STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 15, 2013)

ROSIE K. SWEREDOSKI, as Personal Representative of the Estate of DOUGLAS A. SWEREDOSKI, and Individually Recognized as Surviving Spouse	:	**C.A. No. PC 2011-1544**
v.	:	
ALFA LAVAL, INC., et al.	:	

DECISION

GIBNEY, P.J. In this asbestos case, Crane Co. (Defendant), Individually and as Successor to Chempump, Jenkins Bros., Weinman Pump Manufacturing Company, Pacific Steel Boiler Corporation, Thatcher Boiler, Chapman Valve Company, and Cochrane, brings a Motion in Limine (the Motion in Limine), seeking to admit evidence at trial of the fault of settled defendants and bankrupt entities for contribution or apportionment purposes pursuant to the Rhode Island Contribution Among Joint Tortfeasors Act (the Act), G.L. 1956 § 10-6-1 et seq. Defendant has also filed a Motion to Compel production of copies of certain bankruptcy trust claims forms (the Motion to Compel), arguing that the forms contain evidence relevant to this action. Rosie K. Sweredoski (Plaintiff), as Personal Representative of the Estate of Douglas A. Sweredoski (Sweredoski), and Individually Recognized as Surviving Spouse, opposes both Motions. She argues with regard to the Motion in Limine that the Act should not apply to the bankrupt entities because they are not "joint tortfeasors" under the Act, and public policy disfavors apportioning fault to the bankrupt entities. Concerning the Motion to Compel, Plaintiff contends that the bankruptcy trust claims forms are inadmissible settlement documents, and the

probative value of the information sought by Defendant is outweighed by the danger of confusing the jury. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

From 1964 to 1968, Sweredoski served in the United States Navy. He was assigned to the U.S.S. Independence (the Independence), an aircraft carrier, from 1965 to 1967. On the Independence, Sweredoski worked as a fireman and boiler operator in the ship's boiler rooms, replacing packing and gaskets in steam valves allegedly designed and manufactured by Defendant. Both the packing and gaskets contained asbestos.

Plaintiff claims that as a result of exposure to these asbestos-containing products, Sweredoski developed malignant mesothelioma and eventually died. Plaintiff argues that Defendant owed Sweredoski a duty to warn him of the dangers of working with and around its products. In furtherance of this claim, Plaintiff has asserted several tort- and warranty-based claims against Defendant in the instant action.

With regard to the Motion in Limine, Defendant contends that it should be allowed to introduce at trial evidence of the comparative fault of the defendants who have settled with Plaintiff to establish each defendants' proportional share of Plaintiff's damages. Defendant argues that such apportionment is authorized by the Act for purposes of contribution or judgment reduction. Defendant asserts that as the sole remaining active defendant in the instant action, it would be prejudiced if it is unable to apportion fault among all defendants and reduce its proportional liability to Plaintiff.

Defendant also seeks in the Motion in Limine to extend the Act to cover the bankrupt entities that have paid compensation to Plaintiff. Defendant argues that without extension of the

Act to cover all parties who have contributed to Sweredoski's injuries, it will be forced to pay damages in excess of its proportional liability if a judgment enters against it at trial. Defendant maintains that if the Act is extended to cover the bankrupt entities, it should be allowed to present evidence of the bankrupt entities' fault at trial to properly apportion damages among the parties.

Concerning the Motion to Compel, Defendant contends that Plaintiff must produce copies of the claims forms she submitted to the bankrupt entities to obtain compensation for Sweredoski's injuries. Defendant argues that the claims forms contain information relevant to Plaintiff's burden of causation at trial, notably data regarding Sweredoski's exposure to the bankrupt entities' asbestos products. Defendant avers that this relevant information is not protected by any privilege or barred by any rule of evidence.

