

March 2, 2015

An ALM Publication

## NEW YORK

## FEATURED VERDICT

### SCHENECTADY COUNTY

### PRODUCTS LIABILITY

Failure to Warn — Marketing Defect — Asbestos — Toxic Torts

## Man's mesothelioma caused by industrial talc, estate alleged

**VERDICT** **\$10,550,000**

**CASE** A. Katherine Chisholm, Individually and as Personal Representative of the Estate of Richard G. Chisholm, Deceased v. R.T. Vanderbilt Company, Inc. Individually and as Successor in Interest to Gouverneur Talc Company, Inc., No. 1056/12

**COURT** Schenectady Supreme

**JUDGE** Richard T. Aulisi

**DATE** 2/11/2015

#### PLAINTIFF

**ATTORNEY(S)** Donald P. Blydenburgh, Levy Konigsberg LLP, New York, NY  
Arthur Prystowsky, Levy Konigsberg LLP, New York, NY

#### DEFENSE

**ATTORNEY(S)** Erik C. DiMarco (lead), Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, NY  
Thomas Radcliffe, DeHay & Elliston, L.L.P., Baltimore, MD

#### PLAINTIFF

**EXPERT(S)** Kristin K. Kucsma, M.A., economics, Livingston, NJ

Sean Fitzgerald, P.G., geology, Greensboro, NC

Jacqueline M. Moline, M.D., occupational medicine, New York, NY

David Rosner, Ph.D., public health, New York, NY

James Webber, Ph.D., environmental, Pleasantville, NY

#### DEFENSE

##### EXPERT(S)

Linda Dell, epidemiology, Amherst, MA  
Bryan Hardin, Ph.D., toxicology, Hilton Head, SC  
Tim Oury, M.D., pathology, Pittsburgh, PA  
Drew R. Van Orden, P.E., environmental engineering, Monroeville, PA



**Kristin Kucsma**  
Chief Economist  
Sobel Tindari Economics Group

**FACTS & ALLEGATIONS** In April 2010, plaintiff's decedent Richard Chisholm, 50, an engineer, learned that he was suffering mesothelioma, which is an aggressive, incurable cancer that can result from ingestion or inhalation of fibers of asbestos.

During the summers of 1976, 1977, 1978 and 1979, Chisholm worked at an Ohio-based manufacturer of ceramics. His work involved the handling of talc that had been supplied by Gouverneur-based Gouverneur Talc Co. Inc., which is a subsidiary of Norwalk, Conn.-based R.T. Vanderbilt Co. Inc. Chisholm claimed that his mesothelioma stemmed from his inhalation of fibers of asbestos that was contained in the talc. The disease ultimately claimed Chisholm's life.

Chisholm's widow, A. Katherine Chisholm, acting individually and as representative of her husband's estate, sued R.T. Vanderbilt. The plaintiffs alleged that R.T. Vanderbilt negligently failed to provide warnings that disclosed the risks that could have stemmed from the use of its talc.

Plaintiffs' counsel claimed that Mr. Chisholm's mesothelioma stemmed from exposure to asbestos that was contained in talc that was supplied by R.T. Vanderbilt. They claimed that prior tests had demonstrated that the talc contained a substantial concentration of asbestos, but the talc's packages did not

provide warnings that disclosed the material's associated risks.

Plaintiffs' counsel claimed that R.T. Vanderbilt's talc contained anthophyllite asbestos, and they noted that the material's fibers were detected in tissue that was removed from Chisholm's lungs. The plaintiffs' occupational-medicine expert opined that Chisholm inhaled fibers of the material, and she concluded that the exposure was a substantial component of Chisholm's development of mesothelioma. She reviewed the records of millers and miners who had worked in mines that were located in Gouverneur, and she concluded that their work involved hazards that increased their likelihood of developing an asbestos-related disease. The plaintiffs' environmental-health expert examined ore that had been mined in the area, and he also examined sediment that had been obtained from a nearby lake, and he opined that the samples contained great concentrations of anthophyllite asbestos. He performed another study that dated the lake's contaminated sediment, and he concluded that the sediment was deposited during the era in which activity was conducted in the nearby mines. However, the defense's expert epidemiologist opined that the region has not produced a statistically significant number of cases of mesothelioma.

Defense counsel contended that the most advanced technology indicates that R.T. Vanderbilt's talc did not contain asbestos. They also claimed that that finding was supported by decades of studies. The defense's expert toxicologist noted that two such studies involved rats being exposed to R.T. Vanderbilt's talc.

Defense counsel also contended that talc is not a proven cause of mesothelioma. They claimed that a link has not been established by epidemiology or any of the tests that are routinely used to establish the cause of mesothelioma. The defense's expert pathologist suggested that Chisholm's mesothelioma could have stemmed from toxic substances that Chisholm handled while working on a ship.

**INJURIES/DAMAGES** *chemotherapy; death; mesothelioma; radiation therapy; respiratory*

In April 2010, Chisholm learned that he was suffering mesothelioma. He underwent an extrapleural pneumonectomy, which involved removal of his left lung, his heart's lining, his right lung's lining and a portion of his diaphragm. He also underwent chemotherapy and the application of radiation that was intended to stall the progress of his disease. During the early portion of 2012, he began continuous use of supplemental oxygen. The treatment necessitated his full-time use of a wheelchair. Chisholm's cancer progressed, and it ultimately claimed his life.

Chisholm, 52, died on Aug. 10, 2012. He was survived by his wife and three children: Abby Chisholm, Graydon Chisholm and Mary Chisholm. Richard Chisholm's estate sought recovery of wrongful-death damages that included Chisholm's past lost earnings, Chisholm's future lost earnings, and damages for Chisholm's pain and suffering. Chisholm's widow and children sought recovery of damages for loss of services. Chisholm's widow also sought recovery of damages for her residual suffering, but her claim was struck because the couple's marriage occurred after Mr. Chisholm's use of R.T. Vanderbilt's talc.

**RESULT** The jury found that Mr. Chisholm was exposed to asbestos that was contained in R.T. Vanderbilt's talc, that R.T. Vanderbilt negligently failed to provide warnings that adequately disclosed asbestos's related hazards and that R.T. Vanderbilt was liable for Chisholm's mesothelioma. The jury determined that the plaintiffs' damages totaled \$10.55 million.

**ABBY**

**CHISHOLM** \$305,000 loss of services

**ESTATE OF**

**RICHARD**

**CHISHOLM** \$7,500,000 survival

**GRAYDON**

**CHISHOLM** \$305,000 loss of services

**A. KATHERINE**

**CHISHOLM** \$2,135,000 loss of services

**MARY**

**CHISHOLM** \$305,000 loss of services

**TRIAL DETAILS**

Trial Length: 12 days

Trial Deliberations: 2 hours

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' and defense counsel. Additional information was gleaned from court documents.

—Gary Raynaldo

