

Asbestos

Raising the Bar in Asbestos Litigation

PAGE 4

It's Not 'Fake News': Defense State-of-the-Art in Asbestos Products Liability Litigation

*A Commentary by Robert T. Connor, Esq.,
Partner, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP*

PAGE 11

Mistrial Declared in Cosmetic Talcum Powder Asbestos Case Against J&J

PAGE 12

Calif. Jury Reaches Defense Verdict for Hennessy at Conclusion of Meso Trial

11

Jury Awards \$8.45 Million;
Assesses Defendant 60
Percent Liability

12

Jury Awards \$7 Million to
Former Laborer, Finds Valve
Defendant 50 Percent Liable

13

Jury Awards \$2.1 Million;
Allocates 13 Percent Liability
To Remaining Defendant

14

N.Y. Court Denies Colgate-
Palmolive's Motion for
Summary Judgment

17

Rockwell Automation Denied
Summary Judgment in Case
Concerning Electrical Parts

19

Ill. Court Tosses Verdict
Against Hobart Brothers, Says
Defendant Didn't Know Risks

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COMMENTARY

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4

TABLE OF CASES

A Regional Listing of All the Cases Covered in This Issue

10

COURTROOM NEWS

Mistrial Declared in Cosmetic Talcum Powder Asbestos Case Against J&J

11

Jury Awards \$8.45 Million; Assesses Defendant 60 Percent Liability

11

Jury Awards \$7 Million to Former Laborer, Finds Valve Defendant 50 Percent Liable

12

Calif. Jury Reaches Defense Verdict for Hennessy at Conclusion of Meso Trial

12

Jury Awards \$2.1 Million; Allocates 13 Percent Liability to Remaining Defendant

13

N.Y. Court Denies Colgate-Palmolive's Motion for Summary Judgment in Talc Case

14

Court in Part Precludes Testimony on Cleavage Fragments of Minerals

14

High Court Refuses to Hear Appeal of CMO Allowing Punitive Damages in NYCAL

15

La. Court Grants Honeywell's Unopposed Motion for Summary Judgment

16

Complaint Filed in S.C. State Court Alleges Exposure to Talc Caused Mesothelioma

17

Rockwell Automation Denied Summary Judgment in Case Concerning Electrical Parts

17

Court Tosses Claims on Preemption, Statute of Limitations Grounds

18

Ill. Court Tosses Verdict Against Hobart Brothers, Says Defendant Didn't Know Risks

19

J&J Attacks Talc Claims, Says Evidence Shows Talc Not Present in Relevant Mines

19

Defendants File Notice of Appeal, Contest Decision Keeping Case in N.Y.

20

Ohio Court Says Product Liability Act Preempts Asbestos Claims

21

VERDICT REPORT

A Listing of the Last Year of Asbestos Verdicts

22



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Author bio on page 8

Since the start of the 2016 U.S. presidential election race, the term “fake news” has become a common phrase in the American lexicon. The allegation of “fake news” in the political context is usually directed at the publication of propaganda, or disinformation, on social media to drive web traffic and spread its message. While the prospect of “fake news” will likely continue for as long as the internet remains free and unfettered, what should not be confused as fake news is how the utility of asbestos in medicine was reported more than 50 years ago. A review of prominent American medical journals, newspapers and periodicals demonstrates how asbestos was once considered an effective component in a state-of-the-art heart operation performed on many individuals from the 1930s to the late 1960s.

In asbestos products liability litigation, plaintiff attorneys typically present state-of-the-art evidence through an expert (usually, a scientific historian) to support a negligent failure-to-warn claim and show what a defendant company knew, or should have known, about the potential dangers of asbestos to human health prior to the plaintiff's initial exposure. Since asbestos diseases are latent, with most occurring some 30 to 50 (or more) years after first exposure, much of the trial evidence presented dates back to the 1960s and earlier. The plaintiffs' state-of-the-art evidence is presented in the

form of what was “generally available” in the scientific literature, with an expert cherry-picking articles from various scientific journals spanning the early 20th century into the 1960s. But the likelihood of Americans having readily available access to such articles at the time of publication (other than select doctors, scientists or universities who subscribed to those specific scientific journals) prior to the advent of online access was slim.

