STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 11, 2024)

JAMIE L. DAY AND JENNIFER L. BONITO, CO-EXECUTORS FOR THE ESTATE OF BONNIE J. BONITO	:	
Plaintiffs,	:	
v.	:	**C.A. No. PC-2018-5044**
3M COMPANY INC. et al.,	:	
Defendants.	:	

DECISION

LICHT, J. Plaintiffs Jamie L. Day and Jennifer L. Bonito, co-executors for the Estate of Bonnie J. Bonito, having been substituted as plaintiffs for their decedent Bonnie J. Bonito (Mrs. Bonito) following her death, bring this take-home asbestos[1] action against some seventy defendants. Pursuant to Rule 702 of the Rhode Island Rules of Evidence, twelve Defendants[2] moved to exclude two of the experts Plaintiffs have proffered. However, only two defendants remain in this action: Graybar Electric Company, Inc. and Union Carbide Corporation (Joint Defendants). Joint Defendants' first motion is to exclude Richard L. Kradin, M.D. (Dr. Kradin)

[1] "Take home" asbestos claims "involve workers' family members who have been exposed to asbestos off-site, typically through contact with a directly exposed worker or that worker's soiled work clothes." Mark A. Behrens, *What's New in Asbestos Litigation?*, 28 Rev. Litig. 501, 545–46 (2009); *see also Ramsey v. Georgia Southern University Advanced Development Center*, 189 A.3d 1255, 1259 n.1 (Del. 2018).

[2] Defendants that bring the instant joint motions to exclude are AGCO Corporation, Carrier Corporation, Caterpillar, Inc., Cleaver Brooks, Inc., Eaton Corporation, Ford Motor Company, Gould Pumps, LLC, Graybar Electric Company, Inc., Morse TEC LLC f/k/a BorgWarner TEC, LLC as Successor-by-Merger to Borg-Warner Corporation, Sunbeam Products, Inc., Superior Boiler Works, LLC, Union Carbide Corporation, and Warren Pumps, LLC. *See* Defs.' Mot. to Exclude Dr. Kradin; *see also* Defs.' Mot. to Exclude Dr. Ellenbecker.

and his opinion on the specific causation of Mrs. Bonito's disease. They also submitted two motions to exclude the testimony of Michael J. Ellenbecker, Sc.D. (Dr. Ellenbecker), one seeks to exclude his opinion on Joint Defendants' products increasing Mrs. Bonito's risk of developing mesothelioma and the other to exclude his opinions on the warnings associated with those products. Additionally, Defendant Graybar (Graybar) has filed two motions to exclude testimony from Dr. Kradin and Dr. Ellenbecker that its products specifically caused Mrs. Bonito's mesothelioma. Further, Defendant Union Carbide Corporation (UCC) moves to exclude opinions by both of those experts on whether it supplied UCC's Calidria brand of asbestos that was present in some products Mrs. Bonito was exposed to.

I

Facts and Travel

Plaintiffs assert several theories of liability against Defendants, including negligence, failure to warn, strict liability, breach of express and implied warranty, punitive damages, and conspiracy.[3] *See* Compl. ¶¶ 71-93. Central to Plaintiffs' claims is that Mrs. Bonito suffered from and died of malignant mesothelioma because of exposure to asbestos dust while laundering her late ex-husband's work clothing, which she claims was "covered in asbestos dust[.]" *Id*. at 4. Mrs. Bonito was deposed before her death; her ex-husband, James Bonito (Mr. Bonito), also was deposed. The relevant details from their depositions are summarized below.

Mr. and Mrs. Bonito married in December 1966. *See* Mrs. Bonito's Dep., Aug. 27, 2018, Vol. 1 (hereinafter, Mrs. Bonito's Dep.) at 15:9, 17. During their marriage, Mr. Bonito worked at several businesses. *See generally id.* at 22:10-23:3; *see also generally* Mr. Bonito's Dep., Oct. 25,

[3] The Operative Complaint is Plaintiffs' Tenth Amended Complaint, which was filed on March 3, 2021. *See* Docket. Hereinafter, the Court refers to the Tenth Amended Complaint as the Complaint.

2018 (Vol. 1); Oct. 26, 2018 (Vol. 2); Dec. 10, 2018 (Vol. 3); Mar. 19, 2019 (Vol. 9); and Apr. 15, 2024 (Vol. 14.).[4] In 1967, Mr. Bonito opened his own construction company in which he built and remodeled homes and basements, including framing walls and putting down floor and ceiling tiles. *See generally* Mr. Bonito's Dep., Vol. 1 at 25:18-27:13; 77:13-16; 78:2-5. Mr. Bonito testified to his exposure to products manufactured by Joint Defendants.

Once the couple married, Mrs. Bonito began doing Mr. Bonito's laundry, including cleaning his work clothes and shoes. *See* Mrs. Bonito's Dep. 19:20-22; 30:12-14; *see also* Mr. Bonito's Dep. Vol. 1 at 95:8-96:1. She would do his laundry approximately "[t]hree times a week" or "every couple of days." (Mrs. Bonito's Dep. at 20:6-7.) It was Mr. Bonito's routine to go home in the clothes he wore to work. *See id*. at 30:22-24; *see also* Mr. Bonito's Dep., Vol. 1 at 101:15-102:2. When Mr. Bonito arrived home, Mrs. Bonito described his clothes as "dusty." *See* Mrs. Bonito's Dep. at 31:3, 6.

Mrs. Bonito's laundering process began by shaking out Mr. Bonito's clothing. *See id*. at 32:9-11; *see also* Mr. Bonito's Dep. Vol. 1 at 99:5-7. She could see the dust in the air while shaking out the clothes. *See* Mrs. Bonito's Dep. at 36:19-22. When asked whether she "breathe[d] in the dust from [Mr. Bonito's] clothes," Mrs. Bonito stated, "I'm sure I did, yes." *Id*. at 37:4-5, 7. She did not wear a mask when doing the laundry. *See id*. at 37:8-10. Additionally, Mr. Bonito stated that Mrs. Bonito frequently was present at the homes that he constructed as joint compounds were sanded down to finish the installation of sheetrock. Mr. Bonito's Dep. Vol. 1 at 44:1-3. Mr. Bonito identified that joint compound as Ready-Mix. *Id*. at 146:9-19.

