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SLIP OPINION NO. 2018-OHIO-474

SCHWARTZ, EXR., APPELLEE, ET AL. *v.* HONEYWELL INTERNATIONAL, INC., APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Schwartz v. Honeywell Internatl., Inc.*, Slip Opinion No. 2018-Ohio-474.]

Evidence—Asbestos claims—R.C. 2307.96—A theory of causation based only on a plaintiff's cumulative exposure to various asbestos-containing products is insufficient to demonstrate that exposure to asbestos from a particular defendant's product was substantial factor in causing plaintiff's asbestos-related disease—Trial court erred in denying manufacturer's motion for directed verdict—Court of appeals' judgment reversed.

(No. 2016-1372—Submitted October 17, 2017—Decided January 24, 2018.*)

APPEAL from the Court of Appeals for Cuyahoga County,
No. 103377, 2016-Ohio-3175.

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*Reporter's Note: This cause was decided on January 24, 2018, but was released to the public on

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DEWINE, J.

{¶ 1} To recover on a claim for asbestos-related injuries, a plaintiff must show that exposure to a particular defendant's product was a "substantial factor" in causing her asbestos-related injuries. The primary question here is whether the "substantial factor" requirement may be met through a "cumulative-exposure theory," which postulates that every non-minimal exposure to asbestos is a substantial factor in causing mesothelioma. We conclude that the cumulative-exposure theory is inconsistent with the test for causation set forth in R.C. 2307.96 and therefore not a sufficient basis for finding that a defendant's conduct was a substantial factor in causing an asbestos-related disease.

{¶ 2} The court of appeals held otherwise, so we reverse its judgment. And because the evidence presented in this case was not sufficient to show that exposure to asbestos from the manufacturer's product was a substantial factor in the causing the injury, we enter judgment for the manufacturer.

I. Background

{¶ 3} Kathleen Schwartz died from mesothelioma, a disease almost always caused by breathing asbestos fibers. Kathleen's exposure to asbestos came largely through her father, who worked as an electrician. Growing up in the family home, Kathleen was exposed to asbestos fibers from her father's work clothes, which she often helped launder. In addition, on occasion during that period, her father installed new brakes in the family cars. The brakes, which contained asbestos, were manufactured by Bendix Corporation.

{¶ 4} Following Kathleen's death, Mark Schwartz ("Schwartz"), Kathleen's husband, filed a lawsuit against a number of defendants. Eventually, the case proceeded to trial against only one—Honeywell International, Inc., the successor-in-interest to Bendix. To succeed on his claim against Honeywell, Schwartz had to show that Kathleen had been exposed to asbestos from the brakes and that that exposure was a substantial factor in her contracting mesothelioma.

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R.C. 2307.96. The issue at trial was—and here on appeal is—whether Kathleen's exposure to asbestos from Bendix brake products was a substantial factor in causing her mesothelioma.

{¶ 5} During the jury trial, Schwartz presented testimony from Kathleen's father and mother about how Kathleen may have been exposed to asbestos dust from her father's brake work and from his occupation as an electrician. Kathleen's exposure to asbestos from Bendix products was through her father's changing of the brakes in the family cars—something that occurred five to ten times in the garage of the family home during the 18 years Kathleen lived there. Kathleen and her siblings used the garage to access the backyard, where they would play. Her father testified that the dust from changing the brakes would remain on his clothes and that he would play with the children afterwards without changing those clothes. Kathleen's mother described how Kathleen would help do the family's laundry, which may have included the clothes her father had worn while changing brakes. But there was no specific evidence presented that Kathleen helped wash those clothes.

{¶ 6} Kathleen was also exposed to asbestos from other manufacturers' products by virtue of her father's full-time employment as an electrician. Her father testified that he was regularly exposed to "clouds of asbestos dust" while at work. He worked with products containing asbestos almost every work day. He would drive the family car home from work, pick up Kathleen from school, and play with his children without changing his clothes. And Kathleen's mother stated in her affidavit that Kathleen helped wash her father's work clothes.

