



PROTECT YOURSELF

From Asbestos Lawsuits in the Rebuilding Industry

By David M. Governo, Esq. and Vincent N. DePalo, Esq.

Looking back at the boxing matches that captivated the world in the 1970s, 1980s, and 1990s, each one began the same way. The referee brought the boxers into the center of the ring and gave them final instructions: do not hit below the belt, obey my commands, and most importantly, protect yourselves at all times. Protecting yourself is a fundamental ingrained in every boxer. This Golden Rule of boxing is also key for any automotive rebuilder's success in avoiding and winning lawsuits.

Last fall, we represented a former auto parts rebuilder during a six-week trial. The plaintiff claimed that her husband's lung cancer was partly caused by asbestos, which she said was in the brakes our client re-manufactured, and partly caused by his cigarette smoking. The plaintiff's husband allegedly installed thousands of these brakes as a mechanic in the early 1960s. Over half a century later, the plaintiff's husband died from lung cancer. The plaintiff sued several auto parts companies, including our rebuilder client, as well as two tobacco companies. (The plaintiff's husband smoked for 53 years.) At trial, only our client and the tobacco companies remained as defendants in the case. Our client won, but one of the cigarette companies was hit with a \$43.1 million verdict.

Although the potential exposure from these types of claims against auto parts companies may seem outrageous, they are regularly brought and are difficult to defend against. This article will give you some tips to improve your chances to protect yourself against such claims.

The Early Rounds: How the Past Reverberates into the Present Asbestos Lawsuits

Beginning in the 1960s, scientists became aware of the negative health effects asbestos had on workers in the shipbuilding, mining, and textile industries. No one, however, studied the effect of asbestos on auto mechanics in the United States until the 1970s. As the science linked asbestos to

certain cancers, lawsuits against companies that manufactured asbestos products exploded nationwide.

Auto parts companies and rebuilders are frequently named in lawsuits alleging asbestos disease, because many of the industrial asbestos manufacturers, such as Johns-Manville, are bankrupt. Every rebuilder, especially those in business in the 1970s or earlier, should be aware of the tremendous risk these cases present.

In most types of cases, if you are not sued in the first several years after someone is injured by your product, the statute of limitations prevents the plaintiff from filing suit. Unlike many injuries, asbestos-related diseases can take decades to develop after asbestos inhalation. However, the statute of limitations does not start to run until a person is diagnosed with a disease. Although asbestos is not banned from use in brakes and clutches today, jurors often fail to distinguish the difference between the types of asbestos and the types of exposure. These lawsuits turn on details—employees, purchases, work, and parts—as well as variations in state law.

Backpedaling from Early Offensive Strikes

The auto industry began warning about potential health hazards from asbestos in brakes and clutches in the 1970s in response to asbestos research and lawsuits in other industries where asbestos was used. Although these warnings were designed to protect manufacturers and rebuilders from lawsuits, they had the opposite effect. Ironically, these warnings about the potential health hazards of asbestos created the impression that hazards existed, when, in fact, not a single scientifically-validated study has ever shown that asbestos in brakes causes an increased risk of cancer for auto mechanics.

The auto industry's good faith warning efforts are now being misconstrued by plaintiffs' experts as insufficient. They are used as evidence that the warnings themselves prove hazards existed. These "experts" cloak scientifically questionable

What Is Asbestos?

Asbestos is a set of six naturally occurring silicate minerals, all of which all have in common, their shape—long (roughly 1:20 aspect ratio), thin fibrous crystals, with each visible fiber composed of millions of microscopic "fibrils". These fibrils can be released by abrasion and other processes.



Fibrous tremolite asbestos

Asbestos has been mined for over 4,000 years, but large-scale mining began at the end of the 19th century, when manufacturers and builders began using asbestos for its desirable physical properties. Some of those properties are sound absorption, and resistance to fire, heat, and electricity. These desirable properties led to asbestos being used very widely until the late 20th century.

Inhalation of asbestos fibers can cause serious and fatal illnesses including lung cancer, mesothelioma, and asbestosis (a type of pneumoconiosis). Asbestos is currently estimated to cause 255,000 deaths per year. Concern of asbestos-related illness in modern times began with the 20th century and escalated during the 1920s and 1930s. By the 1980s and 1990s, asbestos trade and use were heavily restricted, phased out, or banned outright in an increasing number of countries.

opinions in “sound bites” tailored to appeal to jurors, who seldom have an appreciation for the science and history involved. Oftentimes, sympathy trumps reality in the courtroom.

Hands Up: Protect Yourself at All Times, Even Before the First Bell

Because most lawsuits claiming harm from asbestos-containing products involve issues from decades ago, defending any company requires accurate and believable historical evidence, which is based on good record keeping. Plaintiffs testify to their use of a particular company’s products 30 or 40 years ago with amazing specificity. Often employees who might have contradicted these “facts” are deceased or otherwise unavailable. Sophisticated and painstaking factual investigations are key components in a successful defense.

These cases are not only capable of million-dollar verdicts, they are expensive to defend. But many companies that are sued have no proof of their historical insurance. Preserve all insurance-related

documentation that still might exist, even if it’s simply correspondence or notes. Try to locate and preserve all insurance policies dating back to your company’s creation. Most insurance companies began to exclude asbestos-related claims decades ago, but policies that existed early on may have provided coverage for asbestos lawsuits. This coverage may protect your company and pay for your legal expenses.

Asset protection is also vital. An optimal corporate structure is critical to protect you and your company. This is a step that must be taken before a claim is made, in order to have any chance of being successful.

Finally, asbestos lawsuits are unusually perilous and complicated compared to typical cases. Hiring specialized legal counsel—with a proven track record for defending companies against these claims—is the first step to keeping your company safe if you are sued. Even before you are served with a lawsuit, if you have any concerns, it is a good idea to seek legal advice by hiring an outside attorney

to help you protect yourself by reviewing your records, analyzing your insurance coverage, and establishing the optimal corporate structure for your company.

By taking these steps, you can protect yourself and dodge the next left hook.

Attorneys David M. Governo and Vincent N. DePalo from Smith Duggan Buell & Rufo, LLP in Boston recently won the first asbestos-tobacco trial in Massachusetts history. They defend companies and individuals in cases involving asbestos, lead, insurance, indoor air quality, toxic torts, and products liability. They can be reached at david.governo@smithduggan.com and vincent.depalo@smithduggan.com or at www.smithduggan.com.

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