Plaintiff opposes both Motions. While she does not contest Defendant's request to assert the fault of the settled defendants at trial, Plaintiff argues that the Act should not be extended to cover the bankrupt entities because they are not "joint tortfeasors" under the Act. Plaintiff contends that the bankrupt entities are not "joint tortfeasors" because, owing to the protections they are afforded by their bankrupt status, they are not "liable in tort" to her. Plaintiff maintains that public policy also militates against extending the Act.

Plaintiff argues with respect to the Motion to Compel that the bankruptcy trust claims forms constitute inadmissible settlement documents and cannot properly be produced. Plaintiff also contends that the probative value of the information sought by Defendant is outweighed by the danger of confusing the jury, because bankruptcy claims require burdens of proof markedly different from those of civil litigation.

II

Discussion

A

Defendant's Motion in Limine

1

Evidence of Fault of Settled Defendants

The Act mandates that a "right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault of the joint tortfeasors shall be considered in determining their pro rata shares."[1] Sec. 10-6-3. This right to contribution does not accrue to a tortfeasor until that party "has by payment discharged the common liability or has paid more than his or her pro rata share of the final money judgment." Sec. 10-6-4. To properly apportion liability among the defendants in a given case, "the relative degree of fault of the joint tortfeasors should be considered [by the trier of fact] in calculating their pro rata shares."[2] Boucher v. McGovern, 639 A.2d 1369, 1374 (R.I. 1994). Such apportionment may occur at trial, once a judgment is reached, if the tortfeasor

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[1] Our Supreme Court has noted that,

> "[t]he policy of the Act is to encourage rather than discourage settlements. The tortfeasor who settles removes himself entirely from the case so far as contribution is concerned if he is able and chooses to buy his peace for less than the entire liability. If he discharges the entire obligation it is only fair to give him contribution from those whose liability he has discharged."

Hawkins v. Gadoury, 713 A.2d 799, 806 (R.I. 1998) (quoting Uniform Act, 12 U.L.A. 194, 196 § 1 cmt. (d) (1955 revision) (1996)) (quotation marks omitted); see Wilson v. Krasnoff, 560 A.2d 335, 339 (R.I. 1989) (stating that "[t]he purpose of the act is to avoid the injustice of having one joint tortfeasor pay more than his or her fair share of damages").

[2] This is because "a tortfeasor is liable only for the injury caused by his or her own negligence." Wilson, 560 A.2d at 340.

seeking contribution has impleaded his or her co-tortfeasors pursuant to Super. R. Civ. P. 14. See Calise v. Hidden Valley Condominium Assoc., Inc., 773 A.2d 834, 840 (R.I. 2001); Roberts-Robertson v. Lombardi, 598 A.2d 1380, 1381 (R.I. 1991). Otherwise, the tortfeasor must file a separate cause of action within one year of satisfying the judgment to obtain contribution from his or her co-tortfeasors. See id.; see also Hawkins, 713 A.2d at 802 (recognizing that the paying tortfeasor has "a one-year postpayment grace period within which to seek contribution from his or her cotortfeasors . . .").

When a tortfeasor settles with the plaintiff, whether before or after judgment, the Act mandates that such a release:

> "does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of consideration paid for the release, or in any amount or proportion by which the release provides that that total claim be reduced, if greater than the consideration paid."

Sec. 10-6-7 (emphasis added); see Augustine v. Langlais, 121 R.I. 802, 805, 402 A.2d 1187, 1189 (1979) (determining that § 10-6-7 "clearly directs that the damage award must be reduced by either the amount of consideration paid for the release, or the proportion of reduction provided by the release, whichever is greater"). The settling tortfeasor "is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement." Sec. 10-6-5; see Nelson v. Ptaszek, 505 A.2d 1141, 1143 (R.I. 1986) (finding that the right to contribution "is inchoate" and, thus, releasable). The settling tortfeasor is also not liable to his or her co-tortfeasors for contribution, however, when the settlement "release is given before the right of the other tortfeasor[s] to secure a money judgment for contribution has accrued, and [the release] provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all other tortfeasors."

