

From: *HarrisMartin's Harrismartin's Litigation Watch: Benzene*

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Vermont Supreme Court Upholds Summary Judgment for Benzene Defendants

MONTPELIER, Vt. — The Vermont Supreme Court has upheld summary judgment awarded to two defendants in a benzene case, ruling that while the plaintiff had established the possibility of benzene exposure, he failed to quantify any level of alleged exposure. *Blanchard v. Goodyear Tire & Rubber Co., et al.*, No. 2011 VT 85 (Vt. Sup. Ct.).

In the Aug. 5 opinion, the high court found that the plaintiff's evidence and expert witness testimony constituted circumstantial evidence, which would not be enough to support a jury finding for the plaintiff.

In his lawsuit, Paul Blanchard claims that his development of Primary Central Nervous System Large B-Cell Lymphoma — a type of non-Hodgkin's lymphoma — was caused by exposure to benzene.

Blanchard specifically said that between 1968 and 1973, he played on a field in the vicinity of a Goodyear rubber manufacturing plant. The plaintiff says that this field was polluted with benzene. The court noted that while there is no evidence Goodyear used benzene, it was contained in the petroleum products used by the defendant.

Blanchard named Goodyear and the current owner of the property, Connecticut River Development Corp., as defendants in the action.

The defendants, however, moved for summary judgment on grounds that the plaintiff had not sufficiently proven that exposure to benzene at the plant's grounds was the cause of his illness.

The trial court agreed, concluding that the plaintiff "was not entitled to present his case to a jury because he had provided neither circumstantial evidence sufficient to support an inference that he had been exposed to benzene in any amount, let alone an amount that could have caused his illness, nor expert testimony sufficient to eliminate other potential causes of his disease."

The plaintiff appealed, arguing that the circumstantial evidence is sufficient.

In addressing the appeal, the Vermont Supreme Court noted that Blanchard must prove that his illness was probably caused by benzene exposure on the defendants' grounds, as opposed to a possibility.

While the plaintiff has presented evidence that benzene-containing products could have made their way on to the field, there is no way of quantifying the amount or concentration of that migration, the court noted.

"Assuming that we accept all of this evidence as true, it falls well short of what plaintiff would be required to show in order to prevail in a jury trial," the high court opined. "Indeed, if a jury were to find in favor of plaintiff on the evidence relied upon by plaintiff, we would have to overturn the verdict. In the end, plaintiff's suspicion that his cancer was caused by exposure to benzene on the Goodyear ballfield when he was a teenager is purely speculative."

The high court further ruled that the plaintiff could not rely on differential diagnosis to support his claims since his own expert witness “acknowledged that a large percentage of cases of plaintiff’s type of lymphoma are of unknown origin.”

Counsel for Goodyear was Joseph D. Lonardo of Vorys, Sater, Seymour and Pease LLP in Washington, D.C.

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