



COOK COUNTY ASBESTOS LITIGATION CONFERENCE

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APPELLATE AND SUMMARY JUDGMENT DECISIONS



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Summary Judgment Procedures and Standards in Cook County



Procedure is dictated by the ILCS and Cook County CMO

- ▶ 735 ILCS 5/2-1005
- ▶ Cook County Master Case Management Order 19 paragraph 9 subsection s
- ▶ Additionally, local rules dictate summary judgment procedure in Cook County



Illinois' Standard for Motion for Summary Judgment.

- ▶ Summary judgment is proper when the pleadings, depositions, admissions, and affidavits on file show that no genuine issues of material fact remain and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). A defendant can obtain summary judgment by showing that the plaintiff cannot prove a necessary element of his or her case, as a complete failure of proof concerning an essential element necessarily renders all other facts immaterial. *See Webber v. Armstrong World Industries, Inc.*, 235 Ill. App. 3d 790, 796 (4th Dist. 1992) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)).



Summary Judgment Standard in Asbestos Cases

- ▶ *Smith v. Eli Lilly & Co.*, 137 Ill. 2d 222 (1990).
- ▶ *Thacker v. UNR Indus., Inc.*, 151 Ill. 2d 343 (1992).
- ▶ *Wehmeier v. UNR Industries, Inc.*, 213 Ill. App. 3d 6 (4th Dist. 1991)



Thacker Continued

- ▷ Frequency, Regularity, and Proximity
- ▷ Is it a lower threshold to have summary judgment granted?



MATT ALVA



Use of discovery and evidence depositions at the dispositive motion stage

Fritz v. Superior Boiler Works (Cook County No. 2023-L-4586)



Conflicting testimony results in denial of dispositive motion

- ▶ Plaintiff's testimony during his discovery deposition regarding boiler exposure was not confirmed during the evidence deposition.
- ▶ Defendant moved for summary judgment arguing that the evidence deposition is 'the best evidence.'



Illinois Supreme Court Rule 212(a)

- ▷ Discovery depositions taken under the provisions of this rule may be used only:
 - 4) for any purpose for which an affidavit may be used; or
 - (5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof, if the court finds that the deponent is not a controlled expert witness, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.



Illinois Supreme Court Rule 212(b)

- ▶ Use of evidence depositions
 - “All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that *at the time of the trial....*”



Final Holding

- ▶ In Fritz, a defendant could not obtain summary judgment if the plaintiff had discussed the exposure during the discovery deposition but had not mentioned that same exposure during the evidence deposition.
- ▶ Illinois Supreme Court Rule 212(a)(4) allows for the use of discovery depositions “for any purpose for which an affidavit may be used.”
- ▶ At the summary judgment stage, “the evidence deposition is not yet ripe for use.”



General tort principles apply to toxic tort claims: Thor Zurbriggen, et al., v. Twin Hill Acquisition Company, et al., NDIL 1:17-cv-5648

- ▷ Claims of exposure of American Airlines employees to toxic uniforms.
- ▷ NDIL granted summary judgment to defendants American Airlines Inc. and Twin Hill Acquisition Co. Inc., dismissing claims of personal injury.



There must be a question of fact for a LAY jury.

- ▶ The court found that the plaintiffs failed to establish a link between the uniforms and their reported health issues.
- ▶ Plaintiffs cannot prevail on their claims without first proving by a preponderance of the evidence that they were exposed to uniforms containing harmful defects.
- ▶ That baseline requirement was dispositive, given that the symptom complaints present incomplete and unreliable information from which no reasonable lay jury could deduce a causal connection.



Avoid working backward from a desired conclusion.

- ▶ “Given the complexity of the causation question, the Court finds that evidence of symptoms, no matter how robust, would be insufficient on its own to establish that the Twin Hill uniforms were defective.”
- ▶ Plaintiffs' expert witnesses, were deemed to have "approached the causation question from the wrong direction.”

Martin v. Goodrich Corp., et. al.

