

FILED

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

2022 APR -4 P 1: 54

MICHAEL D. RUBLE et al.

Plaintiffs

v.

RUST-OLEUM CORPORATION et al.

Defendants

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) **Case No. 19-C-127**
) **Judge Paul T. Farrell**
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MINE WOELFEL
CIRCUIT CLERK
CABELL CO. WV

DISMISSAL ORDER

On the 1st day of March, 2022, the Court heard arguments relative to the Motion to Dismiss filed by Defendant Matrix Chemical LLC (Matrix). After hearing the arguments and considering the pleadings and entire record, the Court granted Matrix's Motion to Dismiss. Joinders that incorporated Matrix's Motion to Dismiss were filed by Defendant Special Materials Company (SMC Global); Defendants Brenntag Great Lakes LLC and Brenntag Mid-South, Inc. (together Brenntag); Defendants Nouryon Functional Chemicals, LLC, incorrectly named as "Akzo Nobel Functional Chemicals, LLC, a Delaware Limited Liability Company," Nouryon Chemicals, LLC as Successor to Akzo Nobel Chemicals LLC, formerly known as Akzo Nobel Chemicals, Inc., incorrectly named as "Akzo Nobel Chemicals, Inc. a Delaware Corporation" (Nouryon); Bayer Corporation and Bayer CropScience, LP, and Monsanto Company; Defendant E.I. du Pont de Nemours and Company (E.I. du Pont); Defendant FBC Chemical Corporation (FBC); Defendant Univar Solutions USA Inc. (individually and as alleged successor to Nexeo Solutions, LLC) (incorrectly

named as "Univar Solutions, Inc.) (Univar)¹; and Defendant Yenkin Majestic Paint Corporation d/b/a OPC Polymer (Yenkin)². The plaintiffs filed oppositions: (1) Response to Matrix's Motion to Dismiss dated February 8, 2022; (2) Response to SMC Global's Joinder dated February 9, 2022; (3) Omnibus Response to Univar's Motion, Yenkin's Motion, E.I. du Pont's Joinder, Nouryon's and Bayer Corporation and Bayer CropScience, LP, and Monsanto Company's Joinder dated February 22, 2022; and (4) Response to Brenntag's Joinder dated February 24, 2022. After considering the arguments, pleadings and record, the Court makes the following findings and conclusions, and dismisses with prejudice this case in its entirety:

FINDINGS OF FACT

Denial of Workers' Compensation Claim

1. Michael D. Ruble³ filed a West Virginia workers' compensation claim for the same alleged chemical exposures at work, time frame and injuries that are at issue in this lawsuit. The claim was denied three (3) times by workers' compensation decisions.

¹ Univar filed a Motion to Dismiss that incorporated by reference Matrix's Motion to Dismiss.

² Yenkin filed a Motion to Dismiss that incorporated by reference Matrix's Motion to Dismiss.

³ Two plaintiffs brought this case—Michael Ruble and Brenda Ruble, his wife. Because this case almost exclusively concerns allegations relating to Michael Ruble, he is referred to as "Ruble" or "Mr. Ruble" in this order. "Plaintiffs" refers to both Michael Ruble and Brenda Ruble.

2. Ruble worked at the Rust-Oleum facility in Lesage, West Virginia, from approximately 1996 to 2018.
3. Ruble applied for workers' compensation benefits and claimed that he was exposed to chemicals while working at the Lesage facility and he claimed this exposure caused him to suffer sensory neuropathy, dermatitis, tremors and weakness of distal arms and legs, and pneumonia. *See, e.g., W. Va. Workers' Comp. Office of Judges Oct. 15, 2020 Decision - In the Matter of Michael Ruble, No. 2019011963, at 1, 5–9, 12–13 [hereinafter O.J. Decision].*
4. In an order dated September 24, 2019, the Workers' Compensation claim administrator denied Ruble's application for workers' compensation benefits. *O.J. Decision at 1.*
5. Ruble appealed the order of the claim administrator to the Workers' Compensation Office of Judges. *O.J. Decision at 1.*
6. In a decision dated October 15, 2020, the Office of Judges affirmed the September 24, 2019 order of the claim administrator, concluding that Ruble "did not prove by a preponderance of the evidence that he developed sensory neuropathy and dermatitis in the course of and as a result of employment." *O.J. Decision at 25.*
7. In its decision, the Office of Judges addressed Ruble's alleged conditions and injuries, including sensory peripheral polyneuropathy, tremors and weakness of distal arms and legs, dermatitis, and pneumonia" and determined that