Sec. 10-6-8; see DeSeene v. Jamestown Boat Yard, Inc., 968 F.2d 1388, 1391 (1st Cir. 1992); Helgerson v. Mammoth Mart, Inc., 114 R.I. 438, 440-42, 335 A.2d 339, 341-42 (1975).

This Court finds that Defendant may present evidence of the comparative fault of the settled defendants at trial. See Calise, 773 A.2d at 840-41; Shepardson v. Consolidated Medical Equipment, Co., 714 A.2d 1181, 1183-84 (R.I. 1998). It is undisputed that Defendant is the only remaining active defendant in this litigation and has asserted cross-claims against the settled defendants under the Act. See Docket Sheet, PC-2011-1544 at 3-14; Def.'s Answer at 11. The settled defendants are no longer parties to this action because they obtained settlement releases from Plaintiff before trial has begun, thereby discharging their liability to Plaintiff in exchange for the payment of some monetary consideration. See Docket Sheet, PC-2011-1544 at 3-14. Assuming that the settlement releases "provid[e] for [the] reduction, to the extent of the pro rata share [of fault] of the released tortfeasor[s], of [Plaintiff's] damages recoverable against [Defendant]," the settled defendants are not liable to Defendant for contribution either. Sec. 10-6-8; see Cooney v. Molis, 640 A.2d 527, 529-30 (R.I. 1994) (recognizing that a remaining tortfeasor has no right of contribution from a settled tortfeasor when "the release provides for [a pro rata] reduction [of the plaintiff's damages] and [is] given before [the remaining tortfeasor] secure[s] a money judgment for contribution"). Under such circumstances, the Act affords Defendant a judgment reduction equal to the greater of the total consideration paid by the settled defendants and the settled defendants' pro rata share of Plaintiff's damages. See § 10-6-7; Cooney, 640 A.2d at 529-30; LaBounty v. LaBounty, 497 A.2d 302, 307 (R.I. 1985). Defendant, therefore, is entitled to present proof of the settled defendants' fault at trial to allow the trier of fact to establish each defendant's pro rata share and obtain the benefit of the judgment

reduction.[3] See Cooney, 640 A.2d at 529-30; Shepardson, 714 A.2d at 1183-84; see also Boucher, 639 A.2d at 1374.

2

Extending the Act to Cover Bankrupt Entities

Defendant argues that the Act should be extended to cover bankrupt entities that have also settled with Plaintiff. Defendant contends that so extending the Act comports with the strong policy that each culpable party should pay only its fair share of a judgment. Defendant asserts that should the Act be extended to cover the bankrupt entities, it should be permitted to present evidence of the bankrupt entities' fault at trial for apportionment purposes.

Plaintiff contends that the Act should not be extended to cover the bankrupt entities for two reasons. First, Plaintiff argues that the entities are not "joint tortfeasors" within the meaning of the Act. Plaintiff asserts that a party is not a "joint tortfeasor" under the Act when that party is not "liable in tort" to the injured party. Plaintiff argues that because the bankrupt entities in this case reorganized themselves pursuant to the provisions of 11 U.S.C. § 524(g) et seq., they absolved themselves from liability arising from exposure to their asbestos products and created special liability trusts to pay fixed compensation to claimants in the absence of evidence of fault. Thus, Plaintiff contends, the bankrupt entities are not "liable in tort" to her, and the Act cannot apply to them.

[3] Although the settled defendants are no longer parties to the underlying tort action, Defendant is free to "assert the settling joint tortfeasors' liability in their absence" to establish each parties' share of fault. Cooney, 640 A.2d 527 at 530. Potential evidentiary problems presented by the absence of the settled defendants may be mitigated by the use of "subpoena . . . to present the [settled defendants'] testimony to [the trier of fact]." Id. at 529. Moreover, "[a]ny unwarranted speculation by [the trier of fact] about why the [settled defendants] are not actual parties to the suit may be cured by the trial justice's careful instructions to the jury." Id. at 530.

