

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

ALLEN GROOVER, AS ADMINISTRATOR : IN THE SUPERIOR COURT OF
OF THE ESTATE OF CHERYL GROOVER : PENNSYLVANIA
AND IN HIS OWN RIGHT, :

Appellant :

v. :

CBS CORPORATION, WEIL-MCCLAIN, :
SPIRAX SARCO, INC., RILEY STOKER :
CORPORATION, JOHN ZINK COMPANY, :
JOHN CRANE HOUDAILLE, INC., :
INGERSOLL-RAND COMPANY, GOULD :
PUMPS, INC., GENERAL ELECTRIC :
COMPANY, FOSTER WHEELER, CONOCO :
PHILLIPS COMPANY, CLEAVER-BROOKS, :
INC., BP AMERICA, INC., ATLANTIC :
RICHFIELD COMPANY, AMERICAN :
STANDARD, INC., ARCO CHEMICAL :

No. 680 EDA 2013

Appeal from the Orders entered January 22, 2013
in the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 3156 September Term 2011

BEFORE: FORD ELLIOTT, P.J.E, OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.:

FILED APRIL 24, 2014

Allen Groover (Groover), as administrator of the estate of his wife Cheryl Groover (Decedent) and in his own right, appeals from the January 22, 2013 orders which granted motions for summary judgment filed by defendants CBS Corporation (Westinghouse) and Spirax Sarco, Inc. (Sarco) (Appellees, collectively) in this asbestos case. We affirm.

The trial court summarized the history of this case as follows.

[Groover] commenced suit against several defendants on September 27, 2011. [Groover] contends that he was married

* Retired Senior Judge assigned to the Superior Court.

to [Decedent] until she died of mesothelioma on October 26, 2010. [Groover] claims that from 1973 to 2010 he worked in a Marcus Hook, Pennsylvania refinery which contained asbestos. [Groover] claims that while on the job he got asbestos on his work clothes from [Westinghouse's] turbines and from [Sarco's] steam traps. [Groover] further contends that he would come home on a daily basis still wearing his work clothing, which would then be laundered on a consistent basis by [Decedent]. According to [Groover], [Decedent] was exposed to asbestos from her contact with [Groover's] work clothing, and contracted mesothelioma as a result.

On November 27, 2012, [Westinghouse and Sarco] each filed a Motion for Summary Judgment. [Groover] filed Answers to Appellees' Motions for Summary Judgment on December 14, 2012. [The trial c]ourt granted both Appellees' Motions for Summary Judgment by Orders [filed on January 22, 2013].

Trial Court Opinion, 9/17/2013, at 1-5 (footnotes omitted).

On February 12, 2013, the trial court listed the case as settled, rendering the summary judgment orders final.¹ Groover timely filed a notice of appeal. Both Groover and the trial court complied with Pa.R.A.P. 1925. Groover presents the following questions for this Court's review.

- A. DID THE [TRIAL] COURT ERR AS A MATTER OF LAW WHEN IT GRANTED THE MOTION FOR SUMMARY JUDGMENT OF [WESTINGHOUSE] WHERE THE RECORD REVEALS GENUINE ISSUES OF MATERIAL FACT CONCERNING

¹ The document indicates that the case is settled as to all non-bankrupt parties except the Manville Fund, and dismisses the claim against the Manville Fund without prejudice. We have held such orders sufficient to render prior grants of summary judgment final. **See, e.g., Weible v. Allied Signal, Inc.**, 963 A.2d 521, 525 (Pa. Super. 2008) ("[T]he record reflects a July 16, 2007 trial court docket entry noting that this case was settled as to all remaining non-bankrupt parties, except the Manville Fund, but the case against the Manville fund was dismissed. ... Consequently, the grants of summary judgment [at issue] are final orders for appeal purposes and the present appeal is properly within our jurisdiction.").

FREQUENT, REGULAR, AND PROXIMATE EXPOSURE TO ASBESTOS IN A PRODUCT OF [WESTINGHOUSE]?