The couple separated around 1985 or 1986, but they "were trying to work things out" for

[4] For clarity purposes, this Court will identify Mr. Bonito's depositions by the volume number, rather than their exhibit numbers, as the exhibit numbers vary among the filings.

about four or five years before their divorce. *Id*. at 21:24-22:1. During their separation, Mrs. Bonito did Mr. Bonito's laundry about half of the time but stopped when the couple divorced in 1990. *See generally id*. at 21:17-22:9; *see also* Mr. Bonito's Dep. Vol. 14 at 2283:2-9.

Plaintiffs intend to present an expert opinion by Dr. Kradin, a pulmonologist and pathologist, who has specialized in pulmonary disease for over thirty-seven years. *See* Kradin Report, June 19, 2020 (Dr. Kradin Report) at 1; *see also* Dr. Kradin's Dep., July 2, 2024. Plaintiffs proffer him to opine on the specific cause of Mrs. Bonito's mesothelioma. *See* Pls.' Expert Disclosure ¶ 2. Dr. Kradin reviewed various medical reports, deposition testimony from Mr. and Mrs. Bonito, and Mrs. Bonito's pathology report. *See* Dr. Kradin Report ¶ 15. Further, he cited several peer-reviewed articles in reaching his conclusion. *Id*. ¶¶ 4, 9. He opined that "[Mrs.] Bonito was repeatedly exposed to asbestos via the shaking out and laundering of her husband's dusty work clothes during their marriage." *Id*. ¶ 15. He concluded the following: "It is my opinion to a reasonable degree of medical probability that [Mrs. Bonito's] malignant mesothelioma was caused by her cumulative para-occupational exposures to asbestos." *Id*.

Plaintiffs also intend to present an expert opinion from Dr. Ellenbecker, an industrial hygienist, who has been certified in the comprehensive practice of industrial hygiene by the American Board of Industrial Hygiene since 1982. Dr. Ellenbecker's Curriculum Vitae, (Dr. Ellenbecker's CV), 2. Plaintiffs proffer Dr. Ellenbecker as a witness so he can give testimony on the "aerosol properties of asbestos fibers" and "the proper industrial hygiene practices necessary to protect workers and family members from the dangers of asbestos fiber inhalation." *See* Pls.' Expert Disclosure ¶ 4.

Joint Defendants filed motions to exclude Drs. Kradin and Ellenbecker on August 9, 2024—the same day that Graybar submitted two motions to exclude the same and UCC submitted

a motion to preclude certain testimony from both experts. Plaintiffs objected to the motions on August 23, 2024. Oral arguments on each motion were heard from September 16 to September 17, 2024.

II

Standard of Review

"When a party seeks to introduce, through expert testimony, novel scientific or complex technical evidence, it is proper for the trial justice to exercise a gatekeeping function." *Owens v. Silvia*, 838 A.2d 881, 891 (R.I. 2003). Rule 702 of the Rhode Island Rules of Evidence provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of fact or opinion." The admissibility of an expert's testimony requires a two-pronged analysis (*DiPetrillo* analysis). *See DiPetrillo v. Dow Chemical Co.*, 729 A.2d 677, 686 (R.I. 1999). The trial justice must first determine that the expert has the "'knowledge, skill, experience, training, or education'" required to deliver a scientifically sound opinion to the trier-of-fact about scientific or technical issues, or other topics requiring specialized knowledge. *Raimbeault v. Takeuchi Mfg. (U.S.), Ltd.*, 772 A.2d 1056, 1061 (R.I. 2001) (quoting *Owens v. Payless Cashways, Inc.*, 670 A.2d 1240, 1244 (R.I. 1996)).

To determine whether the offered expert testimony is scientifically sound, a court may consider four non-exclusive factors:

> "(1) whether the proffered knowledge can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; and (4) whether the theory or technique has gained general acceptance in the relevant scientific field." *DiPetrillo*, 729 A.2d at 689 (citing

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 593-94 (1993)).

"Satisfaction of one or more of these factors may be sufficient to admit the evidence and each factor need not be given equal weight in the analysis[,]" and a court may also consider the qualifications of the expert. *Owens*, 838 A.2d at 892 (citing *DiPetrillo*, 729 A.2d at 689). Trial justices need not become scientific experts to apply those factors, and a court should not exclude expert testimony because it disagrees with the expert's conclusions. *Id*. Rather, "[t]he proponent of the evidence need only show that the expert arrived at his or her conclusion in what appears to be a scientifically sound and methodologically reliable manner." *Id*. "'Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.'" *Id*. (quoting *Daubert*, 509 U.S. at 596).

If the trial justice is satisfied that an expert meets the first requirement, he or she must then determine if the expert's opinion is "'relevant, appropriate, and of assistance to the jury.'" *Raimbeault*, 772 A.2d at 1061 (quoting *DiPetrillo*, 729 A.2d at 686). In other words, the Court must determine that "[t]he expert scientific testimony [is] sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." *DiPetrillo*, 729 A.2d at 689 (internal quotations omitted). Expert testimony is a "fit" when it "logically advances a material aspect of the proposing party's case." *In re Mackenzie C.*, 877 A.2d 674, 684 (R.I. 2005) (quoting *Owens*, 838 A.2d at 891 n.3). "'[O]nce an expert has shown that the methodology or principle underlying his or her testimony is scientifically valid and that it 'fits' an issue in the case, the expert's testimony should be put to the trier of fact to determine how much weight to accord the evidence.'" *Raimbeault*, 772 A.2d at 1061 (quoting *DiPetrillo*, 729 A.2d at 689-90).

"'Unquestionably, an expert's opinion must be predicated upon facts legally sufficient to form a basis for his conclusion.'" *DeChristofaro v. Machala*, 685 A.2d 258, 267 (R.I. 1996) (quoting *Alterio v. Biltmore Construction Corp.*, 119 R.I. 307, 312, 377 A.2d 237, 240 (1977)). "The facts upon which an expert opinion is based must be specifically set forth; otherwise it is impossible to assess whether the conclusions drawn from the facts possess sufficient probative force, or rather, are grounded in mere speculation or conjecture." *DeChristofaro*, 685 A.2d at 267. "Before admitting expert testimony, the trial justice must evaluate whether the testimony that a party seeks to present to the jury is 'relevant, within the witness's expertise, and *based on an adequate factual foundation*.'" *Kurczy v. St. Joseph Veterans Association, Inc.*, 820 A.2d 929, 940 (R.I. 2003) (quoting *Rodriquez v. Kennedy*, 706 A.2d 922, 924 (R.I. 1998)) (emphasis in *Kurczy*). If the Court determines that an expert's opinion is based on speculation, that testimony may be excluded. *See Kurczy*, 820 A.2d at 940 ("Accordingly, we hold that the trial justice did not abuse his discretion in excluding what he deemed to be the speculative portion of [the expert's] proposed . . . testimony").

