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NEWSLETTER
SUMMER/FALL 2022



*Back row: Erica Bergmann, Glenn S. Draper, Justin Olson, Chandler H. Udo
Front row: Brendan Little, Matthew P. Bergman, Vanessa Firnhaber Oslund*

BDOU Secures \$30 million Verdict for Oregon Family



Reberiano and Brenda Ibarra

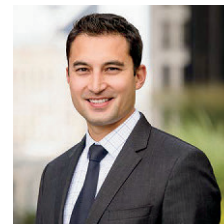
On May 25, 2022 a Multnomah County jury awarded \$30 million for the wrongful death of Oregon resident Reberiano (“Rebe”) Ibarra. Rebe and Brenda lived in Hermiston, Oregon where they raised racehorses. They were active in the Mexican community and their church. Rebe was diagnosed with mesothelioma in February 2020 at the age of 66 and underwent multiple rounds of chemotherapy.

In August 2020 he and Brenda filed a lawsuit in Multnomah County and that fall he was deposed over a period of four days as his health was declining. Rebe died in January 2021 and an autopsy revealed astronomical levels of crocidolite fibers in his lungs.

Ibarra Continued on page 7

Negligence Found by Pierce County Jury in \$11.2 Million Award to BDOU Client

On August 5, 2021, a unanimous Pierce County, Washington jury awarded \$11.2 million to Dennis Woodruff, a 75-year-old Tacoma man suffering from terminal mesothelioma. The trial began in June 2021, and the verdict was delivered on August 5th. The trial was conducted by managing partner Chandler Udo and associate Justin Olson at Bergman Draper Oslund Udo. The case was filed against Zidell Explorations and the Port of Tacoma.



Chandler Udo

Zidell Dismantling was a company that dismantled retired Navy ships on piers leased from the Port of Tacoma. Dennis worked as a welder and laborer at Zidell in the early 1970s and was repeatedly exposed to hazardous levels of asbestos from insulation ripped off during the ship dismantling process. As a laborer, Dennis worked all throughout the job site both on and off ships. He did not wear respiratory protection while performing this