- B. DID THE LOWER COURT HOLD CORRECTLY THAT THE CONSTRUCTION STATUTE OF REPOSE, 42 PA.C.S.A. § 5536 DOES NOT BAR THIS ASBESTOS PERSONAL INJURY ACTION?
- C. DID THE [TRIAL] COURT ERR AS A MATTER OF LAW WHEN IT GRANTED THE MOTION FOR SUMMARY JUDGMENT OF [SARCO] WHERE THE RECORD REVEALS GENUINE ISSUES OF MATERIAL FACT CONCERNING EXPOSURE TO ASBESTOS IN [SARCO] STEAM TRAPS?
- D. DOES THE RECORD REVEAL GENUINE ISSUES OF MATERIAL FACT WHETHER [SARCO] IS LIABLE FOR ASBESTOS IN GASKETS THAT ARE NECESSARY COMPONENTS OF ITS STEAM TRAPS?

Groover's Brief at 5-6.

Generally speaking, this Court applies the following standard in reviewing the grant of a motion for summary judgment.

We view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. Our scope of review of a trial court's order granting or denying summary judgment is plenary, and our standard of review is clear: the trial court's order will be reversed only where it is established that the court committed an error of law or abused its discretion.

Estate of Borst v. Edward Stover Sr. Testamentary Trust, 30 A.3d 1207, 1210 (Pa. Super. 2011) (quoting ***Abrams v. Pneumo Abex Corp.***, 981 A.2d 198, 203 (Pa. 2009)).

Our Courts have developed summary judgment standards specific to asbestos cases. In ***Eckenrod v. GAF Corp.***, 544 A.2d 50, 52 (Pa. Super. 1988), this Court set forth the evidence an asbestos plaintiff must produce to establish a *prima facie* case sufficient to proceed to trial.

In order for liability to attach in a products liability action, plaintiff must establish that the injuries were caused by a product of the particular manufacturer or supplier. Additionally, in order for a plaintiff to defeat a motion for summary judgment, a plaintiff must present evidence to show that he inhaled asbestos fibers shed by the specific manufacturer's product. Therefore, a plaintiff must establish more than the presence of asbestos in the workplace; he must prove that he worked in the vicinity of the product's use.

* * *

Whether direct or circumstantial evidence is relied upon, our inquiry, under a motion for summary judgment, must be whether plaintiff has pointed to sufficient material facts in the record to indicate that there is a genuine issue of material fact as to the causation of decedent's disease by the product of each particular defendant. Whether a plaintiff could successfully get to the jury or defeat a motion for summary judgment by showing circumstantial evidence depends upon the frequency of the use of the product and the regularity of plaintiff's employment in proximity thereto.

Id. at 52-53 (citations omitted).

The ***Eckenrod*** regularity-frequency-proximity standard for determining whether a plaintiff has come forward with sufficient evidence to allow a jury to conclude reasonably that the plaintiff breathed some asbestos fibers from a defendant's product originally applied only to consideration of circumstantial, rather than direct, evidence. ***See, e.g., Gilbert v. Monsey Products Co.***, 861 A.2d 275, 277 (Pa. Super. 2004) ("Because Appellant

provided direct testimony [that he inhaled asbestos fibers from the defendant's product], the **Eckenrod** test was not applicable."). However, our Supreme Court later extended the application of the **Eckenrod** factors to all evidence of asbestos exposure:

we believe that it is appropriate for courts, at the summary judgment stage, to make a reasoned assessment concerning whether, in light of the evidence concerning frequency, regularity, and proximity of a plaintiff's/decendent's asserted exposure, a jury would be entitled to make the necessary inference of a sufficient causal connection between the defendant's product and the asserted injury.

Gregg v. V-J Auto Parts, Co., 943 A.2d 216, 227 (Pa. 2007). Specifically, the Court held that the regularity, frequency, and proximity factors

are to be applied in an evaluative fashion as an aid in distinguishing cases in which the plaintiff can adduce evidence that there is a sufficiently significant likelihood that the defendant's product caused his harm, from those in which such likelihood is absent on account of only casual or minimal exposure to the defendant's product.

