

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DELAWARE 19801-3733
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June 4, 2012

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In Re: Asbestos Litigation

**Charlotte McGhee v.
SPX Cooling Technologies, Inc.
C.A. No. 10C-12-114 ASB**

Dear Counsel:

Plaintiffs filed a motion to prohibit Defendants from adopting other Defendants' motions in limine in excess of the five allowed motions. Specifically, Plaintiffs assert that Defendant, SPX Cooling Technologies ("SPX"), filed five motions in limine of its own and then filed an adoption of four motions filed by Cleaver Brooks.¹ Plaintiffs rely on the General

¹ Plaintiffs captioned their motion for two cases, but only presented facts in the above captioned case as to Defendant SPX. "Delaware law requires that a justiciable controversy exist before a court can adjudicate properly a dispute brought before it," therefore the court will only address the motion as it pertains to SPX in the *McGhee* case. *Crescent/Mach I Partners L.P. v. Dr. Pepper Bottling Co.*, 962 A.2d 205, 208 (Del. 2008) (quoting *Warren v. Moore*, 1994 WL 374333, at *2 (Del. Ch.)) (citation omitted).

Scheduling Order No. 1² and request that the court strike any adoptions or joinders of motions in limine. Defendants respond that the General Scheduling Order does not prohibit the adoption of other Defendants' motions in limine and argue that Judge Slight's decision in *In Re Asbestos Litigation: Lagrone*³ supports their argument. Defendant further argues that this does not create additional work for the court or prejudice Plaintiffs because Plaintiffs must respond to all Defendants' motions regardless of whether they are adopted by other Defendants. It also points out that Plaintiffs filed seven motions in limine in the above captioned matter.

Judge Slight's decision in *Lagrone* does not support Defendant's claim. Judge Slight was discussing the adoption practice in motions for summary judgment, not motions in limine.⁴ Defendant's claim that this practice does not create additional work for the court or prejudice Plaintiffs is incorrect. The court was informed on May 18, 2012 that Cleaver Brooks resolved Plaintiffs' claim against it. Accordingly, its motions in limine are moot and will not be considered by the court and Plaintiffs will not have to prepare to argue them. The practice advocated by Defendant would allow each defendant to file five motions and then adopt motions filed by other defendants who subsequently settle their claims. As a result a plaintiff would be limited to five motions in limine while the defendant could have a nearly endless number. Plaintiffs do not have a similar ability because they

² *In re: Asbestos Litig.*, C.A. No. 77C-ASB-2 (Del. Super. Mar. 9, 2011) (Ableman, J.).

³ 2007 WL 2410879 (Del. Super.).

⁴ *Id.* at *2-3. This court discussed the adoption practice for motions of summary judgment earlier in this case. See *In re Asbestos Litig. McGhee*, C.A. No. 10C-12-114 ASB, at 3-5 (Del. Super. Apr. 18, 2012) (Parkins, J.)

are the only party on their side of the action. This would create an unlevel playing field.

The General Scheduling Order sets forth the procedures that apply to all asbestos trials in Delaware. It states, “[i]ndividual parties are limited to five (5) in limine applications in any given case.”⁵ Accordingly, each party is permitted five motions in limine. The adoption of another parties’ motion in limine counts towards the adopting party’s five. Each party must inform the court by way of letter which *five* motions in limine they intend to argue on or before June 5, 2012. Going forward, the court will be receptive to motions to strike any motions in limine or adoption of such beyond the first five filed. Plaintiffs’ motion is **GRANTED** as described above.

IT IS SO ORDERED.

Very truly yours,

John A. Parkins, Jr.

oc: Prothonotary

cc: Loreto P. Rufo, Esquire, Hockessin, Delaware via efile

⁵ *In re: Asbestos Litig*, C.A. No. 77C-ASB-2, ¶26.