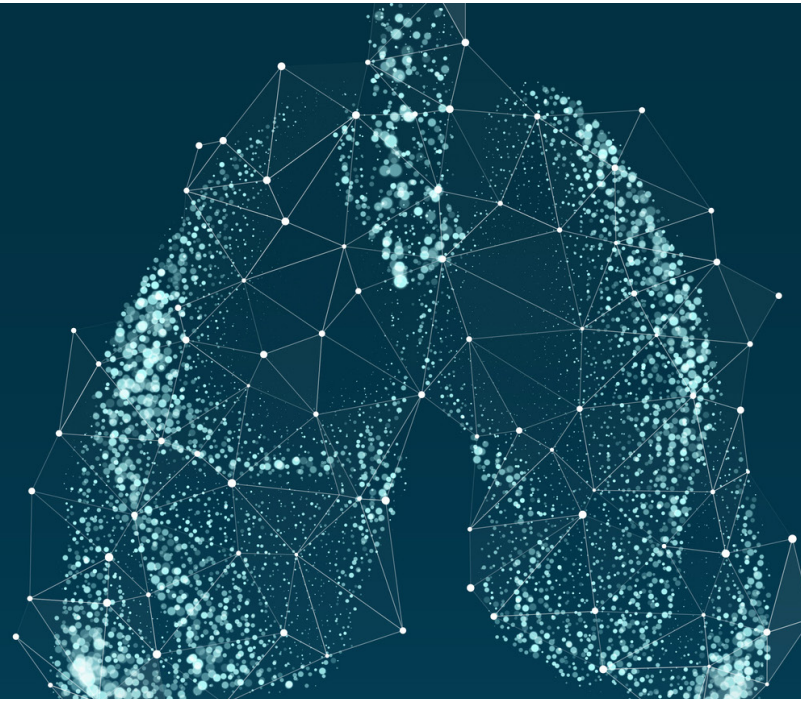


# The Fingerprint on Michael's Lungs

A Case Study of How the “Fingerprint”  
of Asbestos in a Client's Lungs Helped  
Secure a Successful Mesothelioma Verdict

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By *Ryan Kiwala*  
Shareholder



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## EXECUTIVE SUMMARY

Despite an overwhelming body of medical evidence linking asbestos exposure to mesothelioma, asbestos companies routinely lie and misinform about their products. Finding irrefutable evidence that uncovers the falsehoods told by asbestos companies — and secures as much compensation for you as possible — is our trial team's ultimate goal.

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Doctors who study the relationship between asbestos and cancer agree that mesothelioma is the cumulative result of years of asbestos exposure. Mesothelioma cases can be especially complex because it's often the case that a person who developed mesothelioma encountered asbestos on numerous occasions from a variety of sources. Adding another layer of complexity to mesothelioma cases is the fact that they involve the intersection of scientific and medical issues with the wrongdoings committed by one or more companies.

Accordingly, successfully litigating your mesothelioma case will require not only the services of expert witnesses, but also experienced trial counsel who understand and respect the integral role that scientific evidence plays in asbestos litigation. Having this expertise, knowledge and experience can prove invaluable in developing and presenting a credible case before a jury — especially when the defending asbestos companies have spent many decades and countless dollars muddying the waters with lies and misinformation.



**SIMMONS HANLY CONROY**  
A NATIONAL LAW FIRM

No matter how complex a case may be, our firm's dedicated staff, experience and resources offer unparalleled representation in trial

## INTRODUCTION

While the vast majority of mesothelioma cases reach settlements between the injured plaintiffs and the defending asbestos companies, some companies refuse the opportunity to settle — instead forcing a trial before a jury.

To reach a successful trial verdict in the unique case of firm client Michael Galliher, it took exemplary work on behalf of our firm investigators and our medical-expert partners to confirm the fibers extracted from Michael’s lung tissue matched those sold by the defending company, R.T. Vanderbilt.

