

Posted on Tue, Apr. 29, 2008

### **Jury awards \$24.2 million in asbestos lawsuit**

BY PATRICK DANNER

As a teenager working on his stepfather's farm in Punta Gorda, Stephen E. Guilder learned to repair tractors and other farm equipment.

Guilder, of Weston, parlayed his deft handiwork on the farm into a career as a head and neck surgeon, but it's now expected to cost him his life. Guilder, 50, was diagnosed in September with a rare, fatal type of cancer -- which he blames on exposure in the 1970s and early 1980s to brake pads made with asbestos.

On Friday, a Miami-Dade County jury found Honeywell International, the parent of brake maker Bendix, negligent for selling asbestos brakes and awarded Guilder and his family almost \$24.2 million. While it's the largest compensatory jury verdict involving a single defendant in a Florida asbestos case, it was bittersweet for the Guilders, said their lawyer, David A. Jagolinzer.

"They would trade every dime of that for another day of his life," said Jagolinzer, of the Ferraro Law Firm in Miami. Guilder's oncologist testified during the two-week trial that Guilder has a less than 10 percent chance of surviving beyond the fall of next year, Jagolinzer said.

Honeywell spokesman Rob Ferris expressed disappointment with the jury verdict, a rare defeat for the company in Bendix-related asbestos litigation. Honeywell is "confident we will ultimately prevail on appeal," Ferris said in an e-mail. "There is no supportable evidence that Mr. Guilder's disease was caused by exposure to Bendix products."

Honeywell came to own Bendix as a result of a 1999 merger with Allied-Signal, which had merged with Bendix in 1982. Honeywell says it no longer make products containing asbestos. Nine other defendants named in the lawsuit, including Deere & Co. and General Motors, reached confidential settlements before the case went to trial, Jagolinzer said. Caterpillar and Ford Motor were dismissed from the case.

Guilder was diagnosed with peritoneal mesothelioma, a cancer that affects the abdominal lining. Last November, two months after the diagnosis, Jagolinzer said Guilder closed his medical practice. Since then, the cancer has spread throughout his body. Despite his poor health, Guilder attended the trial.

Guilder's case was expedited because of his short life expectancy. The case went to trial less than six months after the suit was filed. Of the \$10.1 million the jury awarded Guilder personally, \$3 million is for future lost earnings and \$6.78 million is for pain and suffering. His wife, Shelia, was awarded \$3.6 million. His three children, ages 18, 16 and 14, were each awarded almost \$3.5 million.

Honeywell has prevailed in the vast majority of Bendix-related asbestos claims that have gone to trial, a company filing with the Securities and Exchange Commission in February indicates. From 1981 through the end of last year, Honeywell says, 125 trials resulted in verdicts in its favor. Ten trials resulted in "adverse" verdicts, although two were reversed on appeal, three were settled, and the remaining five are slated for appeal.

Honeywell has also resolved 113,000 claims outside court, the SEC filing states. Almost 52,000 Bendix-related claims remained unresolved as of the end of last year. Honeywell estimated that its liability for resolving pending and future claims is \$517 million.

