

## VERDICTS & SETTLEMENTS

### \$3.6M for secondhand asbestos plaintiff

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Staff writer

A 57-year-old woman who was diagnosed with mesothelioma after two brief stints of working at an auto dealership has won \$3.6 million in her suit against Ford Motor Co. and the manufacturer of asbestos-containing brakes.

Lynda Daly worked as a warranty clerk at a Ford dealership for approximately one year in the 1970s and again for one year in the 1980s, but never directly handled brakes. She was diagnosed with mesothelioma last year.

Daly attributed the illness to her second-hand exposure at work and sued Ford Motor Co. and Pneumo Abex, an asbestos manufacturer, in Florida state court.

Juan P. Bauta, II, a partner at the Ferraro law firm in Miami, Fla., represented the plaintiff. He has litigated asbestos cases since 1991 but said this was one of his most challenging.

"The defendants disputed [the plaintiff's] diagnosis of mesothelioma and we had to present a secondhand expo-

sure case," he said.

Calls to lawyers for both defendants seeking comment were not returned.

#### Secondhand exposure

Lynda Daly worked at Ford dealerships in Wisconsin for about a year at a time in 1978 and 1987.

Daly worked as a warranty clerk, so she never worked with any brake products firsthand. But her desk at one of the dealerships with in the service bay, and at the other she was only separated from the service area by a half-wall divider.

In May 2007, Daly was diagnosed with mesothelioma. The average life expectancy for a person like the plaintiff who is undergoing chemotherapy is approximately 24 months from diagnosis, Bauta said.

Daly sued Ford and Pneumo Abex, the asbestos manufacturer, alleging that asbestos in the brake dust she was exposed to caused her illness.

Bauta said that the first line of defense was to deny that Daly had mesothelioma. He said that the defendants put an expert on the stand who testified that



Juan P. Bauta, II and Case A. Dam

#### AT-A-GLANCE

The plaintiff discovered internal documents that indicated the defendants warned their own people to take precautions, even while they were insisting their brakes were safe.

the plaintiff actually suffered from metastatic kidney cancer.

But Bauta decided not to get into a battle of the experts. Instead, he only had Daly's treating physicians testify about her condition.

"I wanted to create the contrast between her treating doctors, who at the end of the day are essentially

responsible for all of her care and treatment and the defense, who paid someone to dispute these diagnoses," he explained.

"It was a risk," he acknowledged, "but it allowed me to argue that as her treating doctors, they didn't have an axe to grind and they weren't being paid – this was their patient."

According to Bauta, the defendants also argued that their products were safe.

However, he discovered internal documents that indicated something else.

"They did a lot to warn their own people to make sure to wear respirators when working with brakes, but on the other hand they

told the court and the jury that their brakes were safe.”

**Deliberations and damages**

One wrinkle in the case was that Daly may have been exposed to asbestos-containing brakes at home, because her husband worked on vehicles there (with brakes that were also manufactured by Pneumo Abex) and she would sometimes help him out.

Bauta presented the home exposure because it was another potential source of exposure for Daly and liability for Pneumo Abex, but complained that the trial judge shouldn't have

allowed the issue of comparative fault to go to the jury.

“There was no evidence to support the negligence of the plaintiffs,” he claimed. “How could the Dalys be negligent when they did not know that the brakes contained asbestos and never saw a warning?”

Bauta asked the six person jury for \$14 million, but they ended ultimately awarded his client just \$3.6 million. The damage award is entirely compensatory, since Florida has legislatively abolished punitive damages.

The trial lasted three weeks, with the majority of time spent on the plaintiff's

case. Bauta said that the defense case lasted only three days; they introduced just two experts and put a number of documents into evidence.

The jury deliberated six hours before reaching a unanimous decision.

Bauta said that he wasn't concerned about the length of deliberations.

“My experience has been that when a jury deliberates for less than three hours, it is a defense verdict, so when we hit the three hour mark, I felt much better,” he said.

**Plaintiff's attorneys:** Juan P. Bauta, II and Case A. Dam of the Ferraro Law Firm in Miami, Fla.

**Defense attorneys:** Tom Radcliffe of DeHay & Elliston in Baltimore, Md. and Harold Morlan of Akerman Senterfitt in Orlando, Fla. for Pneumo Abex LLC; Henry Salas of Cole, Scott & Kissane in Miami, Fla. and Ronald F. Lopez of Thelen in San Francisco for Ford Motor Co.

**The case:** *Daly v. Ford Motor Co.*; Nov. 3, 2008; Broward County Circuit Court, Judge Robert Rosenberg.

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