

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION:	:	
	:	
SAMI ABOU-ANTOUN and MICHELLE	:	C.A. No.: 05C-05-246 ASB
ABOU-ANTOUN, his wife,	:	
	:	
VERA CAMPBELL-EMANUEL, and her	:	C.A. No.: 05C-06-083-ASB
Husband, ANTHONY EMANUEL,	:	
	:	
ROBERT COVENEY and FLORENCE	:	C.A. No.: 05C-07-124 ASB
COVENEY, his wife,	:	
	:	
GEORGE DAVIS and RACHEL DAVIS,	:	C.A. No.: 05C-05-203 ASB
his wife,	:	
	:	
DONALD HAYWOOD and BARBARA	:	C.A. No.: 05C-07-248 ASB
HAYWOOD, his wife,	:	
	:	
LOUIS JAUREGUI,	:	C.A. No.:05C-06-341 ASB
	:	
JAMES JONES and BARBARA JONES,	:	C.A. No.: 05C-06-057 ASB
His wife,	:	
	:	
GEORGE JURGENS and MARGARET	:	C.A. No.: 05C-05-273 ASB
JURGENS, his wife,	:	
	:	
ROBERT A. PENZA, ESQ., Administrator	:	C.A. No.: 05C-06-216 ASB
Of the Estate of Philip Koontz, deceased,	:	
DENNIS KOONTZ Individually and as	:	
Surviving son of Philip Koontz, deceased,	:	
	:	
CHARLES ORTNER,	:	C.A. No.: 05C-06-067 ASB
	:	
THEODORE PATE and CHRISTINE	:	C.A. No.: 05C-05-242 ASB
PATE, his wife,	:	
	:	
ROBERT ROZENBOOM and MILDRED	:	C.A. No.: 05C-05-270 ASB
ROZENBOOM, his wife,	:	
	:	
MARK SMITH and AUTUMN SMITH,	:	C.A. No.: 05C-05-302 ASB
his wife,	:	
	:	
LYLE WOOLSTON and JULIE	:	C.A. No.: 05C-06-176 ASB

WOOLSTON, his wife,	:	
	:	
JOAN SALVESON, Individually and as Executrix of the Heirs and the Estate of JOHN RONALD RANKIN, Deceased, TIMOTHY RANKIN, and MASTER SARGENT TODD RANKIN,	:	C.A. No. 05C-08-185 ASB
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	:	
HUGO GEORGE ENGEL, and, INGEBORG ENGEL, his wife	:	C.A. No. 05C-09-083 ASB
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DOROTHY M. SWITZER, Individually and as Executrix of the Estate of HAROLD AUBREY SWITZER, Deceased; PAMELA F. NEVELS; KENNETH SWITZER; and RONALD E. SWITZER,	:	C.A. No. 05C-08-039 ASB
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	:	
VIRGIL LLOYD BRAUER	:	C.A. No.: 05C-08-049 ASB
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SAMUEL MOSES and PATSY MOSES, His wife,	:	C.A. No.: 05C-08-207 ASB
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JENNIFER LYNN GIVAN, Individually and as Personal Representative of the Heirs and Estate of RALPH DAVID GIVAN, Deceased,	:	C.A. No. 05C-07-321 ASB
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RICHARD JARVIS MINSHALL, JR. and SUSAN D. MINSHALL,	:	C.A. No. 05C-07-273 ASB
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GEORGE RAYMOND CLARK and JULIA MARY CLARK,	:	C.A. No. 05C-08-071 ASB
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	:	
JOLINE WRIGHT FINCHER, Individually And as Personal Representative of the Heirs and Estate of RICHARD AHNER FINCHER, Deceased, RICHARD JOSEPH FINCHER, THOMAS WILLIAM FINCHER, AND ELIZABETH ANN WALKER,	:	C.A. No. 05C-07-204 ASB
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	:	
MARY PATRICIA CAMPBELL, Individually and as Executrix of the Estate of CLYDE JAMES CAMPBELL Deceased, LYNN HEICK, CHERYL CAMPBELL, LORI BRISCOE, ROBERT	:	C.A. No. 05C-07-271 ASB

