COURT OF APPEALS
DECISION
DATED AND FILED

July 3, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1415 **Cir. Ct. No. 2006CV8105**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

RITA RISSE INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF LOREN RISSE,

PLAINTIFF-APPELLANT,

V.

BUILDING SERVICES INDUSTRIAL SUPPLY, INC. AND L & S INSULATION COMPANY, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 KESSLER, J. Rita Risse ("Mrs. Risse") appeals from an order of the trial court granting Building Service Industrial Supply Company's ("BSIS")

motion for summary judgment. Mrs. Risse also appeals from an order of the circuit court granting L&S Insulation Company's ("L&S") motion *in limine* and *sua sponte* granting summary judgment in favor of L&S and dismissing the complaint against L&S. We affirm.

BACKGROUND

¶2 Loren Risse ("Mr. Risse") worked in construction as a carpenter at various locations in the Milwaukee area for approximately forty years, beginning in the early 1950s. Mr. Risse worked at over fifty job sites. Insulation contractors installing asbestos insulation and fiberglass insulation were present at many of Mr. Risse's job sites at the same time as Mr. Risse. In July 2006, Mr. Risse was diagnosed with mesothelioma, an asbestos-related cancer.

¶3 Mr. Risse and his wife brought a products liability action against multiple defendants, including BSIS and L&S. Prior to his death in 2007, Mr. Risse provided deposition testimony as to his recollection of various insulation contractors at his work sites. Mr. Risse estimated at how many job sites he remembered seeing the various insulation contractors by assigning each a percentage of his total job sites, which resulted in the following percentages: (1) Sprinkman—sixty-seven percent; (2) Milwaukee Insulation—twenty-five percent; (3) Allied Insulation—twenty percent; and (4) L&S—twenty percent. Mr. Risse's estimations total 132 percent. His recollection of L&S's presence was based on seeing L&S trucks. When asked whether he could recall L&S's presence at any specific location or at any particular time, Mr. Risse responded: "Well, it's kind of tough. They kind of all melt together. The insulating companies all came in and did the same things, and I couldn't specifically say which job they were there on any of these."

¶4 After Mr. Risse's death, Mrs. Risse was appointed special administrator to continue the claims of Mr. Risse's estate. As relevant to this appeal, Mrs. Risse contended that BSIS supplied asbestos-containing products to L&S, and that L&S used those products at multiple job sites when Mr. Risse was present. BSIS filed a motion for summary judgment in July 2007, contending that Mrs. Risse could not establish any material facts tending to show that Mr. Risse was exposed to BSIS products. The motion was denied by Judge David Hansher.

¶5 Mrs. Risse then requested, and was granted, permission to file a second amended complaint, which substituted Mrs. Risse as the plaintiff, both individually and as the administrator of Mr. Risse's estate, and added a wrongful death claim. Due to judicial rotations and scheduling conflicts, the case was eventually transferred to Judge Charles Kahn in June 2010. At a pretrial conference, Judge Kahn (hereinafter, "the trial court") granted the remaining parties permission to file any new or revised motions the parties wanted the trial court to address prior to the scheduled trial date.

¶6 BSIS renewed its motion for summary judgment. L&S filed a motion *in limine* to exclude any evidence that Mr. Risse was exposed to any asbestos-containing products used by L&S, and to exclude any evidence offered to show that Mr. Risse and L&S were ever on any site at the same time. The motion was based on L&S's contention that despite numerous discovery attempts throughout the five years of litigation, Mrs. Risse did not provide any documentary or testimonial evidence simultaneously placing Mr. Risse and L&S at any job sites. L&S did not deny that it used asbestos-containing products, but took the position at the hearing on these motions that ninety-five percent of its insulation work involved fiberglass, not asbestos. Mrs. Risse's counsel did not dispute that assertion.

