Circuit Court for Baltimore City
Case No.: 24-C-21-004475

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1700

September Term, 2022

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IN THE MATTER OF THE PETITION OF
ROBERT T. BUTLER

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Wells, C.J.,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: June 14, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Robert T. Butler, appellant, challenges a summary judgment entered by the Circuit Court for Baltimore City, affirming the denial of his alternative claims for workers' compensation based on occupational disease and accidental injury. Butler's claims are predicated on his alleged exposure to antifreeze fumes while he was employed as a driver for Velocity Rail Solutions, Inc. ("Velocity"). We agree with the circuit court that, as a matter of law, (1) Velocity cannot be liable for any occupational disease that Butler may have sustained because it undisputedly was not his "employer of last injurious exposure," *see* Md. Code (1991, 2016 Repl. Vol.), § 9-502(b) of the Labor and Employment Article ("LE"); and (2) the medical assessment proffered by Butler did not raise a material dispute of fact concerning the complicated medical question of whether Butler's exposure on February 10, 2019, caused an "accidental injury." Consequently, we shall affirm the judgment.

## BACKGROUND

Butler alleges that on February 10, 2019, he was injured by inhaling chemical fumes while on the job in his Velocity work truck. According to Butler, that exposure caused an immediate accidental injury, which then progressed into an occupational disease that was eventually diagnosed in February 2020, after Butler left Velocity's employment and had been exposed to other chemicals while driving commercial vehicles for the United Parcel Service ("UPS").

The circuit court's memorandum opinion sets forth the following evidence from the record:

> [Butler] was a service truck driver with Velocity . . . , hired in November, 2018. He drove a service vehicle on average twice a week . . . . Velocity had two service vehicles, a new truck which was primarily used and an older and infrequently used truck. [Butler] drove the old truck less than eight times during the entirety of his employment, with four of those times in the two weeks before February 10, 2019.
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> [Butler's] claim arises from an alleged incident on February 10, 2019, when [Butler] alleges, he suffered both an accidental injury and occupational disease due to inhaling fumes, injuring his respiratory system, nasal passages, lung, and causing sinus issues . . . . [Butler] alleges he sustained respiratory tract irritation and/or chronic sinusitis on February 10, 2019, during the course of his employment with Velocity, as a result of exposure to anti-freeze fumes. [Butler] believes he dozed off while sitting in an idle work vehicle . . . . He alleges that during that time there was a leak in the antifreeze reservoir that caused him to breathe smoke from a vent which made him to pass out. After the incident [Butler] went to Patient First-Bayview where he reported having fatigue, cold symptoms, and chills. [Butler] did not report any workplace leak or chemical exposure. [Butler] was excluded from work until February 1[4, 2019],[1] due to a "viral syndrome." He did not see a doctor again until May, 2019, and did not complain of nasal symptoms again until September, [2019].[2] [Butler] left his employment with Velocity in March, 2019.
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> Beginning May, 2019, [Butler] sought treatment from multiple different providers, and asked them to causally relate his complaints to the alleged incident. Doctors Steven Lerner, Julian Craig, Namrita Sodhi, Olaide Akonde, and emergency room doctors at Fort Washington Medical Center ("Fort Washington") refused to causally relate his symptoms to any work accident or occupational disease. Pulmonologists Dr. Lerner and Dr. Craig

[1] Although the court's opinion misstates the date of Butler's return to work as February 13, 2020, that error is harmless when viewed in context, because the ensuing analysis is predicated on the correct premise that this initial exposure occurred in 2019 and it is immaterial if Butler returned to work on February 13 or February 14. That said, Butler avers that he was excused from work due to his illness until February 17, 2019, but there is nothing in the record to support this claim.

[2] Once again, although the court's opinion misstates the year as 2020, that error is harmless when viewed in context, because the ensuing analysis is predicated on the correct premise that there was a delay in medical care for treatment of his nasal symptoms.

