[J-7A-C-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

MARGARET HOWARD AND ROBERT HOWARD, CO-EXECUTORS OF THE ESTATE OF JOHN C. RAVERT, DECEASED v. A.W. CHESTERTON CO., ACE HARDWARE CORP., MONSEY PRODUCTS CORP., PECORA CORP. AND UNION CARBIDE CORP. APPEAL OF: MONSEY PRODUCTS CORPORATION	:	No. 48 EAP 2012 Appeal from the Judgment of Superior Court entered on 10/28/11 at No. 2978 EDA 2010 (reargument denied 11/10/11) reversing, vacating, and remanding the judgment entered on 10/5/10 in the Court of Common Pleas, Civil Division, Philadelphia County at No. 202 June term 2007
MARGARET HOWARD AND ROBERT HOWARD, CO-EXECUTORS OF THE ESTATE OF JOHN C. RAVERT, DECEASED v. A.W. CHESTERTON CO., ACE HARDWARE CORP., MONSEY PRODUCTS CORP., PECORA CORP. AND UNION CARBIDE CORP. APPEAL OF: ACE HARDWARE CORPORATION	:	No. 49 EAP 2012 Appeal from the Judgment of Superior Court entered on 10/28/11 at No. 2978 EDA 2010 (reargument denied 11/10/11) reversing, vacating, and remanding the judgment entered on 10/5/10 in the Court of Common Pleas, Civil Division, Philadelphia County at No. 202 June term 2007
MARGARET HOWARD AND ROBERT HOWARD, CO-EXECUTORS OF THE ESTATE OF JOHN C. RAVERT, DECEASED v.	:	No. 50 EAP 2012 Appeal from the Judgment of Superior Court entered on 10/28/11 at No. 2978 EDA 2010 (reargument denied 11/10/11) reversing, vacating, and remanding the judgment entered on

	:	10/5/10 in the Court of Common Pleas,
A.W. CHESTERTON CO., ACE	:	Civil Division, Philadelphia County at
HARDWARE CORP., MONSEY	:	No. 202 June term 2007
PRODUCTS CORP., PECORA CORP.	:	
AND UNION CARBIDE CORP.	:	
	:	
APPEAL OF: PECORA CORPORATION	:	ARGUED: March 6, 2013

ORDER

PER CURIAM **DECIDED: September 26, 2013**

This asbestos-litigation appeal is being resolved upon mutual consent among the parties, who agree that the order of the Superior Court should be reversed.

Appellants were manufacturers or distributors of asbestos-containing products and are defendants in litigation initiated by John C. Ravert and later pursued by Appellees as co-executors of Mr. Ravert's estate. Mr. Ravert and Appellees contended that his exposure to Appellants' asbestos-containing products caused mesothelioma.

The common pleas court awarded summary judgment in favor of Appellants, reasoning that Mr. Ravert's deposition testimony failed to establish that he breathed asbestos-containing dust from the products manufactured or distributed by Appellants.[1] The court also found expert affidavits submitted by Appellees represented "an artificial record which attempts to dehor [Mr. Ravert's] observation denying the existence of asbestos dust."

On appeal, the Superior Court reversed on the basis that dust may have been invisible to the naked eye, and the expert affidavits were sufficient to establish a

[1] For example, the court highlighted that some of the products were used by Mr. Ravert solely in their liquid form.

material issue of fact as to whether dust emanating from products associated with Appellants was a substantial factor in causing Mr. Ravert's mesothelioma. See Howard v. A.W. Chesterton Co., 31 A.3d 974, 981, 983 (Pa. Super. 2011). The court also reasoned that a plaintiff bears a diminished burden of meeting a frequency, regularity, and proximity threshold of exposure in cases of mesothelioma, since the disease may be caused by limited exposure to asbestos. See id. at 979.

Presently, Appellees "concede that the factual record fails to demonstrate regular and frequent enough exposures during which respirable asbestos fibers were shed by [Appellants'] asbestos-containing products to defeat summary judgment." Brief for Appellees at 10. Furthermore, Appellees:

> recognize that this Court will not allow Plaintiffs to prove that a plaintiff's exposure to a particular asbestos-containing product is substantially causative of disease by the use of affidavits in which the expert's methodology is founded upon a belief that every single fiber of asbestos is causative. In Gregg[v. V-J Auto Parts, Inc., 943 A.2d 216 (Pa. 2007)], this Court articulated that the usage of a particular product had to be substantial enough when measured against the totality of the exposures, that the particular product usage was substantial enough to be a factual cause of the disease. . . . The test for adequacy is the comparison of the particular product exposure(s) to the totality of the person's asbestos exposures.

Brief for Appellees at 16.

