STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 24, 2014)

CONSTANCE PODEDWORNY,	**:**	
Executor for the ESTATE of JOSEPH	**:**	
PODEDWORNY, by her agent,	**:**	
THE FEDERAL-MOGUL ASBESTOS	**:**	
PERSONAL INJURY TRUST	**:**	
Plaintiff,	**:**	
	:	
v.	**:**	**C.A. No. PC 11-5268**
	:	
AMERICAN INSULATED WIRE	**:**	
CORP., T&N LIMITED, f/k/a T&N plc,	**:**	
TURNER & NEWALL PLC, and	**:**	
TURNER & NEWALL LIMITED,	**:**	
TAF INTERNATIONAL LIMITED,	**:**	
f/k/a TURNERS ASBESTOS FIBRES	**:**	
LIMITED and RAW ASBESTOS	**:**	
DISTRIBUTORS LIMITED, and JOHN DOE	**:**	
Defendants.	**:**	

DECISION

GIBNEY, P.J. The Plaintiff, Constance Podedworny (Plaintiff or Mrs. Podedworny), Executrix for the Estate of Joseph Podedworny, by her agent, The Federal-Mogul Asbestos Personal Injury Trust, by and through her attorney of record, filed the above-entitled asbestos-related negligence claims against a number of defendants, including Turner & Newell (T&N or Defendant). Defendant moves for summary judgment pursuant to Super. R. Civ. P. 56 (Rule 56), and Plaintiff objects. Jurisdiction is pursuant to G.L. 1956 § 8-2-14. For the reasons set forth below, Defendant's Motion for Summary Judgment is denied.

I

Facts and Travel

A

Introduction

Joseph Podedworny was employed by Narragansett Electric from 1953 to November 1, 1984. See Podedworny Compl., Def.'s Mem., Ex. B. Mr. Podedworny was diagnosed with malignant mesothelioma on September 17, 2002. Id. On September 30, 2002, Joseph Podedworny and his wife, Constance Podedworny, commenced suit against a number of asbestos manufacturers in Rhode Island Superior Court alleging responsibility for Mr. Podedworny's injury. Id. In that action, Plaintiffs did not sue T&N, which was protected from litigation by the automatic stay in its then-pending Chapter 11 reorganization case. Id.

Mr. Podedworny died from mesothelioma on June 29, 2003, at the age of 83. See Podedworny Death Certificate, Def.'s Mem., Ex. C. After his death, Mrs. Podedworny was appointed the representative and executrix of his estate. See Podedworny Compl., Def.'s Mem., Ex. B. On September 12, 2011, the Federal-Mogul Asbestos Personal Injury Trust (the Trust) filed the instant complaint against T&N entities. See the Trust Compl., Def.'s Mem., Ex. D. The Complaint alleges that Mr. Podedworny's mesothelioma and death were a result of Mr. Podedworny's exposure to the T&N entities' asbestos-containing products. Id.

B

Federal-Mogul Global, Inc.'s Chapter 11 Case

On October 1, 2001, Federal-Mogul Global, Inc. and 157 domestic and foreign affiliates (the Debtors), including U.K.-based T&N, filed voluntary Chapter 11 petitions. In re Fed.-Mogul Global, Inc., 282 B.R. 301 (Bankr. D. Del. 2002). The Debtors emerged from bankruptcy

on December 27, 2007, under a confirmed Chapter 11 plan. See Notice of Effective Date, Def.'s Mem., Ex. I. The Reorganization Plan (the Plan) created the Trust under section 524(g) to pay current and future asbestos claims against T&N from the Trust's assets and income. See Fourth Am. Joint Plan of Reorganization, Def.'s Mem., Ex. F. The Plan funded the Trust by issuing 50.1 million Class B shares of the reorganized Federal-Mogul Global, Inc. Id. In accordance with the Bankruptcy Code requirement that the Trust own or have a right to acquire at least 50% of the reorganized debtor's equity, the Trust received 42.5% of the shares in consideration for the Trust's assumption of asbestos claims and the remaining 57.5% of the shares in consideration for a subscription agreement obligation of £338 million, payable over twenty years. Id. Reorganized Federal-Mogul Global, Inc. immediately assigned to T&N its right to that payment obligation. Id.