Id. at 225 (citing **Tragarz v. Keene Corp.**, 980 F.2d 411, 420 (7th Cir. 1992)).

Thus, trial courts are permitted to evaluate the evidence of asbestos exposure to a defendant's product to determine whether the evidenced exposure was insignificant or whether there is a genuine issue of material fact to be resolved by the fact finder. **See also Howard v. A.W. Chesterton, Co.**, 78 A.3d 605 (Pa. 2013) (*per curiam*) (**Howard III**) ("Summary judgment is an available vehicle to address cases in which only bare *de minimus* exposure can be demonstrated....").

Furthermore, we note that in the instant case, the question is not whether the products were used with such regularity and frequency in the workplace such that Groover breathed fibers from the products. Rather, the question is whether his work regularly and frequently placed him in proximity with the defendants' products such that a jury could conclude that asbestos fibers from the defendants' products attached to Groover's clothing, were breathed by Decedent when she did the laundry, and were a substantial cause of Decedent's development of mesothelioma.

With these standards in mind, we turn to the motion for summary judgment filed by Westinghouse and the evidence relevant thereto. Westinghouse's motion for summary judgment claimed that there was no triable issue of material fact as to Decedent's exposure to asbestos from a Westinghouse product because (1) Groover failed to offer sufficient evidence to satisfy the **Eckenrod** standard, and (2) Groover's claims were barred by the statute of repose, 42 Pa.C.S. § 5536.²

² The statute provides, in relevant part, as follows.

[A] civil action or proceeding brought against any person lawfully performing or furnishing the design, planning, supervision or observation of construction, or construction of any improvement to real property must be commenced within 12 years after completion of construction of such improvement to recover damages for:

- (1) Any deficiency in the design, planning, supervision or observation of construction or construction of the improvement.

In response to Westinghouse's motion, Groover filed an answer attaching several documents, or portions thereof, which he claimed evidenced that Decedent breathed asbestos fibers shed by a Westinghouse product. The trial court summarized the evidence as follows.

i. [Groover's] Exhibit "A"

In support of his answer... [Groover] attached as Exhibit "A" a document with the heading "Product I.D." which states, "Including but not limited to asbestos containing ... Westinghouse turbines...."

ii. [Groover's] Exhibit "B"

In support of his answer... [Groover] attached as Exhibit "B" portions of the November 5, 2012 deposition transcript of Earl Groover [(Brother)], the brother and former coworker of [Groover]. In that deposition, [Brother] stated there were lots of times in the early years when [Groover] would be in one area, and [Brother] would be working in another area, and they would be working the same shifts. There were times that they were working together in the same areas and the same shifts. When asked if he believed [Groover] was exposed in any way to asbestos during his time working at the Trainer facility after 1996, [Brother] replied, "I don't know that."

According to [Brother], Boilers 6, 7 and 8 were all insulated with asbestos, and "the boiler house was extensively asbestos insulation, all over the place." [Brother] testified that he was at Boiler 8 when a tube blew in the boiler, and it blew the wall of the boiler out. According to [Brother], the shell or skin of the boiler was asbestos insulation. [Brother] said he was physically standing there at Boiler 8 when the incident

(2) Injury to property, real or personal, arising out of any such deficiency.

(3) Injury to the person or for wrongful death arising out of any such deficiency.

42 Pa.C.S. § 5536(a).

happened. However, [Brother] further testified: [that Groover was not there that day, and that, although such incidents happened frequently during the time Groover worked there, he could not name any such instances when Groover was present].

* * *

In his deposition, [Brother] said that he associated Westinghouse with turbines at the refinery. However, when asked if he associated any asbestos-containing products with turbines in 1988 in the boiler house, [Brother] replied, "No, I can't remember." When asked if he believed [Groover] was exposed to asbestos while working at the refinery, [Brother] responded as follows:

Q. Are there any - do you believe [Groover] - let's start with the period from 1975, excluding the 1988 period. Do you believe [Groover] was exposed to asbestos-containing products during that timeframe?