CAMPBELL,	:	
	:	
EMMIT E. HAYES,	:	C.A. No. 05C-05-245 ASB
	:	
MARJORIE ELLEN SEYMOUR,	:	C.A. No. 05C-07-160 ASB
	:	
BETTY GARNER CORNETT,	:	C.A. No. 05C-09-119 ASB
Individually and as Executrix of the	:	
Estate of HOMER THOMAS CORNETT,	:	
Deceased; GEORGIA C. FRAWLEY;	:	
ELIZABETH C. STELES; LISA JANE	:	
CORNETT; PAMELA C. INMAN;	:	
BARBARA R. CORNETT; ARCHIE	:	
CORNETT; BILLY CORNETT;	:	
BOBBIE CAUDILL; DORIS LEE;	:	
CAROLYN NORRIS; and LLOYD	:	
CRITCHLOW,	:	
	:	
ROBERT E. RICE,	:	C.A. No. 05C-09-034 ASB
	:	
MARY H. PLAXICO,	:	C.A. No. 05C-06-069 ASB
	:	
DEBORAH LYNN SIEBERT, Individually	:	C.A. No. 05C-09-152 ASB
and as Executrix of the Estate of TROY	:	
VERNON SIEBERT, SR., Deceased,	:	
ANNABELL SIEBERT, ANGELA	:	
SIEBERT, TROY SIEBERT, SELMA	:	
ATWOOD, DOROTHY SIEBERT,	:	
BILLY SIEBERT and EDWINA SIEBERT	:	
RAMIREZ,	:	
	:	
LUCILLE M. WILLIAMS, Individually and	:	C.A. No. 05C-08-312 ASB
as Executrix of the Estate of RAYMOND	:	
CARSON WILLIAMS, Deceased;	:	
MARILYN KAY MOORE; JOAN ALICE	:	
SACCO; JAMES CARSON WILLIAMS;	:	
LOUISE DEBOLT; and ALICE BARRITT,	:	
	:	
WILLIAM MODELEWSKI,	:	C.A. No. 05C-09-192 ASB
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PETER KOHLER,	:	C.A. No. 05C-07-247 ASB
	:	
CHERYL CLEMENT,	:	C.A. No. 05C-09-237 ASB
	:	
BARBRA AXELXANDER,	:	C.A. No. 05C-09-269 ASB

ROSEMARY LINDSAY, Individually : C.A. No. 05C-09-177 ASB
and as Executrix of the Heirs and Estate :
of ROBERT ALAN LINDSAY, Deceased; :
LEAH CHILCOTE, RACHEL :
EASTWOOD, RONDA SILER and :
JUANITA RICHBAW, :

Submitted: December 20, 2005
Decided: March 13, 2006

*Upon Consideration of Defendants' Motions to Dismiss
Based on Interest of Justice*

OPINION

Goodyear Tire & Rubber Company¹ (“Goodyear”) is an Ohio corporation with its principle place of business in Ohio. Jurisdiction in this action is based on the long-arm statute, 10 Del.C. § 3104.

Goodyear has filed a motion to dismiss this action based on a provision in the long-arm statute, subsection (1), which requires the court to dismiss or stay an action if, in the *interest of justice*, the action should be heard in another forum.² I conclude that the provision relied on is a codification of the due process protection of the United States Constitution which is implicated when a State seeks to exercise jurisdiction over a nonresident, and does not provide a basis for dismissing the plaintiff’s claim. The motion to dismiss on *interests of justice* is DENIED.

¹ The motion was initially presented by Volkswagen of America, Inc (“Volkswagen”) and joined by Dana Corporation and Goodyear. Since the November 28, 2005 oral argument, Dana Corporation has filed for bankruptcy protection and Volkswagen of American, Inc. has withdrawn its motion as moot, due to settlement of the claims against it. Goodyear formally incorporated by reference the Volkswagen Motion to Dismiss in its brief Motion to Dismiss. The interested parties designated Volkswagen’s counsel to present argument for all.

² 10 Del. C. § 3104 (1) In any cause of action arising from any of the acts enumerated in this section, the court may provide for a stay or dismissal of action if the court finds, *in the interest of justice*, that the action should be heard in another forum. (emphasis supplied)

Discussion

The previously issued decision in this case³ provides the background of this litigation and will not be repeated here.