Second, Plaintiff maintains that public policy disfavors extending the Act to cover the bankrupt entities. Plaintiff argues that like our state's workers' compensation scheme, the provisions of § 524(g) provide the bankrupt entities with immunity from suit in exchange for a trust system affording claimants no-fault compensation for their provable injuries. Plaintiff contends that this scheme is meant to insulate the bankrupt entities from the vagaries of litigation while benefiting the claimants. Thus, Plaintiff asserts, allowing Defendant to establish the bankrupt entities' fault at trial would abridge this purpose and undermine the intent of § 524(g).

a

11 U.S.C. § 524(g)

Asbestos manufacturers nearing bankruptcy due to a preponderance of asbestos-related litigation may seek the protection of structured reorganization pursuant to 11 U.S.C. § 524(g) et seq. See In re G-I Holdings, Inc., 328 B.R. 691, 694 (D.N.J. 2005); Scapa Dryer Fabrics, Inc. v. Saville, 16 A.3d 159, 174 (Md. 2011). Under § 524(g)(1), "asbestos defendants [have] the benefit of a statutory 'channeling injunction' applicable to present and future holders of asbestos-related tort claims." In re G-I Holdings, Inc., 328 B.R. at 694. This "channeling injunction" "enjoin[s asbestos plaintiffs] from taking legal action [against the bankrupt entities] for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that . . . is to be paid in whole or in part by [asbestos liability trusts created by § 524(g)(2)(B)(i)]." Sec. 524(g)(1)(B); see In re G-I Holdings, Inc., 328 B.R. at 695 (citing § 524(g) and finding that the "channeling injunction" provides asbestos manufacturers with "broad protection from any asbestos-related claims [by] directing asbestos claims exclusively to [the asbestos liability] trust[s]"). The asbestos liability trusts are legal

creations of § 524(g) that are wholly separate from the bankrupt entities and their estates.[4] See Scapa Dryer Fabrics, Inc., 16 A.3d at 174; In re Grossman's Inc., 607 F.3d 114, 126 (3rd Cir. 2010). Pursuant to § 524(g)(2)(B)(i)(I), these trusts:

> "assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products . . . ."

(emphasis added). In exchange for "assum[ing] the liabilities" of the bankrupt asbestos manufacturers, the asbestos liability trusts provide claimants with no-fault compensation:

> "through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner."

Sec. 524(g)(2)(B)(ii)(V); see In re Congoleum Corp., 362 B.R. at 182-89; In re AC&S, Inc., 311 B.R. 36, 42 (D. Del. 2004). Once enacted by the bankruptcy court in a given case, the "channeling injunction" and resulting asbestos liability trust system are "valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6) [of § 524(g)]." Sec. 524(g)(3)(A)(i).

[4] The asbestos liability trusts, in fact, must be vested with "a majority of the voting shares of . . . each such debtor [or] the parent corporation of each such debtor . . ." to allow the trusts to obtain control over their associated debtors when the trusts lack sufficient assets to satisfy all cognizable liability claims. Secs. 524(g)(2)(B)(i)(III)(aa)-(bb); see In re Congoleum Corp., 362 B.R. 167, 176 (D.N.J. 2007) (determining that the voting shares requirement allows "the trust to change the course of [the debtor's] operations and ensure the future viability and profitability of the company to protect the interests of the trust beneficiaries" in the event of funding shortfalls).

b

The Bankrupt Entities Are Not "Joint Tortfeasors" Under the Act

This Court finds that the Act should not be extended to cover the bankrupt entities because they are not "joint tortfeasors" under the Act. See Wilson, 560 A.2d at 339 (recognizing that "[a]s the [A]ct applies to joint tortfeasors, the definition of joint tortfeasor under the [A]ct will determine the [A]ct's scope"). Pursuant to § 10-6-2, "joint tortfeasor" is defined as "two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them . . . ." In interpreting this language, our Supreme Court has found that "two requirements [must be met] in order for parties to be joint tortfeasors under the [A]ct." Wilson, 560 A.2d at 339.