Ruble “did not establish . . . that his level of exposure caused the impairments he claims.” O.J. Decision at 23; *see also, e.g., id.* at 5–9, 12–13.

8. Ruble appealed the decision of the Office of Judges to the Workers’ Compensation Board of Review. *See W. Va. Workers’ Comp. Board of Review April 22, 2021 Order - Ruble v. RPM Int’l*, Appeal No. 2055940 [hereinafter Bd. of Review Order].
9. In an order dated April 22, 2021, the Board of Review affirmed the October 15, 2020 decision of the Office of Judges. Bd. of Review Order at 3.
10. Ruble did not appeal the April 22, 2021 decision of the Board of Review to the Supreme Court of Appeals of West Virginia. Since the time period for the appeal has passed, the Board of Review’s order is the final decision in the workers’ compensation proceedings.
11. The workers’ compensation proceedings provided a full and fair opportunity to present the claim. The first twenty-five pages (25) of the Workers’ Comp. Office of Judges Oct. 15, 2020 Decision provided a detailed analysis of the claim, the information presented, and basis for the decision. An additional four (4) pages of the Oct. 15, 2020 Decision lists materials that were provided to the Office of Judges. Mr. Ruble developed an extensive record at the workers’ compensation proceeding. Among other things, Ruble was represented by counsel, depositions were conducted including Mr. Ruble’s own testimony, a statement of a witness was presented, documents prepared by Mr. Ruble’s non-medical expert were submitted, documentary evidence was submitted, photographs

were submitted, medical records and reports were submitted, medical journal articles about the alleged chemical exposures were submitted, and closing arguments were made. *See, e.g.*, O.J. Decision at 2–3, 9, 18–21, 26–29.

Claims Against Third-Parties for the Same Injuries

12. On March 18, 2019—while the workers’ compensation proceedings remained ongoing—Plaintiffs filed their initial complaint in this case, and on March 19, 2020, they filed their amended complaint.
13. In their amended complaint, Plaintiffs alleged claims against the previously mentioned Matrix, SMC Global, Brenntag, E.I. du Pont, Univar, Yenkin, Nouryon, Bayer Corporation and Bayer CropScience, LP, and Monsanto Company along with RPM International, Inc. (RPM), Rust-Oleum Corporation (Rust-Oleum), Zinsser Co. Inc.,⁴ New Parks, The Early Construction Co., AdvanSix, Inc., Altivia Petrochemicals, LLC, Citgo Petroleum Corporation, Exxon Mobil Corporation, and FBC Chemical Corporation.
14. In their amended complaint, Plaintiffs alleged six claims: (1) deliberate intent; (2) negligence; (3) breach of warranty; (4) strict liability; (5) negligent manufacture, installation, repair, or maintenance; and (6) loss of consortium. Am. Compl. 9–17.
15. All six claims were based on Ruble’s belief that his exposure to chemicals at the Lesage facility from 1996 to 2018 resulted in “his development of sensory

⁴ Zinsser Co. Inc. is listed as a defendant two times—“individually and as successor-in-interest to New Parks” and doing business as New Parks. Am. Compl. 1.

peripheral polyneuropathy, tremors and weakness of distal arms and legs, dermatitis, and pneumonia.” Am. Compl. 17; *see also id.* at 8.