Unfortunately for defendants, most jurors today under the age of 60 have little education on how asbestos was universally regarded in America prior to 1970 and the advent of OSHA and the EPA. However, defense attorneys can explore additional resources that shed light on what most Americans were reading about the use of asbestos, especially in medicine, and challenge the plaintiff's theory on the state-of-the-art evidence presented at trial.

* * *

How Americans Kept Informed in the Early 20th Century

Today, we live in the internet era, with news stories traveling across the globe to our electronic devices within minutes of when they occur. However, in the first half of the 20th century, things were very different. Portable transistor radios first became available in the mid-1950s,¹ and

the all-news radio format was not even introduced until the 1960s and, even then, in limited urban areas.² Television was only in 55 percent of U.S. households in 1954,³ but access was not equal in urban and rural settings. For instance, in 1954, only 9 percent of homes in South Dakota had televisions, while 66 percent of homes in Illinois had a television.⁴ While today's daily newspaper circulations are generally declining, the daily local newspaper was how most Americans received their news. From 1950 to approximately 1968, the total daily newspaper paid subscriptions exceeded the number of total U.S. households.⁵ In 1950, there was an average circulation of 53.8 million total paid subscriptions for U.S. daily newspapers, which represented 123.6 percent of U.S. households.⁶

Daily newspapers and other periodicals were clearly the primary methods of how the American public was educated on current events in the U.S. through the 1960s. Both urban and smaller town daily newspapers relied on newswire service stories to keep their readers abreast of current national and international topics. The most prominent newswire services in the U.S. in the 20th century were the Associated Press (AP) (1846 - present)⁷ and the United Press International (UPI 1907-58; UPI 1958-present).⁸ In American periodicals, *Life* was dominant for some 40 years, selling more than 13 million copies per week in 1950.⁹ It was

reported that *Life* in 1950 was seen by half of Americans aged 10 or older during any given quarter.¹⁰

* * *

Dr. Claude Beck and Heart Surgery Using Asbestos

Since 1921, the annual leading cause of death in the U.S. has been heart disease. Before Dr. Rene' Favaloro successfully performed the coronary artery bypass graft operation in 1967 at the world-renowned Cleveland Clinic, much research went into how to improve the lives of those who survived after being stricken with a heart attack or angina pectoris. One of those researchers was Dr. Claude Beck, also based in Cleveland, who is recognized as a pioneer and the "father of heart surgery."¹¹ Beck held many "firsts" in his career: the first to successfully use defibrillation to revive a patient (1947); the first to conduct cardio-pulmonary resuscitation (CPR) classes for medical professionals (1950); the first to successfully remove a heart tumor (1940); and the first professor of cardiovascular surgery in the U.S. (1952 – 65).¹² Beck, who taught at Case Western Reserve University, was a Nobel Prize nominee in Medicine in 1952.¹³ In 1935, Beck first reported on an experimental operation to restore blood flow to a damaged heart muscle.¹⁴ In July 1943, Beck published a study which sought to determine which substance, when directly applied to the surface of the heart as an inflammatory agent, would develop vascular channels between the coronary arteries without producing harmful side effects. He studied 20 substances, including various chemical agents, oils, mixtures, talc, silicon, and asbestos. He reported that powdered asbestos produced the most favorable reaction, with positive results in human patients.¹⁵ By November 1943, his operative technique of applying asbestos to the heart muscle was reported to have been performed in a group of 30 patients operated on between February 1935 and January 1943. His reported

“Unfortunately for defendants, most jurors today under the age of 60 have little education on how asbestos was universally regarded in America prior to 1970 and the advent of OSHA and the EPA. However, defense attorneys can explore additional resources that shed light on what most Americans were reading about the use of asbestos, especially in medicine, and challenge the plaintiff’s theory on the state-of-the-art evidence presented at trial.”

results demonstrated that the patients were partially or completely relieved of chest pain from myocardial ischemia, with some of the patients able to return to hard physical labor. Beck reported that the operation using asbestos on the heart could be considered “a procedure in therapy.”¹⁶

While the heart bypass operation today is considered a common operation, operations on the human heart prior to the 1970s were considered risky, despite the increasing American death toll from the effects of heart disease. Most American surgeons prior to 1960 had never fathomed of operating on a person’s heart, nor had they been taught or trained to do so. After a heart attack, most patients were simply told to “rest and recover,” without the benefit of any therapeutic intervention. So, press reporters responsi-

ble for scientific news coverage began to take note of the pioneering developments in heart surgery. In October 1946, the UP newswire service circulated nationwide its reporting regarding the developments made in heart surgery, including Beck’s operative technique of sprinkling powdered asbestos on the heart to increase its blood supply.¹⁷ By January 1950, the AP reported that powdered asbestos was being used by a surgeon at the University of Cincinnati in a “very encouraging” surgical technique to treat coronary artery disease.¹⁸

In December 1952, it was reported that Claude Beck had presented on his heart operation using powdered asbestos before the American Medical Association (AMA) meeting in Denver.¹⁹ In fact, the AMA, based in Chicago, published a statement in November 1954 entitled

“Pre-Crisis Surgery Can Prevent Heart Failure.” The AMA commended the work of physicians such as Beck, noting that “revascularization” operations, including stimulating the heart with powdered asbestos, can be performed on selected patients with coronary artery disease. The AMA indicated that it was “demonstrated beyond reasonable doubt” that additional blood can be supplied to the heart with the surgery and that “mortality can be reduced.”²⁰ In the same month, the *Journal of the American Medical Association (JAMA)* had published Beck’s article on “Operations for Coronary Artery Disease.”²¹ The *Annals of Surgery* published a similar article by Beck which reported that the surgical technique was the result of over 4,000 experimental operations, which led to him performing 182 operations on human patients by 1954. Moreover, it was then reported that his operation using asbestos began to be referred to as the *Beck I Operation*. The *Beck I Operation* included introducing a small amount of asbestos as an inflammatory agent, applied directly to the heart muscle, after which the pericardium was closed. This research was supported by grants from the United States Public Health Service and the Cleveland Area Heart Society.²² In March 1955, the AP reported that Dr. Beck had taught the surgical technique using asbestos on the heart to other surgeons via a “closed circuit coast-to-coast TV hookup.”²³ A group of Philadelphia surgeons reported in the May 1955 issue of *Chest* (then *Diseases of the Chest*) that the Beck procedure of applying powdered asbestos to the heart remained “the most satisfactory of the surface revascularization techniques.”²⁴

The topic of the advances in heart surgery was catapulted to the forefront of the American news when President Eisenhower sustained a heart attack on September 24, 1955. The AP quickly circulated a news story of the pioneering surgeons in heart disorders within days of

the event, reporting on Dr. Beck’s procedure using asbestos powder to stimulate the heart to create a new blood supply.²⁵ Similarly, *Life* magazine’s October 10, 1955 issue extensively covered Eisenhower’s recovery and the then present-day funded research devoted to heart disease. One of the reported techniques was applying asbestos to the heart to increase blood flow to the organ.²⁶ The AP even interviewed Dr. Beck in October 1955 to discuss with him potential treatments for President Eisenhower while Beck was in Washington, D.C. presenting on heart surgery to the District of Columbia Medical Society. One of the surgical techniques upon which he was presenting was the use of powdered asbestos on the heart to stimulate additional blood channels.²⁷

* * *

The Beck I Operation Gains Increasing Usage in Heart Surgery

By June 1956, the AP reported some 1,200 persons nationwide had undergone the heart surgery using asbestos, with results that included 90 percent of patients being freed from all or most pain and being able to return to full or part-time work.²⁸ In July 1956, physicians at Yale University Medical Center reported on available operations to establish collateral blood circulation to the heart in *The American Journal of Pathology*, including the Beck procedure using asbestos.²⁹

Further spread of the surgical technique using asbestos on the heart muscle continued to be announced in newspapers and journals. The San Rafael, CA, *Daily Independent Journal* newspaper in March 1957 reported that Marin General Hospital’s only heart surgeon, who had studied under Dr. Claude Beck, performed the heart revascularization surgery using powdered asbestos on a 39-year-old man who had been the victim of two heart attacks.³⁰ Beck reported in the

Annals of Surgery in April 1957 a mortality of zero for the last 77 consecutive patients upon which the operation had been performed in Cleveland.³¹ The May 9, 1957 issue of *The New Scientist*, a publication based in London, England, reported on the work of the pioneering heart surgeon Claude Beck and his operation using asbestos to increase blood flow to damaged hearts, as had been recounted in the *Annals of Internal Medicine* in December 1956.³²

In the December 20, 1958 issue of *JAMA*, Beck reported that his heart operation using asbestos had been performed on 347 patients in Cleveland from January 1, 1954 to February 14, 1958. The clinical results demonstrated that it was “nothing less than an effective and beneficial procedure.”³³ The Chicago Tribune news service circulated a similar story of Beck presenting the results before the International College of Surgeons in September 1959.³⁴ A science writer for the Scripps-Howard newspapers reported in February 1961 that the *Beck I Operation* had been performed “on about 2,000 patients on three continents” with good results.³⁵

By August 1966, the *Annals of Surgery* reported on the improved results of combining the *Beck I Operation* using asbestos with the procedure of implanting the internal mammary artery in the left ventricle, developed by the Canadian surgeon Arthur Vineberg at McGill University.³⁶ With the reporting of Dr. Favoloro’s saphenous vein bypass technique in 1968, and other surgical groups reporting their results using the same surgical technique between 1968 and 1970, the era of the heart bypass operation began to take hold in the United States as the primary treatment for myocardial revascularization.

* * *

A Look Back

In looking back at the history of heart surgery, Dr. Harris Shumacker, who had been the Chairman of the Department of Surgery at the Indiana University School of Medicine between 1948 and 1968, authored a book, *The Evolution of Cardiac Surgery*, published in 1992.³⁷ The book garnered positive reviews in the *New England Journal of Medicine*,³⁸ the *Annals of Surgery*³⁹ and the *Archives of Surgery* of the AMA.⁴⁰ In his book, Shumacker reviews the history of heart surgery, including its early pioneers. Shumacker references the *Beck I Operation* using asbestos and noted that the “technique was widely utilized by Beck and many other cardiac surgeons, and with modifications became the most common operation for coronary artery disease until the era of the aortic-coronary bypass surgery.”⁴¹

So, with the benefit of 20/20 hindsight, many today may scratch their heads as to how asbestos could ever have been used in medicine by physicians nationwide and internationally to repair the human heart. But, when put in the proper historical context, they must acknowledge at least two things: it was a different technological era compared to today in America; and that the physicians undertaking heart surgery in the first half of the 20th century were eminently qualified, highly educated individuals whose pioneering research paved the way for the eventual ground-breaking development of the heart bypass operation. Their goal of helping individuals was noble, and the evidence is lacking that even they, as physicians, were aware of drawbacks associated with the use of asbestos in the human body as a potential cancer-causing substance. The foregoing review supports an argument that asbestos was considered to be a medically beneficial therapeutic agent in individuals who had suffered from the effects of heart disease.

“But more importantly for defense attorneys who are faced with challenging an asbestos plaintiff’s state-of-the-art theory, the reports of medical advances in heart surgery using asbestos into the 1960s are worthy of consideration in presenting a defense at trial. And that’s not ‘fake news!’”

But more importantly for defense attorneys who are faced with challenging an asbestos plaintiff’s state-of-the-art theory, the reports of medical advances in heart surgery using asbestos into the 1960s are worthy of consideration in presenting a defense at trial. And that’s not “fake news!”

* * *

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PERSPECTIVES

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