{¶ 7} Dr. Carlos Bedrossian, a pathologist, testified as Schwartz's expert on causation. According to Dr. Bedrossian, there is no known threshold of asbestos exposure "at which mesothelioma will not occur." He opined that Kathleen's exposures to Bendix brakes and to asbestos dust brought home from her father's electrician job were both contributing factors to her "total cumulative dose" of

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asbestos exposure. He explained that the exposures that contributed to this cumulative exposure were "significant meaning above background" and did not include "the elusive background level of asbestos" in ambient air. Thus, according to Dr. Bedrossian, Kathleen's "cumulative" exposure, including her exposure to asbestos from the Bendix brakes, "was the cause of her mesothelioma."

{¶ 8} At the conclusion of Schwartz's case and again at the close of the evidence, Honeywell moved for a directed verdict, arguing that Schwartz had failed to demonstrate that Kathleen's exposure to asbestos from Bendix brakes was a substantial factor in causing her disease. The trial court denied Honeywell's motion on both occasions. The jury ultimately found that Honeywell was 5 percent responsible for Kathleen's injuries, and the court entered judgment against Honeywell in the amount of $1,011,639.92.

{¶ 9} Honeywell appealed, again arguing that Schwartz had presented insufficient evidence that Kathleen's exposure to asbestos from the Bendix brakes was a substantial factor in causing her mesothelioma. The Eighth District Court of Appeals noted the expert testimony that Kathleen's "cumulative" exposure "was the cause of her mesothelioma" and found the expert testimony to be "based on reliable scientific evidence." 2016-Ohio-3175, 66 N.E.3d 118, ¶ 48. Considering the expert testimony and the other evidence introduced, the court concluded that reasonable minds could have found in favor of Schwartz on the issue of causation and affirmed the trial court's denial of Honeywell's motion for a directed verdict.

{¶ 10} We accepted Honeywell's discretionary appeal on the following proposition of law: "A theory of causation based only upon cumulative exposure to various asbestos-containing products is insufficient to demonstrate that a particular defendant's product was a 'substantial factor' under R.C. 2307.96." *See* 148 Ohio St.3d 1442, 2017-Ohio-1427, 72 N.E.3d 656.

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II. Causation and R.C. 2307.96

{¶ 11} The crux of Honeywell's argument is that Schwartz's evidence showing that Kathleen's exposure to asbestos from Bendix brakes contributed to her cumulative exposure to asbestos did not satisfy the substantial-factor causation requirement set forth in R.C. 2307.96. To understand the statutory causation requirements for asbestos-exposure claims, some background on the statute is helpful.

{¶ 12} Before enactment of R.C. 2307.96, *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 (1995), governed multi-defendant asbestos claims. In *Horton*, the court held that a plaintiff alleging asbestos exposure had to show that she was exposed to asbestos from each defendant's product and that exposure to asbestos from each defendant's product was a "substantial factor" in causing the plaintiff's injury. *Id.* at paragraph one of the syllabus. The *Horton* court also considered whether Ohio should adopt the standard for substantial causation developed in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162-1163 (4th Cir.1986). Under the *Lohrmann* test, to survive summary judgment a plaintiff must present evidence "of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Id.* This manner-frequency-proximity test had been "embraced in practically every other jurisdiction which ha[d] reviewed asbestos cases." *Horton* at 691 (Wright, J., concurring in part and dissenting in part). Nonetheless, the court rejected *Lohrmann*'s manner-frequency-proximity test, concluding that it "casts judges in an inappropriate role," is "overly burdensome" for plaintiffs, and is "unnecessary." *Id.* at 683.

{¶ 13} The legislature ultimately disagreed and nine years after *Horton*, stepped in to adopt the *Lohrmann* test and "establish specific factors" to be considered in determining whether exposure to asbestos from a particular defendant's product was a substantial factor in causing a plaintiff's asbestos-related

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