A. I believe that it is possible for any man working in a refinery to be exposed to asbestos at any time during an upset, as long as asbestos is in use in the industry.

Q. When you say in use, what do you mean?

A. Well, the asbestos is still in areas in industry for heat purposes. At any time you have an upset condition - for instance, I was explaining to the other gentleman, when you have a water hammer in a pipe, and that pipe bangs so hard, and it is rattling the whole area, you could hear it in the whole area, and you see dust flying out, and that could very well be asbestos.

Q. And that's because the pipe is covered in asbestos-containing insulation?

A. That's because the jacketing on the pipe is insulation. I don't know if it would be asbestos or not, but in the north side, it was known that in the north side in the boiler house areas, it was predominantly - there was no other insulation used

at that time, because of the refinery, the age of the refinery, and that's what they used.

iii. [Groover's] Exhibit "C"

[Groover] attached portions of his own November 8, 2012 deposition transcript as Exhibit "C" to his Answer... In that deposition, [Groover] stated that from 1996 forward, his wife, [Decedent], was still doing his laundry until she got too sick to do it.

[Groover] stated that in 1994, when he went back to front line supervisor, there were occasions where he either relieved [Brother], or [Brother] relieved him, or he worked in the same general area as [Brother].

* * *

[Groover] said that by 1996, because he had been warned ... about the hazards of asbestos, he knew there was a hazard to asbestos. However, he did not know that the asbestos could get on your clothing, and stated, "I didn't even know you could take asbestos home on your clothes, until my wife got sick."

iv. [Groover's] Exhibit "D"

[Groover] attached portions of ... Westinghouse's Interrogatory Answers in another case as Exhibit "D" to his Answer... In its answer to Interrogatory #4, which requests that Westinghouse "[i]dentify by name each product containing asbestos fibers that [Westinghouse] or any of its predecessor or subsidiary companies at any time manufactured or sold," ... Westinghouse provided a list of products, including ... "steam and gas turbines and ancillary insulation." However, [Westinghouse] stated that "only certain variations of these products contained asbestos; many other variations contained no asbestos."

v. [Groover's] Exhibit "E"

[Groover] attached a two-page document entitled "Westinghouse Process Specification Insulation of Steam Turbines and Associated Equipment" as Exhibit "E" to his Answer... Page 1 of the specification, under the heading "C. Finishing" states, "A finish coat of asbestos finishing cement material 461108A, ½ inch thick shall be reworked into the metal

lath and troweled to a smooth even surface.” Page 2 of the specification, under the heading “Part III Pipe Insulation” states, “All exposed pipe insulation shall be covered with asbestos cloth jacket material 41511AP pasted on with adhesive 53351DU. Piping under the turbine lagging will not require jackets.”

Trial Court Opinion, 9/17/2013, at 10-14 (citations omitted). Based upon its examination of this evidence, the trial court concluded as follows.

[Groover] has presented no evidence specifically placing [Groover] in proximity to ... Westinghouse turbines. In addition, [Groover] has not produced sufficient evidence that the Westinghouse turbines at the Trainer refinery contained asbestos during the time [he] worked there, or that [the Westinghouse] turbines shed asbestos onto [his] work clothing. Consequently, [Groover] has produced no evidence that [he] carried asbestos fibers from [Westinghouse’s] turbines home on his work clothes, or that [Decedent] inhaled those asbestos fibers.

Id. at 14.

Given our standard of review, we are constrained to conclude that the trial court did not abuse its discretion in evaluating the evidence. Although Groover identified in his interrogatory answers that he was exposed to asbestos from Westinghouse turbines,³ the interrogatory answers provide no indication of the regularity and frequency of the exposure, and he offered no such testimony in his deposition. The only evidence of Brother’s side-by-side work with Groover included in Groover’s answer relates to one eight-to-ten week period in 1988, and Brother testified that he did not associate any asbestos-containing products with the Westinghouse turbine in 1988. While Brother testified that dust was released from the asbestos insulation in the

³ We will accept for the sake of argument that Groover established that the Westinghouse turbines were insulated with asbestos-containing materials.

boiler houses frequently when there was an “upset condition,” neither he nor Groover testified that Groover was in the boiler house on any of those occasions. Given this record, we cannot conclude that the trial court erred in holding that Groover presented insufficient evidence that asbestos fibers from a Westinghouse product attached to his clothing in the workplace and were breathed by Decedent at Groover’s home.