¶7 On February 18, 2011, the trial court held a hearing on BSIS's motion for summary judgment and on L&S's motion *in limine*. At the hearing, the trial court explained its rationale for revisiting BSIS's summary judgment motion, stating that it did not want to proceed to trial if there was insufficient evidence. Mrs. Risse indicated that she had additional evidence linking Mr. Risse's asbestos exposure to BSIS and L&S that she did not attach to her brief to the trial court. The trial court granted Mrs. Risse an additional two weeks to sort out the evidence she planned to use at trial, instructing her to: (1) clearly and specifically identify all of the evidence linking Mr. Risse's asbestos exposure to a BSIS product used by L&S at one of Mr. Risse job sites; and (2) demonstrate that the evidence had been timely disclosed to the defendants. Specifically, the trial court stated:

> I want to be clear about what's required. What's required is a concise and precise layout exactly and fully and completely of what you are going to present to the jury. In other words, each individual document, each particular, specific, individual document that you are going to present to the jury, and each precise portion of testimony in order to establish these two things; one, that Mr. Risse was present at any point or any location at which L&S supplied some asbestos-containing material to that work place; and two, the information about the BSIS materials that may have been supplied to L&S … as we previously discussed.
>
> ….
>
> Part of what [Mrs. Risse's counsel] is required to do is establish that these items of evidence have been, in fact, presented to opposing counsel and in some sort of notice of the intent. I mean, like with depositions, those are presumably known by all parties, but with respect to documents, presumably, there was a court order that documents have to be presented, and beyond that, [L&S's counsel] has repeatedly said today that he has asked for disclosure of documents, therefore, [Mrs. Risse's counsel] is required to establish not only the elements of the closing argument, not only the factual support for each of these elements, but thirdly, indications as to why [Mrs. Risse's counsel] believes that both [BSIS's counsel] and [L&S's

> counsel] have been notified previously of the intended use of these documents.

¶8 The trial court held another hearing on March 18, 2011. At that hearing, the trial court again addressed L&S's motion *in limine*, allowing Mrs. Risse's counsel multiple opportunities to specify the evidence intended to be used at trial. Counsel indicated the intent to rely upon deposition testimony from Mr. Risse; testimony from Frank Parker, an industrial hygienist; and State of Wisconsin school survey records, obtained by Parker after his deposition had been taken by the defendants. Specifically, Mrs. Risse's counsel relied on: (1) Mr. Risse's deposition testimony that he recalled seeing L&S trucks at twenty percent of his job sites; (2) Parker's testimony as to the asbestos content of insulation products used during the relevant time period; and (3) survey records indicating that Mr. Risse and L&S may have been at Nicolet High School at the same time.

¶9 The trial court excluded the survey records, which were on a CD containing more than two hundred pages of documents. The records identified asbestos as being found at Nicolet High School, a job site where both L&S and Mr. Risse had worked. L&S was at the school in 1963 and Mr. Risse worked on an addition to the school the following year. The CD was mailed to the defendants approximately three months after Parker's deposition, but the transmittal letter contained no explanatory information about the contents of the CD. The contents of the CD were never specifically identified in the plaintiff's pretrial exhibit list, nor in response to L&S's formal requests that Mrs. Risse admit to not having documents indicating L&S exposed Mr. Risse to asbestos. The trial court found the document had never been specifically disclosed, as required by the only pretrial order ever entered, and therefore concluded that Mrs. Risse's counsel had not complied with proper discovery requests. The trial court also noted that the

case had been pending for five years, and that an additional adjournment was not called for.

¶10 With the survey records excluded both from trial and from consideration at summary judgment, the trial court found that there was no evidence which placed Mr. Risse and L&S at the same job site at the same time; nor was there evidence that established L&S was using asbestos at such a job site. The trial court *sua sponte* granted summary judgment in favor of L&S because Mrs. Risse's counsel did not "provide sufficient evidence from which a … jury could reasonably find that as a fact Mr. Risse was exposed to … asbestos fibers brought into a work site by L&S." The trial court also granted BSIS's motion for summary judgment, finding Mrs. Risse's evidence that Mr. Risse was exposed to a BSIS-supplied asbestos product speculative. This appeal follows. Additional facts are discussed as relevant to the discussion.

DISCUSSION

¶11 Mrs. Risse contends that the trial court: (1) erroneously excluded the school survey evidence; (2) erroneously granted L&S's motion *in limine*; (3) erroneously granted BSIS summary judgment; and (4) improperly *sua sponta* awarded summary judgment to L&S. We disagree.

Exclusion of Evidence.

¶12 Whether to admit or exclude evidence is a decision left to the discretion of the trial court. *See* ***Prill v. Hampton***, 154 Wis. 2d 667, 678, 453 N.W.2d 909 (Ct. App. 1990). If the trial court considers the pertinent facts, applies the correct law, and reaches a reasonable conclusion, we will not reverse

that discretionary determination. *See* ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185-86, 502 N.W.2d 156 (Ct. App. 1993).