# DAILY BUSINESS REVIEW

LAW ■ REAL ESTATE ■ FINANCE

December 8, 2008

An incisivemedia company  
incisivemedia.com

Most  
Effective  
Lawyers  
2008

dbr

## PRODUCT LIABILITY - FINALIST

### David Jagolinzer Ferraro Law Firm

## Convincing a jury that exposure to asbestos caused the cancer killing his client won \$24.2 million award

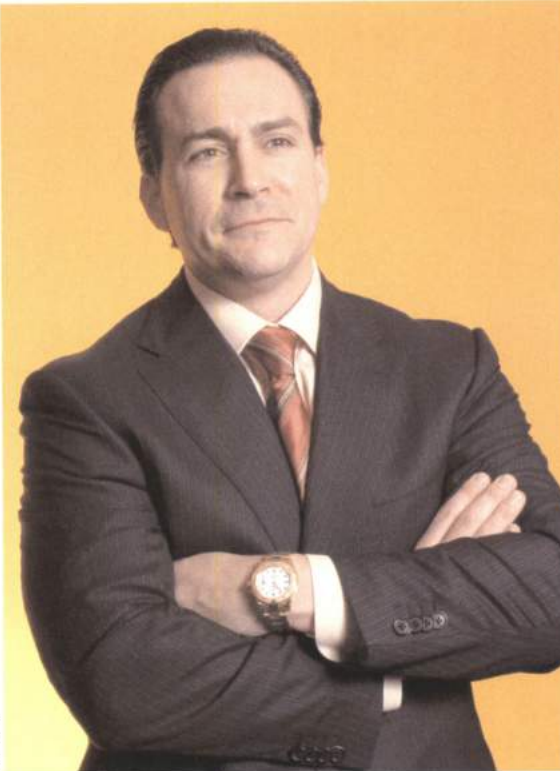
**D**avid Jagolinzer won \$24.2 million, one of the highest compensatory damage awards against a single defendant in a mesothelioma case to date, after convincing a Miami-Dade County jury in April that exposure to asbestos caused the cancer that is killing his client.

Stephen Guilder, a 51-year-old Weston doctor, learned how to work on cars at his family's Florida farm as a teenager and continued to tinker in college, changing brakes to help pay for medical school at the University of Miami.

He left the garage for the operating room two decades ago to practice head and neck surgery. Once diagnosed with peritoneal mesothelioma last year, Guilder shuttered his practice.

The surgeon and his doctors blamed his cancer on his exposure to brakes made by Bendix, a Honeywell International subsidiary.

Guilder filed suit against Honeywell and 15 other defendants in Miami-Dade Circuit Court because he worked in the Miami area while in medical school. Deere & Co., General Motors and seven other defendants agreed to confidential, pretrial settlements, according to court records. Circuit Judge Richard



David Jagolinzer

Feder dismissed Ford Motor and Caterpillar from the case.

At trial, Guilder's oncologist testified he had less than a 10 percent chance of living another year, Jagolinzer said.

The rare cancer diagnosed 100 to 500 times a year in the United States began in the lining of the doctor's abdomen, according to both Jagolinzer and Honeywell attorney Anthony Upshaw of Adorno Yoss in Coral Gables.

But that is just about all the two lawyers agreed on.

Upshaw argued the cause of Guilder's cancer was unknown but had nothing to do with his "extremely limited" exposure to the asbestos in Bendix brakes.

"It was a hard-fought case on both sides," Upshaw said. "I want to make it clear that it was a very sad case, and we understand Mr. Guilder's pain and his disease, but that's not what the case was really about. What I'm talking about here are the underlying factual issues regarding the cause of the disease."

The defense's expert witnesses testified the cancer rate for Guilder's type of the disease has remained constant despite changes in asbestos use over the years.

Jagolinzer dismissed Honeywell's experts as hired guns and relied on the testimony of two experts.

One was "a Harvard-educated, University of Massachusetts doctor who went back into the annals of U. Mass into the 1920s. He said this disease did not exist until after we and other countries started using asbestos," he said.

Another expert testified about individual susceptibility.

"Why do some people get it and other people not get it?" Jagolinzer asked. "They said they don't know. Science doesn't know. Everybody's different; Everybody's body is different. Do genetics play a role in it? Sure. But is there an answer? No. The only way to prevent this cancer is to prevent exposure."

Upshaw faulted the logic of the expert testimony.

"It's because they didn't know what they were looking for back then," he said. "That's like saying cervical cancer caused by HPV didn't exist before they realized that cervical cancer could be caused by a virus. Science evolves."

Jurors disagreed. After deliberating for about three hours, they awarded Guilder \$10.1 million for lost earnings, pain, suffering and medical expenses. His wife, Sheila, was awarded \$3.6 million, and their three minor children, Ariel, Alex, and Ross, were awarded \$3.5 million each.

Honeywell appealed the verdict and award to the 3rd District Court of Appeal. No briefs have been submitted yet.

Jagolinzer, a Coral Gables personal-injury attorney, also won a \$14 million award for a drywall contractor in another mesothelioma case this year.

— Kelly Cramer