



The Voice

And The Defense Wins

Published 2-10-16 by DRI

Robert Berkes and Clint Johnson



[Robert Berkes](#) and [Clint Johnson](#) of **Berkes Crane Robinson & Seal LLP** in Los Angeles received a unanimous defense verdict representing CalPortland Company in the Superior Court for Los Angeles County, California, in an asbestos personal injury case filed by the San Francisco law firm of Levin Simes LLP on behalf of Tommy Tate, Sr. and his wife Aldoria LaGura Tate. (*Tommy Tate, Sr., et al. v. Amcord, Inc., et al.*, (October 26, 2015, Los Angeles Superior Court Case No. BC 560185).

Plaintiff, age 71, was diagnosed with malignant pleural mesothelioma and claimed that his cancer was caused by exposure to asbestos from the gun plastic cement stucco product manufactured by the defendant when he was working for a friend doing home remodels and room additions in the 1960s and 1970s. Plaintiff claimed he was exposed to asbestos when he mixed and spray-applied CalPortland's gun plastic cement product as one of four brands of stucco products he claimed to have used. Plaintiff also claimed he was exposed to asbestos from other construction products, from performing brake jobs on his personal vehicles and his service in the U.S. Navy. Plaintiffs claimed that each of these exposures contributed to Mr. Tate's mesothelioma.

The defense claimed that the sole cause of Mr. Tate's cancer was his exposure to asbestos in the Navy. CalPortland further claimed that Mr. Tate never used its asbestos-containing product. CalPortland refuted Mr. Tate's claim of doing construction work and of any exposure to its product by introducing the testimony of Mr. Tate's ex-wife, the wife of his deceased friend, and an expert in construction practices who challenged plaintiff's description of the work. After his cancer diagnosis, Mr. Tate underwent an extrapleural pneumonectomy (removal of one lung and surrounding tissue), chemotherapy, and therapeutic radiation. Plaintiffs asked the jury to award \$9 million in non-economic damages (\$6 million for Mr. Tate's pain and suffering and \$3 million for Mrs. Tate's loss of consortium claim) and approximately \$500,000 in economic damages. CalPortland Company was the only defendant through the majority of the trial and at the time of verdict.

After nearly five weeks of trial, the jury returned a unanimous special verdict (12–0) in favor of CalPortland after less than three hours of deliberations. The jury found that Mr. Tate was not exposed to asbestos from CalPortland's product.

To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit www.dri.org.