Because we affirm the trial court’s grant of Westinghouse’s motion based upon lack of evidence of exposure, the issue raised in Groover’s second question on appeal about the applicability of the statute of repose to his claims against Westinghouse is moot.

Groover’s remaining questions concerning the propriety of the trial court’s grant of the motion for summary judgment filed by Sarco. Sarco moved for summary judgment upon the claims that (1) the deposition testimony of Groover and Brother failed to satisfy the ***Eckenrod*** test, and (2) Sarco is not liable for asbestos-containing component parts used on Sarco products unless Sarco manufactured, supplied, or specified the use of those components. Groover filed an answer to the motion, attaching evidence summarized by the trial court as follows.

i. [Groover’s] Exhibit “A”

In support of his Answer in opposition to [Sarco’s] Motion for Summary Judgment, [Groover] attached as Exhibit “A” a document with the heading “Product I.D.” which states, “Including but not limited to asbestos-containing ... Spirax Sarco steam traps, ... Flexitallic gaskets, [and] Garlock gaskets.”

ii [Groover's] Exhibit "B"

In support of his Answer..., Appellant attached as Exhibit "B" portions of the November 5, 2012 deposition transcript of [Brother]. In that deposition, [Brother, as noted above, described his interaction with Groover at work and his beliefs about asbestos exposure as a result of an "upset condition"].

* * *

In his deposition, [Brother] gave the following testimony regarding steam traps at the Trainer refinery:

Q. You also mentioned steam traps?

A. Yes.

Q. Steam traps are something that are present in the refinery?

A. Extensively.

Q. What is a steam trap?

A. A steam trap blows off your condensate as your condensate builds up in the leg coming off your piping. You have to have various steam traps along the line. If a couple of those steam traps are out of service or they freeze up or they get mud or debris in them, and they are not cleaned, that can create, just like I mentioned about three or four times here, it could create a water hammer, because the condensate build up in the piping and then you start having a water hammer, and that's one thing you would have to go check to make sure all your steam traps are functioning along that length of the piping.

Q. Are there steam traps located in the boiler house?

A. All over. They are throughout the refinery.

Q. Do you associate any asbestos-containing products with steam traps?

A. I don't know the internal part — I know the capsule, the Sarco traps had capsules in them, and you would replace the capsule, and I don't think there was any asbestos in there. I mean, the seals inside, there are seals in there, that may have been. I know that Teflon is used a lot, but then, again, it depends on temperature, what type of — what is in the trap.

Q. Were the boiler operators responsible for working on the steam traps?

A. Yes, we would have to change out the traps. We would actually — that was part of incidental maintenance. And if a trap was bad, we would have to replace the trap. And I would go to the storehouse and pick up — if you could do it with a capsule, we would do it with a capsule. A lot of times, you have to change the whole trap, but depending on what was wrong.

Q. Do you have any personal knowledge that [Groover] worked on steam traps?

A. I know he did. Everybody in that place did at one time or another.

Q. Do you have any specific recollection of your being present when [Groover] did that?

A. Not any specific recollection.

Q. You mentioned Sarco. Is that one of the manufacturers of the steam traps?

A. That's one of our main manufacturers, but there were other manufacturers, but I don't recall who they were. We had a couple other different type of traps down there, but Sarco was one of our main users of traps down there.

Q. Now, you told me you don't believe there is any asbestos associated with the capsule?

A. I'm not sure.

According to [Brother], all the steam traps were used for the same purpose regardless of the manufacturer; they were all for the purpose of removing condensate from steam piping.

iii. [Groover's] Exhibit "C"

[Groover] attached portions of his own November 8, 2012 deposition transcript as Exhibit "C" to his Answer... In that deposition, [Groover testified as noted above about Decedent's washing his work clothes and about his interaction with Brother at work].