III

Analysis

A

Joint Defendants' Motion to Exclude Dr. Kradin

As noted above, Dr. Kradin is a pulmonologist and pathologist who has specialized in pulmonary diseases for the last thirty-seven years. (Dr. Kradin Report at 1.) He received his medical degree from Thomas Jefferson University in 1976, and he is the Associate Professor Emeritus of Medicine and Pathology at Harvard Medical School. (Dr. Kradin's CV at 1-2.) Additionally, Dr. Kradin has worked in several hospitals and currently serves as the Honorary

Pathologist and Honorary Associate Physician at Massachusetts General Hospital. *Id*. at 2. He has authored at least 140 peer-reviewed articles between 1975 and 2021. *Id*. at 6-17. Dr. Kradin also has held editorial positions for several peer-reviewed journals, and, since 2015, he has worked as an editor for the EC Pulmonology and Respiratory Medicine. *Id*. at 3. He holds the qualifications this Court expects of an expert proffered to opine upon specific medical causation of mesothelioma. *See Owens*, 838 A.2d at 891 (holding a trial justice may consider an expert's qualifications when determining admissibility of his or her testimony).

Dr. Kradin opined, to a reasonable degree of medical probability, that Mrs. Bonito's mesothelioma "was caused by her . . . para-occupational exposures to asbestos." *See* Dr. Kradin's Report ¶ 15. To reach this conclusion, Dr. Kradin reviewed the transcripts of the deposition testimony of both Mr. and Mrs. Bonito and Mrs. Bonito's medical records. *Id*. He also provided many scholarly sources for his determination: (1) that para-occupational exposure to asbestos is able to cause the mesothelioma that Mrs. Bonito suffered from, (2) that determining that cause of mesothelioma does not require quantification of asbestos exposure, (3) there is no safe level of asbestos exposure below which mesothelioma will not occur, and (4) that brief and low-level asbestos can cause mesothelioma. *See id*. ¶¶ 5-8. Notably, Dr. Kradin applied the Helsinki Criteria in reviewing the deposition testimony and medical records in this action.[5] *See id*. ¶ 5.

[5] The Helsinki Criteria were developed as the result of "a multidisciplinary gathering of pathologists, radiologists, occupational and pulmonary physicians, epidemiologists, toxicologists, industrial hygienists, and clinical and laboratory scientists specializing in tissue fiber analysis." *Asbestos, asbestosis, and cancer: the Helsinki criteria for diagnosis and attribution*, Scand. J. Work Environ. Health, Vol. 23, No. 4, 311 (1997). Those criteria were developed to provide a reliable method for the diagnosis of asbestos related diseases, and state that "a history of significant occupational, domestic, or environmental exposure to asbestos will suffice for attribution [of mesothelioma]." *See id*. at 311. Additionally, the Helsinki Criteria recognize that, "[i]n some circumstances, exposures such as those occurring among household members may approach occupational levels." *Id*.

Dr. Kradin reviewed the testimony of Mr. and Mrs. Bonito and Mrs. Bonito's medical history, which provided him with a factual basis to apply the Helsinki Criteria—a scientific basis—to conclude Mrs. Bonito's mesothelioma was caused by her para-occupational asbestos exposure, by laundering Mr. Bonito's clothing that was covered in asbestos dust. *See* Dr. Kradin Report ¶ 15. In this Court's view, Dr. Kradin—through his many years of practice as a medical doctor and medical professor, his review of the medical literature surrounding how mesothelioma is caused in humans, and his review of testimony describing Mrs. Bonito's past asbestos exposures and her medical records—relies on a valid scientific basis, which has been generally accepted by the scientific and medical communities, in forming his opinion. *See Owens*, 838 A.2d at 891 (holding that an expert's qualifications, his or her theories being subject to peer-review, and the general acceptance of such theories are to be considered in determining the admissibility of expert testimony). Therefore, the Court finds that Dr. Kradin has provided a sound scientific methodology in reaching his conclusion. *See id*.

However, Joint Defendants argue that Dr. Kradin's opinion amounts to nothing more than the "each and every exposure [theory]," that is not scientifically supported because it cannot be tested to determine the "frequency, regularity, and proximity" of Mrs. Bonito's asbestos exposures. *See* Joint Defs.' Mem. Dr. Kradin 7-8. Specifically, they point to *Sweredoski v. Alfa Laval, Inc.*, No. PC-2011-1544, 2013 WL 3010419 (R.I. Super. June 13, 2013), in asserting that without a showing of "frequency, regularity, and proximity" in an expert's opinion, such an opinion should be excluded. *See id*.

Joint Defendants misread the holding of *Sweredoski*, and their reliance on it is misguided as a result. In that case, the Court held that a plaintiff's ultimate burden to prove liability, in an asbestos context, is to show that he or she was frequently or regularly in proximity to a defendant's

asbestos-containing product. *Sweredoski*, 2013 WL 3010419, at *5-6. Without a showing of such exposure, a plaintiff's claim is legally insufficient to impose liability on a defendant. *Id*. However, that ultimate burden is different from the *DiPetrillo* analysis that controls whether an expert's testimony will be admitted at trial—first, that the testimony has a sound scientific basis, and, second, that it is relevant to the facts of the action in which it is proffered. *Compare Sweredoski*, 2013 WL 3010419, at *5-6, *with DiPetrillo*, 729 A.2d at 686. *Sweredoski* does not impose an additional requirement on the *DiPetrillo* analysis that an expert's opinion is only scientifically valid when he or she performs tests related to "frequency, regularity, and proximity." *See Sweredoski*, 2013 WL 3010419, at *6. It merely requires that a plaintiff make a showing of "frequency, regularity, and proximity" during trial, and that showing may come from expert testimony, lay testimony, or a combination of both; it need not come from a singular source. *See id*. Further, the "frequency, regularity, and proximity" test becomes less burdensome on a plaintiff when it is alleged that mesothelioma developed due to asbestos exposure. *Id*. ("Similarly, in cases alleging that the plaintiff developed mesothelioma as a result of exposure to a particular defendant's product, meeting 'the frequency and regularity prongs become[s] 'somewhat less cumbersome' for plaintiffs because medical evidence has established that mesothelioma can develop from less intense exposures to asbestos than other asbestos-related diseases, such as asbestosis.") (internal quotation omitted).

