

[Jamie L. Day, et al. v. 3M Co. Inc., et al; 2024 LexisNexis Jury Verdicts & Settlements 293](#)

PC-2018-5044

Nov. 21, 2024

Headline: Union Carbide Prevails In Rare Rhode Island **Asbestos** Trial

Result: Defense verdict

Injury: Mesothelioma and death

Court: R.I. Super., Providence Plantation

Judge: Richard Licht (Justice)

Plaintiff Profile

Jamie Day and Jennifer Bonito

Defendant Profile

Union Carbide Corp

Plaintiff Counsel

Vincent L. Greene IV, Nathan D. Finch and Ashley Hornstein of Motley Rice LLC, Providence, R.I.

Defendant Counsel

Tim McGowan, Kelley Jasons McGowan Spinelli Hanna & Reber LLP, Providence; Eric Cook, Willcox Savage and Monica R. Nelson, Lewis Brisbois Bisgaard & Smith LLP, Providence

Case Summary

Claim: Defective design and failure to warn

Background: After Bonnie J. Bonito's death from mesothelioma, Jamie Day and Jennifer Bonito filed suit in Rhode Island's Providence Plantation Superior Court against more than 70 defendants. The plaintiffs claimed that Bonnie Bonito died after being exposed to **asbestos** while laundering her former husband's work clothing. Bonito allegedly washed the laundry from 1966, when the couple married, through 1990. Bonito's husband allegedly worked various jobs during this time.

Graybar Electric Co. Inc. and Union Carbide Corp. (UCC) filed a joint motion to exclude Richard L. Kradin, retained by Day and Bonito to opine on specific causation. They also moved to exclude Michael J. Ellenbecker from testifying that their products increased Bonito's risk of developing mesothelioma and that the warnings associated with those products were inadequate. Graybar moved to exclude both experts from testifying that its products specifically caused Bonito's mesothelioma. UCC asked the judge to bar either expert from testifying that it supplied the brand of **asbestos** that was present in the products identified in the suit.

Kradin, a pulmonologist and pathologist, was retained to opine on the specific cause of Bonito's mesothelioma.

In an Oct. 11, 2024, opinion, Justice Richard Licht found that Kradin relied on a valid scientific methodology in reaching his conclusion. Rejecting the joint defendants' reliance on Sweredoski v. Alfa Laval, Inc., No. PC-2011-1544 (R.I. Super. June 13, 2013), Justice Licht said the defendants misread the precedent. "In that case, the Court held that a plaintiff's ultimate burden to prove liability, in an **asbestos** context, is to show that he or she was

frequently or regularly in proximity to a defendant's asbestos-containing product. . . . Without a showing of such exposure, a plaintiff's claim is legally insufficient to impose liability on a defendant," Justice Licht said.

But he said DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 686 (R.I. 1999), controls whether an expert can testify.

"Sweredoski does not impose an additional requirement on the DiPetrillo analysis that an expert's opinion is only scientifically valid when he or she performs tests related to 'frequency, regularity, and proximity.' . . . It merely requires that a plaintiff make a showing of 'frequency, regularity, and proximity' during trial, and that showing may come from expert testimony, lay testimony, or a combination of both; it need not come from a singular source," the justice held.

Justice Licht then found Ellenbecker's opinion as it applies to Bonito's increased risk admissible. Ellenbecker "cannot opine on the adequacy of the specific design aspects of the warnings located on Joint Defendants' products" but can testify "on the effect such warnings would have on workers in an occupational environment, such as in the homes Mr. Bonito constructed and remodeled."

The justice also found that "evidence supplies a factual basis in the record for Drs. Kradin and Ellenbecker to conclude that UCC did supply Georgia-Pacific with asbestos in the Ready-Mix product utilized by Mr. Bonito, beyond mere speculation" and allowed testimony related to its products.

Other: The case went to trial against Union Carbide. After nine days of trial and nearly two days of deliberations, on Nov. 21, 2024, the jury found that Union Carbide's products were not defectively designed and that company did not fail to warn about the potential hazards of asbestos.

The trial is the first time an asbestos case in the state has gone to jury in nearly 40 years, sources told Mealey Publications.

Plaintiff Expert(s)

Dr. Richard L. Kradin, pulmonologist and pathologist Dr. Michael J. Ellenbecker

Key Related Documents

Opinion on Kradin.

Document #30-241023-032Z.