Section 3104 is a jurisdictional statute that was enacted to afford Delaware residents a means of redress against persons not subject to personal service in the State.⁴ The statute has been construed to confer jurisdiction to the maximum extent possible under the due process clause.⁵

The analytical process for determining the application of the statute proceeds in two steps. First, the court must determine whether the statute provides for jurisdiction over a defendant. That is not contested.⁶

Second, the court must determine whether exercise of the jurisdiction conferred by the long-arm statute offends the due process clause of the Fourteenth Amendment. Due process requires that certain minimum contacts must exist between a State and a nonresident defendant

³ *In Re: Asbestos Litigation*, Del. Super., C.A. Nos. 05C-05-246, 05C-08-250, 05C-07-206, 05C-08-262, 05C-08-176, 05C-07-178, 05C-08-142, 05C-06-083, 05C-07-124, 05C-05-203, 05C-06-215, 05C-05-274, 05C-07-223, 05C-08-248, 05C-07-248, 05C-08-249, 05C-06-341, 05C-06-057, 05C-05-273, 05C-06-029, 05C-08-162, 05C-06-216, 05C-08-061, 04C-09-122, 05C-09-122, 05C-09-214, 05C-08-220, 05C-07-109, 05C-08-260, 05C-06-067, 05C-05-329, 05C-05-242, 05C-05-270, 05C-08-261, 05C-08-218, 05C-05-302, 05C-05-341, 05C-05-272, 05C-05-272, 05C-05-247, 05C-08-285, 05C-06-176, *Slights*, J. (Mar. 8, 2006) (Mem. Op.)

⁴ *Harmon v Eudaily*, 407 A.2d 232, 236 (Del. Super. 1979).

⁵ *LaNuova D & B, S.p.A. v. Bowe Company, Inc.*, 513 A.2d 764, 768 (Del. 1986); *Wilmington Supply Co. v. Worth Plumbing & Heating, Inc.*, 505 F. Supp. 777, 780 (D.Del. 1980)

⁶ The following exchange occurred at oral argument:

JUDGE DEL PESCO: Well, I have a question. If I understand your argument, you're agreeing that the clients you represent, the nonresidents, are subject to service and jurisdiction under 3104, but you say that that escape hatch, the last provision, applies here?

MR. WYNER: That's right, your Honor. 3104 (l) presumes that personal jurisdiction exists under the long-arm statute. In fact, it expressly says, "In a cause of action arising from any of the acts enumerated in this section." In other words, when the cause of action is based on something that's properly within the long-arm jurisdiction, the Court may dismiss or stay in the interest of justice if it belongs somewhere else.

JUDGE DEL PESCO: So again, you agree that you're properly within those provision of the statute, the long -arm statute, you're just saying that (l) applies here to circumstances of the clients you mentioned?

Mr. WYNER: That's correct, your Honor.

Hearing Tr. 98: 1-21, Nov. 28, 2005.

before the State can exercise personal jurisdiction over it. If exercise of jurisdiction would overstep the bounds of State sovereignty or offend ““traditional notions of fair play and substantial justice’ . . . [citations omitted]. . . then the Due Process Clause forbids such exercise.”⁷ Goodwill’s contacts with Delaware “must rise to such a level that it should ‘reasonably anticipate’” being required to defend itself in the courts of this State.⁸ Goodwill does not argue a due process violation.

The factors argued by the defendant in support of its motion to dismiss are factors related to the plaintiff. Defendant notes that plaintiff has no ties to Delaware, that he has not been treated in Delaware, and that the tort in question did not occur in Delaware. Defendant also argues that litigating the claims here will be a burden on the court system and the citizens who may be called to serve as jurors. Those considerations were properly part of the *forum non convenience* analysis previously decided.⁹

Defendant makes a novel argument, attempting to use the long-arm statute offensively, rather than defensively. I find that section 3104(l) merely codifies the due process limitations of the statute. As such, it is intended to protect a defendant, not to exclude a plaintiff.

The motion to dismiss on the grounds of *interests of justice* is DENIED.

IT IS SO ORDERED.

/s/ Susan C. Del Pesco
Judge Susan C. Del Pesco

⁷ *Moore v. Little Giant Industries, Inc.*, 513 F. Supp 1043, 1048 (D.Del. 1981).

⁸ *LaNuova*, 513 A.2d at 769 (citing *World-Wide Volkswagen, Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

⁹ *In Re: Asbestos Litigation*, Del. Super., C.A. No. 05C-06-295, Slights, J. (Mar. 8, 2006) (Mem. Op.)