

SUPREME COURT OF TEXAS

Union Carbide Corporation v. Daisy E. Synatzske and Grace Annette Webb, Individually and as Representatives and Co-Executrixes of the Estate of Joseph Emmite, Sr., Joseph Emmite, Jr., Dorothy A. Day, Vera J. Gialmalva and James R. Emmite

438 S.W.3d 39 (Tex. 2014) · No. No. 12-0617 · Decided July 3, 2014

SUMMARY

Justice Lehrmann dissents from the Texas Supreme Court’s decision concerning whether Texas Civil Practice and Remedies Code Chapter 90 requires asbestos plaintiffs to produce pulmonary function testing. The dissent argues that applying the requirement to the Emmites’ wrongful-death claims would violate the Texas Constitution’s prohibition on retroactive laws because the claims accrued before the statute took effect and the required testing was medically impossible. The dissent would affirm the court of appeals’ holding that Chapter 90 was unconstitutional as applied.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Debra H. Lehrmann
JURISDICTION	Texas
DECIDED	July 3, 2014
DOCKET	No. 12-0617
DISPOSITION	affirmed
PROCEDURAL POSTURE	Union Carbide Corporation filed an interlocutory appeal from an MDL pretrial court's denial of its motion to dismiss asbestos-related wrongful-death claims for failure to satisfy Chapter 90's pulmonary-function-testing requirement. The court of appeals, sitting en banc, held that Chapter 90 was unconstitutionally retroactive as applied. Justice Lehrmann dissented from the Supreme Court of Texas's contrary disposition and would have affirmed the court of appeals.
STANDARD OF REVIEW	Constitutional review of the retroactive application of a statute; the opinion applies the three-factor retroactivity test from Robinson v. Crown Cork & Seal Co.

PRECEDENTIAL VALUE	Dissenting opinion; nonprecedential as a statement of the court's holding
PARTIES	Union Carbide Corporation v. Daisy E. Synatzske, Grace Annette Webb, Estate of Joseph Emmite, Sr., Joseph Emmite, Jr., Dorothy A. Day, Vera J. Gialmalva, James R. Emmite

TOPICS

constitutional law wrongful death statutory interpretation civil procedure

PRACTICE AREAS

Asbestos litigation constitutional law wrongful death civil procedure

QUESTIONS PRESENTED

1. Whether applying Chapter 90 of the Texas Civil Practice and Remedies Code to the Emmites' asbestos-related wrongful-death claims violated the Texas Constitution's prohibition on retroactive laws.
2. Whether the retroactive application of Chapter 90 substantially impaired the Emmites' accrued right to recover by requiring pulmonary function testing that Joseph Emmite was medically incapable of undergoing.

HOLDINGS

1. Justice Lehrmann would hold that applying Chapter 90 to the Emmites' claims was unconstitutionally retroactive under article I, section 16 of the Texas Constitution.
2. Justice Lehrmann would hold that the existence of a two-and-a-half-month period between Emmite's death and Chapter 90's effective date did not prevent unconstitutional impairment of the claims.

KEY QUOTATIONS

“There must be a compelling public interest to overcome the heavy presumption against retroactive laws.” (at 40)

“We do not consider retroactivity in a vacuum. Instead, we consider the application of a particular law to the facts of a particular case, and then determine whether the law, as applied, is unconstitutional.” (at 43)

“In my view, it is not reasonable to expect the Emmites, particularly when they were mourning the loss of a family member, to have known that they would be required to investigate and file a lawsuit in only two-and-a-half months’ time.” (at 46)

“A plaintiff should not be prevented from recovering for an injury caused by exposure to asbestos because that exposure has made him too sick to complete a pulmonary function test.” (at 47)

FACTUAL BACKGROUND

Joseph Emmite worked for decades as an insulator at Union Carbide and was diagnosed with pulmonary asbestosis in May 2005. Because of his failing health and inability to support his own weight, his physician stated that pulmonary function testing would have been difficult or prohibitive. Emmite died on June 15, 2005, before Chapter 90 became effective, and the MDL court found that he was incapable of taking the test but would have shown sufficient pulmonary impairment if he had been capable.

PROCEDURAL HISTORY

Joseph Emmite's family filed suit against Union Carbide approximately two years after his death. Union Carbide moved to dismiss based primarily on the absence of pulmonary function testing. After factual findings that Emmite was physically and mentally incapable of undergoing the test and would have demonstrated sufficient impairment had he been capable, the MDL court denied the motion. The en banc court of appeals held Chapter 90 unconstitutional as applied, and Justice Lehrmann would have affirmed that judgment.

DISPOSITION

affirmed

CASES CITED

- Robinson v. Crown Cork & Seal Co., 335 S.W.3d 126 (Tex. 2010)
- Landgraf v. USI Film Products, 511 U.S. 244 (1994)
- Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827 (1990)
- Borg-Warner Corp. v. Flores, 232 S.W.3d 765 (Tex. 2007)