> opined [Butler] did not have any pulmonary problems. Dr. Sodhi focused on [Butler's] uncontrolled diabetes. Fort Washington refused to provide a causation statement noting his more than forty year smoking history precluded such link to his symptoms. [Butler] did not provide any medical documentation excluding him from work due to chronic sinusitis while employed by Velocity.
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> In November, 2019, [Butler] began working with UPS where he was exposed to diesel exhaust and fumes. [Butler] . . . subsequently filed a new claim alleging an occupational disease arising from his employment with UPS on, or about January 6, 2020, and December 18, 2020. [Butler] began treatment with Dr. Presant on September 11, 2020, when [Butler] was taking no medications for his respiratory system, noted no respiratory symptoms, and had no respiratory diagnosis.
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> Prior to February 10, 2019, [Butler] alleges he never had a sinus issue in his over thirty years of experience as a truck driver and had never gotten sick when around truck exhaust or fumes. [Butler] alleges that since February 10, 2019, he has developed irritant adduced occupational asthma/chronic sinusitis, and reactive airways disease. [Butler] was first diagnosed with chronic sinusitis on February 14, 2020, by Dr. Manish Khanna. [Butler] alleges he has experienced two episodes of vertigo, one very recently which he believes is related to his current sinus condition. [Butler] admits UPS was "the last employer of injurious exposure."

After the Commission denied Butler's occupational disease and accidental injury claims against Velocity, Butler timely requested judicial review in the Circuit Court for Baltimore City. Velocity moved for summary judgment, noting that Butler had admitted that he was last injuriously exposed while working with UPS. Furthermore, Velocity argued that given the timing and circumstances, the cause of Butler's chronic sinusitis and reactive airways disease was a complicated medical question which required expert testimony that Butler failed to proffer. Butler did not file a written response, but argued against summary judgment during the motion hearing. Representing himself, Butler

asserted that UPS could not be liable for the entirety of his occupational disease because he was initially injured at Velocity.

The circuit court granted summary judgment in favor of the employer on Butler's occupational disease and accidental injury claims. The court held that Butler could not recover for an occupational disease because he did not become disabled during his employment with Velocity and his last injurious exposure was with UPS, "a subsequent employer who is 'responsible as the last employer.'" The court further ruled that Butler could not recover for an accidental injury because he "failed to proffer necessary expert testimony to support his claim that his chronic sinusitis was caused by the February 10, 2019, incident."

## STANDARDS GOVERNING REVIEW OF OCCUPATIONAL DISEASE AND ACCIDENTAL INJURY CLAIMS UNDER THE WORKERS' COMPENSATION ACT

"The purpose of the Workers' Compensation Act generally is to 'provide employees with compensation for loss of earning capacity, regardless of fault, resulting from accidental injury [or occupational disease] occurring in the course of employment.'" *Harford County v. Mitchell*, 245 Md. App. 278, 286 (2020) (alteration in original) (quoting *Johnson v. Mayor of Balt.*, 203 Md. App. 673, 684 (2012)). At issue in this appeal are the provisions of the Act governing occupational disease and accidental injury. Under the Workers' Compensation Act, an employer may be liable for "disablement" of an employee "resulting from an occupational disease" that "causes the covered employee to become temporarily or permanently, partially or totally incapacitated" "due to the nature of an

employment in which hazards of the occupational disease exist[,]" subject to the bright-line limitation known as the "last injurious exposure" rule, which assigns full responsibility for an occupational disease to the employer where the disabled worker was last exposed to that hazard. LE § 9-101(g)(2); LE § 9-502. Alternatively, under LE § 9-501(a)-(b), employees may be entitled to compensation for injuries "resulting from an accidental personal injury" during the course of employment without regard to whether the employer is at "fault as to a cause of" that injury.

When there is no genuine dispute as to facts material to a workers' compensation appeal, summary judgment may be granted in accordance with Md. Rule 2-501. *Dawson's Charter Serv. v. Chin*, 68 Md. App. 433, 440 (1986) (citing *Maloney v. Carling Nat'l Breweries, Inc.*, 52. Md. App. 556 (1982)). Specifically, "the court shall enter judgment in favor of . . . the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

## DISCUSSION

### I. Judgment on Occupational Disease Claim

Butler contends that the circuit court erred in granting summary judgment on his occupational disease claim on the basis of the last injurious exposure rule in LE § 9-502(b), because there was evidence that Butler "had chronic sinusitis on February 10, 2019" and a "clear[] material dispute as to causation" given his medical records from Patient First and

other medical providers.[3] In his view "summary judgment was inappropriate, as a matter of material dispute and as a matter of law, as on the weight of the evidence it reasonably may be concluded that the occupational disease was incurred as a result of his employment with Velocity."

