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#3 Plaintiffs' Verdict

LARGEST VERDICTS OF 2001

Worker Developed Asbestos-Related Cancer Manufacturer Hit For \$10 Million

Not only did Kansas City attorney Louis Accurso bring in the third largest Missouri jury verdict last year, he also had a hand in the 10th and 12th largest awards of 2001. And two of the three trials were back-to-back, with verdicts coming just 29 days apart in February and March of last year.

In April he took a vacation.

Accurso and associate Steven D. Steinhilber won \$10 million for a former operating engineer who contracted mesothelioma, a rare and deadly cancer, from his exposure to asbestos-based fireproofing material in the Kansas City office building in which he worked.

"This was our first asbestos case, and I think that played a big role in the defendants' decision to make us try the case," said Accurso. "They only offered us \$100,000."

"Big verdicts happen when the defendant underestimates the plaintiff's case or the lawyers or both," he said.

In addition to the award of \$3 million in actual damages and \$7 million in punitive damages against the manufacturer, the engineer settled with the building owner for \$5 million before trial.

In the 10th largest verdict of 2001, Accurso and Trenton attorney Terry Evans won \$3.84 million in a Jackson County automobile accident. And Accurso, Evans and Charles H. McKenzie scored \$3.76 million in a negligence case involving a residential propane explosion, also in Jackson County Circuit Court.

ing ductwork, maintenance of the heating and ventilation systems, plumbing and tearing out and installing water lines, circuit breakers and other fixtures, often required him to work above the ceiling tiles.

The fireproofing was manufactured by a subsidiary of Turner & Newall, a company that was later acquired by Federal Mogul Corporation. Hoskins and his wife sued BMA on a premises liability theory and Turner & Newall for strict product liability.

BMA claimed that air quality testing inside the building never revealed a problem with asbestos until 1989 at which time it instituted safety procedures for handling the material.

BMA also argued that Hoskins was a statutory employee of BMA because he worked for separate entities that provided operating engineers to work exclusively inside the BMA building and that it was therefore immune to civil liability.

BMA raised the defense in a motion to dismiss and a motion for summary judgment, and both were denied.

The case against BMA settled the Friday before trial for \$5 million.

Both defendants denied that Hoskins has mesothelioma.

"This is one of those defenses that can backfire without extremely good evidence and we had five doctors diagnose him with the disease," said Accurso.

And backfire it did — Accurso said the defendants used a pulmonologist who was evasive and "just horrible" on the stand.

"He admitted the product was unreasonably dangerous and he even admitted it was their product in the plaintiff's lungs," he said. "It doesn't get much better than that. His demeanor was such that the jurors laughed at him, so this helped with our theme that they were just reaching."

"When you get an expert witness like that who is not credible, you earn the right to get aggressive. And once you've earned that right, you should take advantage of the leeway the jury will give you," he added.

Accurso compared the witness to the plaintiff's liability expert who had written extensively on the subject of asbestos.

"He had done a thorough chronological review of the knowledge of virtually all asbestos companies — it was powerful testimony," he said. "They didn't really cross-examine him because he documented it so well, actually using documents from the company's archives and previous testimony in other cases from folks who had worked for the company."

Malignancy

Forest Hoskins worked at BMA Tower in Kansas City from 1978 until January 1999 when he was diagnosed with mesothelioma. He had been having breathing difficulties, and a chest X-ray showed a growth that was later confirmed to be malignant. The 54-year-old underwent radiation and chemotherapy.

Hoskins was regularly exposed to the asbestos-based material sprayed inside the building as fireproofing. His duties, includ-

Manufacturer's Knowledge

Turner & Newall, the manufacturer, also denied that they knew about the health hazards associated with asbestos in office buildings back in the early 1960s, when the BMA Tower was built.

"We argued that this company had known of the dangers of the product for decades," said Accurso. "They had specific knowledge that very limited exposure was necessary to cause this disease."

"They knew of a safer alternative product back in the 1950s, but it would have



LOUIS C. ACCURSO

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cost them money," he added.

Accurso said he was able to get into evidence tactics that the company used over the years to stall asbestos-injury lawsuits "until the victims died before trial."

He used timelines to illustrate to the jurors when the manufacturer knew about the product's "defective and dangerous character."

"The jury was able to see that years before the material was put in the building — they knew it was deadly," he said. "We emphasized their admissions to show a conscious disregard in that they provided no warning regarding the product's safety."

Jury Selection

"We felt like we had to do a very thorough job on voir dire to get people off the jury who would have hurt the case," he said. "There are a lot of tort-reform minded panel members out there, and you have to find out who they are and get them off or neutralize them."

Accurso said he then used "high tech document projection equipment, not blow-ups" to help the jurors get into the case.

And he said one factor influencing the size of the punitive damages award was the contrast between the plaintiff's and

the defendant's appearances in court.

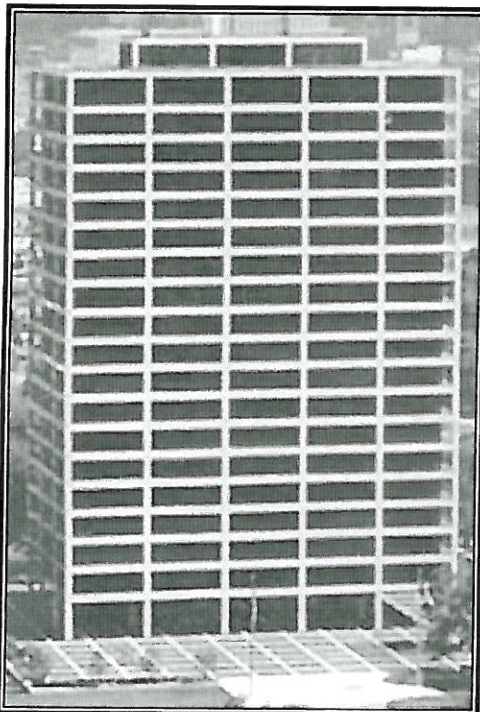
"Their failures in light of the fact of what they knew and when and how long they knew it, combined with the fact that no representative from the company ever bothered to show up in the courtroom contrasted with the very courageous battle that our client fought," he said.

"The Hoskins are very good people," he said. "The jury recognized that they were very sincere folks facing a terrible prognosis. The defendant did a poor job of giving them a reason why they were not liable," Accurso said. "Plus when you choose a witness wholly lacking in credibility, that says a lot about your credibility."

"The level of preparation in a case like this is critical. If you want to win, you have to spend the time and money to hire the right experts, and have the videos edited and ready to play at a moment's notice," said Accurso, who noted that he and his team were putting in 20-hour work days preparing for trial.

In addition to hard work, he offered another ingredient in his recipe for success: "Don't get distracted by settlement negotiations — get tunnel vision about trying the case."

BY STEPHANIE S. MANISCALCO



The BMA Tower was built in the early 1960s.

At-A-Glance

Size of Verdict:	\$10 million
Status:	Stay on appeal as a result of defendant's filing of a Chapter 11 bankruptcy petition
Type of Case:	Products Liability
Date of Verdict:	Feb. 26
Length of Trial:	9 days
Jury Deliberations:	5 hours
Case Name:	<i>Hoskins v. Federal Mogul Corporation</i>
Court:	Jackson County Circuit Court
Plaintiff's Attorneys:	Louis C. Accurso and Steven D. Steinhilber, <i>The Accurso Law Firm, Kansas City</i>