16. The allegations of the amended complaint were, therefore, identical to the allegations that served as the basis for Ruble’s application for workers’ compensation benefits. *Compare* Am. Compl. 8, 17, 25, *with* O.J. Decision at 5–9, 12–13.
17. Necessarily based in part on the identical nature of these proceedings and the workers’ compensation proceedings, a Joint Stipulation and Agreed Order of Continuance was entered on January 21, 2021, which continued the case pending a final decision in the workers’ compensation proceedings.
18. After the workers’ compensation claim was denied, on December 9, 2021, based on the agreement of Plaintiffs, this Court dismissed RPM and Rust-Oleum from this case. *See* Order (Dec. 9, 2021).
19. On January 25, 2022, Matrix filed its Motion to Dismiss, arguing that the amended complaint failed to state a claim under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure based on collateral estoppel.⁶
20. On February 2, 2022, SMC Global filed its February 1, 2022 Joinder in Matrix’s Motion to Dismiss.
21. On February 8, 2022, the plaintiffs served their Response to Matrix’s Motion to Dismiss.

⁶ For clarity, this order uses the term “collateral estoppel” to refer to the doctrine that is also commonly referred to as the issue preclusion branch of the *res judicata* doctrine.

22. On February 9, 2022, the plaintiffs served their Response to SMC Global's Joinder in Matrix's Motion to Dismiss.
23. On February 10, 2022, Brenntag filed its February 8, 2022 Joinder in Matrix's Motion to Dismiss.
24. On February 14, 2022, Nouryon, Bayer Corporation and Bayer CropScience, LP, and Monsanto Company filed their February 10, 2022 Joinder in Matrix's Motion to Dismiss.
25. On February 14, FBC filed its Joinder in Matrix's Motion to Dismiss.
26. On February 14, 2022, E.I. du Pont filed its February 11, 2022 Joinder in Matrix's Motion to Dismiss.
27. On February 15, 2022, Matrix filed its Reply in Support of Its Motion to Dismiss.
28. On February 17, 2022, Univar filed its February 16, 2022 Motion to Dismiss.
29. On February 17, 2022, Yenkin filed its February 14, 2022 Motion to Dismiss.
30. On February 22, 2022, the plaintiffs served their Omnibus Response to Univar's Motion, Yenkin's Motion, E.I. du Pont's Joinder, Nouryon, Bayer Corporation and Bayer CropScience, LP, and Monsanto Company's Joinder in Matrix's Motion to Dismiss.
31. On February 24, 2022, the plaintiffs served their Response to Brenntag's Joinder in Matrix's Motion to Dismiss
32. On March 1, 2022, this Court heard oral argument on the Motion to Dismiss.

33. At the March 1, 2022 hearing, R. Dean Hartley and Mark R. Staun appeared on behalf of Plaintiffs, James J.A. Mulhall and Dallas F. Kratzer III appeared on behalf of Matrix, David P. Lodge and William J. Hanna appeared on behalf of Univar, Justin C. Taylor appeared on behalf of SMC Global, Charity K. Lawrence appeared on behalf of E.I. du Pont, R. Scott Long appeared on behalf of AdvanSix, Sarah C. Boehme appeared on behalf of FBC, Roy D. Baker appeared on behalf of Citgo, Vaughn K. Schultz appeared on behalf of Exxon Mobil, Sharon Z. Hall appeared on behalf of Brenntag, and Colby S. Bryson appeared on behalf of Nouryon, Bayer Corporation and Bayer CropScience, LP, and Monsanto Company.

CONCLUSIONS OF LAW

34. Rule 12(b)(6) permits a court to dismiss a complaint that fails “to state a claim upon which relief can be granted.”
35. When deciding whether to dismiss a complaint for that reason, a court accepts the allegations of the complaint as true and reviews them “in the light most favorable to the plaintiff.” *Forshey v. Jackson*, 671 S.E.2d 748, 754 (W. Va. 2008) (cleaned up).
36. Along with the amended complaint, in this case, this Court also considers the decision of the Office of Judges and the order of the Board of Review because Plaintiffs’ claims are directly related to those documents and because those documents are “susceptible to judicial notice.” *Forshey*, 671 S.E.2d at 752 (cleaned up).