Woodruff Continued on page 6

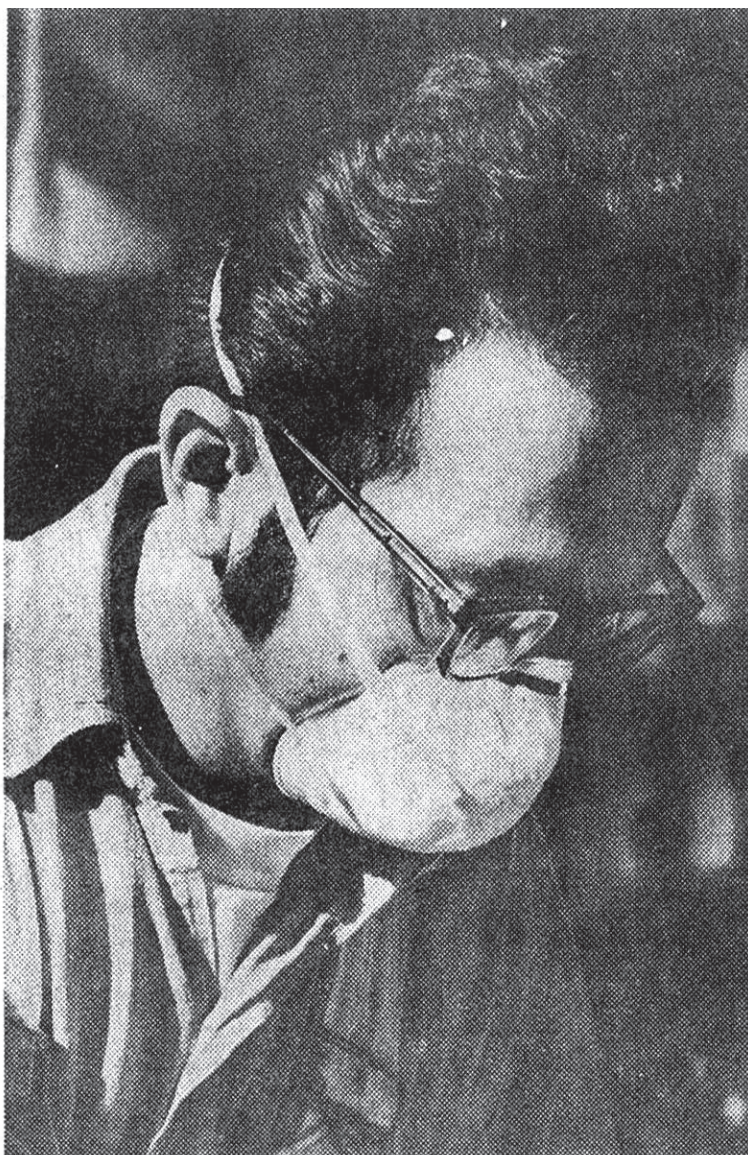
WASHINGTON COURT OF APPEALS ORDERS 3M TO FACE NEW TRIAL FOR DEFECTIVE MASK

On May 9, 2022, the Washington Court of Appeals reversed a verdict against retired insulator, Larry Roemmich, in favor of mask manufacturer 3M Company, holding that the trial court had improperly instructed the jury on the applicable causation standard.

Larry Roemmich worked as an insulator at Puget Sound Naval Shipyard from 1968 to 1995. From 1972 to 1980, he wore 3M's 8710 mask whenever he worked with or around asbestos believing it would protect him from asbestos disease.

Larry's use of 3M's mask at PSNS was no coincidence as 3M developed the 8710 in the 1970s specifically for use

by asbestos workers. 3M actively pursued the insulation and shipyard markets, directly targeting shipyard insulators like Larry. However, from the time 3M first developed the 8710, the company knew its product would not protect workers from asbestos cancer. Nevertheless, 3M not only never warned of these defects but aggressively advertised the 8710 as protective against asbestos disease.



*1972 Newspaper Article from the Bremerton Sun
Depicting Larry Roemmich Wearing the 3M Mask*

You don't have to work yourself to death.

Black lung. Stonecutter's disease. Asbestosis. Grinder's rot. All of them caused by dust particles in the air. And all of them can kill a man. That's why workers should wear a 3M Brand Respirator 8710. The 8710 stops pneumoconiosis and fibrosis producing dusts from ever reaching the lungs. In fact it's so effective it has received Bureau of Mines approval.* But here's what makes the 8710 really different. It's completely disposable and costs 55¢ each. Throw it away when the job's done. In the long run you save money because there are no filters to clean; no storage problem. The 8710 weighs ¼ oz. That's about as heavy as the page this ad is printed on. And it won't muffle the voice, hinder vision or interfere with goggles and glasses. The 3M Brand Respiratory 8710. It helps keep deadly dust out of your lungs. For more information on this and other 3M Occupational Health and Safety Products write or call: 3M Company, 3M Center, Dept. COR-63, Bldg. 517-110, St. Paul, Minnesota 55101. **Occupational Health & Safety Products** **3M**

*Certificate of Approval TC-21C-132 has been granted by the U. S. Bureau of Mines and National Institute for Occupational Safety and Health to the 3M No. 8710 single use air purifying respirator for respiratory protection against pneumoconiosis and fibrosis producing dusts, including but not limited to aluminum, asbestos, coal, flour, iron ore or free silica.

COAL AGE • June 1973 Circle 188 on product information card 149

1974 3M Advertisement for 8710 Mask

In 1980, the National Institute for Occupational Safety and Health explicitly informed 3M that the 8710 had the propensity to leak and should not be used to protect users against the cancer-causing effects of asbestos. Nevertheless, 3M continued to advertise and promote the 8710 as protecting workers from asbestos disease through 1986. As a result, Larry and similarly situated asbestos workers wore the 8710 mask in the mistaken belief that it would protect them from asbestos cancer.

