

DAILY BUSINESS REVIEW

VERDICTS & SETTLEMENTS

Miami Lawyers Land \$70M Verdict Against Biopharma Company Over Lab Technician's Asbestos Exposure

by Raychel Lean

Marc P. Kunen and Jose Becerra of the Ferraro Law Firm in Miami secured a \$70 million jury verdict for 71-year-old Charles E. Thornton, a former lab technician who claimed he contracted mesothelioma after being exposed to asbestos at work.

Thornton worked for biotech company Nabi Pharmaceuticals in Broward and Miami-Dade counties between 1976 and 2010. His job in the fractional department involved separating plasma from blood using



J. ALBERT DIAZ

Marc P. Kunen and Jose Becerra of the Ferraro Law Firm in Miami argued that a former South Florida lab technician contracted terminal cancer after being exposed to asbestos at work.

Case: Charles E. Thornton, Constance Thornton v. GEA Mechanical Equipment US

Case No.: 2017006018CA01

Description: Products Liability

Filing date: March 13, 2017

Verdict date: June 17, 2019

Judge: Miami-Dade Circuit Judge Jose Rodriguez

Plaintiffs attorneys: Marc P. Kunen and Jose L. Becerra, The Ferraro Law Firm, Miami

Defense attorneys: Stuart A. Weinstein, Shapiro, Blasi, Wasserman & Hermann, Boca Raton

Verdict amount: \$70,102,000

biopharmaceutical equipment. But some of those tools contained asbestos, according to Thornton's March 2017 products liability lawsuit.

Asbestos is a naturally occurring group of minerals made of silicon and oxygen. For decades its microscopic flexible and fire-proof fibers lent themselves to

various uses, including pipe and roofing insulation — until it was eventually discovered to be a silent killer.

Asbestos is banned in more than 55 countries, but not in the U.S. Though the Environmental Protection Agency banned certain uses of it in 1973 and barred it from most products in 1989,

the Fifth Circuit Court of Appeals overturned that in 1991. As a result, the ban only covers new uses of asbestos, and decades of litigation has followed. In 2019, the EPA introduced a rule that says discontinued asbestos products can't be reintroduced into commerce without evaluations and restrictions in place.

In 2016, Thornton was diagnosed with mesothelioma, a cancer in the lining of his lungs. Kunen and Becerra alleged this came from exposure to asbestos while performing maintenance work on his separating equipment, designed and manufactured by defendant New Jersey-based GEA Mechanical US Inc.

"Being exposed to asbestos ultimately causes the mutations that led to the cancer, mesothelioma, which is an incurable cancer, so it's always terminal," Kunen said.

The disease presents itself as a painful cough, with chest pain, shortness of breath and lumps of tissue under the skin, and always kills its victims.

The complaint initially tagged various defendants, but GEA Mechanical, which supplies technology and equipment for food processing across the country, was the only one left standing at trial.

Thornton accused GEA Mechanical of negligence and strict liability, alleging the company knew or should have

known about the harm its products could cause, but never told Thornton and failed to put proper warnings on packaging.

Kunen took the lead at trial in Miami-Dade Circuit Court, claiming the defendant let Thornton down by failing to properly test its products and purposely misled the public with its advertising.

GEA Mechanical argued it wasn't at fault and claimed asbestos wasn't the cause of Thornton's cancer. In its answer to the complaint, the company argued that any contact with asbestos-containing materials in its products "would be so slight that it would not be a substantial factor in causing or contributing to" Thornton's mesothelioma.

Counsel to the defense, Stuart A. Weinstein of Shapiro, Blasi, Wasserman & Hermann in Boca Raton, did not respond to emails and calls seeking comment by deadline.

Kunen called epidemiologist Dr. Murray Finkelstein, who used his specialization in pulmonary medicine to explain how asbestos damaged the plaintiff's lungs. Pathologist and pulmonologist Dr. Richard Kradin expanded on that, giving jurors a sense of how end-stage mesothelioma was taking its toll on the plaintiff.

Thornton's wife Constance, 70, has been married to

him for nearly 40 years and claimed loss of consortium as she'll lose her husband's emotional and financial support when he dies.

The evidence, as Kunen saw it, "weighed heavily" in his clients' favor, and he says the most important thing became their well-being during a two-week trial.

"Making sure that Mr. Thornton was doing well and that his wife was doing well during the trial, that was the most important thing for us," Kunen said.

On Jun. 17, jurors found GE Mechanical was negligent in causing Thornton's illness. They awarded \$102,000 for past medical expenses, gave Thornton \$50 million in pain and suffering damages and his wife \$20 million.

The verdict is one of South Florida's largest asbestos-related verdicts, but Kunen pointed out it doesn't change Thornton's diagnosis.

"The verdict is bittersweet," Kunen said. "Obviously, we're pleased with the results, but the reality is that Mr. Thornton is still suffering from this devastating cancer and it's ultimately going to take his life."

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via [@raychellean](https://twitter.com/raychellean).