2025 IL 130509, Opinion Filed January 24, 2025



- Illinois Supreme Court, on writ from 7th Circuit Court of Appeals, asked to decide the following questions:

(1) Is the period referenced in section 1(f) a “period of repose or repose provision” for purposes of the exception provided in section 1.1?

(2) If section 1(f) falls within the section 1.1 exception, what is its temporal reach—either by its own terms or through section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2022))?

(3) Would the application of the exception in section 1.1 to past conduct offend Illinois’s due process guarantee?

Martin v. Goodrich



- Case alleges occupational exposure to vinyl chloride monomer during Martin's employment at B.F. Goodrich between 1966 – 1974
- First issue: is Section 1(f) of ODA a statute of repose?
- Answer: Yes

¶ 27 Like section 6(c), the bar to compensation in section 1(f) does not relate to the accrual of a cause of action. The time runs whether or not the employee has discovered the injury or been diagnosed with a disease.

“A statute of repose gives effect to a policy different from that advanced by a statute of limitations insofar as it is intended to terminate the possibility of liability after a defined period of time, regardless of a potential plaintiff's lack of knowledge of his or her cause of action.” *DeLuna v. Burciaga*, 223 Ill. 2d 49, 61 (2006).

This policy is effectuated under section 1(f), which terminates the employer's compensatory liability after a period of time regardless of when the employee discovers he has a claim. Therefore, **by its plain language, section 1(f) is a statute of repose.**

Temporal Reach of Statute of Repose



- **Prospective v. Retroactive application: Both parties agree it applies prospectively. What does that actually mean?**

¶ 37 The parties agree on this point. However, the parties disagree on what it means to apply section 1.1 prospectively. Martin argues that applying section 1.1 prospectively means to apply it to new actions filed after the amendment was enacted based on claims that accrued after the amendment was enacted. Defendants argue that to apply section 1.1 prospectively means that it would not apply to this case because Rodney's last exposure to vinyl chloride monomer occurred in 1976 and defendants gained a vested right to assert the defenses provided by section 1(f) and the exclusivity provisions of the Workers' Occupational Diseases Act. Defendants argue that a contrary finding, allowing section 1.1 to apply to cases where a claim was barred prior to the amendment, would violate the due process guarantees of the Illinois Constitution. Our resolution of this issue thus implicates the third certified question.

Due Process Violation



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¶ 41 However, section 1.1 did not revive Rodney's ability to seek compensation under the Workers' Occupational Diseases Act. The amendment gave him and his heir the ability to seek compensation through a civil action. The question therefore becomes whether defendants and other employers have a vested right to the protections offered by the exclusivity provisions of the Workers' Occupational Diseases Act, such that section 1.1 violates their right to due process under our constitution.

Due Process Continued



¶ 42

See *id.* at 208. Generally, a party's right to a defense accrues when the plaintiff's right to a cause of action accrues. See *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 405 (1998) (finding a school district's right to the total immunity as a defense vested when the cause of action accrued). A cause of action "accrues" when facts exist that authorize the bringing of a cause of action. Thus, a tort cause of action accrues when all its elements are present, *i.e.*, duty, breach, and resulting injury or damage. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20. This means that any right to a defense based on the exclusivity provisions of the Workers' Occupational Diseases Act accrues when the employee discovers his injury. In this

Due Process



case, Rodney was diagnosed with angiosarcoma of the liver in 2019, and his complaint was initially filed in 2021. This was after the enactment of section 1.1. Because defendants did not have a vested right in an exclusivity defense, to apply section 1.1 prospectively would allow claims such as Rodney's to proceed **without violating due process.**

Plaintiff's Perspective



- Employers added in most cases where viable?
- In traditional exposure cases where an employer is viable, these are some of the strongest cases we can bring with limited factual defenses
- Previously brought these cases where there was uncertainty re: how it would be upheld on appeal. No more uncertainty.

Impacts on Construction Statute of Repose



- Other major issue involving similar factors including vested rights, retroactivity, repose, etc.
- Recent Cook County decisions in Baudino and Mulac based on Martin v. Goodrich
- Major impacts for contractors, premises owners, and architectural engineers.