



COUGHLIN DUFFY LLP

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Court of Appeals of New York Maintains High Standard for Causation



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The Court of Appeals of New York, in *Parker v. Mobil Oil Corp.*, 2006 WL 2945397 (N.Y.), recently affirmed the Appellate Division's reversal of the trial court's denial of a summary judgment in a benzene exposure case based on plaintiff's lack of expert testimony on the issue of medical causation. Although the Court of Appeals rejected the Appellate Division's stringent requirement that the amount of exposure need be quantified exactly, it concluded that the Appellate Division properly precluded plaintiff's experts and deemed their reports insufficient to defeat summary judgment. Parker had worked as a gas station attendant for 17 years and claimed that exposure to benzene through inhalation of gasoline fumes and dermal contact caused him to develop acute myelogenous leukemia (AML). Plaintiff alleged that defendants did not warn him of the dangers of benzene exposure or provide him with safety or protective gear, while defendants argued that the plaintiff's experts' testimony was unreliable. Defendants moved for summary judgment based on the absence of appropriate causation evidence.

The trial court found that the plaintiff's experts followed generally accepted principles and methodologies in demonstrating the link between benzene and leukemia although no study linking AML to exposure to benzene in gasoline or quantifying Parker's exposure

was cited. The Appellate Division reversed and dismissed the complaint finding that plaintiff failed to establish the precise level of his exposure to benzene in gasoline sufficient to establish that his AML was caused by the exposure through a scientifically reliable methodology.

The Court of Appeals noted that a plaintiff's exposure to a toxin may be difficult or impossible to quantify by pinpointing an exact numerical value. However, it determined that an opinion on causation should set forth the plaintiff's exposure to a toxin, that the toxin was capable of causing a particular illness (general causation) and that the plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation). 2006 WL 2946397 p. 6 (citations omitted). While maintaining a high standard for causation, the Court of Appeals departed from the Appellate Division and found that it is not always necessary for a plaintiff to quantify exposure levels precisely, provided that whatever methods an expert uses to establish causation are generally accepted in the scientific community. The Court of Appeals found that plaintiff's experts were unable to identify a single epidemiologic study finding an increased risk of AML as a result of exposure to gasoline containing benzene, and affirmed the Appellate Division on these grounds.

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