"First, the parties must be 'liable in tort'" to the injured party. Id. This phrase "refers to culpability." Zarrella v. Miller, 100 R.I. 545, 548, 217 A.2d 673, 675 (1966). Thus, "the term 'liable in tort' . . . means any person or persons who have negligently contributed to another's injury . . . ." Id. Put another way, "the term 'liable' in § 10-6-2 refers to the existence of a cause of action rather than the right to enforce the same . . . ." Id. (emphasis added).

"Second, the statute refers to the 'same injury.'" Wilson, 560 A.2d at 339 (quotation marks added). "The same injury is caused by parties who engage in common wrongs." Id. "In determining whether an occurrence between two or more parties is a common wrong, two important factors will be the time at which each party acted or failed to act and whether a party had the ability to guard against the negligence of the other." Id. at 340.

Here, it is undisputed that all of the bankrupt entities in the instant case have reorganized themselves pursuant to § 524(g) and satisfied Plaintiff's claims with compensation from their asbestos liability trusts. Such payments are not the product of litigation but arise from a system

of fixed, no-fault compensation matrices which tie payment to evidence of Sweredoski's exposure to the bankrupt entities' asbestos products. See In re Congoleum Corp., 362 B.R. at 182-89; In re AC&S, Inc., 311 B.R. at 42. In exchange for paying Plaintiff this compensation, § 524(g) absolves the bankrupt entities from liability for Sweredoski's alleged exposure to their asbestos products and enjoins Plaintiff from bringing or maintaining a related tort action against them. See §§ 524(g)(1)-(2). Accordingly, not only does Plaintiff lack the "right" to pursue a civil action against the bankrupt entities, the entities are also not subject to the underlying tort cause of action in the first instance. See Zarrella, 100 R.I. at 548, 217 A.2d at 675 (noting that when no cause of action "exists" against a defendant, the defendant is not a joint tortfeasor under the Act). The entities, therefore, are not "liable in tort" to Plaintiff, and the Act cannot apply to them.[5] See Wilson, 560 A.2d at 339-41; Zarrella, 100 R.I. at 548, 217 A.2d at 675; see also Spaur v. Owens-Corning Fiberglas Corp., 510 N.W.2d 854, 863 (Iowa 1994) (quoting In re Joint Eastern and Southern District Asbestos Litigation, 129 B.R. 710, 902-04 (E.D.N.Y. 1991) and noting that once reorganized, bankrupt asbestos manufacturers are "complete[ly] remov[ed] from the tort system").

[5] Even if the bankrupt entities satisfied the requirements for "joint tortfeasor" status under the Act, Defendant would still be barred from establishing the entities' relative amount of fault at trial for contribution or apportionment purposes because Plaintiff may not bring suit against the entities. See Franklin Grove Corp. v. Drexel, 936 A.2d 1272, 1277-78 (R.I. 2007); Cacchillo v. H. Leach Machinery Co., 111 R.I. 593, 596-97, 305 A.2d 541, 543 (1973). Our Supreme Court has determined that claims for contribution or apportionment of fault "are derivative in nature." Drexel, 936 A.2d at 1277. As such, a defendant may only seek contribution when "the aggrieved party has a cause of action against both the party seeking contribution and the party from whom contribution is sought." Id. (quoting R&R Associates v. City of Providence Water Supply Board, 724 A.2d 432, 434 (R.I. 1999)) (quotation marks omitted). Because § 524(g) enjoins Plaintiff from maintaining a tort action against the bankrupt entities, Defendant is equally barred from seeking a derivative claim for contribution or apportionment. See Drexel, 936 A.2d at 1277-78; New Amsterdam Cas. Co. v. Homans-Kohler, Inc., 310 F. Supp. 374, 376-77 (D.R.I. 1970) (finding that because the plaintiff could not maintain a tort action against one defendant, the other defendants could not seek contribution from that defendant).

