

PRESIDING: HON. DEBORAH A. CHIMES

SUPREME COURT: STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

In Re: EIGHTH JUDICIAL DISTRICT ASBESTOS LITIGATION

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOSEPH L. MUIR,

Plaintiff.

Vs.

DECISION
Index No. 809307/2014

AIR & LIQUID SYSTEMS CORPORATION
As successor by merger to
BUFFALO PUMPS, INC., et al.

Defendants

On September 10 and 11, of 2015 this court held a bench trial in this matter. Defendant Hedman Resources, Ltd. was the only remaining defendant.

This action was commenced on November 13, 2013. The Summons and Complaint was served on Hedman Resources c/o Stephen A. Edell at his office at 2 Bloor Street in Toronto, Ontario Canada on August 27, 2014 and by mail on the same date. On December 15, 2014 a Supplemental Summons and Amended Complaint was served in the same manner. Service of the Summon and Complaint and the Supplemental Summons and Complaint was made in accordance with the November 13, 2013 Order of John P. Lane, J.H.O. in *Matter of Eighth Jud. District Asbestos Litig. [Lauren Richards]*, dated November 13, 2013. On April 30, 2015, a Second Supplemental Summons and Second Amended Complaint were served on the defendant

at Stephen Edell's office, pursuant to the April 20, 2015 order of this court. (See plaintiff's exhibits 1-7.)

Through the course of the nearly two years this case has been in litigation, the defendant has not appeared. In addition to service of the summons and complaints, defendant and its insurance carriers were noticed of depositions, conferences and trial dates and were provided with related documents, by mail and electronic mail on at least twenty seven occasions (See plaintiff's exhibits 8-35).

On November 20, 2014 the defendant was notified of the Trial Order scheduling jury selection for September 8, 2015. (See plaintiff's exhibit 8). The defendant failed to appear at trial, or to contact the court.

At trial 72 trial exhibits were admitted into evidence. (See exhibit A attached hereto.) In addition to prior trial and deposition testimony of several witnesses, including plaintiff, his father Melvin Lee Muir, and plaintiff's mother, Patricia Batt, and Duain Shankar Rajhans that was heard and admitted by the court the plaintiff offered the testimony of plaintiff's wife, Nancy Muir as well as expert witness, Mark J. Utell, M.D., a board-certified pulmonologist.

FINDINGS OF FACT

After consideration of all the evidence received, the court makes the following findings of fact and conclusions of law:

1. Joseph Muir was born on August 13, 1957 and is currently 58 years old.
2. Nancy Muir is currently 56 years old.
3. Joseph and Nancy Muir have been married for 36 years.
4. Joseph and Nancy Muir have three (3) adult children and five (5) grandchildren all of whom they have a close relationship with.

5. Joseph and Nancy presently live in Ledyard, Connecticut.
6. In July, 2014 Joseph Muir was diagnosed with pleural mesothelioma.
7. Pleural mesothelioma is a terminal cancer, caused by exposure to asbestos, affecting the lining of the lung for which there is no cure.
8. During the summers of 1976 and 1977 Joseph Muir was employed by Durez Plastics in North Tonawanda (Herein Referred to as Durez).
9. Between 1970 and 1977 Hedman Resources, Ltd. (herein after referred to as Hedman) sold 43,677,200 pounds of raw asbestos fiber to Durez.
10. During this period of time, Durez identified the raw asbestos used in its facility by code numbers.
11. The code number for the Hedman product sold to Durez during 1970 and 1976 was 761.
12. Hedman asbestos, Code 761, was used as raw material in building 88 of the compound department at Durez (herein after referred to as Building 88) between 1970 and 1976.
13. During the summers of 1976 and 1977, Hedman sold 2,016,000 pounds of asbestos fiber to the compound department at Durez.
14. While Joseph Muir was working for Durez during the summers of 1976 and 1977 he would handle and test molding compound from Building 88 which contained Hedman asbestos fiber.
15. Joseph Muir would handle and test the compound from Building 88 which contained Hedman asbestos fiber, 4 to 5 times per day, every day.
16. The process of handling and testing the molding compound that contained the Hedman asbestos fiber created visible dust that Joseph Muir inhaled.
17. Melvin Lee Muir is the father of Joseph Muir.

18. Melvin Lee Muir worked at Durez between 1959 and 1988.
19. Between 1970 and 1976 Hedman sold 42,870,800 pounds of raw asbestos fiber to Durez.
20. Between 1970 and 1976 Melvin Lee Muir worked as a mixer operator in Building 88.
21. Between 1970 and 1976 Melvin Lee Muir would handle and dump 100 lb. bags of Code 761 asbestos fiber.
22. The process of handling and dumping Code 761 asbestos created visible dust and contaminated Melvin Lee Muir's work clothes.
23. Between 1970 and 1976 Melvin Lee Muir would bring his asbestos contaminated work clothes home to be laundered by his then wife, Patricia Batt.
24. Patricia Batt is the mother of Joseph Muir.
25. Between 1970 and 1976, Patricia Batt laundered the asbestos contaminated clothes in the basement of the family home. She would shake out the asbestos contaminated clothes in close proximity to Joseph Muir causing visible dust that Joseph Muir was exposed to.
26. Hedman operated an asbestos mine in Timmins, Ontario, Canada
27. Prior trial testimony of Gyan Rajhans was heard and admitted at trial. He is an industrial hygienist, who, from 1968 until 2000, as employed by the Ontario Ministry of Labour.
28. In March, 1969 Mr. Rajhans visited Hedman's Timmons mine. At that time, Mr. Rajhans advised John J. Mangan, the president of Hedman at the time, that exposure to asbestos causes asbestosis which could lead to various types of cancer in human beings, including lung cancer.