C

The Plan and Its Treatment of the Hercules Policy

In 1996, T&N purchased from its wholly-owned captive insurance subsidiary, Curzon Insurance, Ltd., a U.K. law-governed asbestos liability policy known as the "Hercules Policy" (the Policy or the Hercules Policy). See Disclosure Statement, Def.'s Mem., Ex. E (Part 1). The Hercules Policy's terms and U.K. law prohibited the Plan from assigning the Hercules Policy to the Trust—as the Plan did with domestic policies—as was done in other asbestos Chapter 11 cases in which the Bankruptcy Code overrides typical anti-assignment provisions. See In re Fed. Mogul Global, Inc., 684 F.3d 355 (3d Cir. 2012). Thus, in order to preserve the Policy's value, section 4.5.6 of the Plan deferred discharge of asbestos claims against T&N so that they could be asserted against T&N to reach the Hercules Policy. See Fourth Am. Joint Plan of Reorganization § 4.5.6, Def.'s Mem., Ex. F. Section 4.5 denied a discharge to reorganized Hercules-protected

entities on the effective date, including the T&N entities, for a limited time period solely to allow the Trust to prosecute and establish Debtor HBE asbestos claims in the tort system up to the proceeds of the Hercules Policy. See § 4.5. The Plan provided, however, that when the Hercules Policy was exhausted, the Hercules-protected entities would automatically be discharged. See § 4.5.20.

D

The Center for Claims Resolutions, Inc. Tolling Agreement

In 1988, T&N became a member of the Center for Claims Resolutions, Inc. (CCR), a consortium of former asbestos manufacturers. Barraford v. T&N Ltd., 2014 WL 793567 (D. Mass. Feb. 25, 2014). In 1993, CCR, as T&N's agent, entered into a National Class Action Settlement Agreement that tolled the statute of limitations for all members of a purported class of persons who had been exposed to asbestos but had not yet filed a claim. Id. at *1. The district court conditionally certified an opt-out class and appointed Ness, Motley, Loadholt, Richardson & Poole (Ness Motley) as class counsel. Id. In 1996, the class certification was overturned, and the class was formally decertified in August 1997. Id. at *2.

In July 2000, CCR and Ness Motley—which represented a number of plaintiffs—entered into an agreement to extend the 1993 tolling agreement. Barraford, 2014 WL 793567, at *2. The extension was from May 5, 1996 to "until such time" as Ness Motley received "written notification from the CCR that the tolling agreement extension is terminated." Id. On October 1, 2001, Federal-Mogul Global, Inc. and its subsidiaries, which included T&N, filed a bankruptcy petition under Chapter 11. Id. The following day, Federal-Mogul Global, Inc. terminated its membership in the CCR. Id.

II

Standard of Review

"[S]ummary judgment is an extreme remedy that warrants cautious application." Gardner v. Baird, 871 A.2d 949, 952 (R.I. 2005). Pursuant to Rule 56(c), "[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." Delta Airlines, Inc. v. Neary, 785 A.2d 1123, 1126 (R.I. 2001).

Once a summary judgment motion is made, "[t]he burden rests upon the nonmoving party 'to prove the existence of a disputed issue of material fact by competent evidence; it cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.'" Mut. Dev. Corp. v. Ward Fisher & Co., 47 A.3d 319, 323 (R.I. 2012) (quoting Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011)). Thus, "by affidavits or otherwise[, opposing parties] have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998). Accordingly, in order for a plaintiff to survive a defendant's summary judgment motion as to a particular claim, the plaintiff must "produce evidence that would establish a prima facie case for [that] claim." DiBattista v. State, 808 A.2d 1081, 1089 (R.I. 2002). Conversely, summary judgment is proper where the plaintiff is unable to establish a prima facie case. Kelley v. Cowesett Hills Assocs., 768 A.2d 425, 430 (R.I. 2001).

III

Analysis

Defendant first contends that Plaintiff cannot establish a prima facie case because all of the claims are time barred. In response, Plaintiff first asserts that the statute of limitations has

not run because the Defendant was not provided with a discharge on December 27, 2007; rather, the Defendant was provided with a conditional discharge upon the exhaustion of the Hercules Policy. Second, Plaintiff asserts that the CCR tolling agreement is still in effect and applies to Mr. Podedworny. Lastly, Plaintiff contends that G.L. 1956 § 23-24.5-15 extended the statute of limitations.

