

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND NACK, RAYMOND PETERS	)	
	)	No. 361, 483, 484, 2001
ARTHUR FLEETWOOD,	)	Consolidated
	)	
LARRY HOLLIS, GEORGE HILL,	)	Court Below: Superior Court
CHARLES FLEETWOOD,	)	of the State of Delaware in
LEROY MESSICK, JOSEPH MESSICK,	)	in and for New Castle County
BILLIE CHANEY, ALBERT GRIFFITH,	)	
PAUL HITCHENS, ROBERT TRUITT,	)	
GEORGE WILLEY, KENNETH MILLER,	)	C.A. Nos. 99C-02-0278
CALVIN MUSSER, THOMAS BUCHANAN,	)	98C-09-007
LARRY SURRICCHIO, JEREMY WELLS,	)	98C-05-047
JACK BRASURE, EDGAR WILSON,	)	97C-08-128
RICHARD MCCABE, ROLAND WINGATE,	)	97C-08-064
CLARK SPICER, WILLIAM LANE,	)	96C-05-266
JOHN GARRIS, RONALD DAVIDSON,	)	96C-10-150
PARKER TURNER, ROBERT STEELE,	)	95C-03-123
WILLIAM WEST, ROBERT HARDING,	)	97C-08-087
JAMES REED,	)	97C-02-220
CLAUDE MARVEL,	)	97C-10-153
ORVILLE SOMERS, SIDNEY TAYLOR,	)	97C-12-019
ALTON SCOTT, KENNETH MARVEL,	)	97C-03-056
RICHARD BOWDLE, LEROY HILL,	)	98C-04-123
EUGENE HASTINGS, DONALD HILL,	)	88C-09-199
BEN PETERSON, SHELLY EWELL,	)	87C-04-14A
WOODROW BUTLER, THOMAS KLINE	)	89C-10-130
MIFFLIN PORTER, HERMAN ENGLISH,	)	89C-10-128
THOMAS MARINE, ALBERT MCDOWELL,	)	89C-10-129
DORIS FERMANDES, EDWARD KOWALEWSKI	)	90C-05-038
LESTER TRICE, EDWARD MCGUIRE,	)	90C-05-037
ERMAN JAMES BRADLEY, EDWARD BARTO	)	90C-07-101
and as Executor of the Estate of,	)	90C-07-102
John Barto, deceased, CALVIN COLLINS,	)	90C-07-103
GRIFFIN CONLEY, ROBERT DICKERSON,	)	90C-12-040
CALVIN FOSKEY, ALLEN HICKMAN, SR.,	)	90C-11-222
LLOYD HOPKINS, CHARLES ISENBERG,	)	90C-12-039
VIRGINIA MASON, Individually and as	)	90C-11-221
Administratrix of the Estate of Charles Mason,	)	91C-04-303
Deceased, JACK MESSICK, ULYSSES	)	91C-04-124
MILLS, JOSEPH MOORE, ELLA MORRIS,	)	91C-04-153
Individually and as Executrix of the Estate of	)	91C-04-125
Samuel Morris, Deceased, DONALD POWELL,	)	91C-04-024
LEWIS POWELL, ALFRED ROGERS,	)	90C-09-067
HARRY SCHIFF, JOSEPH SPICER,	)	90C-09-068

ANDREW J. BJORSON, URIAS GRAHAM,	)	90C-12-139
GRANVILLE W. BRITTINGHAM,	)	90C-12-108
ERNEST M. DERRICKSON, ROY D. JAMES,	)	90C-12-106
HAYWARD ROE, DALE V. SHAFFER,	)	90C-12-107
DALE V. SHAFFER, HARLEY G.	)	90C-12-109
WATKINS, JR., MARTHA JENKINS,	)	91C-07-251
ELWOOD H. KITE, SR., HENRY C. WENKE, JR.,)	)	91C-07-259
DATHIETTE M. M. HEARN, DONALD LOWE,	)	91C-07-127
	)	91C-04-046
Plaintiffs Below,	)	91C-07-317
Appellants,	)	91C-07-126
	)	91C-01-153
v.	)	88C-07-146A
	)	89C-05-197
CHARLES A. WAGNER CO., INC.,	)	87C-07-037
	)	88C-11-109
Defendant Below,	)	86C-02-100A
Appellee.	)	85C-06-029A
	)	84C-05-145A-S
	)	85C-05-013
	)	85C-11-119A-G
	)	85C-01-155A-C
	)	86C-06-160
	)	86C-08-070A

Submitted: May 29, 2002

Decided: June 28, 2002

Before **WALSH, BERGER** and **STEELE**, Justices.

