

TOXIC TORT LITIGATION UPDATE

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The Toxic Tort Law and Litigation Practice Group provide guidance and representation to clients involved in "long tail" claims. These claims relate to exposure to asbestos, lead paint, mold, occupational heavy metals and solvents, silica, EIFS, sick buildings and indoor air quality, mercury, and inks and dyes.

Our representation includes acting as Local and National counsel in State and Federal courts, and involves both individual and mass toxic exposure claims. Many of our attorneys have written and spoke to insurance and industry groups throughout the Country on various toxic tort issues.

PROCEDURE AND FUTURE OF FEDERAL MDL 875 (ASBESTOS) PROGRAM

Recent Changes were made to the MDL 875 (Asbestos) program instituted by the Panel on Multidistrict Litigation, based on the suggestion of Judge Eduardo C. Robreno, who runs that program. The Panel has decided to no longer allow transferring "tag-along actions" to the MDL 875. Judge Robreno justified his decision by citing that the backlog of cases in the MDL 875 has largely been eliminated. Eleven jurisdictions or categories of cases already in the MDL 875 program, however, were excluded from Judge Robreno's suggestion, and will continue as before.

EXTENT OF TWO DISEASE RULE (ASBESTOS) ESTABLISHED (PENNSYLVANIA)

In a recent Pennsylvania Supreme Court case, the Court established the extent of the "two-disease rule" in asbestos matters. The Court held that the "two-disease rule" permitted a plaintiff to file Mesothelioma lawsuits 15 years after he had filed a claim for lung cancer, resulting from the *same* asbestos exposures.

NEW STUDY (POSSIBLY) "LINKS" DIACETYL (CHEMICAL FOUND IN BUTTERED POPCORN) TO ALZHEIMER'S DISEASE?

Diacetyl (ingredient used for butter flavor and smell in foods like microwaveable popcorn), might now be linked to development of Alzheimer's disease. This chemical, previously associated with occupational respiratory problems (when *producing* foods), might now also be related to Alzheimer's disease when *eating* it. However, the study did *not* show a cause and effect relationship, but merely raised "concerns" over the "harmful effects of Diacetyl on neurological development."

CHANGES TO PHARMACEUTICAL MASS TORT AND ASBESTOS PROGRAMS IN PHILADELPHIA STATE COURT

There has been an increase in filings for asbestos-related cases in Philadelphia County by 143% over the last five years. (Hence, Philadelphia making #1 on this year's "Judicial Hellholes" list!) That dramatic increase occurred after the Court's leadership accepted claims from other jurisdictions. As of 2011, 47% of filings were from matters which were *solely out of state*. Judge Herron stated that the Philadelphia Asbestos Program is by far one of the programs most out of compliance with ABA standards, as only 36% of the mass tort cases were disposed in accordance. (However, this issue also directly relates to Pharmaceutical Mass Torts, as well.) In light of this, the total projected filings in these mass torts should see a reduction of 60% in 2012, as all of the out of state filings of pharmaceutical and asbestos cases begin to decrease.

ASBESTOS AND PHARMACEUTICAL DISCOVERY RULES CHANGES (PHILADELPHIA)

In a recent development regarding Pharmaceutical Law, punitive damages are not excluded as long as the basis for seeking such damages is shown in court (but continue to be excluded for Asbestos). Also unless otherwise agreed upon, all discovery shall take place in Philadelphia. However depositions may take place outside of Philadelphia provided there is video or telephone conferencing at no expense to opposing parties. Asbestos cases shall also be consolidated into groups ranging from 8-10 following grouping criteria like same law, same disease, same plaintiff's law firm, as well as others. Any grouping of less than 8 or more than 10 shall not receive a trial date and a maximum of 3 may be tried, with the others either resolved through settlement or regrouping and relisting with consent of a Judge.

PENNSYLVANIA SUPREME COURT RULES AGAINST "EVERY BREATH" THEORY

In a recent Pennsylvania Supreme Court case, the plaintiff argued that his Mesothelioma was caused by inhalation of asbestos fibers while working for a car company for 44 years. The Plaintiff's expert opined that "each and every" asbestos fiber was a "substantial contributing factor" in contracting the asbestos-related disease. The Pennsylvania Supreme Court ruled that that expert testimony was too broad, and "outside the range of his usual professional activities." Therefore the Court sided against plaintiffs, and this "any exposure/every breath" theory.

DISCLAIMER: THE INFORMATION CONTAINED IN THIS NEWSLETTER IS INTENDED TO INFORM READERS OF DEVELOPMENTS IN THE LAW. THE COMMENTS AND ARTICLES DO NOT CONSTITUTE LEGAL ADVICE AND SHOULD NOT BE RELIED UPON AS SUCH. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE ENVIRONMENTAL LAW AND LITIGATION PRACTICE GROUP AT WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP.

FEDERAL MDL 875 (ASBESTOS) COURT REFUSES PLAINTIFF TO COMPEL DEFENSE TESTIMONIES

In an Asbestos MDL 875 case, the Court denied the Plaintiff's Motion to Compel testimony from several defendants. This decision was because the Plaintiff had failed to address the specific defense objections to the Deposition Notices, before filing the Motion.

FREQUENCY, REGULARITY & PROXIMITY TEST CLARIFIED (PENNSYLVANIA)

Plaintiff was exposed to asbestos fibers when working on a couple of asbestos abatement projects for defendant. In a recent Superior Court decision, Plaintiff who had worked with packing, roof coating, and other items and claimed that those items caused him to contract Mesothelioma. Pennsylvania Superior Court explained that a plaintiff who suffers an asbestos-related injury must provide evidence that he/she inhaled some asbestos fibers shed from a specific defendant's product or service. The Superior Court ruled that because the plaintiff never actually inhaled asbestos fibers from a specific defendant's product, that his claim was not viable under the Frequency, Regularity & Proximity test.



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