Moreover, Presiding Justice Gibney made the distinction between admissible evidence and the plaintiff's ultimate burden. She specifically held that evidence showing that "each and every exposure" to asbestos is causative of mesothelioma was admissible in *Sweredoski*. *See id*.

> "There is little dispute that 'asbestos fibers are intrinsically dangerous and that the respiration of each fiber is cumulatively harmful. . .' *John Crane, Inc. v. Wommack,* 489 S.E.2d 527, 531 (Ga. App. 1997); *see CertainTeed Corp. v. Dexter,* 330 S.W.3d 64,

> 77-78 (Ky. 2010) (finding that medical evidence shows that 'the more exposure you have [to asbestos], the more likely you are to get [asbestos-related] disease'). This is especially true in mesothelioma cases because 'mesothelioma can result from [cumulative] minor exposures to asbestos products.' *Tragarz,* 980 F.2d at 421; *see Wilbur,* 476 N.W.2d at 75 (noting that "mesothelioma is a long-latency disease caused by cumulative exposure to asbestos fibers"); *Wagner v. Bondex Int'l, Inc.,* 368 S.W.3d 340, 352 (Mo. App. 2012). This Court is thus satisfied that 'each and every exposure' to asbestos is cumulatively harmful to humans, and finds no need to hold a hearing to establish the scientific validity of such a theory in Rhode Island. *See DiPetrillo,* 729 A.2d at 688 (holding that when the scientific theories underlying a party's expert's testimony are not novel, the party need not establish a foundation for that testimony prior to trial). Instead, once expert evidence is found to be scientifically valid, 'the expert's testimony should be put to the trier of fact to determine how much weight to accord to the evidence' . . . *See id.* at 689-90; *see also* R.I. R. Evid. 402." *Sweredoski,* 2013 WL 3010419, at *7.

The decision in *Sweredoski* establishes that Plaintiffs will be required to show Mrs. Bonito was frequently or regularly in proximity to asbestos from Joint Defendants' products to ultimately recover. *Id*. at *6. However, an expert's opinion based upon the "each and every exposure" theory is independently admissible in Rhode Island courts because it is scientifically valid without the need to address the frequency, regularity, or proximity of a plaintiff's exposure to asbestos. *Id*. at *7.

Further, Dr. Kradin reviewed the deposition testimony of both Mr. and Mrs. Bonito, as well as Mrs. Bonito's medical records. *See* Dr. Kradin's Report ¶ 15. He then drew upon his many years of experience as a distinguished medical professional, along with reviewing pertinent peer-reviewed studies, to conclude that Mrs. Bonito's mesothelioma was caused by her para-occupational asbestos exposure. *See id.* Dr. Kradin's testimony would assist the trier-of-fact in deciding whether Joint Defendants are liable for Plaintiffs' claims based on his review of case-

specific facts in the record. *DiPetrillo*, 729 A.2d at 686 (holding that expert testimony is admissible only if it is "relevant, appropriate, and of assistance to the jury").

Although Joint Defendants take issue with the "each and every exposure" theory Dr. Kradin's testimony is based on, "'[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence,"' not exclusion. *Owens*, 838 A.2d at 892 (quoting *Daubert*, 509 U.S. at 596). It is not the role of the Court "'to determine which of several competing scientific theories has the best provenance[;]'" rather, its task is to determine "'only that the proponent of the evidence [has shown] that the expert's conclusion [was] arrived at in a scientifically sound and methodologically reliable fashion.'" *DiPetrillo*, 729 A.2d at 690 (quoting *Ruiz-Troche v. Pepsi Cola of Puerto Rico Bottling Co.*, 161 F.3d 77, 85 (1st Cir. 1998)). The Court finds that Plaintiffs have met that burden. Therefore, the Court finds Dr. Kradin's testimony is relevant to this asbestos action; it is supported by a sound scientific methodology and can be submitted to the trier-of-fact to determine how much weight, if any, to afford it.

B

Joint Defendants' Motions to Exclude Dr. Ellenbecker

1. **Risk**

As to Dr. Ellenbecker, Joint Defendants first argue that he admitted, in a separate case, that he is unqualified to quantify risk, and he is therefore unqualified to opine on whether Mrs. Bonito's risk of developing mesothelioma was increased due to her alleged exposures to Joint Defendants' products. (Joint Defs.' Dr. Ellenbecker Risk Mem. at 5.) Additionally, they assert that Dr. Ellenbecker's methodology is not scientific because his opinion is based on the "each and every exposure theory"—that any exposure to asbestos above background levels is cumulatively

causative of mesothelioma—and they claim he fails to quantify the amount of asbestos Mrs. Bonito was exposed to and is thus unreliable. *Id*. at 6-9. Because they assert that the "each and every exposure theory" is unreliable, and that it cannot be tested for "frequency, regularity, and proximity," they argue Dr. Ellenbecker's testimony is not relevant. *Id*. at 10-13.

Dr. Ellenbecker is an industrial hygienist who holds both a master's degree and a Doctor of Science degree in Environmental Health Sciences from Harvard University. *See* Dr. Ellenbecker's CV 1. He became certified in the comprehensive practice of industrial hygiene by the American Board of Industrial Hygiene in 1982, and his certification is current until December 1, 2026. *Id*. at 2. Currently, Dr. Ellenbecker is the Professor Emeritus of Occupational and Environmental Hygiene at the University of Massachusetts, Lowell, where he has taught courses on aerosol science, industrial ventilation, industrial hygiene, and toxic use reduction. *Id*. at 1, 3. Between 1979 and 2022, he authored eighty-seven peer-reviewed articles that described how fibers, such as asbestos fibers, travel through the air; as well as several textbooks that discuss proper ventilation in the workplace. *Id*. at 10-17. To the extent of how Mrs. Bonito's alleged asbestos exposures from Joint Defendants' products increased her risk of developing mesothelioma, Plaintiffs proffer Dr. Ellenbecker as a witness to testify about the "aerosol properties of asbestos fibers," how they are released from products, their tendency to remain in the air and travel long distances, and how they can reenter the air after settling on surfaces. *See* Pls.' Expert Disclosure ¶ 4. He will further testify "to the proper . . . practices necessary to protect workers and family members from the dangers of asbestos fiber inhalation." *Id*. Again, Dr. Ellenbecker holds the qualifications this Court expects of an expert proffered to testify on such matters. *See Owens*, 838 A.2d at 891.