c

Public Policy Disfavors Extending the Act to Cover the Bankrupt Entities

This Court finds that public policy also disfavors extending the Act to the bankrupt entities in this case. In passing § 524(g), Congress "intended the [asbestos liability] trust [system] as a means to give 'full consideration' to the interests of future claimants by ensuring their claims would be compensated comparably to present claims, while simultaneously enabling corporations saddled with asbestos liability to obtain the 'fresh start' promised by bankruptcy." In re Federal-Mogul Global, Inc., 684 F.3d 355, 359 (3rd Cir. 2012) (quoting H.R.Rep. No. 103-835, at 46-48); see In re G-I Holdings, Inc., 328 B.R. at 694 (finding that Congress intended § 524(g) to allow bankrupt asbestos entities to "globally resolve claims and free themselves from future asbestos tort liability"). The § 524(g) statutory scheme accomplishes these objectives by absolving bankrupt asbestos manufacturers from liability in exchange for establishing a no-fault compensation plan operated by the asbestos liability trusts. See §§ 524(g)(1)-(2); Scapa Dryer Fabrics, Inc., 16 A.3d at 174.

Like our state's workers' compensation system, § 524(g) "insures a fixed rate of compensation to [asbestos claimants] without requiring any showing of [a bankrupt entity's] negligence." Cacchillo, 111 R.I. at 595, 305 A.2d at 542; see In re Federal-Mogul Global, Inc., 684 F.3d at 362 (determining that the trust scheme established by § 524(g) is "similar to workers' compensation or other administrative remedies that employ valuation grids to compensate injuries . . ."). As our Supreme Court has found, the purpose of such a system "is a salutary one, designed to insure immunity from suit in exchange for a no-fault compensation program." Cacchillo, 111 R.I at 597, 305 A.2d at 543-44. To allow Defendant to assert cross-claims against the bankrupt entities under the Act and establish the entities' fault at trial would

undermine the clear intent of § 524(g) and "defeat the purpose for which [§ 524(g)] was enacted." Id.; see Scapa Dryer Fabrics, Inc., 16 A.3d at 177-79 (recognizing that payments made pursuant to an asbestos liability trust do not amount to "an adjudication [of fault], an admission of liability to the claimant, [or] a default judgment"). Thus, the Act should not be extended to cover the bankrupt entities. See Cacchillo, 111 R.I. at 597, 305 A.2d at 543-44; cf. Zarrella, 100 R.I. at 546-49, 217 A.2d at 675-76.

B

Defendant's Motion to Compel

Defendant seeks the production of copies of the claims forms that Plaintiff submitted to the asbestos liability trusts to obtain compensation for Sweredoski's injuries. Defendant contends that these documents are discoverable because they contain non-privileged information relevant to Plaintiff's burden to prove causation at trial. Defendant asserts that discovery of the bankruptcy claims forms is not proscribed by any rule of evidence or evidentiary privilege recognized in Rhode Island.

Plaintiff opposes discovery of the claims forms on two grounds. First, Plaintiff argues that the claims forms constitute inadmissible settlement documents protected by R.I.R. Evid. 408.[6] Plaintiff asserts that the claims forms fall under Rule 408 because they contain information

[6] Rule 408 provides that:

> "Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

regarding Plaintiff's negotiations to obtain compensation from the asbestos liability trusts. Plaintiff argues that the admission of such information would allow Defendant to present disguised causation evidence at trial and prejudice Plaintiff's case.

Second, Plaintiff argues that even if the claims forms contain admissible information, pursuant to R.I. R. Evid. 403,[7] the probative value of such information is substantially outweighed by the danger of confusing the issues and misleading the jury. In particular, Plaintiff avers that to obtain compensation from asbestos liability trusts, a claimant must meet a burden of proof markedly different from that of civil litigation. Allowing the admission of the information contained in the claims forms without a thorough and time-consuming explanation of these proof differences at trial, Plaintiff asserts, would blur the distinction between the requirements and mislead the jury.