37. Under West Virginia law, for collateral estoppel to attach to quasi-judicial determinations—like the decision of the Office of Judges and the order of the Board of Review—“the prior decision must be rendered pursuant to the agency’s adjudicatory authority and the procedures employed by the agency must be substantially similar to those used in court.” Syl. pt. 2, *Vest v. Bd. of Educ.*, 455 S.E.2d 781 (W. Va. 1995).
38. If collateral estoppel attaches to quasi-judicial determinations, a court will not reconsider any issues or claims when “(1) the issue previously decided is identical to the one presented in the action in question; (2) there is a final adjudication on the merits of the prior action; (3) the party against whom the doctrine is invoked was a party or in privity with a party to a prior action; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.” Syl. pt. 1, *State v. Miller*, 459 S.E.2d 114 (W. Va. 1995).

Collateral Estoppel Attaches to the Workers’ Compensation Decisions

39. Consistent with decisions of state and federal courts of West Virginia, this Court concludes that collateral estoppel attaches to the decision of the Office of Judges and the order of the Board of Review. *See, e.g., White v. SWCC*, 262 S.E.2d 752, 756 (W. Va. 1980); *Corley v. E. Associated Coal Corp.*, 2009 WL 723120, at *6 (N.D. W. Va. Mar. 18, 2009).

40. This Court further concludes that collateral estoppel attaches to the decision of the Office of Judges and the order of the Board of Review because they satisfy the two primary requirements of *Vest's* second syllabus point.⁶
41. First, "both the Office of Judges and the Board of Review are statutorily authorized to make compensability decisions regarding workers' compensation claims, and, indeed, they are specialized decision-makers in this area." *Corley*, 2009 WL 723120, at *5; *see also* W. Va. Code §§ 23-5-9 & 23-5-12.
42. Second, the workers' compensation proceedings employed court-like procedures because, in those proceedings, an individual "may be represented by counsel, and may request written discovery, take depositions and proffer expert witnesses." *Corley*, 2009 WL 723120, at *5 (citing W. Va. Code § 23-1-13); *see also* W. Va. Code St. R. § 93-1-7 (providing rules for "obtaining, presenting, exchanging, and identifying" evidence).

Collateral Estoppel Bars Plaintiffs from Relitigating Causation

43. Upon review of the four *Miller* requirements, this Court is also satisfied that Matrix has established that Plaintiffs are precluded from relitigating the cause of Ruble's injuries and, thus, their complaint fails to state a claim.

⁶ That syllabus point adds that "the identity of the issue litigated is a key component to the application of administrative res judicata or collateral estoppel." Syl. pt. 2, *Vest*, 455 S.E.2d 781 (cleaned up). This issue is addressed later because this is also required for collateral estoppel to apply. Suffice it to say, this condition is also satisfied.

44. First, the issues here and the issues in the workers' compensation proceedings are identical because, in both, Ruble has claimed that chemical exposure in his workplace at the Lesage facility during the same timeframe caused him to develop "sensory peripheral polyneuropathy, tremors and weakness of distal arms and legs, dermatitis, and pneumonia which resulted in his severe injuries, disabilities, and damages." Am. Compl. ¶ 25; *accord* O.J. Decision at 5–9, 12–13.
45. Second, the workers' compensation proceedings resulted in a final adjudication on the merits because the Board of Review affirmed the decision of the Office of Judges—which concluded that Ruble did not develop his injuries "in the course of and as a result of employment"—and Ruble did not appeal that decision to the Supreme Court of Appeals of West Virginia. O.J. Decision at 25.
46. Third, collateral estoppel is being asserted against the proper parties (i.e., Plaintiffs) because Ruble was a party to the workers' compensation proceedings and because his wife is in privity with him since they share the same legal right as Mrs. Ruble asserts a loss of consortium claim. *See Miller*, 459 S.E.2d at 124; *see also S. Env't Inc. v. Bell*, 854 S.E.2d 285, 293 (W. Va. 2020) ("A claim for loss of consortium cannot be maintained independent of a cognizable personal injury claim.")
47. Fourth, Ruble had a full and fair opportunity to address the cause of his injuries and did so by securing initial and further review before administrative bodies, conducting depositions, and presenting his own testimony, statements