¶13 A trial court has the discretion to exclude evidence as a sanction for a party's failure to disclose it. ***Jenzake v. City of Brookfield***, 108 Wis. 2d 537, 543, 322 N.W.2d 516 (Ct. App. 1982). At the March 18, 2011 hearing, L&S argued that despite numerous discovery requests throughout the course of the litigation, Mrs. Risse's counsel had not specifically disclosed the survey documents. L&S explained that Mrs. Risse's counsel produced a CD without an explanatory cover letter. The CD contained 254 pages of documents titled "Documents obtained from the State of Wisconsin by Caliche Ltd." Mrs. Risse's counsel argued that the CD was listed in her index of exhibits attached to her pretrial report.

¶14 The trial court gave Mrs. Risse's counsel multiple opportunities to specifically disclose the CD and to explain its intended use. The trial court found that under the only scheduling order ever entered in the case, the CD should have been specifically disclosed by October 17, 2007. The CD was mailed to the defendants in 2008. At the February 18, 2011 hearing, the trial court adjourned the hearing, specifically instructing Mrs. Risse's counsel to identify for the trial court and defense counsel each issue to be addressed in his closing argument, the evidence that supported each issue, and proof that the specific evidence *and its intended use* had been specifically and previously disclosed to L&S and BSIS. Counsel did not comply. Instead, he continued to insist that his prior disclosures were all that were required.

¶15 The trial court found that counsel's disclosure was improper because it consisted only of "the vaguest of references to a CD that was transmitted with a

cover letter that says here, this is something," and that meaningful disclosure "was just not sufficient as a listing of … each exhibit." Mrs. Risse's counsel's pretrial report consists of 169 pages with no specific reference to a CD containing a government asbestos survey report. The trial court properly exercised its discretion.

Summary Judgment.

¶16 Mrs. Risse argues that the trial court improperly reconsidered BSIS's motion for summary judgment years after a previous judge denied a similar motion. A trial court has the inherent authority to exercise its discretion to reconsider matters of law. *See* ***Eisenberg v. Estkowski***, 59 Wis. 2d 98, 103-04, 207 N.W.2d 874 (1973). Whether to grant or deny summary judgment is ultimately a matter of law. *See* WIS. STAT. § 802.08(2) (2009-10).[1] We review a trial court's decision to reconsider matters under an erroneous exercise of discretion standard. *See* ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853.

¶17 Here, the passage of substantial time, the dismissal of all other original defendants, and the relatively imminent trial date for what the court believed would be a complicated trial, supported the trial court's rationale for allowing BSIS's summary judgment motion.

¶18 In review of summary judgment, this court reviews the record *de novo*, applying the same standard and following the same methodology required of

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the trial court[2] under WIS. STAT. § 802.08. *See, e.g.*, ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). On summary judgment where causation is disputed, a court must determine "'whether the defendant's [conduct] was a substantial factor in contributing to the result.'" ***Zielinski v. A.P. Green Indus., Inc.***, 2003 WI App 85, ¶16, 263 Wis. 2d 294, 661 N.W.2d 491 (citation omitted). To be a "'substantial factor,'" requires "'that the defendant's conduct ha[ve] such an effect in producing the harm as to lead the trier of fact, as a reasonable person, to regard it as a cause, using that word in the popular sense.'" ***Id.*** (citation omitted). "A mere possibility of ... causation is not enough; and when the matter remains one of pure speculation or conjecture or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." ***Id.*** (citation and quotation marks omitted).

¶19 The trial court correctly explained to Mrs. Risse's counsel the evidence of causation necessary here:

> The question here … is the particular involvement of these two defendants and what you have been able to establish to provide sufficient evidence from which a … a jury could reasonably find that as a fact Mr. Risse was exposed to … asbestos fibers brought into a work place site by L&S or that Mr. Risse … inhaled[]asbestos fibers supplied to L&S by Building Service Industrial Supply.

¶20 Here, it is undisputed that:

[2] Mrs. Risse claims that the trial court improperly required her to produce a preponderance of the evidence to defeat BSIS's summary judgment motion. Her argument is based on the trial court's statement that "[t]here is not sufficient evidence for any juror to make a finding of a preponderance of the evidence that Mr. Risse was exposed on a jobsite to asbestos fibers which … contributed to his development of malignant mesothelioma." However, the record clearly indicates that the trial court, in numerous instances, cites to the appropriate summary judgment standard when engaging in colloquies with counsel and when rendering its decision.

