

\$4.5M Awarded to Family of Kansas City Ceiling Tile Installer in Asbestos-Exposure Case

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LIBERTY, Mo. - June 5, 2009 - A Clay County jury has found three corporations liable for the death of a construction worker who worked with their asbestos-containing products more than three decades ago.

The jury awarded \$4.5 million to the wife and adult children of Robert Wagner, agreeing that his death was the direct result of lethal exposure to the asbestos contained in products manufactured and distributed by Conwed Corporation, Simpson Timber Company, and Bondex International in the 1960s and 1970s.

Mr. Wagner worked on major commercial construction projects, including Hallmark's Crown Center and the Kansas City International Airport. He primarily installed Conwed and Simpson acoustical ceiling tile that contained asbestos as a fire retardant. He regularly breathed asbestos dust generated from handling, cutting, and placing the tiles. His work also put him in constant, close proximity to drywall installers who generated copious amounts of asbestos dust from mixing, applying, and sanding joint compound used to fill seams between panels. None of the workers wore masks or breathing apparatus.

Mr. Wagner was an active 70-year-old outdoorsman and avid Harley-Davidson rider when he was diagnosed with mesothelioma in December 2006. He died six months later, before the case was filed, and was never deposed. Product identification and the nature and scope of his work was offered through testimony of former co-workers. Two of his colleagues testified in open court; the testimony of three additional co-workers was read into the record.

Mr. Wagner's co-workers testified that he installed thousands upon thousands of ceiling tiles during his long career tenure. They confirmed never having seen a warning on product packaging about the asbestos hazard, and none wore masks or breathing apparatus.

Product identification was central to the case. At the time of Mr. Wagner's employment, Conwed and Simpson offered both asbestos-containing and non-asbestos-containing product lines. The tiles - one hazardous and one not - looked virtually identical.

"The two types of ceiling tiles were visually impossible to tell apart," explained Troyce Wolf, WK partner and lead trial attorney.

Plaintiff's counsel performed an exhaustive search of Conwed's and Simpson's product catalogs during the years in question and demonstrated that about 75-percent of the ceiling tiles advertised in the commercial catalogs were the asbestos-containing Lo Tone products manufactured by Conwed. Additionally, Plaintiff's counsel showed that Conwed purchased thousands of tons of raw asbestos for use in its ceiling tiles, and that Simpson bought, rebranded and sold millions of square feet of those same Conwed ceiling tiles. This evidence, in conjunction with testimony from cell biologist Arnold Brody, Ph.D., helped the jury conclude that the tiles Mr. Wagner worked with were most likely Lo Tone, and that the asbestos contained in the Lo Tone tiles were responsible for Mr. Wagner developing mesothelioma.

"This was a hard-fought, hard-won battle against tremendous odds," continued Mr. Wolf. "Credit goes to Bob's family for their courage and determination, to Bob's co-workers for their honesty and willingness to come to court, and to the jury for their common sense and wisdom."

Mr. Wagner's wife of 50 years, Lois, and their son, Robin, attended court daily and were present when the verdict was read.

"The jury returned its verdict in three-and-a-half hours," noted Gibbs Henderson, Mr. Wolf's co-counsel. "Even without Bob's direct testimony, and the added complexity posed by the look-alike tiles, the jury saw the case for exactly what it is:

Corporations putting the profit motive ahead of the value of human life. We are pleased that the jury brought justice and closure to the Wagner family."

About Waters & Kraus, LLP

Waters & Kraus, LLP, is a plaintiffs' firm concentrating on complex product liability and personal injury/wrongful death cases. The firm's diverse practice includes toxic tort (asbestos and mesothelioma) litigation, pharmaceutical product liability, negligence, elder financial abuse, and consumer product liability, as well as qui tam (whistleblower), and commercial litigation. With offices in Texas, California, and Maryland, Waters & Kraus has litigated cases in jurisdictions across the United States on behalf of individuals from all 50 states, as well as foreign governments.

Brandy Dietz
Public Relations Coordinator
Waters & Kraus, LLP
3219 McKinney Ave.
Dallas, Texas 75204
Ph: 800.226.9880
Email: bdietz@waterskraus.com
www.waterskraus.com

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