Much as they did with Dr. Kradin, Joint Defendants argue that Dr. Ellenbecker's testimony

must be excluded because he also subscribes to the " each and every exposure theory," which cannot be scientifically tested to satisfy the "frequency, regularity, and proximity" analysis. *See* Joint Defs.' Dr. Ellenbecker Risk Mem. at 6-9. As the Court already discussed at length above, and need not repeat here, testimony premised on the "each and every exposure theory" is scientifically valid and admissible in Rhode Island courts, and the "frequency, regularity, and proximity" analysis only applies to a defendant's ultimate liability—not to the admissibility of each individual expert's testimony. *See Sweredoski*, 2013 WL 3010419, at *6.

Additionally, Joint Defendants point out that Dr. Ellenbecker, in a different action, admitted that he is not qualified to quantify risk, and, thus, he cannot opine if such risk was elevated. *See* Joint Defs.' Dr. Ellenbecker Risk Mem. 10-13. Dr. Ellenbecker maintains that such quantifications are unnecessary to assess Mrs. Bonito's increased risk. *See id*. at 5, 8-10.

Yet, in *Sweredoski*, the Court held that evidence showing the dosage of an asbestos exposure crossing some threshold value is not required to show that asbestos exposure was a substantial factor in a claimant developing mesothelioma. *See Sweredoski*, 2013 WL 3010419, at *4. The Court stated that "strict formula of the causation standard for asbestos cases 'overburdens the claimant, who might not be able to sufficiently demonstrate not only the dosage quantity of exposure to a particular defendant's product but also the total asbestos dosage to which he was exposed.'" *Id*. (quoting *Holcomb v. Georgia Pacific, LLC*, 289 P.3d 188, 195 (Nev. 2012)). Rather, Rhode Island law provides proximate cause does not necessarily require specific direct evidence, but instead may be shown by inference that "'need not exclude every other possible cause. . . [but] it must be based on reasonable inferences drawn from the facts in evidence.'" *Id*. (quoting *Gianquitti v. Atwood Medical Associates, Ltd.*, 973 A.2d 580, 592-93 (R.I. 2009)). In place of a standard that requires evidence of specific dosage, the Court instead adopted the

"frequency, regularity, and proximity" analysis to determine whether a defendant should be held liable in the asbestos context. *See id*. at *5-6.

Additionally, Dr. Ellenbecker explained in his deposition testimony in this action why such a quantification of the risk is not necessary. *See* Dr. Ellenbecker's Dep. Tr. (Dr. Ellenbecker's Dep.) 171:11-172:14, June 25, 2024. When asked if he found it necessary to calculate the dosage of asbestos Mrs. Bonito was exposed to, he stated:

> "No, I mean, for cases like this, it's, in my opinion, impossible. Not only this case but many cases like this where the exposures are episodic. They're not measured by anyone. They're to a range of different products. They occurred 40, 50 years ago. None of them were measured. All we can do is rely on typical exposures from the literature to inform us about likely ranges of exposure in this case Ms. Bonito had. So it's just not possible. There is not enough information available to quantify the exposure. That doesn't keep me from reaching the conclusion that it's likely Ms. Bonito had—she washed her husband's clothes two or three times a week. Say twice a week. That's 100 times a year for 20 years. She washed her husband's clothes 2,000 times, more or less. My opinion is that it's likely that on many of those occasions those clothes were contaminated with asbestos dust. Handling them, shaking them out, washing them exposed her to elevated levels of asbestos. We can't say what the level was. But it certainly occurred. It was certainly elevated. It contributed to her risk of developing mesothelioma." *Id*.

Dr. Ellenbecker provided a rationale for why he could not quantify the level of exposure—and hence, the risk associated with developing mesothelioma—that the exposures occurred many years in the past. *See id*. Instead, he explained that he relied on literature regarding average asbestos dosages from typical exposures to determine the likely ranges Mrs. Bonito was exposed to. *Id*. Further, Dr. Ellenbecker discussed at length specific literature he relied on to determine those average dosages and how asbestos fibers can become entangled in clothing and then released at later points. *See generally*, *id*. at 103-125; *see also Owens*, 838 A.2d at 891. Finally, Dr. Ellenbecker's testimony—that quantification of exposure dosage is unnecessary—is consistent

with the Helsinki Criteria, that "[m]esothelioma can occur in cases with low asbestos exposure," and, thus, any exposure above background levels increased Mrs. Bonito's risk of developing her disease. *See Asbestos, asbestosis, and cancer: the Helsinki criteria for diagnosis and attribution*, at 313.

Dr. Ellenbecker also reviewed the deposition testimonies of both Mr. and Mrs. Bonito. *See* Dr. Ellenbecker's Dep. 19:10-20:1. Based on that review, Dr. Ellenbecker concluded that "[m]ost of [Mrs. Bonito's] exposure came from asbestos dust that contaminated Mr. Bonito's clothing when he was either doing work himself or present when others were mixing or sanding asbestos-containing drywall." *Id*. at 24:17-21. He further stated, "[s]he handled the clothes. She shook them out. She cleaned the house. She testified, I think, that she typically washed his work clothes two to three times a week. So for 20 years two or three times a week she was washing his work clothes." *Id*. at 25:5-10. From the deposition testimonies of Mr. and Mrs. Bonito, along with his review of scientific literature surrounding exposure of asbestos fibers in the air, Dr. Ellenbecker concluded:

> "It's my opinion that on many of those occasions, it's likely that among the dust that contaminated his work clothes would be asbestos-containing dust from the mixing and sanding of drywall and joint compound.
>
> "Mrs. Bonito handling those clothes, shaking those clothes, washing those clothes, cleaning the house where those clothes were present would have exposed her to airborne asbestos fibers. And those fibers increased her risk of developing mesothelioma." *Id*. at 25:11-21.

