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APPLICATION OF SUBSTANTIAL EVIDENCE RULE TO ADMINISTRATIVE FINDINGS

The Court's function in reviewing a determination of an administrative agency is not one of weighing the evidence but of determining whether the result reached by the agency is supported by some substantial evidence.<sup>70</sup>

The Court of Appeals had occasion to consider the applicability of the "substantial evidence rule" in the recent case of *Miller v. National Cabinet Co.*<sup>71</sup> Proceedings were brought by the widow of Jacob Miller against the employer of the deceased and his insurance carriers. Miller had worked as a piano or cabinet finisher for a period of approximately twenty-five years. During that period of time he had been employed by four firms prior to his employment with National Cabinet Company. Miller died in 1950 from chronic monocytic leukemia. The claimant alleged that the blood disease which brought about the death of her husband was caused by his exposure to a chemical, known by its trade name as benzol, while in the employ of the National Cabinet Company. The Referee who conducted the workmen's compensation proceeding disallowed the claim, finding that plaintiff had not established that exposure to benzol caused the death of Miller. The Workmen's Compensation Board reversed the Referee, finding in substance that deceased's death was caused by his exposure to the chemical. This determination was affirmed by the Appellate Division.<sup>72</sup> The Court of Appeals reversed the determination of the Board, holding that the evidence was insufficient to establish that exposure to benzol was the cause of leukemia.

The question in issue was whether substantial evidence was presented to support the causal relationship of the deceased's death to the exposure to benzol. The majority answering in the negative, based its conclusion on several premises. The first of these, summarily stated by the majority, was that the Board based its decision on the invalid assumption that causality if shown, was established against any one of the employers unless that employer proved that the disease was contracted elsewhere. Secondly, the Court reasoned that since the causes of leukemia are unknown, there was a serious defect in claimant's case. Four doctors were called as expert witnesses to express their opinions as to the connection, if any, between exposure to benzol and leukemia. If the Board's determination was to be affirmed, the opinion of only one of the doctors called would have to form the basis for the affirmance. This witness had no personal contact with the deceased but was called by claimant to answer certain hypothetical questions. The substance of the testimony elicited from the doctor was that it was possible that leukemia could result from the alleged exposure to benzol. The doctor testified that the incidence of leukemia was "quite high" in patients exposed to benzol but he could give no statistical

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70. *New Rochelle Water Co. v. Maltbie*, 248 App. Div. 66, 289 N.Y. Supp. 388 (3d Dep't 1936).

71. 8 N.Y.2d 277, 204 N.Y.S.2d 129 (1960).

72. 8 A.D.2d 281, 188 N.Y.S.2d 29 (3d Dep't 1959).

data to verify his position. In addressing itself to this testimony the Court stated that "there must be some evidence of a basis for the opinion, and the acceptance in one case of 'possible' as meaning reasonable medical certainty does not justify treating every possibility as though it were enough to establish the facts sought to be proved."<sup>73</sup> The Court pointed out that to accept such a standard would overturn the rule established in *Stubbs v. City of Rochester*,<sup>74</sup> that the burden to prove causation is on the party asserting that a disease is based on actionable facts. The Court did not say that the mere use of such words as "could produce" or "it is possible" in and of themselves destroy probative force of testimony. However, the opinion evidence was not found "fortified by detailed explanation and other facts in the record which add to its reasonableness and correctness."<sup>75</sup>

It is established that a finding is supported by the evidence only when the evidence is so substantial that from it an inference of the existence of the fact may be reasonably found.<sup>76</sup> Mere proof of possibility, or even a preponderance of possibilities or a majority of chance, never can suffice alone to establish a proposition of fact.<sup>77</sup> It is only when there is no substantial evidence of a competent, probative force to sustain an administrative conclusion, that a court is warranted in setting aside the determination.<sup>78</sup>

TEST USED, EVEN THOUGH NOT THAT PRESCRIBED BY REGULATION, ADMISSIBLE IN EVIDENCE TO SHOW GUILT

The defendant in the case of *People v. Prince Jagendorff Greene Inc.*<sup>79</sup> was charged with violating the Rules and Regulations of the Department of Air Pollution Control adopted pursuant to Chapter 47 of the Administrative Code of the City of New York. The rules prohibited the sale or transportation of any solid fuel with a volatile content in excess of 24% on an ash-and-moisture-free basis for hand-firing equipment.<sup>80</sup>

Volatile matter was defined by the Department as "The gaseous constituent of fuels as determined by standards of the American Society for Testing Materials".<sup>81</sup> The American Society for Testing Materials procedure under this standard of testing provided for the taking of a gross sample of not less than 90 pounds, consisting of a minimum of nine increments, each increment weighing not less than 10 pounds.<sup>82</sup>

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73. *Supra* note 71 at 284, 204 N.Y.S.2d 134 (1960).

74. 226 N.Y. 516, 124 N.E. 137 (1919).

75. *Zaepfel v. Du Pont de Nemours & Co.*, 284 App. Div. 693, 696, 134 N.Y.S.2d 377, 380 (3d Dep't 1954).

76. *Holland v. Edwards*, 307 N.Y. 38, 119 N.E.2d 581 (1954).

77. *Erin Wine and Liquor Store v. O'Connell*, 307 N.Y. 768, 112 N.E.2d 612 (1954).

78. *Reynolds v. Triborough Bridge and Tunnel Authority*, 276 App. Div. 388, 94 N.Y.S.2d 841 (1st Dep't 1950).

79. 7 N.Y.2d 42, 194 N.Y.S.2d 498 (1959).

80. Rules of Department of Air Pollution Control, 14.3, 14.3.2, 14.4.

81. Rules and Regulations of the Department of Air Pollution Control, § 0.

82. American Society for Testing Material, designation D 980-53.