***ORDER***

This 28<sup>th</sup> day of June 2002, it appears to this Court that:

1) Appellants are plaintiffs-below in a series of product liability actions filed in the Superior Court against Charles A. Wagner Co., Inc., stemming from Appellants' alleged exposure to asbestos contained in a sweeping compound supplied to their employer by Wagner. Appellants contend that they were exposed to the asbestos compound while employed at the DuPont Seaford nylon plant from

1958 to 1973. Wagner has consistently moved for summary judgment in these cases, based primarily on the theory that the exposed workers were unable to establish a sufficient nexus between the sweeping compound actually used in the DuPont plant and Wagner. In 1988, the Superior Court in *Bradley v. A.C. & S. Co., Inc.*<sup>1</sup> granted Wagner's motion for summary judgment on exactly that basis. Several other orders of the Superior Court relied on either the precedent or reasoning of the *Bradley* order to similarly grant summary judgment.<sup>2</sup> This is the consolidated appeal from those orders.

2) A trial judge shall grant summary judgment when the evidence before the court reveals no genuine issue of material fact in dispute.<sup>3</sup> In applying that standard, the court must view all of the material facts and the reasonable inferences arising from them in a light most favorable to the non-moving party.<sup>4</sup> The party bearing the burden of proof at trial, however, must provide sufficient evidence to carry that burden at trial.<sup>5</sup> Among the elements that a plaintiff must prove in an asbestos-related products liability action is the existence of a sufficient nexus between the defendant and the injury-causing asbestos products.<sup>6</sup>

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<sup>1</sup> C.A. No. 84C-MY-145, Taylor, J. (June 16, 1989).

<sup>2</sup> *In re Asbestos Litigation (Marine)* C.A. No. 88C-JL-146, Taylor, J. (December 20, 1990); (*Musser and Hastings*) C.A. Nos. 88C-09-199, 91C-07-251, Gebelein, J. (May 2, 1994); (*Nack and Peters*) C.A. Nos. 98C-05-047, 98C-09-007, Babiarez, J. (July 2, 2001).

<sup>3</sup> *Nutt v. A.C. & S. Co., Inc.*, 517 A.2d 690 (Del. Super. Ct. 1986)

<sup>4</sup> *Id.*

<sup>5</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed 265 (1986).

<sup>6</sup> *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 147 (Del. 1987).

3) The *Bradley* order granting summary judgment, which is at the heart of each of the decisions Appellants have appealed from, is premised on the notion that neither direct evidence nor the reasonable inferences drawn from the evidence presented could lead to the conclusion that Wagner was responsible for supplying the sweeping compound used. In so ruling, the trial judge relied heavily on a related decision from the United States District Court for the District of Delaware. In *Morean v. Pittsburgh-Corning Corp.*,<sup>7</sup> the Magistrate overseeing the case recommended that summary judgment be granted because the plaintiffs had provided insufficient evidence to defeat summary judgment. Specifically she found that the plaintiffs had failed to produce evidence tying Wagner's name to any of the materials at the DuPont Seaford plant. It is clear from the record that the *Bradley* trial judge relied heavily on the Magistrate's conclusions in his order.

4) The record supports, however, Wagner's concession that the evidence before the *Bradley* court was not the same as that before the Magistrate in the *Morean* case, but instead was materially identical to that of a second case, *Wells v. Charles A. Wagner Co., Inc.*<sup>8</sup> In the latter case, the District Court *rejected* Wagner's Motion for Summary Judgment. Plaintiffs in that case expanded the record, presenting evidence that: a) Wagner shipped almost 38 tons of asbestos

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<sup>7</sup> C.A. No. 85-03-JJF, Robinson, M. (D. Del. May 11, 1988) (Magistrate's Report and Recommendation).

<sup>8</sup> C.A. No. 86-435-JJF, Robinson, M. (D. Del. June 16, 1989) (Magistrate's Report and Recommendation).

fiber to the DuPont plant; b) an asbestos compound consistent with that supplied by Wagner was used by or near the plaintiffs as a sweeping compound; c) there was deposition testimony associating Wagner's name with paper bags in which asbestos arrived at the plant; d) there was no evidence of any other asbestos sweeping compound delivered after 1959; and e) DuPont purchasing officers and Wagner's president corresponded in 1969 about the use of Wagner's asbestos fiber as a sweeping compound at the DuPont plant.<sup>9</sup>

5) The Magistrate concluded that this was sufficient evidence from which a rational trier of fact could infer the existence of the necessary nexus between Wagner's product and plaintiffs' injuries.<sup>10</sup> We agree. Therefore we find that the trial judge in *Bradley* erred by failing to give the same consideration to the inferences favorable to the Plaintiffs arising from the material facts before him when he granted Wagner's Motion for Summary Judgment. Furthermore, because the same body of material facts was also before the Superior Court judges who later granted summary judgment on the same grounds or on the basis of *stare decisis*, we conclude that those decision were similarly in error.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.

NOW, THEREFORE, IT IS ORDERED, that the judgments of the Superior Court granting summary judgment be, and hereby are, **REVERSED** and **REMANDED** for further action consistent with this order.

BY THE COURT:

/s/ Myron T. Steele  
Justice