Butler misunderstands how the last injurious exposure provision in the statutory framework governing recovery for occupational diseases operates. Under LE § 9-502, employees alleging occupational disease must prove both that their occupational diseases were incurred "due to the nature of an employment in which hazards of the occupational disease exist and the covered employee was employed before the date of disablement[,]" LE § 9-502(d)(1)(i), ***and*** that the claim is filed against the employer where they were "last injuriously exposed" to that hazard, LE § 9-502(b).

Most importantly for purposes of this appeal, the Act expressly limits responsibility for workers' compensation coverage to "the employer in whose employment the covered employee was last injuriously exposed to the hazards of the occupational disease[.]" LE § 9-502(b)(1). Under this statutory framework, liability has been assigned based on "the last employment that could have caused the disease[,]" regardless of whether the employee also was exposed to such hazards during a prior employment. *James v. Gen. Motors Corp.*, 74

[3] Butler contends that during the motion hearing, Velocity's counsel admitted that he had chronic sinusitis on February 10, 2019, by stating, "I don't believe that there is really any argument that he had chronic sinusitis at that point." Velocity counters that Butler has "misinterpreted this as an admission," because, to the contrary, "this statement denies the existence of a single fact to create a genuine argument." When read in context, we agree that statement was not an admission but was an assertion that Butler lacked evidence that he had chronic sinusitis as of February 10, 2019.

Md. App. 479, 488 (1988). As this Court recently explained, there are public policy reasons for allocating liability solely to the employer of last injurious exposure.

> An occupational disease may result from exposure to workplace hazards over a period of time. That period may encompass the individual's employment with more than one employer . . . . The General Assembly has provided a bright-line general rule in the statute that assigns liability for an occupational disease claim entirely to the employer and insurer that are last in chronological order during the relevant period. This provision is known as the "last injurious exposure rule"—an all-or-nothing rule that furthers the efficient processing of claims because it dispenses with any need to allocate liability based on causation.

*Pa. Mfrs. Ass'n v. Cree*, 259 Md. App. 179, 186-87 (2023); *cf. James*, 74 Md. App. at 488-89 (1988) (holding trial court should have granted judgment in favor of employer where last injurious exposure was with a subsequent employer).

As the circuit court recognized, the last injurious exposure rule governs Butler's case, operating to excuse Velocity from any liability for Butler's alleged occupational disease. Assuming that Butler was first exposed to the chemical hazard while working for Velocity, Dr. Presant's report notes that Butler was exposed to, and treated for, additional chemical hazards while driving diesel vehicles for UPS. Instead of ascribing fault between Velocity or UPS, Dr. Presant's report discusses how the cumulative effect of Butler's "exposures" may have been "a significant if not the main contributor" of his chronic sinusitis. Moreover, Butler expressly acknowledged that he had "filed the claim against UPS, saying that they're the last employer of injurious exposure" because "the law says

that they are responsible as the last employer."[4]

Based on Butler's medical evidence that he was injuriously exposed to airborne chemicals that contributed to his chronic sinusitis during his UPS employment, he cannot, as a matter of law, assert an occupational disease claim against Velocity. The court therefore did not err in granting summary judgment affirming the denial of Butler's occupational disease claim.

## II. Judgment on Accidental Injury Claim

Under LE § 9-501, claimants can seek compensation for accidental injuries caused by a work-related incident. *See also* LE § 9-101. When the underlying causation question is complicated or outside a layperson's knowledge, expert testimony may be required. *See generally* Md. Rule 5-702 (providing that expert testimony may be admitted if the court finds that it will assist the trier of fact to understand the evidence or determine a fact in issue).

Among the questions frequently requiring expert testimony are complex medical questions, including whether a workplace incident caused a compensable disability. In *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 382-83 (1997), where expert testimony was required to establish causation for a herniated disc, this Court recognized that

> the causal relationship will almost always be deemed a complicated medical question and expert medical testimony will almost always be required when one or more of the following circumstances is present: 1) some significant passage of time between the initial injury and the onset of the trauma; 2) the impact of the initial injury on one part of the body and the manifestation of

[4] Butler's workers' compensation cases against UPS remain pending in the Circuit Court for Montgomery County.