Simmons Hanly Conroy is no stranger to the courtroom. It’s the job of our experienced trial teams to diligently prepare every case — including yours — as if it is going to trial. To do so successfully involves leveraging resources across the firm and cultivating relationships with scientific and medical experts in order to:

- Determine your exact source(s) of asbestos exposure
- Find out every aspect of a company’s history — from previous owners to its marketing materials — to help prove a company is at fault for asbestos exposure
- Deliver testimony from expert witnesses — doctors,

public health officials and mineralogists, among others — who are distinguished in their field in order to help prove your case

- Develop an effective, credible and compelling story to tell a jury, relying on the underlying science and hard-won evidence proving asbestos company liability

Simmons Hanly Conroy will guide you through every step of the legal process. When you hire us, we will begin working on your case right away. Our team will gather evidence to support your claim, leverage medical expertise to confirm your mesothelioma diagnosis, file your lawsuit, and attempt to negotiate a settlement with the parties responsible for your asbestos exposure. Through it all, we stand proudly beside you and your family, serving as your trusted legal advisors, answering your questions, addressing your concerns, and helping you understand exactly what steps are being taken and why.

Verdicts and settlements secured by Simmons Hanly Conroy trial teams have been consecutively ranked in national and state Top 100 Verdicts & Settlements lists since 2016. In the past 5 years, the Asbestos Department has won eight asbestos verdicts, totalling more than \$190 million.

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### TAKING A COMPLEX MESOTHELIOMA CASE TO VERDICT:

## THE STORY OF MICHAEL GALLIHER AND R.T. VANDERBILT TALC

Michael Galliher spent much of his working life employed at a ceramics plant that made bathroom sinks and toilets. There, Michael spent many years in the plant’s “cast shop,” assembling the molds used to form the ceramics. After more than 30 years, Michael left the ceramics plant when it closed in 2004.

When Michael was diagnosed with mesothelioma in 2010, he contacted our office and our team learned the unique details of his story. His story shared some things in common with many of our clients: he had repeated, cumulative exposure to asbestos, but had no idea how he had been exposed.

When Michael shared the details of his work history, we learned he had worked with talc in the cast shop nearly every day. Michael used talc to “dust” the molds to prevent

the ceramic from sticking or cracking. He filled cloth bags with talc kept in bins located throughout the cast shop. Michael and his colleagues patted these bags on the molds’ surfaces, producing a “fog” of dust.

Talc was also used in the “slip house” area adjoining the cast shop, where it was an ingredient for the glaze that was applied to all of the ceramics made in the cast shop. Dust regularly blew into the cast shop through the open doors leading to the slip house.

One of the brands of talc used for these processes was NYTAL, a product made by R.T. Vanderbilt — a company with which Simmons Hanly Conroy attorneys were all too familiar.

## R.T. VANDERBILT'S BIG ASBESTOS LIE

For decades, R.T. Vanderbilt had been attempting to hide a dirty secret: their talc contained asbestos. As firm investigators would soon learn, the company's misinformation campaign even reached the doors of the ceramics plant in Ohio where Michael worked.

In 1948, R.T. Vanderbilt purchased the Gouverneur talc mine and mill in upstate New York and began processing and marketing talc from this mine as NYTAL. Though NYTAL was marketed as "talc," its mineral makeup was only one-third talc. The remaining two-thirds of NYTAL contained other minerals present in the mine: tremolite, anthophyllite and serpentine. When these minerals appear in a fibrous form, they are considered to be types of asbestos.

For years, evidence had been mounting that talc mined in upstate New York was dangerous. The U.S. Public Health Service reported that talc from the area damaged lungs. Additional studies warned that talc from the area caused permanent and disabling lung diseases.

In 1972, when the Occupational Safety and Health Administration (OSHA) placed limits on workplace exposure to asbestos fibers, R.T. Vanderbilt knew that placing an asbestos warning label on NYTAL packaging would put the company at a competitive disadvantage.