Both parties agree that the relevant statute of limitations is three years, and that Mr. Podedworny died on June 29, 2003. Finally, it is undisputed that Plaintiff filed the instant action on September 12, 2011.

A

Defendant was Provided with a Conditional Discharge, Effective upon the Expiration of the Hercules Policy

1

11 U.S.C. § 108(c)

The parties agree that the applicable statute of limitations would initially have expired if the Defendant had not been in bankruptcy and protected by the automatic stay. However, Defendant alleges that the 11 U.S.C. § 108(c)(2) extension began to run on the effective date of the Plan—December 27, 2007—and expired thirty days later on January 28, 2008.[1] Put another way, Defendant maintains that it was provided with a discharge from bankruptcy on December 27, 2007—pursuant to the Discharge Order and the Notice of Effective Date—and § 108(c)(2) provided Plaintiff with thirty days from that date to file a timely claim. See Confirmation Order and Notice of Effective Date, Def.'s Mem., Exs. H and I. Plaintiff did not file suit until

[1] Section 108(c) provides that if the statute of limitations expires while a defendant is protected by the automatic stay, the plaintiff will have "30 days after notice of the termination or expiration of the stay under section 362 . . . of this title" to file a timely claim. See 11 U.S.C. § 108(c)(2).

September 12, 2011, and thus Defendant contends that Plaintiff's claims are time barred. In opposition, Plaintiff contends that the bankruptcy court conditioned the Defendant's discharge upon the exhaustion of the Hercules Policy—which has yet to occur—and thus the relevant statute of limitations never began to run. Accordingly, this Court must determine whether a discharge occurred resulting in the lifting of the automatic stay and the running of the statute of limitations.

2

11 U.S.C. § 362(c)

Bankruptcy Code § 362(c) states, in pertinent part:

> "(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;
> "(2) the stay of any other act under subsection (a) of this section continues until the earliest of—
> "(A) the time the case is closed;
> "(B) the time the case is dismissed; or
> "(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied[.]" 11 U.S.C. § 362(c)[.]"

At first glance, it is unclear which paragraph to apply. However, the legislative history of § 362(c) clarifies the application of this section:

> "Subsection (c) of section 362 specifies the duration of the automatic stay. Paragraph (1) terminates a stay of an act against property of the estate when the property ceases to be property of the estate, such as by sale, abandonment, or exemption. It does not terminate the stay against property of the debtor if the property leaves the estate and goes to the debtor. Paragraph (2) terminates the stay of any other act on the earliest of the time the case is closed, the time the case is dismissed, or the time a discharge is granted or denied (unless the debtor is a corporation or partnership in a Chapter 7 case.)." In re Kretzer, 48 B.R. 585, 588 (Bankr. D. Nev. 1985) (citing H.R. Rep. No. 95–595, 95th Cong., 1st Sess. at 343 (1977)).

Thus, this Court must apply paragraph two because the property in question has not been sold, abandoned or exempted. See 11 U.S.C. § 362(c). Section 362(c)(2) provides that the automatic stay continues until the earliest of "(A) the time the case is closed; (B) the time the case is dismissed; or (C) . . . the time a discharge is granted or denied[.]" Id. Clearly, the case has not been closed or dismissed. Furthermore, there is no evidence that a discharge was denied. Thus, the specific issue is whether the Confirmation Order granted an immediate discharge upon the effective date or conditioned discharge upon the exhaustion of the Hercules Policy.

3

11 U.S.C. § 1141(d)

It is undisputed that the bankruptcy court and the district court confirmed the Plan, effective December 27, 2007. See Notice of Effective Date, Def.'s Mem., Ex. I. However, the parties disagree as to the effect of the confirmation of the Plan on the Plaintiff's claim. Plaintiff contends that the bankruptcy court conditioned the Defendant's discharge within the Confirmation Order. In particular, Plaintiff asserts that the Plan conditioned the Defendant's discharge upon the exhaustion of the Hercules Policy.

