

# 10.28.13

Weber   
Gallagher

## October Newsletter

### Pennsylvania Superior Court Vacates \$14.5 Million Verdict

Plaintiff's counsel improperly asked the jury to award plaintiff at least \$1 million on each of 12 separate items of damages. Attempting to cure the alleged prejudice, the trial court instructed the jury that opening and closing statements were not evidence.

The Superior Court found this instruction to be insufficient to cure the prejudice of plaintiff's counsel suggesting a specific amount to be awarded for non-economic damages. Accordingly, the Superior Court reversed the trial court, vacated the judgment and remanded for a new trial on damages.

### Pennsylvania Supreme Court Affirms Several Governing Principles From Prior Asbestos Case

In a rather unusual move, the Pennsylvania Supreme Court granted a defendant's request to reaffirm several governing principals announced in prior cases: (1) the "each and every breath" theory may not be relied upon to establish causation for diseases that are dose responsive. See, *Betz v. Pneumo Abex*, 44 A.3d 27 (Pa. 2012) (2) expert witnesses may not ignore or refuse to consider dose as a factor in their opinions. See, *Betz* (3) bare proof of de minimus exposure to a defendant's product is insufficient to establish causation for dose responsive diseases. See, *Gregg v. V-J Auto Parts*, 943 A.2d 216 (Pa. 2007) (4) expert opinions require some reasoned, individualized assessment of a plaintiff's or a decedent's exposure history. See, *Betz* (5) Summary judgment is available to address cases where only de minimus exposure can be demonstrated and plaintiff's expert opinion is based on the "each and every breath" theory. See, *Betz* and *Gregg*.

### Dauphin County Asbestos Program Inactive Docket to be Established

An Order creating an inactive docket for all current and future Dauphin County asbestos cases which allege a non-malignant asbestos-related injury will soon be filed with the Court. A case may be removed from the Inactive Docket if the plaintiff presents medical reports documenting a malignant asbestos related injury or death.