

[J-107A&B-2011][M.O. – McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SUSAN B. FRALICK BALL, LARRY G. : No. 18 MAP 2011
COMISAK, KATHRYN S. COMISAK, :
RICHARD COWHIG, CAREN COWHIG, : Appeal from the Order of the Superior
FLORENCE DAHM, ON BEHALF OF : Court at No. 3061 EDA 2007 entered
HERSELF AND THE ESTATE OF : 10-30-2009, reconsideration denied 12-
EDWARD DAHM, CHRISTINE FISHER, : 28-2009, reversing and remanding the
WARREN FISHER, BARBARA A. : order of Montgomery County Court of
FRANKL, DAVID GLASS, ELAINE : Common Pleas, Civil Division, at No.
GLASS, JARED GLASS, ALMA R. : 99-06438 dated 10-10-2007.
JACOBS, ON BEHALF OF HERSELF :
AND THE ESTATE OF J. ALEXANDER :
JACOBS, EUGENE KATZ, LENORE :
KATZ, SUN E. KIM, JOAN KUCH, ON : ARGUED: November 29, 2011
BEHALF OF HERSELF AND THE :
ESTATE OF LEONARD KUCH, JOHN :
MCCARRY, MARYBETH MCCARRY, :
JONATHAN MCCARRY, MATTHEW :
MCCARRY, PATRICK MCCARRY, :
JAMES J. MOORE, III, PATRICIA G. :
MOORE, LOUIS NICOLAI, BRUCE :
NICHOLS, BEATRICE NICHOLS, :
RICHARD K. OBERHOLTZER, WENDY :
OBERHOLTZER, MEGAN :
OBERHOLTZER, TAYLOR :
OBERHOLTZER, RICHARD H. :
SHEPHERD, JR., WENDIE STEFFENS, :
MARK STEFFENS, PAYTON THURMAN, :
JOAN THURMAN, D. JEAN TISDALL, :
SUSAN WALSH, KURT :
WEIDENHAMMER, DEBBIE :
WEIDENHAMMER, KAREN :
WEIDENHAMMER, MARYANN WRUBEL, :
METRO J. WRUBEL AND TODD :
WRUBEL :

v.

BAYARD PUMP & TANK CO., INC., GULF :
OIL LIMITED PARTNERSHIP, E.O. :
HABHEGGER CO., INC., TITFLEX :
CORPORATION, VEEDER-ROOT CO., :

WAGNER AND T.F.W., INC.

v.

MARLEY PUMP COMPANY AND
CONTAINMENT TECHNOLOGIES
CORPORATION

APPEAL OF: MARLEY PUMP COMPANY,
VEEDER-ROOT CO., E.O. HABHEGGER
CO. AND BAYARD PUMP & TANK CO.,
INC.

SUSAN B. FRALICK BALL, LARRY G.
COMISAK, KATHRYN S. COMISAK,
RICHARD COWHIG, CAREN COWHIG,
FLORENCE DAHM, ON BEHALF OF
HERSELF AND THE ESTATE OF
EDWARD DAHM, CHRISTINE FISHER,
WARREN FISHER, BARBARA A.
FRANKL, DAVID GLASS, ELAINE
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JACOBS, ON BEHALF OF HERSELF
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JACOBS, EUGENE KATZ, LENORE
KATZ, SUN E. KIM, JOAN KUCH, ON
BEHALF OF HERSELF AND THE
ESTATE OF LEONARD KUCH, JOHN
MCCARRY, MARYBETH MCCARRY,
JONATHAN MCCARRY, MATTHEW
MCCARRY, PATRICK MCCARRY,
JAMES J. MOORE, III, PATRICIA G.
MOORE, LOUIS NICOLAI, BRUCE
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RICHARD K. OBERHOLTZER, WENDY
OBERHOLTZER, MEGAN
OBERHOLTZER, TAYLOR
OBERHOLTZER, RICHARD H.
SHEPHERD, JR., WENDIE STEFFENS,
MARK STEFFENS, PAYTON THURMAN,
JOAN THURMAN, D. JEAN TISDALL,
SUSAN WALSH, KURT
WEIDENHAMMER, DEBBIE
WEIDENHAMMER, KAREN
WEIDENHAMMER, MARYANN WRUBEL,

No. 19 MAP 2011

Appeal from the Order of the Superior
Court at No. 3061 EDA 2007 entered on
10-30-2009, reconsideration denied 12-
28-2009, reversing and remanding the
order of Montgomery County Court of
Common Pleas, Civil Division, at No.
99-06438 dated 10-10-2007.

ARGUED: November 29, 2011

METRO J. WRUBEL AND TODD	:
WRUBEL	:
v.	:
	:
	:
BAYARD PUMP & TANK CO., INC., GULF	:
OIL LIMITED PARTNERSHIP, E.O.	:
HABHEGGER CO., INC., TITEFLEX	:
CORPORATION, VEEDER-ROOT CO.,	:
WAGNER AND T.F.W., INC.	:
	:
v.	:
	:
MARLEY PUMP COMPANY AND	:
CONTAINMENT TECHNOLOGIES	:
CORPORATION	:
	:
APPEAL OF: GULF OIL LIMITED	:
PARTNERSHIP AND THOMAS F.	:
WAGNER AND THOMAS F. WAGNER,	:
INC.	:

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: May 28, 2013

Eight years after Appellees filed their original complaint, and apparently after trial finally had been scheduled, defendants proposed trial-management plans which would upend Appellees’ conventional approach to the trial planning. Appellees reasonably requested that at least “all members of the designated households of each designated plaintiff” should be included in at least one trial phase. Not only was this request denied, Appellees were precluded “from any mention, testimony and/or other evidence of claims of non-trial plaintiffs . . . , outside the mention of the same as part of the recitation of the ‘history’ of the case.”

While I have differences with the breadth of the Superior Court's rationale vindicating Appellees' position that imposition of the case management regime was an abuse of the trial court's discretion, I agree with Appellees that the wholesale division of households and associated limitations upon the evidence, at least, were unreasonable in the circumstances.

Accordingly, I am unable to join the majority in overturning the result attained under the Superior Court's order.