Section 1141(d) of the Bankruptcy Code provides that, "[e]xcept as otherwise provided in this subsection, *in the plan, or in the order confirming the plan*, the confirmation of a plan . . . discharges the debtor from any debt that arose before the date of [confirmation] . . . ." In re Push & Pull Enters., Inc., 84 B.R. 546, 549 (Bankr. N.D. Ind. 1988) (citing 11 U.S.C. § 1141(d)) (emphasis added). Usually, such confirmation discharges the debtor and lifts the automatic stay. McKinney v. Waterman S.S. Corp, 925 F.2d 1, 4 (1st Cir. 1991). However, the plain language of § 1141(d) specifically provides for exceptions when the confirmation plan or order provides for a different result. See Push & Pull Enters., Inc., 84 B.R. at 549 (holding that a bankruptcy court

may condition a corporate debtor's discharge within a confirmation order).

In light of the unique nature of this case, the bankruptcy court was forced to include an exception in the Plan which conditioned discharge upon the exhaustion of the Hercules Policy. This case is unique because the U.K.-based Hercules Policy made it impossible for the bankruptcy court to assign the Policy to the Trust. Had the bankruptcy court simply been able to assign the Policy to the Trust—which is customary in most reorganization plans—it would have been able to discharge the Defendant upon confirmation. Here, however, the bankruptcy court clearly intended for T&N to remain liable following the confirmation plan, so as to allow for victims of asbestos exposure to reach the Hercules Policy. If the bankruptcy court had provided the Defendant with a discharge, a nonsensical result would have occurred in which all potential victims would have been summarily barred from reaching the Hercules Policy. Defendant admits as much in its brief when it writes, "[s]ection 4.5 [of the Plan] denied a discharge to Reorganized Hercules-Protected Entities on the Effective Date, including the T&N Entities, for a limited time period solely to allow the Trust to prosecute and establish Debtor HBE Asbestos Claims in the tort system up to the proceeds of the Hercules Policy." (Def.'s Mem. in Supp. of Summ. J. 9-10).

Such an interpretation of the Plan is supported by case law which states, "1141(d) does contemplate that Debtors can postpone the discharge to sometime after the confirmation date." In re Reisher, 149 B.R. 372, 374 (Bankr. M.D. Pa. 1992). Furthermore, bankruptcy courts have the "power under § 1141(d)(1) to condition the discharge a corporate debtor receives with a confirmed plan under § 1141(d)(1)(A), and that the discharge provided under 11 U.S.C. § 1141(d)(1)(A) may be withheld until the debts compromised or extinguished in the plan are paid." Push & Pull Enters., Inc., 84 B.R. at 549. Here, discharge was specifically conditioned

upon the exhaustion of the Hercules Policy, which has yet to occur. See Fourth Am. Joint Plan of Reorganization, § 4.5.20, Def.'s Mem., Ex. F.

4

Language of the Reorganization Plan

The plain language of the Plan indicates that discharge was to be delayed until the Hercules Policy was exhausted. The "plan of reorganization is a binding contract between the debtor and the creditors and is subject to the general rules of contract construction and interpretation." In re New Seabury Co. Ltd. P'ship, 450 F.3d 24, 33 (1st Cir. 2006) (citing In re Sergi, 233 B.R. 586, 589 (1st Cir. B.A.P. 1999)). Basic principles of contract interpretation indicate that "an interpretation which gives reasonable, lawful and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." Littlefield v. Acadia Ins. Co., 392 F.3d 1, 10 (quoting Restatement (Second) Contracts § 203(a) (1981)).

With respect to the case at bar, construing the Plan to grant the Defendant an immediate discharge would completely negate section 4.5, which explicitly provides for a conditional discharge upon the expiration of the Policy. Section 4.5.6 states, in pertinent part:

> "*[o]n and from the Effective Date* [December 7, 2007] *until discharge* and release under Section 4.5.20 of the Plan, any liability of the Reorganized Hercules-Protected Entities for Asbestos Personal Injury Claims . . . shall continue in full . . . ." Fourth Am. Joint Plan of Reorganization, Def.'s Mem., Ex. F (emphasis added).

