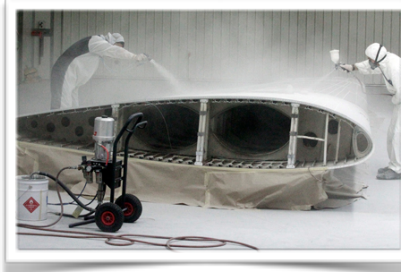
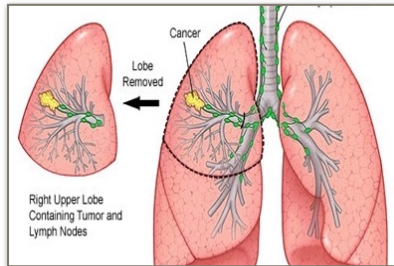




HEUBECK LAW, P.C.

Toxic Injury & Products Liability Litigation



Primary Lung Cancer

Decedent was a non-smoker diagnosed with primary adenocarcinoma (with an EGFR mutation) about 20 years after she began work as an aerospace painter.

Aerospace Coatings

Many aerospace coatings in use in the 1990s contained one or more chromates as corrosion inhibitors. These chromates contained Hexavalent Chromium, Cr(VI), a notorious carcinogen made famous by the *Erin Brockovich* movie.

Strontium Chromate

The ACGIH set a limit for Strontium Chromate exposure that was 100 times lower than for other carcinogenic Cr(VI) compounds.

Aerospace Paint Exposure

Decedent was employed in the 1990s as a painter on the Stealth Bomber program. She applied and sanded a variety of military-grade primers, topcoats and epoxy resins. The products were chosen by the U.S. Government. She always applied them in a mechanically-ventilated paint booth while wearing an OSHA-approved half-face respirator. The products were labeled with warnings that certain identified ingredients were known carcinogens. An Approved Material Safety Data Sheet (MSDS) accompanied each product.

OSHA Compliance

It was acknowledged that her employer likely complied with all applicable OSHA regulations and that her exposures to the identified carcinogens were always below the existing Permissible Exposure Limits (PELs).

Government Contractor Defense (CACI No. 1246)

It was undisputed that the products were governed by certain military specifications, the employer and manufacturers were bound by the MilSpecs, and the MilSpecs mandated the use of the carcinogen Strontium Chromate as an ingredient.

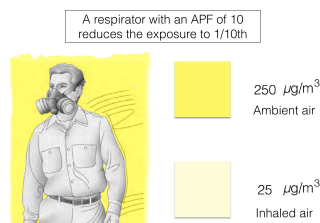
In short, the Defendants had much in their favor.

Why Then Were the Paint Manufacturers Liable?



Respirators Aren't Perfect

Properly-fitted, half-faced filter cartridge respirators are given an assigned protective factor (APF) of 10, meaning that they will reduce exposure to the contaminants in the air by only 90% - *regardless of the filter cartridge used!* Why? Because such respirators are known to intermittently leak around the face seal during use.



Understanding Chemistry

John C. Heubeck, Esq. has prosecuted hundreds of chemical exposure cases over the last 30 years. His degree in Chemistry and past work with OSHA has always proven invaluable in establishing the defendant's liability, conducting discovery, and selecting, preparing and cross-examining experts. Most plaintiff lawyers - and defense lawyers - lack a technical background and are usually at a mutual disadvantage when handling such cases.

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The Product Design Defect

We defined the product defect in a way that avoided the Government Contractor Defense. While the MilSpecs required the use of Strontium Chromate - *an undissolved particulate used in the paint* - they did **not** specify a lower limit for the particle size. About 20% of the SrCrO₄ used in the paints involved particles smaller than 2 microns. It was these sub-2 micron particles that were capable of reaching the small airways and causing her lung cancer. There was no compelling reason for such small particles to be in the paint. They were simply an artifact of the milling process used by the paint manufacturers to prepare the raw ingredients and could have been removed.

The Military Specs

Our research revealed that certain versions of the MIL-SPECS were briefly modified in the mid-1990s to include language that required the supplier to assure the military that the products would "*have no adverse effect on the health of personnel when used for its intended purpose*". The manufacturers were unaware that they had effectively provided the users with an express warranty that their products would be safe. This allowed us to pursue a breach of warranty claim, in addition to the strict product liability claim.

OSHA Subsequently Lowered the Exposure Limit

In the 1990s, the OSHA limit for SrCrO₄ was about 52 $\mu\text{g}/\text{m}^3$. In 2006 - *after she had been exposed* - the limit was lowered to 5 μg . This helped establish - albeit, through hindsight - that her exposures in the 1990s had placed her at an increased risk of lung cancer. The fact that the scientific community may not have fully understood the hazards in the 1990s didn't matter, since liability was based upon a breach of warranty and the claim that the product was defective under the "Consumer Expectations" test.

Results

The case was assigned to the long-cause calendar in Los Angeles Superior Court and shortly before trial commenced, each of the remaining defendants settled for a confidential amount.

If you need assistance with a chemical exposure case, contact us. Our knowledge and experience can add significant value to the case.