prepared by lay and expert witnesses, documentary evidence, medical journal articles, and medical records and reports in the workers' compensation proceedings. *See, e.g.*, O.J. Decision at 26–29 (detailing evidence presented and considered).

Matrix's Motion Withstands Plaintiffs' Objection

48. For the most part, Plaintiffs have not challenged Matrix's assessment and application of the requirements prescribed by *Vest* and *Miller*, and Plaintiffs' various arguments against the application of collateral estoppel are not well taken.
49. Although Plaintiffs have argued that collateral estoppel violates constitutional promises of the right to a jury trial, this is a flawed argument that would effectively overrule the doctrine of collateral estoppel and place this Court at odds with the Supreme Court of the United States and the West Virginia Supreme Court.
50. As the Supreme Court of the United States has explained, "the right to a jury trial does not negate the issue-preclusive effect of a judgment, even if that judgment was entered by a juryless tribunal," rejecting the notion that it "should jettison administrative preclusion in whole or in part to avoid potential constitutional concerns." *B&B Hardware Inc. v. Hargis Indus. Inc.*, 575 U.S. 138, 150 (2015).
51. Plaintiffs' argument is further flawed because it is founded entirely on an Arkansas case predating *B&B Hardware* and providing no assistance here for

at least four reasons. See *Craven v. Fulton Sanitation Serv. Inc.*, 206 S.W.3d 842 (Ark. 2005).

52. First, as noted by a concurring justice, collateral estoppel was inapplicable in the Arkansas case of *Craven* because the workers' compensation proceedings did not consider the alleged injury at issue, and causation of the alleged injury was not addressed. *Craven*, 206 S.W.3d at 848–49 (Imber, J., concurring).
53. Second, the Arkansas Constitution and the West Virginia Constitution have material differences regarding the right to a jury trial. Compare Ark. Const. art. 2, § 7 (providing that “right of trial by jury shall remain inviolate”), with W. Va. Const. art. 3, § 13 (providing that “right of trial by jury, if required by either party, shall be preserved”). In Arkansas, the “right of trial by jury shall remain inviolate” but the Supreme Court of Appeals of West Virginia has previously stated that another state’s constitution that makes the right of trial by jury “inviolable” is meaningfully distinct from West Virginia’s Constitution, which states that “the right of trial by jury, if required by either party, shall be preserved.” See Ark. Const. art. 2, § 7; W. Va. Const. art. 3, § 13; see also *MacDonald v. City Hosp. Inc.*, 715 S.E.2d 405, 415 (W. Va. 2011) (discussing Ga. Const. art. 1, § 1, ¶ XI). In fact, the Supreme Court of Appeals of West Virginia has concluded that cases in other states dealing with a constitution making the right inviolable are not persuasive when analyzing West Virginia’s constitutional language. See *MacDonald*, 715 S.E.2d at 415.