Larry was diagnosed with mesothelioma in the fall of 2019 and, shortly thereafter, he and his wife Gloria filed a lawsuit against 3M and several asbestos manufacturers in King County Superior Court. By time of trial in October 2020, the Roemmiches had settled with all defendants except 3M. BDOU partner Chandler Udo led the trial team with Brendan Little and Erica Bergmann. At the conclusion of trial, the court instructed the jury that in order to find that 3M caused Larry's injury, it needed to determine that he would not have contracted mesothelioma "but for" 3M's defective mask. This instruction was contrary to longstanding practice in Washington asbestos litigation in which plaintiffs need only prove that the defendant's product was a "substantial factor" in the development their disease.

Based on 3M's manufacture and sale of a mask it knew to be defective and its false and misleading representations to workers that the 8710 protected them from asbestos disease, the jury found that 3M was negligent. However, based on the trial court's "but for" causation instruction, the jury could not conclude the 3M's negligence had caused Larry's injury and rendered a defense verdict.

On appeal, BDOU founding attorney Matthew Bergman argued that the trial court's "but for" causation test was improper in cases involving asbestos workers exposed to multiple products over a substantial period of time. Bergman explained that under a "but for" standard, career asbestos workers like Larry who were exposed to many different products could never prove causation with respect that any single manufacturer. He argued that applying a "but for" test to 3M's negligence was analogous to permitting one member of a nine-person firing squad to evade accountability based on the argument that the shooting victim would have died anyway from the eight other riflemen. Instead, Bergman argued that the trial court should have given a "substantial factor" instruction under which 3M's negligence need only have been a significant factor in the development of Larry's mesothelioma, even if his other exposures would have been sufficient to cause his disease.

The Court of Appeals agreed and in a published opinion held as follows:

Roemmich was exposed to asbestos by a number of parties, so individual responsibility for the harm cannot be proven under the "but-for" test. Regardless of whether 3M's mask was the only reason for Roemmich's mesothelioma, there was substantial evidence from which the jury could determine that the mask was defective and contributed to his injury. And because the

harm done by 3M and the other defendants was identical—Roemmich developing mesothelioma—the substantial factor test applies.

The court reversed the verdict in favor of 3M and remanded the case for retrial. Because the jury previously found 3M negligent, the new trial will be limited to the issue of whether 3M's negligence was a substantial factor in causing Larry's mesothelioma.

Larry, who continues to undergo treatment for his mesothelioma, was pleased with the court's decision. "I am happy the Court of Appeals rejected a standard that no asbestos worker could ever meet. I relied on the 8710 mask to keep me safe when 3M knew all along that it didn't protect against the cancer I'm battling today. I look forward to another opportunity to hold 3M accountable at trial and hope that a properly instructed jury will reach a just result."



Larry and Gloria Roemmich

BDOU Secures \$10 Million Verdict in World War II “Take Home” Exposure Case

In November 2021, a King County jury awarded \$10 million in non-economic damages to a retired middle school teacher from Wenatchee, Washington who developed mesothelioma as a result of his “take home” exposure to asbestos from his father who was an insulator at shipyards in Seattle in the 1940s. BDOU partner Vanessa Oslund led the trial team with associate Erica Bergmann. Due to the pandemic, the trial occurred virtually with the judge, jury, plaintiff, and defense counsel all participating online.



Vanessa Oslund

George Kraemer was the youngest of three children who grew up in the Lake City neighborhood of Seattle. His father, Charles Kraemer, started working at the Harbor Island shipyards just before Pearl Harbor and continued to make asbestos-insulated wrappings for pipes throughout the war effort. George’s father unknowingly brought asbestos home on his work clothes exposing his family to toxic dust. One of George’s older siblings was diagnosed with asbestosis in the 1980s. George contracted mesothelioma in July 2020.



