

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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WILMINGTON, DELAWARE 19801  
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November 26, 2003

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Re: *Lori Ann Sanzone v.*  
*Allied Signal Inc., et al.,*  
*C.A. No. 00C-07-068*  
*Letter/Order*  
*November 26, 2003*  
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Re: *Lori Ann Sanzone v. Allied Signal Inc., et al.,*  
*C.A. No. 00C-07-068-FSS*

Dear Counsel:

This letter is prompted by Mr. Jacobs's November 20, 2003 letter and Mr. Reid's November 21, 2003 response. The court stands by its decision to grant Defendants' motions for summary judgment based on the statute of limitations. I have re-reviewed *Brown v. E. I. De DuPont Nemours & Co., Inc.*<sup>1</sup> and I remain convinced that *Brown* controls. The court continues to appreciate that when he told Plaintiff that she had cancer, Dr. Sinkovic offered two possible causes. Nonetheless,

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<sup>1</sup> 820 A.2d 362 (Del. 2003).

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the undisputed fact that Dr. Sinkovic told Plaintiff that one possible cause of her illness was Defendants' product put her on inquiry notice, as a matter of law.<sup>2</sup> Plaintiff had two years from the time she was told that Defendant's product might have caused her illness to investigate and bring suit. The court will enter a final judgment order after the claims against the remaining Defendants are resolved.

Furthermore, Defendants are correct that the trial in March will not address damages. The court continues to view causation as a "make or break" issue. While the court is unable to grant summary judgment on causation, after spending so much time with this case the court questions whether Plaintiff can prove that her illness probably was caused by exposure to vinyl chloride monomer. The trial will answer that question. The trial's outcome will either end this litigation or potentially pave the way to a substantial recovery.

Concerning separate trials, this case will be bifurcated. The jury will only consider whether Plaintiff's illness probably was caused by exposure to vinyl chloride monomer. The jury will not decide if any Defendant was negligent, nor whether Defendants conspired. The jury also will not reach damages. If the jury finds for Plaintiff on causation, the court will conduct a second trial in front of a second jury on the unresolved issues, including damages.

Plaintiff's snippet from Judge Taylor's bench ruling in *Lee v. A.C.& S. Co., Inc.*<sup>3</sup> is not helpful. Meanwhile, Superior Court Civil Rule 42(b) expressly

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<sup>2</sup> See *Id.* At 368 (limitations period begins running when plaintiff on notice that injury may be caused by defendant).

<sup>3</sup> 1987 WL 16746 (Del. Super.).

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contemplates separate trials on separate issues.<sup>4</sup> And Judge Taylor approved the idea of separate trials in *In Re Asbestos Litigation*.<sup>5</sup> The court is not acting rashly. As mentioned above, causation is a pivotal issue. Originally, Plaintiff claimed her illness was the signature disease associated with vinyl chloride monomer. Now, she admits that her cancer could be caused by vinyl chloride monomer, or other things, such as birth control pills. While Plaintiff had repeated exposure to some of the other things, she worked with polyvinyl chloride for only a few days. If Plaintiff cannot prove causation, a distinct possibility, forcing Defendants and the court to trial on negligence and damages will be grossly inefficient.

Otherwise, the court understands there is pending motion practice related to the upcoming trial, scheduled to be heard on December 5, 2003. That is good. The court intends to clear all obstacles to the bifurcated trial.

**IT IS SO ORDERED.**

Very truly yours,

FSS/lah  
oc: Prothonotary (Civil Division)  
pc: James W. Semple, Esquire  
Daniel V. Folt, Esquire

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<sup>4</sup> SUPER CT. CIV. R. 42(b).

<sup>5</sup> 1987 WL 10277 (Del. Super.); See also 9 *C. Wright & Miller Federal Practice and Procedure: Civil* § 2391 (1995). (“Is there a violation of the constitutional [right to a jury] provision if issues are submitted independently to separate juries? The answer rather clearly must be in the negative.”); *Moore’s Federal Practice* 3D § 42.20[5][a] (court may separate virtually any issue it deems proper on motion of any party or *sua sponte*).