Here, the Plan specifically states that discharge will not occur on the Effective Date; rather, the discharge will occur under the provisions of 4.5.20. Accordingly, section 4.5.20 states, in pertinent part:

> "(a) *[f]rom and after* the Hercules Expiry Date,

> (ii) the Reorganized Hercules-Protected Entities shall automatically and without further order of court be *discharged* and released from any and all liability with respect to Asbestos Personal Injury Claims . . . ." Fourth Am. Joint Plan of Reorganization, Def.'s Mem., Ex. F (emphasis added).

Reading these two sections together, it is clear that discharge was to occur not upon the effective date, but rather, automatically upon the expiration of the Hercules Policy. See H.C. Lawton, Jr., Inc. v. Truck Drivers, Chauffeurs and Helpers Local Union No. 384, 755 F.2d 324, 328-29 (3d Cir. 1985) ("[C]ontracts must be construed 'as a whole' without rendering any provision a 'nullity' or 'meaningless.'").

5

The Barraford Decision

In support of its argument, Defendant relies heavily upon the Massachusetts federal district court's opinion in Barraford v. T&N Ltd., which addressed a nearly identical set of facts. Barraford, 2014 WL 793567, at *5 (Plaintiff filed suit against T&N on November 22, 2011, and the Defendants alleged that the claim was barred by the statute of limitations.). In Barraford, the court addressed the issue of whether a discharge was granted upon confirmation. Id. Ultimately, the court concluded that the bankruptcy court granted the Defendant a discharge upon confirmation and thus the automatic stay was lifted and the statute of limitations began to run on the effective date (December 7, 2007). Id. at *7 ("[A]s of December 27, 2007, the effective date of the Plan, defendants were granted a discharge and the automatic stay was lifted. Because the limitations period for plaintiff's claim had expired while defendants were in bankruptcy, plaintiff had thirty days from December 27, 2007, to file suit . . . ."). Id. at *6. Accordingly, the court held that the plaintiff's claim was time barred. Defendant urges this Court to follow the Barraford court in holding that the Plaintiff's claim is time barred.

In Barraford, the plaintiff contended that the bankruptcy court "discharged some but not all claims against defendants, and that her asbestos claim [was] one of the claims that was not discharged." Id. at *5. The Barraford court held that the "Plan both denied a discharge with respect to Debtor . . . up to the availability of the Hercules Policy and granted an automatic discharge with respect to such claims upon the occurrence of the Hercules Policy Expiry Date." Id. at *5-6. Put another way, the Barraford court reasoned that T&N had been denied a discharge with respect to the Hercules Policy, yet provided with a general discharge which lifted the automatic stay. Id. at *6. Accordingly, the Barraford court held that the "bankruptcy court grants 'a' discharge, not multiple 'discharges,' to a debtor," and thus the general discharge caused the automatic stay to dissipate.[2] Id. at *5.

This Court does not find the Barraford court's reasoning persuasive because the bankruptcy court did not grant a partial discharge; rather, the court conditioned the Defendant's discharge upon the expiration of the Hercules Policy. Id. Section 4.5.20 of the Plan specifically provides that "after the Hercules Policy Expiry Date, the [Debtor] shall automatically and without further order of court be discharged . . . ." See Fourth Am. Joint Plan of Reorganization, Def.'s Mem., Ex. F. The overall purpose of the Plan was to postpone discharge in order to allow the Trust to prosecute and establish claims—against T&N—in the tort system, up to the proceeds of the Hercules Policy.

In this instance, following the Barraford reasoning would lead to an absurd result. If T&N were provided with a general and immediate discharge, then the Trust would be summarily

[2] The Barraford court cites the In re Cardillo decision and contends that it stands for the proposition that bankruptcy courts do not grant or deny a discharge 'piecemeal.' See In re Cardillo, 172 B.R. 146, 151 (Bankr. N.D. Ga. 1994). While it is true that an individual "debtor in a chapter 7 case receives only one discharge," such a case can easily be distinguished from a Chapter 11 case involving a corporate debtor. Id. at 151.

precluded from bringing claims against T&N and the Hercules Policy. Such an interpretation would render § 4.5 of the Plan meaningless. See H.C. Lawton, Jr., Inc., 755 F.2d at 328-29. This Court finds that the statute of limitations has yet to run because discharge was conditioned upon the expiration of the Hercules Policy. Since the Hercules Policy is not exhausted, the automatic stay is still in place, and the statute of limitations remains tolled. Accordingly, Defendant is not entitled to judgment as a matter of law on Plaintiff's claims.