It is well-settled that Rule 408 bars the admission of "offers to compromise and evidence of settlement negotiations . . . [because e]xclusion of such evidence facilitates an atmosphere of compromise among parties and promotes alternatives to litigation." Votolato v. Merandi, 747 A.2d 455, 461 (R.I. 2000); see Lesal Interiors, Inc. v. Resolution Trust Corp., 153 F.R.D. 552, 561 (D.N.J. 1994) (recognizing that "evidence of settlement negotiations is generally inadmissible under [Rule 408] as irrelevant and contrary to public policy"). However, the discoverability of settlement information is governed by our state's general discovery rule,

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> This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."

[7] Rule 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Super. R. Civ. P. 26.[8] See Morse/Diesel Inc. v. Trinity Industries, Inc., 142 F.R.D. 80, 84 (S.D.N.Y. 1992); Porter Hayden Co. v. Bullinger, 713 A.2d 962, 965-69 (Md. 1998). Rule 26 provides in pertinent part that:

> "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Super. R. Civ. P. 26(b)(1) (emphasis added). Rule 26(b)(1) is "generally [a] . . . liberal [rule] . . . designed to promote broad discovery among parties during the pretrial phase of litigation." Henderson v. Newport County Regional Young Men's Christian Association, 966 A.2d 1242, 1246 (R.I. 2009). "In granting or denying discovery motions, a Superior Court justice has broad discretion." State v. Lead Industries Association, Inc., 64 A.3d 1183, 1191 (R.I. 2013) (quoting Colvin v. Lekas, 731 A.2d 718, 720 (R.I. 1999)) (quotation marks omitted).

The touchstone for the discoverability of settlement documents is relevance. See Doe v. Methacton School District, 164 F.R.D. 175, 176 (E.D. Pa. 1995); Bullinger, 713 A.2d at 967-68. "Relevant" evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." R.I. R. Evid. 401; see Callahan v. Nystedt, 641 A.2d 58, 60 (R.I. 1994). "Thus, 'if the evidence is offered to help prove a proposition that is not a matter in issue,

[8] Because our Rule 26 and the federal version are substantially similar, this Court will look to federal cases for guidance on this issue. See Crowe Countryside Realty Associates, Co., LLC v. Novare Engineers, Inc., 891 A.2d 838, 840 (R.I. 2006) (quoting Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985) and finding that "where the federal rule and our state rule of procedure are substantially similar, [Rhode Island courts should] look to the federal courts for guidance or interpretation of our own rule").

the evidence is immaterial.'" State v. Thomas, 936 A.2d 1278, 1282 (R.I. 2007) (quoting 1 McCormick on Evidence § 184 at 729). The party seeking to obtain discovery of settlement information carries the burden of demonstrating the particular relevance of the information sought. See Morse-Diesel Inc., 142 F.R.D. at 84; Fidelity Savings and Loan Association v. Felicetti, 148 F.R.D. 532, 534 (E.D. Pa. 1993). It is not enough that the moving party asserts that the materials sought will lead to the discovery of "some" admissible evidence. See Bottaro v. Hatton Associates, 96 F.R.D. 158, 159-60 (S.D.N.Y. 1982); see also Lesal, 153 F.R.D. at 560-61.

Here, Defendant argues that discovery of the bankruptcy claims forms is warranted because they contain information relevant to Plaintiff's burden of proving causation at trial, notably product identification and usage data and the dates and circumstances of Sweredoski's exposure to the bankrupt entities' asbestos products. Defendant contends that this information is relevant to causation because Plaintiff must prove that Sweredoski was exposed to a specific defendant's asbestos products to recover damages from that defendant at trial.