Therefore, this Court finds that Dr. Ellenbecker's qualifications, his reliance on the scientifically sound "each and every exposure theory," and his consideration of scientific literature to support his expected testimony, renders his opinion as it applies to Mrs. Bonito's increased risk scientifically reliable. *See Owens*, 838 A.2d at 891. That finding is strengthened by the absence

of a requirement under Rhode Island law that a claimant must present evidence of specific dosages to prove a defendant's liability in the asbestos context. *See Sweredoski*, 2013 WL 3010419, at *4.

The Court further finds Dr. Ellenbecker's conclusion, which considers previous testimony in this action and his knowledge and review of scientific literature about how asbestos fibers travel in the air, is relevant to a trier-of-fact on how asbestos fibers on Mr. Bonito's work clothes were able to reenter the air and increase the risk of Mrs. Bonito developing mesothelioma. *See DiPetrillo*, 729 A.2d at 689 (holding a court must determine that "[t]he expert scientific testimony [is] sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute") (internal quotations omitted). Thus, his testimony is a "fit" because it will "logically advance[] a material aspect of [Plaintiffs'] case." *In re Mackenzie C.*, 877 A.2d at 684.

2. **Warnings**

In addition to arguing that Dr. Ellenbecker is not qualified to discuss increased risk, Joint Defendants argue that he is not qualified to opine about the warning labels located on their products. *See* Defs.' Dr. Ellenbecker Warnings Mem. 1. They first note that Dr. Ellenbecker stated that he is not "a warnings expert," and, thus, argue that he is unqualified to opine about warnings. *Id*. at 5-8. Next, they assert that Dr. Ellenbecker's opinion does not fit the facts of this case because, as an industrial hygienist, the only warnings he could conceivably be allowed to testify an opinion on are those on workplace premises and not those on Joint Defendants' products. *Id*. at 8-9. They assert that Dr. Ellenbecker's opinion is not reliable because he fails to articulate any scientific methodology for reaching his opinion as it relates to the design of Joint Defendants' warnings, which are instead a product of his subjective beliefs. *Id*. at 9-12. As he is unqualified and relies on speculation, Joint Defendants argue that his testimony is prejudicial. *Id*. at 12-15.

Dr. Ellenbecker's credentials and qualifications as an industrial hygienist have been discussed above and the Court need not reiterate them here. His opinions regarding warnings are proffered to further Plaintiffs' allegation that Joint Defendants had a duty to warn about the hazards of their asbestos-containing products and they failed to do so. *See* Compl. ¶ 74(ii)-(iii). At his deposition, Dr. Ellenbecker explained how scientific literature has concluded products such as brakes, clutches, and gaskets, in their normal use, released asbestos in levels that exceeded the permissible limits set by the Occupational Safety and Health Administration. *See* Dr. Ellenbecker's Dep. 128:4-129:2. He then concluded that Joint Defendants were required to warn the purchasers of those products about the dangers of asbestos as a result. *See id*. at 127:24-128:3, 131:24-132:6. The Court finds that Dr. Ellenbecker is qualified, as an industrial hygienist, to opine on the amount of asbestos released from products similar to the Joint Defendants' as described in the scientific literature—which renders his expected testimony scientifically sound—and how warnings could alert a worker to the dangers such asbestos created. *Owens*, 838 A.2d at 891.

However, Joint Defendants note that Dr. Ellenbecker is not an expert on the design of warnings so any opinions he has regarding the adequacy of the design of warnings on their products, or the lack thereof, ought to be excluded. *See* Defs.' Dr. Ellenbecker Warnings Mem. 1. Dr. Ellenbecker stated that he is "not an expert in the design of warnings to maximize their effectiveness in terms of the size of the fonts and so forth." *See* Dr. Ellenbecker's Dep. 16:23-17:1. However, he then qualified that remark with:

> "No, I'm not an expert in the design of warnings, but I certainly evaluate warnings in terms of their effectiveness in communicating risk to workers. So from that aspect, I think I am [an expert]. From an industrial hygiene aspect, but not from a design aspect." *Id*. at 17:2-7.

As Dr. Ellenbecker is not an expert in the design of warnings, he cannot opine on the adequacy of the specific design aspects of the warnings located on Joint Defendants' products. *See Owens*, 838 A.2d at 891. However, he may opine on the effect such warnings would have on workers in an occupational environment, such as in the homes Mr. Bonito constructed and remodeled. *See id*.

Mrs. Bonito's asbestos exposure is alleged to be from her laundering Mr. Bonito's work clothes two to three times per week for twenty years over the course of the couple's marriage. (Mrs. Bonito's Dep. at 20:6-7.) Mr. Bonito's clothes allegedly became contaminated with asbestos dust at his work sites. *See* Mr. Bonito's Dep. Vol. 1 147:15-21. Dr. Ellenbecker opined:

> "In other words, Mr. Bonito should have been warned about the asbestos in the various products he was using. He was not an expert in those products. He said he had no way of knowing there was asbestos or if he did know about asbestos, that the asbestos was hazardous, so he couldn't meet his obligation to his employees because he didn't know that the asbestos was in the products and that it was hazardous." (Dr. Ellenbecker Dep. 129:18-130:3.)

Essentially, Dr. Ellenbecker's opinion, in relation to warnings, is that Joint Defendants should have warned about the asbestos in the products they sold so Mr. Bonito, his employees, and their families could limit the hazards of the asbestos. *See id*. Such warnings, in the context of an occupational environment, fall under administrative controls that Dr. Ellenbecker is qualified to opine on as an industrial hygienist. *See id*. at 75:7-11; *see also Owens*, 838 A.2d at 891. Dr. Ellenbecker's testimony considers the specific facts of the instant action that deal with his area of expertise, and thus, his testimony will "logically advance[] a material aspect of [Plaintiff's] case," and assist the trier-of-fact in coming to its ultimate determination. *In re Mackenzie C.*, 877 A.2d at 684 (internal quotation omitted). Therefore, the Court finds that Dr. Ellenbecker may provide

an opinion concerning the importance of including such warnings; however, he may not opine on the adequacy of the design of the warnings provided.