- Mr. Risse worked as a carpenter from 1958-1973, a time when asbestos products were commonly used;
- Mr. Risse came into contact with asbestos fibers, resulting in malignant mesothelioma;
- Mr. Risse did not work with asbestos products himself, but rather was exposed to the fibers as a bystander while working as a carpenter;
- Mr. Risse worked at numerous job sites during the relevant time period;
- Mr. Risse could not identify any specific job site at which he and L&S products were simultaneously present;
- Mr. Risse estimated percentages of the presence of various insulation contractors at his job sites, estimating L&S was present at twenty percent of the sites. His total estimated presence of all insulation contractors totaled more than 100 percent;
- BSIS and L&S had, and continue to have, a business relationship;
- Not all BSIS products supplied to L&S were asbestos-containing; and
- L&S used fiberglass insulation in a very high percentage of its jobs.

¶21 Mrs. Risse, relying on ***Zielinski*** and ***Horak v. Building Services Industrial Sales Company***, 2008 WI App 56, 309 Wis. 2d 188, 750 N.W.2d 512, argues that the combination of: (1) Mr. Risse's testimony that L&S trucks were

present on twenty percent of his job sites; (2) the existence of a supplier/buyer relationship between BSIS and L&S; (3) Parker's deposition testimony as to the asbestos content of the materials used in the settings and time period in which Mr. Risse worked; and (4) L&S contract books showing that L&S may have been present on nine of Mr. Risse's work sites, potentially during the same years, was sufficient to create a jury question as to causation for both BSIS and L&S.

¶22 In ***Zielinski***, we reversed a trial court order granting summary judgment to an asbestos supplier, known as Firebrick, *see* ***id.***, 263 Wis. 2d 294, ¶1, where the trial court found that there was insufficient evidence to establish that George Zielinski had been exposed to asbestos-containing products sold by Firebrick to Zielinski's employer, the Ladish Company, ***id.***, ¶4. We concluded that genuine issues of material fact existed as to whether Firebrick was the source of Zielinski's exposure because two witnesses testified as to *the probability* that Ladish purchased products from Firebrick at the relevant time period. ***Id.***, ¶¶9-12. There was also no evidence that Ladish operated any plant other than the one where Zielinski worked, therefore we concluded that there was sufficient evidence to support the inference that Firebrick's asbestos-containing materials exposed Zielinski to asbestos fibers. ***Id.***, ¶¶20-21.

¶23 Here, we have neither witnesses nor documents which create a factual basis for the inference that BSIS-supplied asbestos was ever at the same job site at the same time as Mr. Risse. We have Mr. Risse's opinion, which we accept as accurate for purposes of summary judgment, that L&S trucks were present at twenty percent of his job sites over his career as a carpenter. Because the percentages he applied to all insulation contractors totaled more than 100 percent, there are two possible inferences to be drawn: (1) either Mr. Risse's estimations were accurate and more than one contractor was present at the same

time, or (2) Mr. Risse was merely guessing. If Mr. Risse was guessing, his guess is speculation. Evidence based on speculation and conjecture is inadmissible. *See* ***State v. Scheidell***, 227 Wis. 2d 285, 305, 595 N.W.2d 661 (1999). If more than one insulation contractor was present at a job site, it is pure speculation to conclude that L&S, rather than any other insulation contractor, used asbestos products, which Risse ultimately inhaled.

¶24 In ***Horak***, the estate of George Benzinger sued BSIS (among others) alleging that Benzinger was exposed to asbestos-containing products supplied by BSIS to his employer, Jaeger Insulation Company, which resulted in his death from lung cancer. *See* ***id.***, 309 Wis. 2d 188, ¶1. Benzinger worked for Jaeger before and after 1961 through 1965. ***Id.***, ¶3. Benzinger died before he could testify about his exposure. ***Id.*** BSIS's sales records indicated that it sold asbestos to Jaeger during the 1961 to 1965 time period. ***Id.*** It was not disputed that Benzinger actively worked with asbestos-containing products at Jaeger. ***Id.***, ¶5. There was also no dispute that Jaeger obtained products from multiple suppliers. ***Id.***, ¶6. We reversed the trial court's order granting summary judgment in favor of BSIS, because there was sufficient evidence to create a disputed material fact as to whether Benzinger was exposed to BSIS-supplied products. ***Id.***, ¶¶5-6, 16.

