

Rhode Island Superior Court Declines to Apply “Sham Affidavit” Doctrine To Contradictory Affidavit of Plaintiff’s Daughter



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On October 19, 2017, Judge Taft-Carter of the Rhode Island Superior Court issued Loretta Belac v. 3M Company, et al., No. Civ. A. PC-2016-0544, 2017 WL 4839159 (R.I. Super. Oct. 19, 2017), wherein the Court examined whether to apply the “sham affidavit” doctrine. By way of background, certain defendants filed a motion to strike plaintiff’s daughter’s affidavit pursuant to the “sham affidavit” doctrine and grant a motion for summary judgment on the basis that the plaintiff did not produce sufficient evidence of product identification or a causal connection. The defense argued the affidavit of the daughter should be stricken under the “sham affidavit” doctrine, as it was contradictory to the plaintiff’s testimony and provided no explanation for the contradiction. The plaintiff objected, arguing there were genuine issues of material fact and that appropriate product identification and causal connection between plaintiff’s injuries and the defendants’ products had been shown.

The Court noted that the Rhode Island Supreme Court has not addressed the issue of sham affidavits, but according to the First Circuit, the “sham affidavit” doctrine states that when an interested witness has given clear answers to unambiguous questions, he or she cannot create a conflict and resist summary judgment with an affidavit that is clearly contradictory, but does not give a satisfactory explanation of why the testimony is changed. However, the “sham affidavit” doctrine did not necessarily apply when contradictory testimony comes from another witness. Based on this, and the fact that the daughter had not been deposed, the Court concluded that the daughter’s affidavit could not be said to contradict her own testimony. Therefore, the Court declined to strike the daughter’s affidavit under the “sham affidavit” doctrine, and the motions for summary judgment of the defendants were denied, as there were genuine issues of material fact regarding product identification, exposure, and causal connection.

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