[Groover] testified regarding his work with steam traps as follows:

Q. What type of work did you do in the steam traps?

A. Most of the time, I would replace them. I wouldn't mess with trying to repair them.

Q. And my understanding from your brother is that the steam traps are screw pipe on the ends?

A. Yes.

Q. Is there any — the use of any asbestos-containing materials in the replacement of a steam trap?

A. I didn't know it at the time, but there was, yes.

Q. And what would that be?

A. I guess a gasket inside or whatever. The most I would do with a steam trap is I would take and check the screen in it, because if the screen would plug, then it wouldn't release the condensate, and if it wasn't that, if I could get it off, I would take it off and go to the storehouse and match it up and put another one back on.

Q. And if you are replacing a steam trap, you are not — that does not involve opening the steam trap up; correct?

A. Not if you are replacing it.

Q. You are just unscrewing it from the pipes and pulling it out and putting a new one in?

A. Yes.

Q. And that was your preferred method?

A. That was my preferred method. I would try to check the screen first. As far as taking it apart and replacing part, once in a while, I would do that, but you did have to take a certain amount of it apart just to get the screen out of it, but if the screen was clean, I figured, well — and I would just go and get a new one, and that's what I would do.

Q. To get the screen, did that involve removing the gasket?

A. Yes.

Q. Where was the gasket located on the steam trap?

A. On top of the screen housing.

Q. How did you open up the steam trap? Your brother indicated that the top of the steam trap was screwed on; is that correct?

A. Yes.

Q. So you would unscrew the top and open it up?

A. Yes.

Q. And you would have to remove the gasket to get to the screen?

A. Well, it was on the part that you took off and then you pulled the screen out.

Q. How did you find out — why is it you believe that the gasket contained asbestos?

A. I don't know. I just figured — some of the old steam traps, I don't know about the new ones, but I don't know for sure.

Q. Did you personally ever replace the gasket in a steam trap?

A. No.

Q. Do you know who manufactured the steam traps?

A. No, not all of them. I know the later ones, the Sarco traps, that were basically more or less all stainless steel.

Q. Do you recall Sarco's traps?

A. Yes, I do.

Q. And you recall those in your later years?

A. Yes.

Q. Do you recall about what year you would have first seen a Sarco trap at the refinery?

A. No.

Q. Was it in the 1990s or earlier than that?

A. I think it was earlier than that.

Q. But your recollection is the Sarco traps were all stainless steel?

A. In the later years, they were. In the beginning, I don't know, to be honest with you.

Q. You have a specific recollection of ever opening up a Sarco trap?

A. Yes.

Q. In earlier years, before they were stainless steel?

A. Not particularly that was a Sarco. I opened many a traps [*sic*] up, but I can't say in particular that was Sarco.

* * *

iv. [Groover's] Exhibit "D"

[Groover] attached portions of [Sarco's] Interrogatory Answers as Exhibit "D" to his Answer.... In its answer to Interrogatory #8, which requests that [Sarco] identify each asbestos or asbestos containing product [it] has dealt with, [it] responded, in pertinent part:

... Certain Spirax Sarco product segments in the past have incorporated Garlock gasketing material #7021 and to much lesser extent Flexitallic or other manufacturer's stainless steel or copper spiral wound/rmetal clad gaskets and to a very limited extent used braided packing. ... Spirax Sarco began the process of switching over to non-asbestos containing sealing material in the mid-1980s when the manufacturers and suppliers of these products began offering non-asbestos products as substitutes....

Trial Court Opinion, 9/17/2013, at 15-22 (citations omitted).

