

SUPREME COURT OF VIRGINIA

Ford Motor Co. v. Boomer; Honeywell International, Inc. v. Boomer,
285 Va. 141

736 S.E.2d 724 (2013) · No. Record Nos. 120283, 120299 · Decided January 10, 2013

SUMMARY

The Supreme Court of Virginia considered paired appeals arising from a mesothelioma wrongful-death verdict against Ford Motor Company and Honeywell International, the successor to Bendix. The court rejected the use of an undefined “substantial contributing factor” standard and held that, in multiple-exposure mesothelioma cases, causation should be analyzed under a multiple-sufficient-causes approach. It reversed and remanded for further proceedings and declined to reach the sufficiency-of-the-evidence and expert-testimony issues under the revised causation standard.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Leroy F. Millette, Jr.; Kinser, C.J.; Lemons, J.; Millette, J.; Mims, J.; McClanahan, J.; Powell, J.; Koontz, S.J.
JURISDICTION	Virginia
DECIDED	January 10, 2013
DOCKET	Record Nos. 120283, 120299
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ford Motor Company and Honeywell International, Inc., as successor-in-interest to Bendix, appealed final judgments entered after a jury found for the administrator of James D. Lokey's estate in a wrongful-death asbestos case.
STANDARD OF REVIEW	The accuracy of jury instructions stating the applicable law is reviewed de novo. The court separately considered whether the evidence was sufficient to support proximate cause and the failure-to-warn claim.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion; precedential
PARTIES	Ford Motor Company, Honeywell International, Inc. v. Walter E. Boomer, Administrator

TOPICS

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products liability

proximate cause

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QUESTIONS PRESENTED

1. Whether the circuit court improperly instructed the jury to determine whether defendants' negligence was a "substantial contributing factor" in causing mesothelioma.
2. What causation standard applies in a multiple-exposure mesothelioma case under Virginia law.
3. Whether the evidence was sufficient to establish proximate cause despite evidence of a potentially more likely alternative asbestos exposure.
4. Whether the circuit court erred in admitting or permitting the estate's expert causation testimony.
5. Whether the evidence was sufficient to support a finding that defendants' failure to warn was a proximate cause of Lokey's injury despite the absence of direct testimony that Lokey would have heeded an adequate warning.

HOLDINGS

1. Virginia law does not permit the undefined "substantial contributing factor" standard used in the jury instructions. In a concurring-causation mesothelioma case, the plaintiff must prove that exposure attributable to each defendant was, more likely than not, sufficient by itself to have caused the mesothelioma, and that the exposure occurred before the cancer developed.
2. The court declined to decide whether the trial evidence was sufficient to establish that Ford's or Bendix's products proximately caused Lokey's mesothelioma because the case had been tried under an incorrect causation standard.
3. The court declined to reach the assignments of error concerning the admissibility and foundation of the expert testimony because the experts' opinions were tied to the impermissible substantial-contributing-factor theory and would have to be reconsidered under the proper causation standard.
4. The evidence was sufficient for a jury to find that defendants' failure to warn was a proximate cause of Lokey's injury, even though Virginia does not recognize a heeding presumption and Lokey did not testify directly that he would have followed an adequate warning.

KEY QUOTATIONS

"The standard that, in this case, exposure to the defendant's product alone must have been sufficient to have caused the harm is both an accurate articulation of our concurring cause law and perfectly plain to the average juror." (at 16)

"We find that in concurring causation cases, the "sufficient"-to-have-caused standard as elaborated above is the proper way to define the cause-in-fact element of proximate cause." (at 19)

"We have previously stated that "an insufficient warning is in legal effect no warning."" (at 25)

FACTUAL BACKGROUND

James D. Lokey, a Virginia State Trooper, observed vehicle inspections from approximately 1965 or 1966 for seven and a half to eight years, often standing near mechanics who used compressed air to blow brake dust from brake linings. He recalled breathing visible dust, lacked respiratory protection or warnings, and was present during inspections of Ford vehicles and at Oldsmobile dealerships. Lokey later developed mesothelioma and died from complications in 2007; competing expert testimony addressed whether chrysotile asbestos from brake products or amosite asbestos associated with earlier shipyard work caused the disease.

PROCEDURAL HISTORY

A jury found in favor of Lokey's estate on negligence and awarded \$282,685.69. The Circuit Court of Albemarle County denied defendants' motions to strike the expert testimony and motions to set aside the verdict or for a new trial, then entered final judgment for the estate. The defendants timely appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must conduct further proceedings under the multiple-sufficient-causes analysis. It must evaluate whether each defendant's alleged asbestos exposure occurred before Lokey's cancer developed and was more likely than not sufficient to cause mesothelioma, and must reconsider the expert opinions under that causation standard.

CASES CITED

- Hawthorne v. VanMarter, 279 Va. 566, 586, 692 S.E.2d 226, 238 (2010)
- Wells v. Whitaker, 207 Va. 616, 622, 151 S.E.2d 422, 428 (1966)
- Carolina, Clinchfield & Ohio Railway Co. v. Hill, 119 Va. 416, 421, 89 S.E. 902, 904 (1916)
- Locke v. Johns-Manville Corp., 221 Va. 951, 957-58, 275 S.E.2d 900, 905 (1981)
- Owens-Corning Fiberglas Corp. v. Watson, 243 Va. 128, 143-44, 413 S.E.2d 630, 639 (1992)
- Schools v. Walker, 187 Va. 619, 629-30, 47 S.E.2d 418, 423 (1948)
- Dickenson v. Tabb, 208 Va. 184, 193, 156 S.E.2d 795, 802 (1967)
- Hoar v. Great Eastern Resort Management, Inc., 256 Va. 374, 388, 506 S.E.2d 777, 786 (1998)
- McClanahan v. California Spray-Chemical Corp., 194 Va. 842, 852-54, 75 S.E.2d 712, 718-19 (1953)
- Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162-63 (4th Cir. 1986)
- Rutherford v. Owens-Illinois, Inc., 941 P.2d 1203, 1219 (Cal. 1997)
- Borg-Warner Corp. v. Flores, 232 S.W.3d 765, 773-74 (Tex. 2007)

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