



## Alerts

### Pennsylvania Redefines Summary Judgment Standard in Asbestos Litigation by Allowing Cases to Proceed Even When Other Medical Causes Are Present

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*Toxic Tort Alert*

A recent ruling by the Pennsylvania Supreme Court is likely to result in fewer summary judgments being granted in Pennsylvania asbestos litigation cases involving smoking and asbestos exposure. Specifically, the Pennsylvania Supreme Court in *Summers, et al. vs. Certaineed Corp., et al.*, 997 A.2d 1152 (Nos. 19-22) (2010), reversed a decision in which a lower appeals court held that, as a matter of law, a plaintiff is barred from pursuing an asbestos claim when his or her alleged asbestos-related symptoms could just as easily be explained by a non-asbestos condition, such as smoking. The trial court had previously granted summary judgment to defendants based directly on this principle.

The Pennsylvania Supreme Court's decision was based upon two consolidated cases involving plaintiffs Frederick Summers and Richard Nybeck. In 1959 and 1960, Mr. Summers worked as a saw operator in an asbestos manufacturing plant, where he allegedly was exposed to raw asbestos. He later encountered a further occupational exposure to asbestos as an independent heating and plumbing contractor. Mr. Summers was subsequently diagnosed with asbestos pleural disease due to asbestos exposure, as well as from chronic obstructive lung disease caused by his heavy smoking history. Mr. Nybeck was enlisted in the U.S. Navy from the 1950s to the 1970s and allegedly was exposed to various forms of asbestos located on Navy ships. He was subsequently diagnosed with asbestosis, along with severe obstructive lung disease related to a long-term smoking history. Both Summers and Nybeck supported their alleged asbestos-related conditions with medical expert opinion.

The trial court granted defendants' motions for summary judgment in both cases by relying on the Pennsylvania Superior Court's 2003 decision in *Quate v. American Standard, Inc.*, 818 A.2d 510, which held as follows:

Where a plaintiff suffers from a non-asbestos related medical condition, the symptoms of which are consistent with medical conditions arising from exposure to asbestos, the existence of those non-asbestos-related medical conditions negate his ability to establish the necessary causal link between his symptoms and asbestos exposure. Under these circumstances, summary judgment is proper.

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Because both plaintiffs in *Summers* suffered from lung conditions that could be explained by both asbestos and non-asbestos-related symptoms, the trial court found it “impossible . . . to causally relate [plaintiffs’] shortness of breath to any particular medical condition.”

The Pennsylvania Supreme Court, in a 5-1 ruling, found that “[u]nder this Commonwealth’s jurisprudence, where it is clear that reasonable minds could differ on the issue of causation, precluding asbestos litigants from pursuing causes of action, supported by competent medical evidence, merely because of the existence of competing health conditions, is unsustainable.” The Court further stated, “[i]n the context of negligence actions, we have held unequivocally that the fact that some other cause concurs with the negligence of the defendant in producing an injury does not relieve the defendant from liability unless he can show that such other cause would have produced the injury independently of his negligence.” In other words, the Court held that any conflict or inconsistency between plaintiffs’ and defendants’ respective medical experts on medical causation must be decided by a jury. (It should be noted that Mr. Summers recently passed away, and his case will be dropped at the request of his family. According to his attorney, Mr. Summers died of causes unrelated to asbestos exposure.)

The *Summers* decision likely means that more cases involving both smoking and asbestos exposure will proceed to trial because more summary judgment motions by defendants will be denied by the courts. It will now be even more important for defendants in such cases to thoroughly investigate and gather the necessary medical evidence to show the plaintiffs’ complete smoking history and the harmful effects that smoking has on the lungs. Credible expert opinion testimony will be key to that analysis. Moreover, defendants need to show that, even absent an asbestos exposure, these plaintiffs would have sustained breathing and other health problems caused by smoking, so that all potential causes can be thoroughly considered in the case.

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[Craig T. Liljestrand](#), a Partner in Hinshaw’s Chicago office, has been selected by his peers as a Leading Lawyer in the areas of Products Liability Defense Law and Toxic Torts Defense Law.

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