a four-week trial a jury found that manganese fumes from the defendants' welding rods caused central nervous system injury resulting in Elam's Parkinson's disease. Elam is represented by Robert Bosslet, Esq., of Bosslet & O'Leary, Ltd., Madison County, Illinois.

The welding rods at issue in the Gomez and Tucker cases, known by their American Welding Society Classification "6010," were and continue to be a top-selling, all-purpose welding rod. Up to the early 1980s, these rods were coated with a mixture containing 5% to 15% asbestos, according to trial testimony. "We proved that asbestos from the coating of these rods would be released in the air and breathed in by workers like Mr. Gomez and Mr. Tucker who had no idea

that asbestos could kill them,” Block explained. For at least a half century, from the 1930’s through the early 1980’s, Lincoln manufactured billions of asbestos-containing welding rods, which were commonly used in industry, Block noted. In addition to welders, others who worked around them were endangered by these rods, Block added.

According to trial testimony, during these five decades, Lincoln never informed workers that there was asbestos in the coating of any of its welding rods, including the 6010s; and never placed a warning label on the container of these rods about the hazards of asbestos.

The jury found that Gomez was exposed to asbestos from welding rods made by Lincoln, and that the rods were a “defective”, unreasonably dangerous product under New York law; the jury also found that Lincoln was negligent in selling the asbestos-containing rods without adequate warning, and that Gomez’s exposure to the rods was a substantial cause of his lung cancer. In the Tucker case the jury made the same findings against Lincoln and Hobart with respect to Tucker’s mesothelioma. In both cases, the jury made the additional finding that Lincoln acted with reckless disregard for the safety of others, according to Block.

“The havoc wreaked by asbestos and the toll it continues to take in human lives and health is sad testament to the failure of many companies to adhere to the basic corporate responsibility of protecting human life,” Block said. “This appellate victory is a major milestone for welders, those who worked around welders, and their families who have been victimized by asbestos-caused cancers,” Block said.

For Editors & Producers:

Case File

Christine Wiegman, Individually and as the Administratrix of the Estate of Daniel Tucker, Plaintiff-Respondent, v A C & S, Inc., et al., Defendants, The Lincoln Electric Company, et al., Defendants-Appellants.; Angel Gomez, Plaintiff-Respondent, v A C & S, Inc., et al., Defendants, The Lincoln Electric Company, Defendant-Appellant

Media Contacts and Case Documents

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About Levy Phillips & Konigsberg, LLP (<http://www.lpklaw.com>)

Levy Phillips and Konigsberg, LLP is nationally recognized for handling all phases of state and federal complex legal matters, from initial investigation through, litigation, trial and appeals. The firm represents individuals and employees with mass-tort, toxic tort, product liability, personal injury, whistleblower, qui tam, employment discrimination and retaliation claims. With offices in midtown Manhattan, Goshen, New York, and suburban Princeton, New Jersey, the firm's attorneys consistently have won landmark decisions enhancing the rights of individual workers and consumers injured by exposure to toxic substances, defective products and negligent behavior, with jury trial damage awards among the highest in the nation. Recent verdicts involving asbestos exposures include: a 2004 verdict in which a New York jury awarded \$22 million to two mesothelioma victims; and a 2005 verdict in which a New Jersey jury awarded \$10 million to a mesothelioma victim.