This Court finds that said information is not relevant to Plaintiff's burden of causation in this case. See Bottaro, 96 F.R.D. at 159-60; Thomas, 936 A.2d at 1283-85. It is true that to establish causation at trial, Plaintiff must present evidence showing that Sweredoski was exposed to a particular defendant's asbestos products. See Thomas v. Amway Corp., 488 A.2d 716, 718-22 (R.I. 1985); DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 693 (R.I. 1999). However, as Defendant is the only active defendant remaining in this case, Plaintiff need only present product identification and exposure evidence concerning Defendant's asbestos products to establish the causation element at trial. See Chavers v. General Motors Corp., 79 S.W.3d 361, 368 (Ark. 2002) (finding that to satisfy the causation element in asbestos cases, a plaintiff must present evidence showing "(1) exposure to a particular product; (2) on a regular basis; (3) over an

extended period of time; and (4) in proximity to where the plaintiff actually worked"); Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162-63 (4th Cir. 1986). Evidence regarding Sweredoski's exposure to other defendants' asbestos products, therefore, is not relevant to the causation analysis with respect to Defendant's products at trial.[9] See Holcomb v. Georgia Pacific, LLC, 289 P.3d 188, 196-97 (Nev. 2012) (finding that "[w]here . . . there is more than one supplier of the asbestos-containing products [in a given case], the injured party must prove that exposure to the products made or sold by that particular defendant was a substantial factor in causing the injury"); Gregg v. V-J Auto Parts, Inc., 943 A.2d 216, 225-26 (Pa. 2007) (emphasis added). Defendant has not asserted another basis of relevance for the information it seeks, beyond the contention that discovery of the settlement documents will lead to the revelation of admissible evidence. Thus, this Court denies Defendant's Motion to Compel. See Methacton School District, 164 F.R.D. at 176-77; Bottaro, 96 F.R.D. 160 (finding that a party cannot seek discovery of settlement documents "based solely on the hope that it will somehow lead to admissible evidence . . .").

III

Conclusion

This Court finds that Defendant may present evidence at trial of the fault of the settled defendants in this case. Although this Court does not have before it the subject liability releases given to the settled defendants by Plaintiff, the Act entitles Defendant to a judgment reduction

[9] Even if the information sought by Defendant were relevant to Plaintiff's burden of causation, such data is readily available to Defendant from the extensive and wide-ranging discovery already produced in this case. See Pl.'s Resp. to Def.'s Interrog. at 23-27. Thus, discovery of the bankruptcy claims forms would be cumulative and unnecessary. See Rule 26(b)(1)(i) (mandating that discovery "shall be limited by the court if it determines that . . . the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive . . .").

and authorizes the trier of fact to consider the relative liability of the defendants in this action to properly apportion fault among the parties. This Court finds that the Act should not be extended to cover the bankrupt entities, however, because the entities are not "joint tortfeasors" within the meaning of the Act and public policy dictates that no fault be apportioned to the entities. Thus, Defendant may not introduce evidence of the bankrupt entities' fault at trial. Moreover, this Court finds that the bankruptcy trust claims forms sought by Defendant are not discoverable because Defendant has failed to demonstrate the relevance of the identified information to Plaintiff's burden of causation. Because Defendant is the only remaining active defendant in this litigation, Plaintiff is only required to present evidence of Sweredoski's exposure to Defendant's asbestos products to establish causation at trial. Accordingly, Defendant's Motion in Limine is granted in part and denied in part, and its Motion to Compel is denied.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Sweredoski v. Alfa Laval, Inc., et al.

CASE NO: PC 2011-1544

COURT: Providence County Superior Court

DATE DECISION FILED: July 15, 2013

JUSTICE/MAGISTRATE: Presiding Justice Alice Bridget Gibney

ATTORNEYS:

For Plaintiff: Robert J. Sweeney, Esq.

For Defendant: David A. Goldman, Esq.; Kendra A. Christensen, Esq.