

*From: HarrisMartin's Harrismartinâ€™s Litigation Watch: Benzene*

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### **Ill. Court Awards Manufacturer of Wood Finishing Products Summary Judgment in Trace Benzene Case**

CHICAGO — An Illinois court has awarded summary judgment to a manufacturer of wood refinishing products, rejecting the plaintiffs' claims that trace amounts of benzene in the defendant's aerosols and liquids led the decedent to develop acute myeloid leukemia.

In a one-page order issued April 18, the Illinois Circuit Court for Cook County granted RPM Wood Finishes Group's motion for summary judgment after hearing oral arguments on the matter earlier in the day. Since RPM was the lone remaining defendant in the case — which had been set for a May trial — the lawsuit was dismissed with prejudice, sources said.

Sources told HarrisMartin that after hearing oral arguments, the judge made his ruling from the bench. In doing so, the judge opined that the opinions of plaintiffs' expert Barry Levy, M.D., were "too speculative," and lacked foundation, sources added.

In RPM's February motion for summary judgment, the defendant contended that it did not use benzene in any of its products and, further, that none of the ingredients in the wood refinishing products are known to cause AML.

The claims were brought on behalf of Michael Cullum, who was allegedly exposed to trace amounts of benzene in several products, including RPM Wood Finishes Group's wood refinisher.

Cullum developed acute myeloid leukemia (AML) as a result of the exposure, the plaintiffs argued.

While the plaintiffs claimed that Cullum was exposed to benzene in the defendant's products while working at Instant Furniture Rental, RPM argued that none of its products contain benzene but instead use other chemicals such as toluene, xylene and mineral spirits.

"None of these ingredients are known to cause AML despite the fact that they always have some small trace level of benzene within them," the motion stated, adding that Cullum's "cumulative exposures to benzene are approximately 100,000 times lower than the legally permissible benzene exposure as set by OHSA."

RPM specifically attacked the testimony of Levy, saying that he was the only expert to testify on causation and his testimony was insufficient to support the claims because the expert was unable to rule out all but one cause of Cullum's AML.

"Dr. Levy's causation opinion in this case is based on nothing more than pure speculation," the defendant argued.

In a response brief filed in March, the plaintiffs maintained that RPM's benzene-containing products caused Cullum's injuries. Specifically, the plaintiffs contended that they are "only required to prove that the exposure to the defendant's product is a 'cause' of his disease."

"This means that a plaintiff who was exposed to a defendant's benzene-containing product is required to prove that: '(1) he regularly worked in an area where the defendant's product was frequently used and (2) the injured worker did, in fact, work

sufficiently close to this area so as to come into contact with the defendant's product.' This is called the 'frequency, regularity and proximity' test. Even to the level of details of some of the out-of-state cases cited by Defendants, Plaintiff's evidence regarding the frequency, regularity, and proximity of Mr. Cullum's exposures to RPM's benzene-containing products far surpasses the Illinois standard," the plaintiffs argued.

The plaintiffs cited Dr. Levy's testimony as support for this point, saying that the expert assessed airborne exposures Cullum experienced based on the record.

"[Dr. Levy] concluded that Mr. Cullum was exposed on a regular, frequent basis to benzene and benzene-containing substances in his job setting," the response brief stated.

Counsel for the defendant is Anthony J. Monaco of Swanson, Martin & Bell, LLP in Chicago.

The plaintiffs are represented by Keith E. Patton of Shrader & Associates in Houston; and Kevin J. Golden of Dudley & Lake in Chicago.

Zacharias, et al. v. RPM Wood Finishes Group, et al., No. 09 L 002003 (B) (Ill. Cir. Ct., Cook Cty.).

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