Charles Kraemer Holding Son George in 1942

George and his wife Patricia filed a lawsuit in October 2020 against Lone Star Industries, formally known as Pioneer Sand and Gravel. Pioneer Sand and Gravel

sold Carey asbestos containing insulation and operated a warehouse adjacent to Harbor Island in Seattle. The evidence at trial demonstrated that Pioneer held itself out as a distributor of Carey insulation, was the sole distributor of Carey products during the time period, sold the product without any warnings, and that unprecedented ship repair was occurring on Harbor Island during WWII.

The jury ultimately found that Lone Star was responsible for causing George’s terminal cancer and awarded the Kraemers’ \$10 million in damages.



George and Patty Kraemer

“We are grateful the court found in favor of our case,” said Kraemer. “It set a precedent so others afflicted with this disease may find justice in the future. Our family has been through a lot in the past few years so the judgment will ease the financial medical burden but moreover we’re just relieved to know those responsible have been held accountable. I was an innocent toddler when I was exposed to asbestos in my own home.”

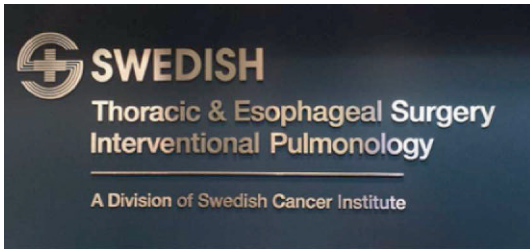
BDOU to be Honored with Swedish Community Impact Award



BDOU with Swedish Thoracic Surgery Team

Left to right: Brian E. Louie, MD, Madeline F. Bergman, Adam J. Bograd MD, Chandler H. Udo, Matthew P. Bergman, Eric Vallieres, MD, FRCSC, Vanessa Firnhaber Oslund, Jed A. Gorden, MD

Bergman Draper Oslund Udo will be honored with the Swedish Community Impact Award for their ongoing support of the Swedish Thoracic Surgery Fellowship program. BDOU is proud to be recognized by Swedish and continues to value the ongoing partnership they have formed with the incredible care team in the Swedish Thoracic Surgery group.



BDOU's support of the thoracic surgery fellowship program allows the Swedish team to train the next generation of thoracic surgeons. Most of the fellows who join this research program are finishing up general surgery training with the goal of moving on to thoracic surgery training. This program not only benefits BDOU clients but also other individuals in our community who are suffering from thoracic health conditions.

Most recently, BDOU attorneys gathered with the Swedish Thoracic Team in Seattle and had the opportunity to hear updates on the research being performed at Swedish and meet the current fellow in the program. It was a wonderful opportunity for both groups to hear about the work each were doing on behalf of asbestos victims.

"We are so impressed by the knowledge and skill of the Swedish Thoracic Surgery team. We are incredibly proud to support the world-class care and treatment that they provide mesothelioma victims," said BDOU partner, Vanessa Oslund.

For BDOU attorneys, their gift to Swedish over the years is seen as another way to continue to support and take care of their clients. Founding attorney, Matt Bergman, has forged a strong relationship with Eric Vallieres, M.D., and his team of surgeons

at Swedish. "When we learned of this opportunity years ago to support this program, we embraced the chance to further support our clients. We are honored to receive the Swedish Community Impact Award and look forward to a meaningful partnership in the future," said Matt Bergman, founding attorney at Bergman Draper Oslund Udo.

Paralegal Ann Cohan to Retire from BDOU



Longtime BDOU paralegal, Ann Cohan, intends to retire from her day-to-day role at the firm in 2022. Ann will continue to handle Medicare issues for BDOU on a part-time basis. Ann has been a fixture at our law firm for over two decades, guiding clients, widows, and other family members through the challenging – and often overwhelming – process of seeking justice for a loved one stricken with asbestos disease. She has taken great joy in connecting with our clients over the years and should be proud of the difference she has made in so many lives.