¶25 Here, the contract books from L&S do not identify which products (asbestos-containing or non-asbestos-containing) L&S used at any of Mr. Risse's job sites. Unlike Benzinger, Mr. Risse worked at multiple job sites, in places with multiple insulation contractors, at multiple times. ***Horak*** placed Benzinger at Jaeger simultaneously with BSIS-supplied products. Here, even Mr. Risse's testimony does not place L&S at any specific job site, with BSIS-supplied asbestos products, at the same time Mr. Risse was there.

¶26 Nor does Mrs. Risse's expert witness, Parker, create the necessary causal link. Parker's testimony centered on the asbestos content of thermal insulation products prior to 1972. His testimony was not specific to any particular asbestos supplier. To infer a link between BSIS-supplied asbestos and Mr. Risse's inhalation of asbestos fibers based on Parker's testimony would be piling the *possibility* that BSIS supplied asbestos on the *possibility* that L&S was present at one of Mr. Risse's job sites with that asbestos, on the *possibility* that Mr. Risse (then or later) inhaled asbestos fibers which were disbursed into the air by L&S rather than by one or more of the other insulation contractors Mr. Risse identified. Parker's testimony supports only speculation, namely the *possibility* that Mr. Risse inhaled asbestos-fibers *possibly* released by L&S and *possibly* supplied by BSIS.

¶27 The undisputed business relationship between BSIS and L&S also does not establish more than the *possibility* that asbestos was present because BSIS also supplied non-asbestos-containing products. L&S primarily used fiberglass in its insulation work. In order to survive summary judgment, Mrs. Risse was required to produce evidence demonstrating that Mr. Risse was *probably* exposed to a BSIS-supplied asbestos-containing-product and that specific exposure was a substantial factor in his illness. She has not done so. The available evidence fails to take the question of Mr. Risse's exposure to BSIS-supplied asbestos-containing products out of the realm of speculation and conjecture. Unfortunately, Mrs. Risse was unable to establish that Mr. Risse was *probably* ever exposed to BSIS-supplied asbestos-containing products.

¶28 Mrs. Risse objects to the trial court's *sua sponte* dismissal of her claim against L&S after it prohibited use of the survey records and granted summary judgment to BSIS. A trial court has the inherent authority to consider issues *sua sponte*. *See* ***State v. Holmes***, 106 Wis. 2d 31, 39-41, 315 N.W.2d 703

(1982). Objections to a trial court's *sua sponte* consideration of an issue are "diminished or eliminated by the circuit court giving the litigants notice of its consideration of the issue and an opportunity to argue the issue." ***Id.*** at 41.

¶29 Here, counsel for Mrs. Risse was given multiple opportunities, both before and after the trial court prohibited use of the survey records, to explain to the trial court how he intended to prove his case. In every instance, he repeated his argument that: (1) the jury could infer asbestos came from BSIS because of the business relationship with L&S; and (2) the jury could infer that L&S brought asbestos to a job site because Mr. Risse said L&S was at twenty percent of his job sites and because Parker said all insulation installers used asbestos. The trial court concluded that this syllogism was not based on facts from which a jury could reasonably conclude that it was *probable* that asbestos supplied by BSIS and used by L&S was inhaled by Mr. Risse. After noting that that Mrs. Risse had to produce "sufficient evidence from which … a jury could reasonably find that as a fact Mr. Risse was exposed to … asbestos fibers brought into a work place site by L&S or that Mr. Risse … inhaled, asbestos fibers supplied to L&S by Building Service Industrial Supply" the trial court concluded:

> There is sufficient evidence to develop that *hunch*. There is sufficient evidence to make it a *suspicion*, but *there is not sufficient evidence … that Mr. Risse was exposed on a jobsite to asbestos fibers … which contributed to his development of malignant mesothelioma.*

(Emphasis added.) Evidence, to be admissible, "'must do more than simply afford a possible ground of suspicion.'" *See* ***Scheidell***, 227 Wis. 2d at 301 (citation and brackets omitted).

CONCLUSION

¶30 For the foregoing reasons, we affirm the trial court.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.

