

**SUPERIOR COURT  
of the  
STATE OF DELAWARE**

PEGGY L. ABLEMAN  
Judge

New Castle County Courthouse  
500 North King Street, Suite 10400  
Wilmington, Delaware 19801-3733  
Telephone (302) 255-0660

October 4, 2011

Elizabeth Lewis, Esquire  
2 East 7th Street  
P.O. Box 1271  
Wilmington, DE 19899

Francis J. Murphy, Esquire  
Jonathan L. Parshall, Esquire  
1011 Centre Road  
Suite 210  
Wilmington, DE 19805

RE: John Crane's Motions for Summary Judgment  
*In re Asbestos Litig. (Turchen)*, 09C-11-059 ASB  
*In re Asbestos Litig. (Johnston)*, 09C-07-128 ASB  
*In re Asbestos Litig. (Truitt)*, 10C-06-072 ASB

Dear Counsel:

The Court has reviewed the motions for summary judgment filed by John Crane Inc. ("John Crane") in the *Turchen*, *Johnston*, and *Truitt* matters. All three motions present nearly identical arguments regarding causation. The Court finds that these matters are not ripe for decision pursuant to its letter Opinion of July 13, 2011 and as such, will defer decision on these three summary judgment motions.

Pursuant to the Master Trial Scheduling Order ("MTSO"), as amended August 4, 2011,<sup>1</sup> summary judgment motions for cases in the November 2011 trial setting were due on July 8, 2011. Oppositions to summary judgment were due to be filed on August 1, 2011 and replies were due August 12, 2011.

In a letter Opinion dated July 13, 2011, the Court deferred decision in the *Johnston* and *Turchen* matters, finding that it would not be appropriate to reach a

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<sup>1</sup> Master Trial Scheduling Order, C.A. No. 77C-ASB-2 (Del. Super. Aug. 4, 2011).

final determination on John Crane's summary judgment motions until deposition transcripts for Plaintiff's experts could be made available.<sup>2</sup>

John Crane re-submitted its summary judgment motions in the *Johnston* and *Turchen* matters for the November 2011 trial setting. The papers appear to have been unaltered from their original submission last spring, and neither party provided the expert deposition transcripts required by the Court. Only after the Court requested the transcripts did John Crane belatedly submit transcripts of the depositions of Plaintiffs' experts on September 30, 2011. Dr. Frank's deposition was taken on August 12, 2011 at 1:00 PM. Dr. Abraham's deposition was taken on July 21, 2011, at 4:05 PM.

The Court recognizes that its letter opinion directing the parties to submit expert deposition transcripts was issued after the deadline for summary judgment motions for the November 2011 trial setting had already passed. The Court also acknowledges the difficulty of scheduling expert depositions and the practical impossibility of obtaining a deposition transcript for submission to the Court on the same day. However, particularly in the case of Dr. Frank, there was ample time for the Plaintiffs to submit the deposition transcript with their opposition briefs, or for John Crane to submit the deposition transcript with its reply. The parties also could have sought the Court's leave to submit the deposition transcript of Dr. Abraham as soon as it became available. Instead, the parties ignored the Court's instructions and submitted the same briefs in the *Johnston* and *Turchen* matters that the Court reviewed in July. Accordingly, the Court will **DEFER DECISION** on John Crane's summary judgment motions in the *Johnston* and *Turchen* cases until it has had time to review the deposition transcripts of the plaintiffs' experts.

John Crane also submitted a summary judgment motion in the *Truitt* case. The facts of the *Truitt* case differ from those presented in the *Johnston* and *Turchen* cases in that the *Truitt* case concerns the alleged asbestos exposure of an employee of the DuPont Seaford plant rather than the DuPont Experimental Station. However, in its motion for summary judgment, John Crane raises the same causation argument that it did in *Johnston* and *Turchen*: namely, that it is entitled to summary judgment because the Plaintiff has failed to produce evidence showing that exposure to John Crane asbestos-containing products is a "but for" cause of his lung cancer and asbestosis. Dr. Abraham, Plaintiffs' designated expert, apparently had not been deposed in connection with the *Truitt* case as of the

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<sup>2</sup> *In re Asbestos Litig. (Turchen & Johnston)*, C.A. Nos. 09C-11-059 ASB & 09C-07-128 ASB (Del. Super. Jul. 13, 2011).

filing of John Crane's reply. In its reply, John Crane acknowledged this Court's previous decision deferring judgment in the *Johnston* and *Turchen* cases and requested that decision be deferred in the *Truitt* matter until such time as Dr. Abraham has been deposed and deposition transcripts are available to the Court.

For the reasons set forth in its letter Opinion of July 13, 2011 in the *Johnston* and *Turchen* cases, the Court will also **DEFER DECISION** on John Crane's summary judgment motion in the *Truitt* case until expert deposition transcripts are available. The parties need not present oral argument on these matters (*Johnston*, *Turchen*, or *Truitt*) at Thursday's hearing. If Dr. Abraham has not yet been deposed in connection with the *Truitt* matter, the parties will make every effort to schedule his deposition as soon as possible. Counsel shall notify the Court as soon as this deposition transcript is available.

Yours very truly,  
/s/

Peggy L. Ableman