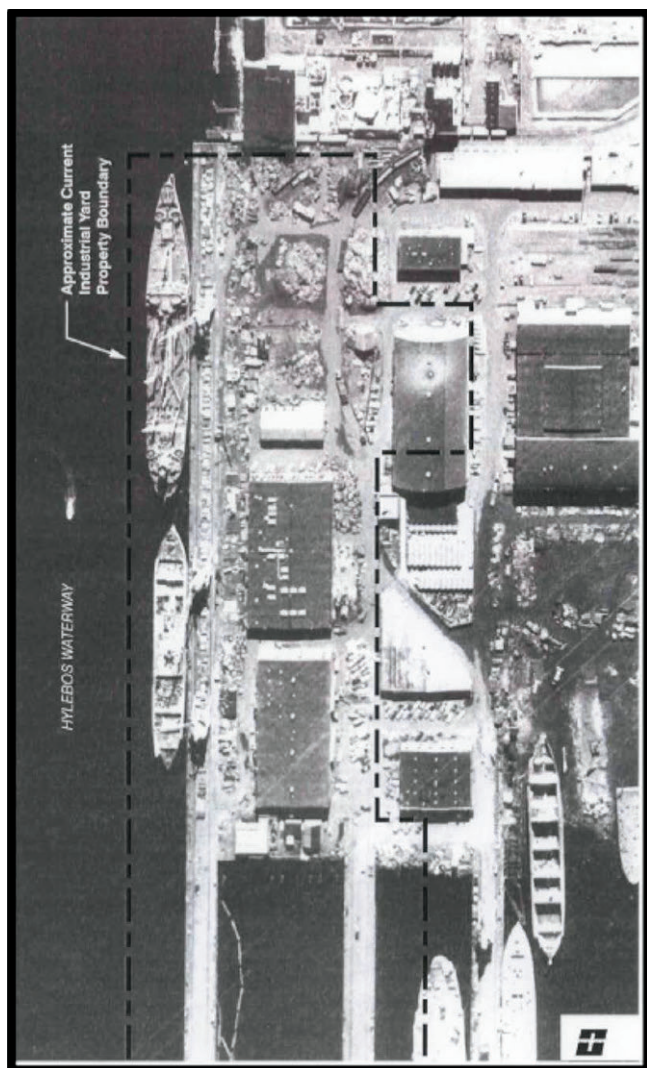
Ann began her career in the asbestos field in the Fall of 1981 at the law firm of Levinson Friedman Vhugen Duggan & Bland in Seattle. This was the very beginning of asbestos lawsuits in King County and no defendants had filed for bankruptcy protection at that time. Between 1981 to 1999, Ann was away from work for several years while she raised three children and traveled. However, whenever she returned, it was always to work on behalf of asbestos victims. In 2000, Ann began working for our founding attorney, Matt Bergman at Weinstein & Bergman and has continued to work for the firm – now Bergman Draper Oslund Udo - for 22 years.

Ann has taken on so many behind the scenes tasks at BDOU, handling Washington State Labor & Industry widow claims, veteran's benefit claims, settlement releases, and Medicare reporting and payment. While not as glamorous as other aspects of our trial practice, these roles are critical in ensuring that our clients receive compensation and valid liens are paid. In many cases, the Labor and Industries pensions Ann helps secure are the greatest source of compensation for our clients.

"Ann has been a true joy to work with. She has provided a reassuring voice to grieving widows and family members throughout her time at the firm. Ann always approaches her work with diligence, patience, and a positive attitude. We will miss her in the office but are thankful she will carry on with assisting with Medicare claims," said managing partner, Chandler Udo.

Ann plans to travel with her husband and spend more time with family and her grandchildren. On behalf of all the BDOU team, we wish Ann a well-deserved retirement and thank her for her many contributions to our firm and clients.

work and testified he had no knowledge that asbestos-containing thermal insulation found all throughout the Navy vessels could be deadly. Witnesses who worked with Dennis at Zidell during the same time period described incredibly dusty, dirty conditions caused by the dismantling process.