Upon Appellees' concession, the opinion of the Superior Court will be vacated and its order reversed. Appellant Monsey Products Company -- in view of its status as a defendant in other cases and the time and expense of this litigation -- asks this Court to reaffirm several governing principles deriving from prior cases. In most respects, these precepts are now well established, and they are relevant to the appropriate

disposition of the present case. Accordingly, we are able substantially to accommodate this request. Hence, we reaffirm the following:

-- The theory that each and every exposure, no matter how small, is substantially causative of disease may not be relied upon as a basis to establish substantial-factor causation for diseases that are dose-responsive. See Betz v. Pneumo Abex, LLC, 44 A.3d 27, 55-58 (Pa. 2012).

-- Relatedly, in cases involving dose-responsive diseases, expert witnesses may not ignore or refuse to consider dose as a factor in their opinions. See id.

-- Bare proof of some de minimus exposure to a defendant's product is insufficient to establish substantial-factor causation for dose-responsive diseases. See Gregg v. V-J Auto Parts, Inc., 943 A.2d 216, 225-26 (Pa. 2007).

-- Relative to the testimony of an expert witness addressing substantial-factor causation in a dose-responsive disease case, some reasoned, individualized assessment of a plaintiff's or decedent's exposure history is necessary. See Betz, 44 A.3d at 55-58.

-- Summary judgment is an available vehicle to address cases in which only bare de minimus exposure can be demonstrated and where the basis for the experts testimony concerning substantial-factor causation is the any-exposure theory. See Betz, 44 A.3d at 55-58; Gregg, 943 A.2d at 227.

-- The content of expert discovery is specified in the Pennsylvania Rules of Civil Procedure, as may be supplemented by particular directives by courts of original jurisdiction.[2]

[2] Here, Monsey seeks a particular admonition that expert reports in asbestos cases must contain a discussion of the methodology supporting the expert opinion. There are enough nuances pertaining to this subject that we are unable to make such a general pronouncement here. We recognize, however, that per Rule of Civil Procedure 4003.5(a)(1)(b), a party through interrogatories may require the other party to have (continued…)

In her concurring statement, Madame Justice Todd appears to oppose any explanation whatsoever relative to this Order, suggesting that supporting reasons are irrelevant in light of a concession on the merits. See Concurring Statement, slip op. at 2 ("Appellees' evidentiary concession is the end of the matter[.]"). The concurrence couches the legal precepts which we have set forth above as "unadorned" and "unmoored" from any factual context, while chastising us for violating the axiom that the holding of any case is to be read against its facts. See id. at 1-4. The concurring statement also discusses the limited effect of a per curiam order and questions the benefit of explanations provided in them. See id. at 4.

Responsively, we observe that this case was accepted for review on our discretionary docket, briefed, and argued, and we have never understood a party's merits concession to foreclose the Court's ability to explicate the ultimate disposition. Furthermore, the relevance of our discussion to the present case is plain and straightforward.

As we have explained, Appellees have related that they read and understood the decisions in Gregg and Betz to mean what these decisions say – namely, that "this Court will not allow Plaintiffs to prove that a plaintiff's exposure to a particular asbestos-containing product is substantially causative of [an individual plaintiff's particular] disease by the use of affidavits in which the expert's methodology is founded upon a belief that every single fiber of asbestos is causative." Brief for Appellees at 16. The main points we have delineated above represent nothing more than a modest

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(…continued)
identified trial experts state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. See Pa.R.Civ.P. No. 4003.5(a)(1)(b). The rules also provide latitude for the court of original jurisdiction to order further discovery by other means, subject to specified conditions. See id. No. 4003.5(a)(2).

elaboration upon this very reasoning supplied by the Appellees themselves in support of their controlling concession. As such, it is difficult to appreciate what additional "adornment" or "mooring" is contemplated by the concurrence.

Certainly, we do not suggest that a per curiam order has any effect beyond that represented in Justice Todd's responsive opinion. Nevertheless, in light of the intensely protracted nature of this and other asbestos litigation, as well as our own limited resources, we have acceded to Appellants' reasonable request to provide whatever limited guidance we were able to supply under the circumstances. Notably, Justice Todd does not substantively question any of the now unremarkable propositions indicated above.[3] Indeed, as explained in detail in the unanimous decision in Betz, the any-exposure opinion is simply unsupportable both as a matter law and science. See Betz, 44 A.3d at 55-58. Our present effort to highlight this proposition while applying it in a case in which it is conceded to be dispositive, we believe, may be of some benefit to Pennsylvania litigants, in terms of crystalizing the essential burdens of proof.

The opinion of the Superior Court is VACATED, its order is REVERSED, and the case is remanded for reinstatement of the order of the common pleas court.

Former Justice Orie Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Saylor, Eakin, Baer and McCaffery join the per curiam order.

Madame Justice Todd files a concurring statement.

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[3] In light of the now settled nature of the above, controlling principles, it is difficult to credit Justice Todd's prediction that they are susceptible to "summary rejection" in a future opinion. Concurring Statement at 4.