

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE : SPECIAL TERM : PART 31

RICHARD K. BRENNER, et al,

Plaintiffs,

vs.

Index No. 12596/93

AMERICAN CYANAMID COMPANY, et al

DECISION

Defendants.

77 West Eagle Street
Buffalo, New York
June 14, 2000

B e f o r e :

KEVIN M. DILLON,

Supreme Court Justice

A p p e a r a n c e s :

LIPSITZ, GREEN, FAHRINGER, ROLL,
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Appearing for Plaintiffs

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Appearing for Defendant Atlantic
Richfield

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A p p e a r a n c e s : (Cont'd)

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BY: JOHN T. LOSS, ESQ.
Appearing for Defendant Lead
Industries Association, Inc.

Michael Martin
Official Court Reporter

Decision

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2 (Proceedings of June 14, 2000. All counsel
3 present.)

4 THE COURT: All right. The Court has
5 reviewed the submissions of the parties and has
6 also reviewed and analyzed the authorities relied
7 upon by both the plaintiff and defendant.

8 As to the issue raised regarding the City of
9 New York Lead Industry Association -- City of New
10 York versus Lead Industry Association, that was an
11 action to recover for the money New York City had
12 to expend for removing lead-based paints from
13 buildings. And this Court concludes that the
14 allegations against the Association in that case
15 are clearer relative to proximate cause than are
16 the issues raised in this case. In this case the
17 Fourth Department has already found that, unlike
18 the DES cases, here there was no signature injury,
19 that plaintiff's injury could have been caused by
20 another source of lead or a source other than
21 lead, and the Court finds that that determination
22 by the Appellate Division distinguishes this case
23 from the City of New York versus Lead Industry
24 Association.

25 The Court finds that the defendant has

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2 submitted evidence in legally admissible form that
3 plaintiff cannot identify which, if any, of these
4 defendants' products caused injury to the
5 plaintiff. This is sufficient to meet the
6 defendants' initial burden of entitlement to
7 summary judgment as a matter of law.

8 Plaintiff has not raised a question of fact
9 as to which of these defendants, if any,
10 manufactured the product that caused the injury to
11 the plaintiff.

12 This failure to raise a question of fact on
13 this issue, combined with the Appellate Division's
14 findings on the prior appeal, and plaintiff's
15 legal inability to rely upon any exception to the
16 proximate cause requirement of New York's products
17 liability law due to the specific facts of this
18 case, mandates that summary judgment be granted to
19 the defendants on the fourth and fifth causes of
20 action alleging concerted action and civil
21 conspiracy. For these reasons the defendants'
22 motion for summary judgment on these two causes of
23 action is granted.

24 In light of this determination, and the
25 inability of the plaintiff to identify which, if

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2 any, of these defendants' products caused injury
3 to the plaintiff, the Court also finds it
4 necessary to dismiss the first three causes of
5 action.

6 For these reasons the complaint is dismissed
7 in its entirety, and these findings are to be
8 attached to the order which is to be submitted by
9 the defendants to the Court on notice to the
10 plaintiff. Thank you, gentlemen.

11 (Court recessed.)

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