¶31 FINE, J. (*dissenting*). Summary judgment, of course, is not a short-circuit trial; it merely determines if there are any evidentiary facts that warrant a trial. In making that assessment, a court *must* view the proffered evidence in a light most favorable to the party against whom summary judgment is sought. ***Novell v. Migliaccio***, 2010 WI App 67, ¶9, 325 Wis. 2d 230, 235–236, 783 N.W.2d 897, 899. Thus, "[c]ourts do not weigh the evidence when determining summary judgment motions." ***Petzel v. Valley Orthopedics Ltd.***, 2009 WI App 106, ¶9, 320 Wis. 2d 621, 629, 770 N.W.2d 787, 790. In my view, the circuit court and the Majority on its *de novo* review have done precisely that.

¶32 Pared to the nub, this is what we have here. Loren Risse testified to the following at his deposition, and, for summary-judgment purposes, this must be taken as true:

> Q What types of work do you remember L & S Insulation for?
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> A That would have been -- that would have been the pipe covering and duct covering and that type of work.
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> ….
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> Q How often do you remember L & S Insulation being on any of your jobs -- commercial jobs -- in that '58 to '73 time period?
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> ….
>
> A Probably 20 percent.

Further, Risse testified that he *was* exposed to the asbestos products:

> Q I want to direct your attention now to a product that you all might have used to cover like soffits and so on. What were carpenters typically using for that? Again, I'm in that '58 to '73 time frame on commercial jobs.
>
> A Yes. That was -- well, we always called it asbestos board. It was a brittle material about a quarter of an inch thick, and it was cut with a Carborundum blade and with a big cloud of dust of course.

¶33 The Majority credits, on its admittedly *de novo* review, the circuit court's assessment, as phrased by the Majority, "the trial court found that there was no evidence which placed Mr. Risse and L&S at the same job site at the same time." Majority at ¶10. But, as we have seen, that is not true—for summary judgment purposes we must credit Risse's testimony that L&S was on "[p]robably 20 percent" of his job sites. We must also credit his testimony that they used what they referred to as "brittle" "asbestos board."[1] If L&S's use of asbestos contributed to Risse's cancer in any degree, it is responsible for that exposure. *See* WIS. STAT. § 895.045.

¶34 Asbestos cases arising from exposures in the dim past of history are not easy to prove precisely because many of the victims are dead, and much of the documentation no longer exists. Yet, we have enough to let a jury—rather than

[1] Fiberglass insulation is not, within sufficient experience for us to take judicial notice, *see* WIS. STAT. RULE 902.01, a "brittle material." *See* http://en.wikipedia.org/wiki/Fiberglass ("Fiberglass is a lightweight, extremely strong, and robust material. Although strength properties are somewhat lower than carbon fiber and it is less stiff, the material is typically far less brittle, and the raw materials are much less expensive. Its bulk strength and weight properties are also very favorable when compared to metals, and it can be easily formed using molding processes.") (last visited June 20, 2012). Wikipedia can be an acceptable source of information that is generally beyond dispute. *See* ***Plumbers and Pipefitters Local Union 719 Pension Fund v. Zimmer Holdings, Inc.***, ___ F.3d ___, ___, 2012 WL 1813700, at *1 (7th Cir. May 21, 2012) (referencing article in Wikipeda for "an overview of the components and procedures" of the hip-replacement medical procedure).

judges—decide the contested disputes of fact. In my view, this is clear from ***Zielinski v. A.P. Green Industries, Inc.***, 2003 WI App 85, ¶20, 263 Wis. 2d 294, 309, 661 N.W.2d 491, 498 ("(1) the plaintiffs have presented evidence that creates a genuine issue of material fact as to whether Firebrick sold or supplied asbestos-containing products, namely Weber 48, to Ladish; and (2) the plaintiffs have presented evidence that creates a genuine issue of material fact as to whether Zielinski was exposed to asbestos containing products supplied by Firebrick during the course of his employment at Ladish."). The same can be said here. *See also* ***City of Milwaukee v. NL Industries, Inc.***, 2005 WI App 7, ¶18, 278 Wis. 2d 313, 325, 691 N.W.2d 888, 894 (Ct. App. 2004) ("Both Mautz and NL Industries acknowledge this. Mautz denies that it sold lead paint for interior use and attempts to distinguish its sales of lead paint for exterior residential use as negligible, asserting that such sales, as a matter of law, cannot be a substantial cause of the alleged public nuisance. However, there does not appear to be agreement on what would be a 'negligible' amount of sales in the context of paint sales over many years. Nor does there appear to be agreement on how 'negligible' is to be measured during the relevant time. The determination of such questions is for a jury rather than this court."). Accordingly, I respectfully dissent.