

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5204

MALCOLM CLARK, ET AL.,

Plaintiffs,

MALCOLM CLARK,

Plaintiff-Appellee,

and

SUNBELT INSURANCE CO. & HIGHLANDS INSURANCE,

Intervenor-Plaintiffs-
Appellees,

versus

BETZ PAPERCHEM, INC., ET AL.,

Defendants,

BETZ PAPERCHEM, INC.,

Defendant-Appellant.

Appeal from the United States District Court for
the Eastern District of Texas
(91-CV-432)

(November 12, 1993)

Before POLITZ, Chief Judge, REAVLEY and EMILIO M. GARZA, Circuit
Judges.

PER CURIAM:*

*Local Rule 47.5 provides: "The publication of opinions
that have no precedential value and merely decide particular
cases on the basis of well-settled principles of law imposes
needless expense on the public and burdens on the legal
profession." Pursuant to that Rule, the Court has determined

Malcolm Clark recovered judgment against Betz Paperchem, Inc. on a jury verdict that the negligence of Betz caused physical injury to Clark. Betz argues three points on appeal, two points having no merit but the third requiring modification of the judgment.

First, Betz says Clark failed to carry his burden of proving that Betz chemicals caused Clark's injuries. In its argument much attention, entirely misplaced, is given to recent judicial writings about expert witness testimony. Here, there was no question but that Betz chemicals will cause respiratory irritation if there is enough exposure, no question but that Clark was exposed to Betz chemicals, and no question but that chemical exposure caused Clark's injuries. That leaves only the questions of whether the extent of Clark's exposure to Betz chemicals was a cause, or whether other chemicals in his workplace)) not manufactured by Betz)) were responsible for his injuries. For eight years Clark had worked at the same job on the same machine, but only when his employer used the Betz chemicals did he suffer injury. The onset of his considerable symptoms fit his exposure to Betz chemicals and none other. Even though Betz presented an expert who thought those chemicals could not have caused the injuries, it is difficult to find any other reasonable explanation in this record. The verdict stands.

Secondly, Betz complains of the consolidation for trial of this case with another case where Betz was the defendant. Courts

that this opinion should not be published.

are entitled and encouraged to employ methods to speed disposition of the docket, although we have some question about there being enough commonality here to save any time. However, the other case settled before the evidence began, and we can find no prejudice suffered by Betz.

The third objection has to be sustained. Clark submitted fifteen invoices of medical expense, all supported by affidavits of the custodians of respective records. Betz objected to their admissibility and specifically pointed to its inability to inquire about the charges as reasonable and as related to the particular injuries at issue. Betz had not stipulated to those expenses, nor had it waived objection to the exhibits. Even in Betz' stipulation with Clark's comp carrier, Betz expressly reserved the issues of reasonableness of amount and the necessary nexus to the Betz chemicals exposure. Affidavits are not admissible evidence in a trial to a jury, over objection. The medical total was \$28,808.03. To that extent the judgment cannot stand. We therefore order a remittitur of that amount.

JUDGMENT AFFIRMED AS MODIFIED; REMITTITUR ORDERED.