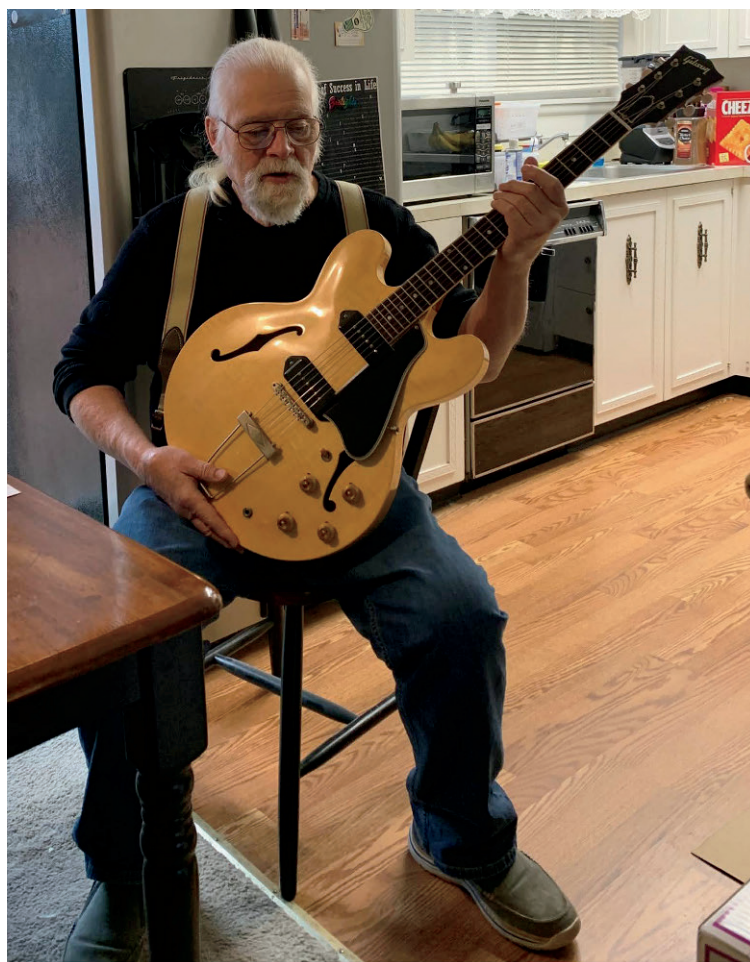
Aerial Photo of Zidell Dismantling in Tacoma

At trial, Dennis sought accountability from the Port of Tacoma, which owned the land upon which Zidell operated, and Zidell Explorations, the Portland-based sister corporation that worked hand-in-hand with Zidell Dismantling's Tacoma operations. During trial, the jury learned that later environmental studies of the Port of Tacoma revealed asbestos buried in the soil decades after Dennis worked there. The jury also heard that Zidell Explorations owned the ships that were dismantled in Tacoma and even signed a guarantee with the Port promising to ensure that the job site was kept clean and safe. Zidell Explorations further guaranteed that all safety laws and regulations would be followed. Plaintiff also presented evidence

that Zidell destroyed critical corporate records relating to its Tacoma dismantling operations and the trial court instructed the jury that it could draw an adverse inference from this discovery violation.

The jury found that Zidell Explorations' failure to warn or protect Dennis from asbestos hazards was negligent and contributed to causing Dennis's disease. The jury found the Port of Tacoma negligent but did not find causation. The defendants argued at trial that Dennis was 100% at fault for causing his own illness for failing to wear a respirator and that the jury should award him nothing. The jury rejected this argument and awarded Dennis \$11.2 million.

Sadly, Dennis passed away one month after the jury's verdict. Chandler Udo observed that "we are grateful that Dennis was able to participate in his trial and lived to see a jury hold Zidell Explorations accountable for causing his terminal disease. The jury's conclusion that Dennis had no fault for contracting his preventable disease is especially gratifying."



Dennis Woodruff



Reberiano and Brenda Ibarra

After multiple continuances, the Ibarra trial took place in Multnomah County Circuit Court with Judge Eric L. Dahlin presiding.

