

P R O D U C T L I A B I L I T Y

A L E R T

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2012PENNSYLVANIA SUPREME COURT DECISION
EXPANDS SCOPE OF *FRYE* CHALLENGES

By Julie E. Randolph

The Pennsylvania Supreme Court opinion in *Betz v. Pneumo Abex, LLC*, No. 38 WAP 2010 (Pa. May 23, 2012) gives both asbestos defendants and parties challenging an expert opinion's admissibility under *Frye* reason to celebrate. Under *Frye*, "novel scientific evidence is admissible if the methodology that underlies the evidence has general acceptance in the relevant scientific community." *Grady v. Frito-Lay, Inc.*, 576 Pa. 546, 555; 839 A.2d 1038, 1043-44 (Pa. 2003). In a 6-0 opinion reversing the Superior Court, the *Betz* Court upheld the trial judge's finding that plaintiff's expert's "single-fiber" theory of asbestos disease causation was inadmissible and, in doing so, expanded the scope of *Frye* challenges.

In *Betz*, the Supreme Court rejected the narrow approach to the *Frye* test of *Trach v. Fellin*, 817 A.2d 1102 (Pa. Super. 2003), which limited *Frye* inquiries to situations where the underlying science or methodology was "novel." Citing a court's gatekeeper function and recognizing "the influential nature of expert opinions and their potential to mislead laypersons," the *Betz* Court ascribed a broad meaning to novel scientific evidence subject to a *Frye* inquiry. Slip op. at 42-44. As a result, *Frye* challenges no longer are limited to situations where the underlying science or methodology is novel; such challenges also are warranted when the expert "has not applied accepted scientific methodology in a conventional fashion in reaching his or her conclusions." *Id.* at 43-44. An expert may not "evade a reasoned *Frye* inquiry merely by making references to accepted methods in the abstract." *Id.* at 52.

In addition to making *Frye* challenges more broadly applicable, the Court clarified that:

- *De minimis* exposure personal injury cases may be a thing of the past. The Court rejected downward extrapolation of a dose response curve such that any exposure is a substantial contributing factor. Slip op. at 47-53; *see also id.* at 34-36. Without a showing of scientific acceptance, such a position "is fundamentally inconsistent with both science and the governing standard for legal causation." *Id.* at 50, 52; *see also id.* at 34 n.20;
- Use of case reports, animal studies, and regulatory stan-

dards is "ineffectual" to prove substantial-factor causation of an injury; at most, they can be used to prove general causation. *Id.* at 48; *see also id.* at 32-33;

- Where a dispositive motion is based on an underlying evidentiary ruling, "the appropriate appellate standard of review is the one pertaining to the underlying ruling." *Id.* at 45. As a result, an appellate court should review a summary judgment motion based on a *Frye* ruling under the abuse of discretion standard applicable to evidentiary decisions. *Id.*; and
- If an expert's opinion strays outside of the realm of his particular expertise, the rebuttal expert need not be an expert in the same field. Here, an epidemiologist was an appropriate expert for the defendants to call to evaluate the testimony of a pathologist who discussed epidemiological subjects. *Id.* at 46-47.

In sum, *Betz* provides an important correction to recent Superior Court cases that have tipped in favor of plaintiffs' causation experts. ♦

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For more information about our Product Liability Practice Group or to speak with a member of the group at a particular Schnader office location, please contact:

Keith E. Whitson, Chair
412-577-5220
kwhitson@schnader.com

Julie E. Randolph
215-751-2563
jrandolph@schnader.com

www.schnader.com

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