

IN THE SUPREME COURT OF THE STATE OF DELAWARE

McCord Corporation,	§
	§ No. 44, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
CARL WILKERSON and CONNIE	§ C.A. No. 04C-08-268
WILKERSON,	§
	§
Plaintiffs Below-	§
Appellees.	§

Submitted: January 24, 2008

Decided: January 25, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 25th day of January 2008, it appears to the Court that:

(1) The defendant-appellant, McCord Corporation, has petitioned this Court, pursuant to Supreme Court Rule 42, to appeal from the Superior Court's interlocutory ruling on January 17, 2008 denying its motion for summary judgment. This is an asbestos negligence case, which is scheduled for trial on January 28, 2008. In its January 17, 2008 order, the Superior Court ruled that there were genuine issues of material fact regarding whether McCord had a duty to warn plaintiff-appellee Carl Wilkerson of the danger of contracting asbestos-related disease as a result of his employment

removing and installing gaskets on military vehicles¹ and that, therefore, the motion for summary judgment must be denied.²

(2) On January 24, 2008, the Superior Court refused to certify an interlocutory appeal to this Court pursuant to Rule 42.

(3) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances.³ We have examined the Superior Court's January 17, 2008 decision according to the criteria set forth in Rule 42. In the exercise of its discretion, this Court has concluded that exceptional circumstances do not exist in this case to merit interlocutory review of the decision of the Superior Court.

NOW, THEREFORE, IT IS ORDERED that the within interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ Restatement Second of Torts §§ 388, 389; *In re Asbestos Litigation*, 799 A.2d 1151, 1152 (Del. 2002).

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ Supr. Ct. R. 42(b).