C

Graybar's Motions

Graybar argues that Drs. Kradin and Ellenbecker's testimony must be excluded because they do not utilize any kind of reliable methodology to reach their opinions that satisfies the "frequency, regularity, and proximity" test. *See* Graybar's Dr. Kradin Mem. 9; *see also* Graybar's Dr. Ellenbecker Mem. 9. It asserts that Plaintiffs have failed to provide any definitive evidence that Mrs. Bonito was exposed to Graybar's asbestos-containing products because Mr. Bonito's deposition testimony is speculative at best. *See* Graybar's Dr. Kradin Mem. 13-14; *see also* Graybar's Dr. Ellenbecker Mem. 9-10. As a result, the experts' reliance on Mr. Bonito's deposition testimony fails to serve as an adequate basis for them to form reliable opinions about the specific cause of Mrs. Bonito's mesothelioma or how Graybar's products increased her risk of developing the disease. *See* Graybar's Dr. Kradin Mem. 14-15; *see also* Graybar's Dr. Ellenbecker Mem. 14-15. Graybar requests that testimony as to specific causation be excluded, or, in the alternative, that the Court hold a Rule 705 voir dire to determine if either expert has a factual basis for his opinion. Graybar's Dr. Kradin Mem. 16; Graybar's Dr. Ellenbecker Mem. 19.

The Court already has determined that Drs. Kradin and Ellenbecker each have a valid scientific methodology for reaching their conclusions, so it will not reanalyze the first prong of the *DiPetrillo* analyses performed above. However, Graybar submits an argument that Joint Defendants did not make—that Mr. Bonito's testimony is unreliable and, thus, cannot serve as a proper basis for the experts to reach their conclusions. *See* Graybar's Dr. Kradin Mem. 13 ("[Mrs.] Bonito did not identify exposure to any of [Graybar's] products prior to her passing, and Mr.

Bonito has provided only speculation and conjecture about his potential exposure and work with [Graybar's] products"); *see also* Graybar's Dr. Ellenbecker Mem. 14 (same). Consequently, Graybar is essentially arguing that the experts' testimony is not relevant to the instant action because there is no evidence to tie its products to Mrs. Bonito's exposures. *See* Graybar's Dr. Kradin Mem. 13; *see also* Graybar's Dr. Ellenbecker Mem. 14.

Yet, this Court previously addressed that same argument from Graybar in its motion for summary judgment. There, the Court stated:

> "Mr. Bonito testified to working with Graybar-manufactured products, specifically the older panels and fuse panels. *See* Mr. Bonito's Dep., Vol. 2 at 236:4-5. He described that process as 'dusty' and 'dirty.' *See id*. at 239:15. Moreover, Mr. Bonito explained that he could not even estimate how many times he removed Graybar panels, as he had done it so many times. *See id*. at 239:21-240:2. Specifically, Mr. Bonito testified to working with Graybar's products while he was married to Mrs. Bonito, thus while she was laundering his work clothing. *See id*. at 239:18-20. The circumstantial evidence provided as to Graybar is unlike the evidence that the plaintiff presented in *Hostetter,* 2014 WL 906112, at *3. Here, a jury could reasonably infer, 'to the exclusion of other reasonable inferences' that Mr. Bonito was in contact with Graybar's products. *See id*. As such, this Court finds that Mr. Bonito's description of his work with Graybar products sufficiently meets the frequency and regularity aspect of the applicable test. *See Nichols*, 2018 WL 1900256, at *10." (Decision entered Aug. 28, 2024, 15-16.)

As this Court previously has held, Mr. Bonito's testimony is sufficient to allow a trier-of-fact to infer that he was in contact with Graybar's asbestos-containing products often enough to satisfy the frequency and reliability prongs of the "frequency, regularity, and proximity" analysis. *Id*. Therefore, the experts' reliance on the same testimony does not amount to speculation. *See Kurczy*, 820 A.2d at 940 (holding a trial justice must exclude expert testimony if it is grounded in speculation and unsupported by the record). The trier-of-fact in this action will determine what weight, if any, to assign to Mr. Bonito's deposition testimony about his exposure to Graybar's

products, the transfer of Graybar's asbestos to Mrs. Bonito through his clothing, and, by extension, then will gauge the expert testimony considering its reliance on that of Mr. Bonito. *DiPetrillo*, 729 A.2d at 686 (holding that once an expert's testimony is scientifically valid and relevant to the case it should be submitted to the trier-of-fact).

D

UCC's Motion

UCC requests that this Court preclude certain testimony of Drs. Kradin and Ellenbecker that the joint compound and floor tiles allegedly used by Mr. Bonito contained UCC's Calidria asbestos, or that similar electrical products and grinding wheels contained UCC's phenolic molding compounds. (UCC's Mem. in Supp. (UCC's Mem.) 1.) UCC argues neither expert has a factual basis to reach such conclusions. *Id*. at 2. It asserts Dr. Kradin did not review any documents specific to UCC, did not review Georgia-Pacific or National Gypsum joint compound, and did not review any corporate deposition testimony from Georgia-Pacific or National Gypsum. *Id*. at 3. Dr. Kradin said that he would defer to an industrial hygienist; the only one Plaintiffs have proffered is Dr. Ellenbecker. *Id*. at 4. Dr. Ellenbecker likewise stated he has no factual basis to conclude that UCC ever supplied asbestos for the products Mr. Bonito was directly exposed to. *Id*. at 5. Although he has testified that such products at the time Mrs. Bonito was alleged to have been exposed to them typically contained asbestos, he does not know if UCC specifically supplied the asbestos for them. *Id*. at 5-6. UCC and Plaintiffs have reached an agreement regarding Plaintiffs' claims as to several products at issue in the motion, and, thus, the Court need only determine if there is a factual basis for either expert to opine on the joint compound.

Plaintiffs point to several different areas of the record to support those expert opinions regarding the joint compound. First, they point to the deposition testimony of Mr. Bonito. He

testified that Georgia-Pacific was a specific brand of joint compound that was used at his worksites. *See* Mr. Bonito's Dep. Vol. 1 145:14-18 ("Q: Do you recall as you sit here today the names of [the] manufacturers of any of those? A: Georgia-Pacific was one of them. I remember that. And the other ones, no, I do not remember"). He additionally testified that Mrs. Bonito was present when the joint compounds were sanded down to finish the installation of sheetrock. *See id*. at 45:1-3 ("Q: And were there occasions when [Mrs. Bonito] was present on the site when joint compound was sanded? A: Mm-hm, many"). Additionally, Plaintiffs point to Mrs. Bonito's testimony that she washed Mr. Bonito's clothes three times a week. *See* Mrs. Bonito's Dep. 20:4-6 ("Q: And how often would you do his laundry? A: Three times a week"). Further, dust from the joint compound would end up on Mr. Bonito's clothes, which Mrs. Bonito would wash. *See* Mr. Bonito's Dep. Vol. 1 147:15-21 ("Q: And the clothes that you wore when that work was done, what happened to those clothes? A: Go home, [Mrs. Bonito would] wash 'em. Q: And to the best of your recollection, was there dust on your clothes from the Georgia-Pacific joint compound that you used? A: Yeah, it was compound and dust").