29. In July 1969, Gyan Rajhans visited the Hedman facilities a second time. As a result of the second inspection, he again warned Mr. Mangan that exposure to asbestos could cause cancer in human beings.
30. In 1972, Gyan Rajhans again visited the Hedman facilities and for a third time warned Mr. Mangan that exposure to asbestos could cause cancer in human beings.
31. Hedman did not heed these prior warnings.
32. Between 1969 and 1975, Mr. Rajhans continued to warn Hedman that its asbestos was capable of causing cancer.
33. Between 1969 and 1975, Mr. Mangan continued to disregard the warnings of Gyan Rajhans regarding the dangers of Hedman's asbestos.
34. Hedman never placed a warning concerning the health hazards of asbestos on its bags of raw asbestos that it sold to Durez.
35. Joseph Muir had no knowledge that asbestos was used at Durez, or about the health hazards of asbestos during his employment at Durez in the summers of 1976 and 1977.
36. Dr. Mark Utell, a board-certified pulmonologist, with expertise in occupational and environmental lung disease, testified that he reviewed Joseph Muir's asbestos exposure history.
37. Dr. Utell opined the following:
 - a. Joseph Muir endured substantial exposure to asbestos while working as a pressman during the summers of 1976 and 1977.
 - b. Joseph Muir endured substantial exposure at his home to asbestos from the laundering of Melvin Lee Muir's asbestos-contaminated work clothes between 1970 and 1976.
 - c. Joseph Muir's pleural mesothelioma was caused by his exposure to asbestos.

- d. Joseph Muir's exposure to Hedman's asbestos fiber during the summers of 1976 and 1977 was a substantial factor in causing is pleural mesothelioma.
 - e. Joesph Muir's exposure to Hedman's asbestos fiber from the laundering of Melvin Lee Muir's asbestos-contaminated work clothes from 1970 to 1976 was a substantial factor in causing his pleural mesothelioma.
38. Joseph Muir would have heeded a warning concerning the health hazards of asbestos if it had been provided to him by Hedman.
39. Joseph Muir is not and never was a cigarette smoker.
40. Joseph Muir, had he known about the health hazards of asbestos, would have not worked at the Durez Plant.
41. Melvin Lee Muir would have heeded a warning concerning the health hazards of asbestos if it had been provided to him by Hedman.
42. Melvin Lee Muir would not have worked at Durez, or brought is asbestos-contaminated work clothes home between 1970 and 1976, if he had known it would put his family at risk for asbestos disease.
43. At the time of the diagnosis of the pleural mesothelioma, Joseph Muir enjoyed excellent health, and was working full time as a project administrator for Electric Bat Corporation earning over \$200,000.00 per year.
44. Prior to the onset of pleural mesothelioma in 2014, Joseph Muir planned to continue working for Electric Boat until age 65.
45. In the summer of 2014, Joseph Muir, began experiencing a persistent cough and fatigue associated with the onset of plural mesothelioma.
46. In July 2014, it was discovered through the use of an X-ray and CT Scan that Joseph Muir ha a large mas over his lung; which he was told was likely lung cancer, and that it was very serious and he had a short time to live.

47. On July 30, 2014, Joseph Muir had surgery/biopsy confirming his mesothelioma diagnosis. He was told the cancer had spread to his lymph nodes, and he had two months to live.
48. In August 2014, Joseph Muir was told his cancer was stage four, and without chemotherapy, he would be dead by October 1, 2014. He was further told that chemotherapy only has a thirty-seven percent (37%) chance of working, but if it did, he would live for an additional twelve (1) months.
49. Between August and October of 2014, Joseph Muir underwent four (4) rounds of chemotherapy causing the following side effects: fifty (50) pounds of weight loss, excruciating pain, nausea, loss of appetite and fatigue. He was bed-ridden and suffered from fluid buildup in his abdomen.
50. Between August and October of 2014, Joseph Muir underwent fourteen (14) surgical procedures (paracentesis) to remove large quantities of fluid from his abdominal space.
51. Between August 2014 and September 2015, Joseph Muir underwent a total of twenty-three (23) rounds of chemotherapy.
52. On September 9, 2015, Joseph Muir was informed by staff at Dana-Farber Cancer Institute that his tumor has spread to his liver and spine, and that he was not a candidate for further chemotherapy at this time. Therefore, Joseph Muir will be proceeding with 3-5 rounds of experimental immunotherapy, at an out of pocket cost of \$30,000.00-\$50,000.00.
53. As of the time of trial, Joseph Muir had been living with mesothelioma for 14 months.