B

CCR Tolling Agreement is Not Applicable to Plaintiff

Plaintiff alleges that the original tolling agreement from 1993, which was extended in 2000, is still effective as to members of the CCR. Plaintiff further alleges that the tolling agreement—assuming it is still in effect—transferred from Ness Motley to Motley Rice. Defendant contends that the tolling agreement is not applicable because it withdrew from the CCR in 2001. Furthermore, the Defendant notes that the Plaintiff was not a client of Ness Motley at the time of the tolling agreement, and Motley Rice did not inherit the tolling agreement.

With respect to the CCR tolling agreement, this Court agrees with the Barraford court, and finds that the tolling agreement did not extend the statute of limitations. Barraford, 2014 WL 793567, at *7. In 1997, "when that class was decertified, Ness Motley no longer represented a class of persons. At that time, the firm only represented certain specific individual clients," which did not include the Plaintiff. Id. at *6. Accordingly, "Ness Motley could enter into a tolling agreement only as to their own clients, not as to the no-longer-existing class." Id. At that time, Ness Motley did not represent the Plaintiff and thus had no authority to act upon his behalf.

Additionally, assuming arguendo, that some tolling agreement continued for members of

the CCR, the Defendant withdrew from the CCR in 2001. Accordingly, any tolling agreement applicable to members of the CCR, if such an agreement still exists, is inapplicable to the Defendant. Thus, this Court finds that there is no tolling agreement extending the limitations period as to Plaintiff's claim.

C

Section 23-24.5-15 Does not Extend the Statute of Limitations

Having determined that there was a conditional discharge of the Defendant, this Court need not determine whether § 23-24.5-15 extends the statute of limitations. However, for purposes of discussion, this Court will briefly address the issue.

Section § 23-24.5-15 states:

> "(a) Any physician or employee of a licensed medical facility making the diagnosis of mesothelioma, asbestosis, or any illness or death suspected as being due to asbestos exposure must be reported to the director of health within six (6) months of the diagnosis.
>
> "(b) The physician or licensed medical facility involved shall also inform the patient or patient's next-of-kin in a dated letter by certified mail return receipt requested of the suspected role of asbestos as it relates to the patient's condition.
>
> "(c) Notwithstanding any other law to the contrary, the statute of limitations for any personal injury or property damage relating to asbestos or asbestiform materials for any cause of action now pending or which may be pending in the future shall not begin to run until notice to the patient or the patient's next-of-kin is filed as set forth in subsection (b), or in the case of pending matters when a physician in writing had notified the patient or next-of-kin." Sec. 23-24.5-14.

Accordingly, the plain language of the statute indicates that the statute of limitations—regarding personal injury damage relating to asbestos—shall not begin to run until a physician notifies the patient or their next-of-kin "in a dated letter by certified mail return receipt requested of the suspected role of asbestos as it relates to the patient's condition." Sec. 23-24.5-15.

Plaintiff asserts that a certified letter from Mr. Podedworny's doctor was never received, and thus, the statute of limitations has not begun to run. Defendant alleges that Mr. Podedworny was diagnosed with mesothelioma on September 17, 2002 and filed suit on September 30, 2002. Indeed, at his deposition, Mr. Podedworny testified that he was first diagnosed with an asbestos-related condition in approximately August of 2002. See Joseph Podedworny Dep. 13:24-18:14, Dec. 4, 2004. Thus, Defendant notes that there was no question that Mr. Podedworny was aware of his diagnosis, regardless of whether he received an official letter from a physician. Accordingly, Defendant contends that the doctrine of judicial estoppel should preclude the Plaintiff from alleging that he did not have notice. Furthermore, Defendant alleges that § 23-24.5-15 is unconstitutional because the State has failed to enforce that statute and it violates the equal protection clause.

