

Pennsylvania Court Allows “Every Exposure” Testimony When Combined With Other Evidence

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Distinguishing the recent Pennsylvania Supreme Court’s decision in *Betz v. Pneumo Abex LLC*, 44 A.3d 27 (Pa. May 31, 2012) (see *Pennsylvania High Court Rejects “Any Exposure” Theory*, Toxic Tort and Product Liability Quarterly, July 18, 2012, available at <http://www.environmentallawportal.com/Pennsylvania-High-Court-Rejects-Theory>), which rejected the “every exposure” theory to prove causation, a Pennsylvania appellate court upheld a nearly \$1 million judgment in an asbestos injury case against a welding products company. *Wolfinger v. 20th Century Glove Corp. of Texas*, No. 1393 EDA 2011 (Pa. Super. Ct. Feb. 14, 2013), available at www.bdlaw.com/assets/attachments/Wolfinger.pdf. The court held that the jury weighed other evidence in conjunction with the expert’s testimony on “every exposure” and therefore the state Supreme Court’s decision in *Betz* did not require reversal of the jury’s verdict. *Wolfinger*, slip op. at 23-24.

Wolfinger filed suit against a group of defendants alleging that exposure to asbestos caused him to suffer from pleural thickening. *Id.* at 2. Plaintiff relied, in part, on expert testimony that every breath the plaintiff took in the presence of asbestos was enough to establish causation. After trial, the court entered judgment against defendant Lincoln Electric Co. for just over \$950,000. *Id.* at 3. The court denied defendant’s post-trial motion seeking a new trial or modified verdict on the grounds that testimony from the plaintiff’s expert was inadmissible under applicable Pennsylvania Supreme Court precedent.

On appeal, defendant claimed that the trial court improperly admitted plaintiff’s expert testimony. *Id.* at 9. Rejecting defendant’s arguments, the Superior Court (an intermediate appellate court) distinguished the *Betz* decision on the grounds that the court in that case was confronted only with reviewing the adequacy of the every exposure theory for causation on its own, and not in conjunction with other evidence. *Id.* at 10-11. Here, the plaintiff offered other evidence in the case to buttress its theory, including a specific history of the plaintiff’s exposure to the defendant’s product, and therefore the expert testimony “was relevant to, albeit not dispositive of, the issue of substantial factor causation.” *Id.* at 11.

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