54. As Joseph Muir's pleural mesothelioma progresses even further, he will likely experience physical pain, weight loss, and ultimately, hypoxia (akin to suffocation) until he passes away.
55. Without pleural mesothelioma, Joseph Muir's life expectancy would have been 79.7 years of age, which would have been 21.1 years from the present time.
56. At the present stage of the disease, Joseph Muir's prognosis is grave with a life expectancy of three (3) months to less than a year from the present time.
57. Without pleural mesothelioma, Joseph Muir's work life expectancy would have been 65.7 years of age, which would have been 7.7 years from the present time.
58. Dr. Zaporowski, plaintiff's expert economist calculated Joseph Muir's lost wages up to age 67 to be \$3,192,506.00
59. Lost wages if calculated to age 65 amount to \$2,795,103.00
60. There is a medical lien for past medical treatment in the amount of \$381,069.96 held by The Rawlings Company. Pursuant to the plaintiff's attorney, Joseph Muir is personally responsible for paying 55% of the lien, which equates to \$209,588.47.

VERDICT

Based upon the findings of fact, the Court finds that the plaintiff established the defendant was negligent and the negligence was a proximate cause of the plaintiff's claimed injury. The Court therefore finds the plaintiff is entitled to damages in the following amounts:

The dollar amount awarded for past pain and suffering up to the date of this verdict is one million, seven hundred fifty thousand dollars (\$1,750,000).

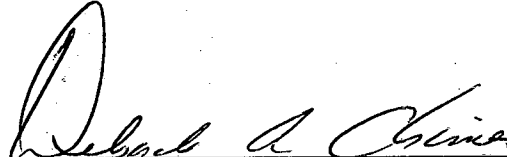
The dollar amount awarded to plaintiff, Joseph Muir for future pain and suffering is five hundred thousand dollars (\$500,000).

The dollar amount awarded to plaintiff, Joseph Muir for past medical expenses up to the date of this verdict is two hundred and nine thousand five hundred and eighty-eight dollars and forty-seven cents (\$209,588.47).

The dollar amount awarded to plaintiff, Joseph Muir for future medical expenses is three hundred and fifty dollars (\$350,000).

The dollar amount awarded to plaintiff, Joseph Muir, for future lost wages two million, seven hundred ninety-five thousand, one hundred and three dollars (\$2,795,103) over a period of seven (7) years to age 65.

DATED: Buffalo, New York



HON. DEBORAH A. CHIMES
Justice of the Supreme Court

GRANTED

OCT 09 2015

BY 
MARY PAZIK
COURT CLERK

EXHIBIT

A

HON. DEBORAH A. CHIMES, J.S.C.

INDEX NO.: 809307/2014
 CAL. NO.: 2015-00442

C/C: Mary Pazik
 C/R: Lisa Pazderski

Joseph Muir VS. Hedman Resources Limited

EXHIBITS

PLAINTIFF

No.	Date	Description	Ev.	No.	Date	Description	Ev.
1-35	9/10/15	Notices to Hedman	X	56	9/10/15	DVD Patricia Batt	X
25-A	9/10/15	Notices to Hedman	X	57	9/10/15	Letter	X
25-B	9/10/15	Notices to Hedman	X	58	9/10/15	Letter	X
36	9/10/15	Joseph Muir Transcript	X	59	9/10/15	Letter	X
37	9/10/15	DVD Joseph Muir Testimony	X	60	9/10/15	Trans. of Duian Rajhans	X
38	9/10/15	Photo	X	61	9/10/15	Page & Line Transcript	X
39	9/10/15	Photo	X	62	9/10/15	DVD Duian Rajhans	X
40	9/10/15	Photo	X	63	9/10/15	Hedman invoices to Durez	X
41	9/10/15	Photo	X	64	9/10/15	Hedman sales to Durez	X
42	9/10/15	Photo	X	65	9/10/15	1968 New Yorker Mag.	X
43	9/10/15	Photo	X	66	9/11/15	Mark Utell C.V.	X
44	9/10/15	Photo	X	67	9/11/15	Expert Report	X
45	9/10/15	Photo	X	68	9/11/15	Work Records	X
46	9/10/15	Photo	X	69	9/11/15	Medical Lien	X
47	9/10/15	Photo	X	70	9/11/15	Economic Loss Report	X
48	9/10/15	Photo	X	71	9/11/15	Earnings History	X
49	9/10/15	W-2 2011	X	72	9/11/15	Medical Records	X
50	9/10/15	Handwritten Map	X				
51	9/10/15	Durez Summer Employee doc.	X				
52	9/10/15	Melvin Muir Transcript	X				
53	9/10/15	DVD Melvin Muir Testimony	X				
54	9/10/15	Map of Durez	X				
55	9/10/15	Patricia Batt Transcript	X				