To avoid putting warning labels on NYTAL, R.T. Vanderbilt fought the regulation of its talc as an asbestos product. The company hired mineralogists who lobbied OSHA to change its definition of asbestos, so the minerals found in NYTAL would not be included.

Starting in 1980, the plant would purchase hundreds of tons of NYTAL over the next 12 years — years during which Michael was employed at the plant.

## THE FINGERPRINTS OF VANDERBILT TALC IN MICHAEL'S LUNGS

When Michael was diagnosed with mesothelioma in 2010, R.T. Vanderbilt had been living its "asbestos lie" for nearly 40 years. Vanderbilt maintained that the minerals in NYTAL were not asbestos. They also argued there was no proof Michael had actually been exposed to NYTAL — the product was not suited for use in dusting molds, Vanderbilt witnesses claimed.

Combating such claims, Simmons Hanly Conroy attorneys found the company's NYTAL promotional materials from the 1960s, which touted NYTAL as a dusting compound for ceramic molds.

Firm attorneys also uncovered evidence that NYTAL was used as a dusting agent in the cast shop where Michael worked. Further, the National Institute for Occupational Safety and Health (NIOSH) had conducted a health hazard evaluation at the ceramics plant and found a significant amount of dust migrated each day into the cast shop from the slip house.

The most significant breakthrough in the case, however, was the discovery of NYTAL's "fingerprint" in Michael's lungs. When viewed under a microscope, NYTAL looked distinct from talc from any other source — similar to how each person's fingerprint is unique and can be used to identify them.

Simmons Hanly Conroy sought help from asbestos-medicine and mineralogy experts to search for NYTAL's fingerprint using a technique called "tissue digestion." Experts took a tissue sample from Michael's lung and separated the inhaled minerals and dust from the tissue. Under the microscope, the minerals found in the tissue matched the unique mineral mixture found in NYTAL, leaving no doubt Michael Galliher was exposed to R.T. Vanderbilt's talc.

## THE LAWSUIT: GALLIHER v. R.T. VANDERBILT COMPANY, INC.

Tragically, Michael Galliher passed away in February 2011, before his case went to trial. However, he died knowing that Simmons Hanly Conroy would continue to fight for his family and his memory.

Firm attorneys Conard Metcalf, Randy Cohn and William Kohlburn represented the Galliher family at trial, bringing more than 70 years of combined experience to the table. The legal team presented testimony from distinguished experts who were able to explain to the jury how the "fingerprint" of R.T. Vanderbilt's talc had been found in Michael Galliher's lungs.

It took two weeks of trial — but only three hours of deliberation — for the jury to agree that R.T. Vanderbilt was at fault. The jury reached a verdict in favor of the Galliher family, awarding them \$2.86 million. The Galliher case was the largest asbestos verdict against a single defendant in Delaware in over a decade.

## CONCLUSION

Mesothelioma cases often involve a meticulous discovery process to reveal the many sources of asbestos exposure, which can be very complicated to unravel. Only by marshaling together all of Simmons Hanly Conroy's unique resources — from its decades of experience and high-level understanding of mesothelioma litigation to its strategic use of testimony

from prominent and credible experts — is it possible to effectively present your case to a jury in a convincing manner. A firm's experience and resources can mean the difference between a small settlement and a landmark trial verdict that ends up on the national and state Top 100 Verdicts & Settlements lists.

Ryan J. Kiwala  
*Shareholder*



Ryan Kiwala has successfully represented hundreds of men and women diagnosed with asbestos-related diseases, such as mesothelioma, lung cancer and asbestosis — recovering millions of dollars in verdicts and settlements on their behalf.

In 2006, Ryan earned his law degree from the St. Louis University School of Law, where he served on the editorial

staff of the St. Louis University Public Law Review. In addition to his work as part of the asbestos trial team at Simmons Hanly Conroy, Ryan volunteers his time with the Madison County Legal Advice Clinic and has done pro bono service as a guardian ad litem.



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