Rebe's only asbestos exposure occurred while working as a general laborer and sandblaster at Ameron's Bondstrand factory in Brea, California. For just four months in 1974. During this time, Ameron failed to notify the workers who were exposed to high levels of asbestos while working in Ameron's Bondstrand pipe factory. In fact, multiple workers who have testified about their time at Ameron said they believed they were working with fiberglass only and were unaware of the hazards associated with asbestos.

The evidence introduced at trial showed that Ameron was a notorious user and seller of crocidolite asbestos that was used to line its Bondstrand brand fiberglass pipe and pipe fittings. Even after major asbestos suppliers began abandoning the crocidolite asbestos business in the early 1970s due to health concerns, Ameron continued to buy, sell, and manufacture products that contained this potent carcinogen.

All of Rebe's asbestos exposure at Ameron occurred after OSHA promulgated its 1972 asbestos regulations, which mandated work practices and warnings to protect workers from mesothelioma and other asbestos diseases. Ameron had actual knowledge that the asbestos levels in its Bondstrand factory were many times in excess of OSHA standards and that exposures even below the OSHA limits were shown to cause mesothelioma, a terminal cancer associated with asbestos exposure. Ameron was so informed because it hired an industrial hygiene consultant

in 1972 who took air samples in the Bondstrand factory and who later criticized the company for failing to follow his recommendations, instead using the consultant to "intercede" with government inspectors from OSHA and The National Institute for Occupational Safety and Health.

Mesothelioma is an extremely rare disease with a background disease incidence in the general population of one in a million. Yet among the relatively small population of less than 400 employees who worked at Ameron, at least six were diagnosed with mesothelioma. In epidemiologic terms, this is a veritable epidemic.

Most of the Ameron employees who developed mesothelioma were Mexican immigrants, many of whom did not speak English. Ameron never warned these vulnerable workers that they were being exposed to a known carcinogen at astronomical levels, let alone took measures to protect them from this obvious hazard, such as switching to a less hazardous substance or providing respiratory protection.

Numerous witnesses testified on the horrific industrial hygiene conditions at the Ameron Plant with asbestos fiber levels that were multiple times greater than permissible OSHA limits and the failure of plant personnel to provide any warnings to the mostly Spanish speaking employees who were constantly being exposed to asbestos dust with no respiratory protection. Ameron sought to pass responsibility off on other companies that supplied asbestos to its plant and argued that Rebe's mesothelioma was caused, not by the raw asbestos in its plant, but by naturally occurring erionite asbestos that was allegedly present in the Mexican village where he grew up. Ameron also introduced evidence that Rebe was undocumented at the time he worked at their factory.

After a four week trial, the jury found Ameron negligent and 100 percent responsible for causing Rebe's mesothelioma.

"We are pleased with the jury's decision to hold Ameron International accountable for Rebe's death and for failing to warn him that he was being exposed to hazardous crocidolite asbestos fibers in the workplace," said Vanessa J. Firnhaber Oslund, a partner at BDOU who litigated the case along with her partner Brendan E. Little. "While we know that no jury award can alleviate the family's pain, they can take solace in the fact that Ameron is being held responsible. Ameron treated these workers as if they were disposable, but the jury vehemently disagreed with Ameron's devaluation of human life."



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Brendan Little Promoted to Partner

On January 1, 2022, Brendan Little became a partner at Bergman Draper Oslund Udo having joined BDOU as an associate in 2019.

Brendan grew up on the Kitsap Peninsula where his father operated a veterinary practice in Gorst. He attended Kitsap High School and competed on the varsity wrestling and soccer teams. Brendan attended the University of Washington, graduating with a degree in Economics in 2006. He attended Washington University Law School where he served as Associate Editor of the Journal of Law and Policy before graduating cum laude in 2010.

After law school, Brendan was appointed to serve as law clerk to Judge Carol E. Jackson of the United States District Court for the Eastern District of Missouri. He then worked at a prominent New York City plaintiffs' firm representing individuals who had been exposed to asbestos in talcum powder products, children harmed by lead in paint and contaminated water systems, and whistleblowers.

In 2019, Brendan and his wife decided to move back to the Northwest to raise their children closer to his family. They have two children and live in Seattle.