54. Third, *Craven* came to its constitutional conclusion partly based on an allegedly “similar case from Minnesota,” but that “similar case” is dissimilar because its outcome was not based on constitutional principles and the workers’ compensation proceeding in Minnesota did not provide a full and fair opportunity to be heard for the purposes of collateral estoppel. *Craven*, 206 S.W.3d at 846.
55. Fourth, Arkansas had to amend its constitution before enacting workers’ compensation laws—yet West Virginia did not—widening the analytical divide between this case and *Craven*. See *Craven*, 206 S.W.3d at 847.
56. Although Plaintiffs purport that Matrix seeks to avail itself of the statutory immunity provided to employers under workers’ compensation law, this Court disagrees with that characterization.
57. Matrix has not requested dismissal under workers’ compensation immunity; instead, it has requested dismissal based on the well-established doctrine of collateral estoppel.
58. While the Supreme Court of Appeals of West Virginia has not applied the collateral estoppel doctrine in the circumstances presented here—that is, a case involving third-party, non-employer defendants—this Court is persuaded to join other courts that have had that opportunity and found the doctrine applicable. See, e.g., *Frederick v. Action Tire Co.*, 744 A.2d 762, 767 (Pa. Super. Ct. 1999) (noting that state’s “appellate courts have consistently held findings in workers’ compensation cases may bar relitigation of identical issues in

collateral civil actions, even third party tort actions” and holding that workers’ compensation decision that employee did not sustain injuries in a car crash precluded subsequent tort action against company and driver); *see also, e.g., Lennon v. 56th & Park (NY) Owner LLC*, 199 A.D.3d 64 (N.Y., App. Div. 2021) (workers’ compensation decision that construction worker was not injured by workplace accident precluded personal injury action against third-parties including property owner, construction managers, and contractor); *Young v. Gorski*, 2004 WL 540944 (Ohio Ct. App. Mar. 19, 2004) (workers’ compensation finding that school bus driver was not injured in rear-end collision barred subsequent tort claim against third-party motorist).

59. Lastly, although Plaintiffs contend that judicial notice does not allow this Court to give preclusive effect to the finding that Ruble’s injuries were not caused by chemical exposure in his workplace, those contentions are without merit.
60. Specifically, Plaintiffs have argued that “it is clear that any judicial notice of the underlying workers’ compensation orders cannot be for the truth of the matter set forth therein, i.e., to establish a lack of causation.” Resp. 14.
61. This Court can take notice of the decision of the Office of Judges and the order of the Board of Review for the purposes of determining that those administrative bodies decided that Ruble’s injuries were not caused by chemical exposure in his workplace. *See Arnold Agency v. W. Va. Lottery Comm’n*, 526 S.E.2d 814, 827 (W. Va. 1999) (“It was certainly within the circuit

court's prerogative to use these records for the purpose of ascertaining that Bryan had, in fact, been convicted of mail fraud.”).

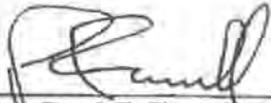
62. Whether those administrative bodies were unquestionably correct does not matter for purposes of collateral estoppel; the question is whether they decided the issue of causation, and they did.
63. At the close of argument on Matrix's Motion to Dismiss, Plaintiffs noted their objection to this Court's determination that the Motion should be granted; their objection is noted and overruled.

* * *

For the reasons detailed above, this Court **GRANTS** Matrix's Motion to Dismiss and **OVERRULES** Plaintiffs' objections. This Court further applies those reasons to the remaining moving and non-moving defendants. Accordingly, Plaintiffs' complaint is **DISMISSED WITH PREJUDICE** in its entirety. Because this resolves the case, this Court finds that Matrix's Motion to Amend Pleading to Bring Third-Party Claims is moot, and no decision is rendered on that Motion to Amend.

This Court further **ORDERS** that the Clerk shall remove this case from the docket and serve a certified copy of this order on all counsel of record.

Entered this 5 day of Apr, 2022.

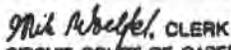


Judge Paul T. Farrell

Prepared By:
James J.A. Mulhall (No. 6491)
Dallas F. Kratzer III (No. 12350)
Counsel for Matrix Chemical LLC

STATE OF WEST VIRGINIA
COUNTY OF CABELL

I, MICHAEL J. WOELFEL, CLERK OF THE CIRCUIT
COURT FOR THE COUNTY AND STATE AFORESAID
DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON _____
GIVEN UNDER MY HAND AND SEAL OF SAID COURT
THIS _____

 CLERK, 
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA