

Exhibit A

The copy I received was very poor and very hard to read, for and original copy please ask the court. Charles Lake
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF GREENE

Plaintiffs,
CHARLES LAKE and JOANNE LAKE, his Wife,
-against-
Defendants.
M.P.C. TRUCKING, INC. and W.P. GRACE & CO, INC

DECISION/ORDER

Index No. 95-208
R.J.I. No.19-95-6238
Hon. John G. Connor, J.G.C.

APPEARANCES:

Plaintiffs:
Lewis & Stanzione, Esqs
by Ralph C. Lewis, Jr., Esq

Defendants:
Bond, Schoeneck & King, LLP
by Arthur Slegel, Esq.
for M.P.C. Trucking, Inc.

Donohue, Sabo, Varley & Armstrong, P.C.
by Bruce S. Huttner, Esq.
for W.R. Grace & Co.

Connor, J.

Defendants move for an order pursuant to CPLR 3212 granting summary judgment dismissing Plaintiffs' Complaint on the grounds that (1) Plaintiffs cannot identify the compound, substance or material that they allege caused Plaintiffs injuries, (2) the only substantive proof offered by Plaintiffs & consists of testing results performed by an independent lab which found no hazardous chemical components in Plaintiff's truck, and (3) the extent of Plaintiffs' damages are limited by the Plaintiffs Worker's Compensation case dated March 26, 1997.

Plaintiffs oppose the instant motions on the grounds that questions of fact exist which preclude summary judgment, and the findings in the Worker's

Compensation case should not be binding since the Administrative Law Judge overstepped his bounds and ruled on Issues not before him.

It is well settled that on a motion for summary judgment the moving party has the initial burden to make a prima facie showing that it is entitled to judgment as a matter of law. Only when the initial burden is met does the burden shift to the opposing party to produce evidentiary proof, also in admissible form, to raise material triable issues of fact requiring trial of the action. See, *Miccio v. Skidmore College* 180 A.D.2d 983(3rd Dept. 1992); *Tessier v. New York City Health and Hospitals Corporation*, 177 A.D.2d 626 (2nd Dept. 1991); *Wilder v. Rensselaer Polytechnic Institute*, 175 A.D.2d 534 (3rd Dept.1991)

Although summary judgment may be granted in negligence actions, the question of whether a Defendant's acts or omissions constitute negligence is inherently a question of fact in all but the most egregious instances. See, Siegel, Practice Commentary to C.P.L.R. 3212, c3212:8, McKinney's Cons. Laws of N.Y., Book 78, page 430. Summary judgment is a drastic remedy and should not be granted if there is any doubt as to the existence of a triable issue of fact. *Moskowitz v. Garlock*, 23 A.D.2d 943 (3: Dept. 1965). The Court's function when deciding a motion for summary judgment is issue finding rather than Issue determination. *Sillman V. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395 (1957) If an issue is arguable trial is needed and the case may not be disposed of summarily. *Barrett v. Jacobs*, 255 N.Y. 520 (1931). If the Court has any doubt as to whether a triable issue of fact exists, summary judgment should be denied. *Daliendo v. Johnson*, 147 A.D.2d 312 (2nd Dept. 1989).

Here questions of fact exist whether Plaintiff's injuries were caused or created by the Defendant's negligent acts or omissions. Regardless of whether Plaintiffs can specifically identify the toxins that allegedly cause Plaintiffs injuries, Defendants have not satisfied their burden of demonstrating that they were not negligent as a matter of law. Notwithstanding the aforesaid, Plaintiff's damages are limited to the period of disability as determined by the Pennsylvania Worker's Compensation Board.

Although Plaintiff's argue that the Administrative Law Judge decided issues he did not need to decide, the issues decided were properly before the Administrative Law Judge and he had jurisdiction to issue findings upon the same. The Doctrine of Res Judicata applies to quasi-judicial determinations of administrative tribunals such as the Worker's Compensation Board. See, 111 N.Y. Jur.2d §721, at page 62. Final determinations of the Board or Administrative Law Judge are binding on the parties in all subsequent actions or proceedings. See, *Lee v. Jones*, 230

A.D.2d 435 (3rd Dept. 1997); Samba v. Dellicard, 116 A.D.2d 563 (2nd Dept. 1986); McKinney's Cons. Laws of N.Y., Bock 64, Worker's Compensation Law §23. By decision dated March 26, 1997, the Pennsylvania Worker's Compensation Administrative Law Judge found that the Plaintiff's disability was proximately caused by his exposure to environmental factors and his disability commenced April 6, 1992. The Administrative Law Judge further found that Plaintiff's disability was fully resolved on May 18, 1992; thus, the Administrative Law Judge found that Plaintiff's disability was limited to the period April 6, 1992 to May 18, 1992. Said finding is binding on this Court. See, Lee v Jones, supra.

Plaintiffs had an opportunity to litigate all questions in front of the Pennsylvania Worker's Compensation Law Judge and Plaintiff was represented by counsel in said proceedings. Furthermore, Defendants rely, in part, on an Affidavit from Plaintiff's counsel, submitted in conjunction with counsel's motion to be relieved, wherein counsel concedes that his clients' claims are limited by the Doctrine of Res Judicata. Counsel averred that he needed to be relieved because the findings of the Worker's Compensation Law Judge would severely limit the amount of Plaintiffs' claim in Supreme Court.

Accordingly, Defendants' motion for summary judgment is granted to the extent that Plaintiffs' damages shall be limited to the period of March 6, 1992 through May 18, 1992; Defendants' motion is denied in all other respects. The aforesaid opinion constitutes the decision and order of this Court. All papers shall be forwarded to Bruce Huttner, Esq. for filing and service. The signing of this decision and order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that section relative to filing, entry and notice of entry.

SO ORDERED.

Dated: January 10th, 2001
Hudson, New York

JOHN G. CONNOR
Justice of the Supreme Court

Papers Considered: Defendant W.R. Grace's Notice of Motion for Summary Judgment, together with Affirmation of Bruce Huttner, Esq. in support thereof with Exhibits annexed; Reply Affirmation of Bruce Huttner, Esq.; Correspondence of Bruce Huttner, Esq. dated June 20, 2000; Defendant M.P.C. Trucking's Notice of Motion for Summary Judgment, together with Affidavit of Arthur Siegel, Esq. with Exhibits annexed; Correspondence of Arthur Siegel, Esq. Dated June 19, 2000; Affirmation in Opposition of Ralph Lewis, Jr., Esq. and Affidavit in Opposition of Charles Lake with Exhibits annexed; Correspondence of Charles

| Lake dated July 16, 2000 with attachments, August 2, 2000, August 11, 2000
| and September