> the trauma in some remote part; 3) the absence of any medical testimony; and 4) a more arcane cause-and-effect relationship that is not part of common lay experience (the ileitis, the pancreatitis, etc.)[.]
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> . . . There can be no hard and fast rule controlling all cases. It does appear clear, however, that when there is a genuine issue as to whether there is a causal connection between an earlier injury and a subsequent disability, in the majority of cases it will be a complicated medical question requiring, as a matter of law, expert medical testimony.

We then held that the cause of the claimant's injury was a complicated medical question that required expert medical testimony, explaining:

> Whether an injury to the back could set in motion a process that could result in a herniated disc eight months later was a question that self-evidently called for input from medical experts. Whether the appellee's "locked back" on June 3, as the manifestation of the herniated disc, could have come on suddenly or would have been preceded by a slow and steady build-up of complications was a complicated medical question calling for input from medical experts. This was not a subject matter within the common understanding of laymen. We hold that in the absence of expert medical testimony, the appellants failed to meet their burden of production. Judge Stepler's granting of judgment in favor of the appellee was proper.

*Id*. at 385.

In *Giant Food, Inc. v. Booker*, 152 Md. App. 166 (2003), we applied this analytical framework to a workers' compensation claim arising from inhalation exposure to freon gas on a single occasion, which allegedly caused the claimant's asthma. Holding that "[a] medical diagnosis of asthma, and its antecedent cause, requires expert testimony[,]" we compared that expert causation requirement to the "cause-and-effect evaluation of adult on-set asthma[,]" finding it "no less complicated than . . . the claimant's herniated disc in *S.B. Thomas*." *Id*. at 180-81.

Here, as in the workers' compensation claims by employees Thompson and Booker, the circuit court held that Butler "failed to proffer necessary expert testimony to support his claim" that he suffered an accidental injury because "the causal link between chronic sinusitis and the incident of February 10, 2019, is a complicated medical question that requires expert medical opinion." In reviewing Butler's evidence, the court noted that "Dr. Presant's medical opinion fails to establish causation and does not provide the requisite link between [Butler's] single exposure on February 10, 2019, to any diagnosis." Thus, the court concluded that Dr. Presant did not sufficiently identify a causal link between Butler's exposure on February 10, 2019, and his chronic sinusitis diagnosed on February 14, 2020. Dr. Presant's report stated:

> In terms of his chronic sinusitis, there is a much better case to be made that his exposures were a significant if not the main contributor to his current issues in terms of causality. This is based on the reported time sequence and the likelihood of direct chemical irritation. His reports of wheezing after these exposures is suggestive of a Reactive Airways component to his problems as well.

The circuit court concluded that this

> opinion is speculative insofar as [Dr. Presant] references "exposures," but does not identify what exposures, when, or the specific hazard. [Butler] relies on the assumption that he was exposed to antifreeze and/or some other inhalation hazard that had reached dangerous levels, none of which are supported by evidence. Without the necessary expert to make the connections, [Butler's] claim must fail.

We agree with the circuit court that expert medical testimony was required to establish that the Velocity vehicle incident on February 10, 2019, caused Butler's chronic sinusitis or reactive airways disease. That failure aside, we note that the medical record

from Patient First related to Butler's February 10, 2019 visit indicated diagnoses of "[v]iral infection, unspecified" and "[n]ausea with vomiting, unspecified," and stated that his condition "[a]ppears to be non-A non-B influenza with gastroenteritis symptoms." Not only does his Patient First record make no mention of a gas exposure, it notes that his symptoms started two days *before* the alleged incident at Velocity. This evidence further supports the circuit court's causation analysis and generally undermines Butler's claim that he suffered any work-related injury on February 10, 2019.[5]

In conclusion, we agree with the circuit court that expert testimony was required to establish the causal effect between the alleged antifreeze vapor and Butler's sinusitis or other claimed medical injury. We also conclude that Dr. Presant's assessment is too equivocal to satisfy that requirement. Most importantly, nothing in his statement attributes Butler's chronic sinusitis and reactive airways disease to the February 2019 incident. Nor does the doctor differentiate that initial exposure from the multiple ensuing exposures that Butler experienced while working at UPS. Because Butler failed to present the necessary medical expert testimony concerning causation, the court did not err in granting summary judgment on Butler's accidental injury claim.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[5] We also note that multiple medical reports between the alleged injury and his diagnosis acknowledge the difficulty in establishing causation for Butler's symptoms due to Butler's diabetes and lengthy history of smoking.