That testimony was reviewed by both Drs. Kradin and Ellenbecker. *See* Dr. Kradin's Expert Report ¶ 15 (stating Dr. Kradin reviewed the deposition testimony of both Mr. Bonito and Mrs. Bonito); *see also* Dr. Ellenbecker's Dep. 19:10-20:1 (stating Dr. Ellenbecker reviewed all four volumes of Mrs. Bonito's deposition testimony and thirteen out of fourteen volumes of Mr. Bonito's). It provides Drs. Kradin and Ellenbecker with a factual basis to conclude that Mrs. Bonito was exposed to Georgia-Pacific's joint-compound; however, it does not provide a basis for either expert to conclude that UCC supplied Georgia-Pacific with the asbestos for the joint-compound.

UCC argues that Drs. Kradin and Ellenbecker both admitted they do not have a factual basis for the connection between UCC and Georgia-Pacific. *See* UCC's Mem. 3, 5. Dr. Kradin testified that he would defer to an industrial hygienist when asked whether UCC supplied Georgia-Pacific with asbestos for their joint compound. *See* Dr. Kradin's Dep. 28:14-29:12 (stating that Dr. Kradin believes it would be common for Georgia-Pacific's joint compound to include asbestos, but that he did not review any product formula or corporate deposition testimony and that he believes UCC supplied the asbestos). In that testimony, Dr. Kradin fails to set forth the specific facts he relied on to reach his conclusion, and instead states it is his "understanding" that UCC supplied asbestos for Georgia-Pacific. *Id*. Such testimony is speculative. *Kurczy*, 820 A.2d at 939-40.

The same is true for the testimony of Dr. Ellenbecker. When asked if the joint compound used by Mr. Bonito contained asbestos he stated:

> "Well, literature indicates that during that time period a great majority of joint compounds available commercially did contain asbestos. But I don't know which ones actually contained asbestos when he used them. It's another factual question. I don't know that anyone can answer at this point." *See* Dr. Ellenbecker's Dep. 27:1-7.

Again, Dr. Ellenbecker's testimony demonstrates that he does not have a factual basis to testify that UCC provided Georgia-Pacific with asbestos for its joint compound used by Mr. Bonito beyond mere speculation. *Kurczy*, 820 A.2d at 939-40.

However, Plaintiffs point to evidence that reasonably could suggest to a trier-of-fact that UCC did supply Georgia-Pacific with asbestos. They first note the deposition testimony—from a different case in 2001—of C. William Lehnert (Lehnert) a former Georgia-Pacific employee, who stated that Georgia-Pacific joint compounds contained UCC asbestos. *See* Pls.' Mem. Ex. 4, Deposition of C. William Lehnert, 26:12-14 ("Q Okay. Did Georgia-Pacific joint compounds ever

contain Union Carbide asbestos? A Yes"). Further, Lehnert noted that each product had a code to determine what asbestos supplier was used for a particular product, with SG-210 being the code for UCC. *See id*. at 27:12-20. He also testified that from 1969 to 1977, all the Georgia-Pacific Ready-Mix made at the Akron, New York plant—which supplied the northeastern United States—contained asbestos labeled with UCC's SG-210 code. *See id*. at 29:14-18, 34:24-35:18. Additionally, Mr. Bonito identified the Georgia-Pacific joint compound he used as Ready-Mix, which he believed contained asbestos. *See* Mr. Bonito's Dep. Vol. 1 146:9-19. Further, formula cards from the Georgia-Pacific Akron, New York plant show that the Ready-Mix produced there contained asbestos with the SG-210 code—UCC's code. *See* Pls.' Mem. 7B, Ready-Mix Formula Card.

That evidence supplies a factual basis in the record for Drs. Kradin and Ellenbecker to conclude that UCC did supply Georgia-Pacific with asbestos in the Ready-Mix product utilized by Mr. Bonito, beyond mere speculation. *DeChristofaro*, 685 A.2d at 267. Additionally, Plaintiffs may pose hypothetical questions to either expert on direct examination. R.I. R. Evid. 703 ("An expert's opinion may be based on a hypothetical question, facts or data perceived by the expert at or before the hearing, or facts or data in evidence.").

IV

Conclusion

For the foregoing reasons, Joint Defendants' motion to exclude the testimony of Dr. Kradin is **DENIED**. Additionally, their motion to exclude Dr. Ellenbecker's testimony, as it pertains to risk, is **DENIED**. This Court **GRANTS IN PART** and **DENIES IN PART** Joint Defendants' motion to exclude Dr. Ellenbecker's testimony as is relates to warnings. As he is not a design expert, Dr. Ellenbecker will not be permitted to testify on the adequacy of the warnings located on

Joint Defendants' asbestos-containing products; however, he may opine on the importance of such warnings in an occupational environment. Further, both of Graybar's motions are **DENIED**. Finally, UCC's motion to exclude certain testimony is **DENIED**.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Jamie L. Day and Jennifer L. Bonito, Co-Executors for the Estate of Bonnie J. Bonito v. 3M Company Inc., et al.**
CASE NO:	**PC-2018-5044**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 11, 2024**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Vincent L. Green, IV, Esq.** **Kate Menard, Esq.**
For Defendant:	**Brian D. Gross, Esq.; Brian A. Fielding, Esq.; Marisa K. Roman, Esq.; John R. Felice, Esq.; Wayne E. George, Esq.; Matthew C. Oleyer, Esq.; Lawrence Cetrulo, Esq.; Rochelle Gumapac, Esq.; Stesha Emmanuel, Esq.; Stephen P. Cooney, Esq.; Jeffrey M. Thomen, Esq.; Paul E. Dwyer, Esq.; Cassandra Feeney, Esq.; Kenneth Costa, Esq.; Nancy Kelly, Esq.; Jonathan Myhre, Esq.; Tierney M. Chadwick, Esq.; Holly M. Polglase, Esq.; Jennifer Whelan, Esq.; Randolph Totten, Esq.; Mark O. Denehy, Esq.; Jonathan Tabasky, Esq.**