

10.07.19

Weber 
Gallagher

NJ Supreme Court Ruling to Impact Future Medical Malpractice Cases

A recent New Jersey Supreme Court decision will affect future medical malpractice cases. The case involved settled defendants in an asbestos liability action. Rowe v. Bell & Gossett Co., 2019 N.J. LEXIS 1078 (September 11, 2019). The Court held that the trial court appropriately allowed the jury to hear depositions and readings of interrogatory answers from the settled defendants in the context of apportioning a percentage of fault against the settled parties.

The plaintiff alleged that he developed mesothelioma as a result of exposure to products sold by nine defendants. Eight of the defendants settled before trial. The remaining defendant sought to use deposition testimony given by corporate representatives for the settled defendants. The defendant also sought to admit interrogatory answers supplied by settled parties. The defendant argued all of these materials constituted statements against interest and were therefore admissible as an exception to the general prohibition against hearsay. Among other things, the settled defendants acknowledged manufacturing products that contained asbestos. Several of the settled defendants also admitted to the sale of asbestos without warnings regarding the risk of asbestos exposure.

The trial court allowed the remaining defendants to utilize the testimony and interrogatory as part of its effort to seek an allocation of fault against the settled defendants. The court determined that these statements were statements against interest. There were also issues with the availability of the settled defendants to testify. The Appellate Division reversed. The Supreme Court determined that the trial court correctly allowed the admission of the statements at issue. The court included a detailed analysis regarding the various statutes applicable to cases involving multiple defendants and the Rules of Evidence applicable to hearsay.

Comment: The New Jersey Supreme Court's ruling will impact the trial of future medical malpractice cases. A doctor or hospital remaining in a case can try to use a settled defendant's statements against her for purposes of obtaining an allocation of fault. For example, there could be a scenario where a settled defendant acknowledged that he performed the portion of the surgery at issue and injured a patient. The remaining defendant could potentially use that admission to ask the jury to attribute negligence onto the settled defendant. There would be other issues to consider, including the availability of expert testimony against the settled defendant. Careful consideration of this case's implications will be required.

For more information, please contact Peter Espey at pespey@wglaw.com or 973.854.1071, or Kenneth Brown at kbrown@wglaw.com or 215.825.7225.