The legislative intent of § 23-24.5-15 is to protect victims of asbestos exposure in light of the fact that mesothelioma and other asbestos-related diseases have a long latency period. Accordingly, § 23-24.5-15 serves to toll the statute of limitations until the patient receives confirmation that he or she has been diagnosed with an asbestos-related disease. Here, it is clear that Mr. Podedworny knew of the nature of his diagnosis in 2002. Though his treating physician may not have informed him in strict accordance with § 23-24.5-15(b), it would defy logic and common sense to hold that Plaintiff's estate was unaware of the right to file a claim—and indefinitely toll the statute of limitations—when a claim was filed in 2002.

1

Judicial Estoppel

Judicial estoppel protects the integrity of the judicial process by preventing parties from changing positions to suit the exigencies of the moment. See Gaumond v. Trinity Repertory Co.,

909 A.2d 512, 520 (R.I. 2006).

Here, the Plaintiff alleges that his claim did not accrue in September of 2002 with respect to § 23-24.5-15, yet he filed suit against other defendants—asserting similar asbestos-related causes of action—the next month. These two positions cannot both be true. The Plaintiff was on notice that his asbestos-related claim had accrued both when he was diagnosed with the disease and when he filed suit in September of 2002. This Court finds the Plaintiff judicially estopped from denying that the claims in this case accrued with respect to § 23-24.5-15.

2

Constitutional Argument

Defendant asserts that § 23-24.5-15 is unconstitutional both because it is not enforced by the State and because it violates the equal protection clause. For the purposes of discussion, this Court shall briefly address the issue.

Defendant is not a protected class, and thus, the statute would be construed under the lenient rational basis standard.[3] Furthermore, case precedent dictates that when considering the

[3] In FCC v. Beach Commc'ns., Inc. the Supreme Court elaborated upon the rational basis standard with respect to social and economic policy.

> "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if any reasonably conceivable state of facts could provide a rational basis for the classification. See, e.g., Sullivan v. Stroop, 496 U.S. 478, 485. On rational-basis review, a statutory classification such as the one at issue comes before the Court bearing a strong presumption of validity, and those attacking its rationality have the burden to negate every conceivable basis that might support it. Since a legislature need not articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the legislature was actually motivated by the conceived reason for the challenged distinction." F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307, 113 S. Ct. 2096, 2098, 124 L. Ed. 2d 211 (1993).

"constitutionality of a statute, our review begins with a presumption of constitutionality." State ex rel. Town of Westerly v. Bradley, 877 A.2d 601, 605 (R.I. 2005); see Gem Plumbing & Heating Co. v. Rossi, 867 A.2d 796, 808 (R.I. 2005). Furthermore, '"[t]his [C]ourt will attach 'every reasonable intendment in favor of . . . constitutionality' in order to preserve the statute."' Bradley, 877 A.2d at 605 (quoting Lynch v. King, 120 R.I. 868, 875, 391 A.2d 117, 121 (1978)). Clearly, the State has an interest in protecting victims of asbestos exposure and allowing them a reasonable period in which to file their claims. On the other hand, it would seem absurd to permanently toll the statute of limitations on a claim where a plaintiff is clearly on notice with regard to such a claim. Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 923 (R.I. 2004) ("Although we agree that strict compliance with the terms of the statute is mandatory, we cannot interpret a statute to require an 'absurd result.'"). However, as this Court has found that the statute of limitations has yet to run with respect to the automatic stay, it need not rule upon this issue.

IV

Conclusion

After review of the evidence before it, the Court finds that Plaintiff has demonstrated that there exist material questions of fact precluding the granting of summary judgment. Section 4.5 of the Plan specifically conditioned the Defendant's discharge upon the exhaustion of the Hercules Policy. At this point in time, the Hercules Policy has yet to be exhausted. Accordingly, the Defendant has not been provided with a discharge, the automatic stay has not lifted, and the statute of limitations has not begun to run. With regard to the facts of the case, there remain material questions of fact as to whether T&N's product caused the Plaintiff's injury. Accordingly, Defendant's Motion for Summary Judgment is denied. Counsel shall prepare an

appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Podedworny v. American Insulated Wire Corp., et al.**
CASE NO:	**PC 11-5268**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 24, 2014**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**Vincent L. Greene, Esq.**
For Defendant:	**Lawrence G. Cetrulo, Esq.** **Stephen T. Armato, Esq.**