

Johnson v. American Biltrite

By Joel M. Doner

On March 25, 2022, at the trial of *Benjamin F. Johnson v. American Biltrite*, a Delaware jury found that Defendant, American Biltrite's Amtico floor tile did not play a substantial part in causing Mr. Johnson's mesothelioma. The entire trial was completed live, and in-person with no remote participation via video conference.

Superior Court Judge Francis J. Jones presided over the trial. This was not only his first jury civil trial, but also his first *asbestos* trial. His Honor personally conducted jury voir dire based on an agreed-upon set of questions. If a potential juror found a question problematic, Judge Jones met with that person in chambers with one attorney from each party to discuss the issues. Thereafter, Judge Jones either dismissed the juror or had them remain seated. Ultimately, this process proved efficient as a jury of twelve (12) was selected in one day. Ipek Kurul, Esq. of Dalton & Associates, and Michael C. Smith, Esq. of Balick & Balick represented Plaintiff, Benjamin Johnson ("Mr. Johnson").

Mr. Johnson (70 years-old) alleged that his exposure to asbestos from construction work with Amtico vinyl asbestos floor tile in North Dakota between 1973 and 1986 caused him to develop mesothelioma. He sued for failure to warn of a defective product under strict liability, and that Defendant knew or should have known about the dangers of asbestos and failed to take any remedy to reduce the dangers of exposure. Plaintiff relied upon the expert testimony of Barry Castleman for state-of-the-art and Dr. Mark Ginsburg on pathology and causation.

American Biltrite argued that:

- any asbestos exposure Mr. Johnson incurred from Amtico floor tiles was de minimis and did not substantially/proximately cause his injury;
- its compliance with regulatory standards and North Dakota law rendered it not liable as a matter of law; and
- there are no punitive damages as a matter of law under North Dakota substantive law.

In support of its defense, American Biltrite called as its corporate representative for corporate history and actual knowledge about the dangers of asbestos. As experts, it called Dr. James Crapo to testify about the pathology and lack of asbestos fibers, and Certified Industrial Hygienist, John Spencer, PhD to address the asbestos fibers' encapsulation in the floor tile and lack of respirable asbestos fibers created by Mr. Johnson's work thereon, as well as Dr. Ron Dodson regarding the results of tissue digestion studies.

Ultimately, the jury found that while Mr. Johnson was exposed to asbestos from the Amtico floor tiles, any asbestos exposure he experienced did not proximately cause his mesothelioma. Further, while eight (8) other entities, including bankrupts, made it on the verdict form, in applying North Dakota substantive law, there was pro rata liability for damages.

The trial lasted eight (8) days and the jury deliberated for three (3) days. At the end of the first day of deliberations, the jury informed the Court that they were in an 8 to 4 deadlock in favor of Defendant. On the second day, the jury submitted a question to Judge Jones for the definition of “substantial”. Judge Jones responded by instructing them to use their common sense. The next day, the jury returned a unanimous defense verdict.