The trial court's review of this evidence led it to conclude that Groover failed to establish that Decedent breathed asbestos fibers from a Sarco product:

While [Groover] has presented evidence that [he] worked with [Sarco] steam traps, [he] has not produced sufficient proof that [Sarco's] steam traps shed asbestos onto [Groover's] work clothing. While [Sarco] stated in its interrogatory answers that the steam trap gaskets contained an asbestos component until the mid-1980s, [Groover] admitted in his own deposition testimony that he only removed steam trap gaskets because they were attached to the top of the steam trap, and he took off the top to get the screen out. [Groover] also admitted he never changed a gasket in a steam trap, and no evidence was produced to indicate that [Groover] was in the vicinity when someone else changed a steam trap gasket. Consequently, [Groover] has produced no evidence that [he] carried asbestos fibers from [Sarco's] steam traps home on his work clothes, or that [Decedent] inhaled those asbestos fibers.

Id. at 22.

In his brief, Groover reiterates the extensive evidence that establishes his work with Sarco steam traps, points to the evidence that there were asbestos-containing gaskets contained therein, and analogizes his case with pre-**Gregg**, direct-evidence cases. Groover's Brief at 43 ("The testimony of an injured plaintiff 'that the products in question contained asbestos and were present in the plaintiff's work area, is sufficient to allow a jury to conclude that the plaintiff was exposed to and injured by that defendant's products.'") (quoting **Ball v. Johns-Manville Corp.**, 625 A.2d 650, 661 (Pa. Super. 1993)).

The problem with this analysis is that post-**Gregg**, it is not the law. Only "casual or minimum exposure to the defendant's product" is insufficient to meet the "frequency, regularity, and proximity" test. **Gregg**, 943 A.2d at 227. In **Howard III**, our Supreme Court indicated that the following

principles apply to all asbestos cases involving a dose-responsive disease:⁴ (1) the “theory that each and every exposure, no matter how small” is not viable to establish a defendant’s liability; (2) proof of *de minimus* exposure to a product is insufficient to establish causation; (3) an expert must make “some reasoned, individualized assessment of a plaintiff’s or decedent’s exposure history” in opining about substantial-factor causation of the asbestos disease; and (4) summary judgment “is an available vehicle” for challenging *de minimus* exposure. 78 A.3d at 608.

Thus, our Supreme Court is of the opinion that, in ruling on a motion for summary judgment, the trial judge must be convinced that the evidence is sufficient to allow the fact finder to conclude that the injured party’s exposure was a substantial contributing factor in causing the disease. Clearly, this requires some affirmative showing that the plaintiff or decedent breathed dust from the particular defendant’s product. A plaintiff no longer may simply offer evidence that he or she worked with or around a defendant’s product. Groover did not offer evidence to establish his own exposure to asbestos fibers released from a Sarco product, let alone that Decedent breathed them from his work clothing.

Given the legal precedent and our standard of review, we cannot conclude that the trial court erred or abused its discretion in finding that

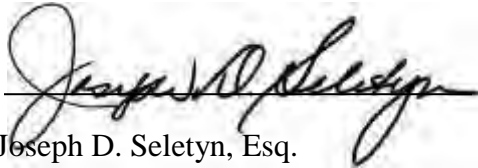
⁴ In ***Betz v. Pneumo Abex, LLC***, 44 A.3d 27, 31 (Pa. 2012), a case involving a challenge based upon ***Frye v. United States***, 293 F. 1013 (D.C. Cir. 1923), to the each-and-every-exposure theory, the Court noted that all experts agreed that mesothelioma is a dose-responsive disease.

Groover offered insufficient evidence that Decedent breathed asbestos fibers from a Sarco product. Therefore, we are constrained to hold that Groover is entitled to no relief from this Court on his third issue.

In holding that Groover failed to establish that Decedent was exposed to asbestos from Groover's work with Sarco products, the trial court did not distinguish between the Sarco steam traps and the asbestos-containing gaskets therein which may have been manufactured or distributed by another company. It fully considered the alleged exposure to the gaskets in making its determination, and yet still found the evidence lacking. Accordingly, Groover's final question, concerning Sarco's liability for the component parts (in this case, gaskets) of the steam traps, is moot.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/24/2014