

SUPREME COURT OF OHIO

Horton v. Harwick Chemical Corp.

73 Ohio St. 3d 679 (Ohio 1995) · Decided September 13, 1995

SUMMARY

The Ohio Supreme Court declined to adopt the Lohrmann test for determining causation in asbestos cases at the summary-judgment stage. It held that ordinary summary-judgment standards apply, while rejecting alternative liability because the defendants' asbestos products did not create substantially similar risks of harm.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Wright, J.; Cook, J.
JURISDICTION	Ohio
DECIDED	September 13, 1995
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs in asbestos-exposure cases sought review of appellate decisions addressing summary judgment on causation and the possible application of alternative liability. The Supreme Court of Ohio reversed the court of appeals and remanded the causes to the trial court.
STANDARD OF REVIEW	Summary judgment is reviewed under the ordinary standard: it is proper when no genuine issue of material fact remains, the moving party is entitled to judgment as a matter of law, and reasonable minds, construing the evidence most strongly in favor of the nonmoving party, can reach only the moving party's conclusion.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; binding statewide precedent.
PARTIES	Horton v. Harwick Chemical Corp., A.W. Chesterton Company, John Crane, Inc., Pittsburgh Corning Corporation

TOPICS

- products liability
- summary judgment
- negligence
- civil procedure
- evidence

PRACTICE AREAS

Torts

Products Liability

Civil Procedure

Evidence

QUESTIONS PRESENTED

1. Whether Ohio courts should adopt the Lohrmann frequency, regularity, and proximity test as the summary-judgment standard for causation in asbestos cases.
2. Whether a plaintiff in an asbestos case must prove regular, extended exposure to a particular product in close proximity to the plaintiff's workplace to establish that the product was a substantial factor in causing injury.
3. Whether alternative liability applies when defendants' asbestos-containing products did not create substantially similar risks of harm.

HOLDINGS

1. Ohio courts must not apply the Lohrmann frequency, regularity, and proximity test as a formulaic summary-judgment standard in asbestos cases.
2. For each defendant, the plaintiff must prove exposure to the defendant's product and that the product was a substantial factor in causing the injury, but need not prove regular, extended, close-proximity exposure under the Lohrmann formula.
3. Alternative liability does not apply where the defendants' products did not create substantially similar risks of harm.

KEY QUOTATIONS

“For each defendant in a multidefendant asbestos case, the plaintiff has the burden of proving exposure to the defendant’s product and that the product was a substantial factor in causing the plaintiff’s injury.” (686-687)

“A plaintiff need not prove that he was exposed to a specific product on a regular basis over some extended period of time in close proximity to where the plaintiff actually worked in order to prove that the product was a substantial factor in causing his injury.” (687)

“Summary judgment is proper in an asbestos case in the same circumstances as in any other case” (687)

“Alternative liability cannot apply if the defendants’ products do not create a substantially similar risk of harm.” (688)

FACTUAL BACKGROUND

The cases involved alleged exposure to asbestos-containing products used at the DTR facility and resulting asbestos-related disease. Plaintiffs offered evidence, including an affidavit from Dr. Kenneth S. Cohen, that asbestos fibers could travel through the plant by air movement, vibration, and re-entrainment, exposing workers who were not in close proximity to a particular product. The record did not establish that the various defendants' products created substantially similar risks of harm because the products involved different asbestos fibers, quantities, and uses.

PROCEDURAL HISTORY

The plaintiffs' asbestos claims proceeded through the trial courts and courts of appeals. The court of appeals applied or endorsed a restrictive causation approach associated with the Lohrmann test and agreed that alternative liability did not apply. The Supreme Court of Ohio rejected the Lohrmann test for Ohio summary-judgment analysis, agreed that alternative liability was unavailable on the record, and remanded for proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The causes were remanded to the trial court for a determination consistent with the opinion, applying the ordinary summary-judgment standard and not the Lohrmann test.

CASES CITED

- Pang v. Minch (1990), 53 Ohio St. 3d 186, 559 N.E.2d 1313
- Goldman v. Johns-Manville Sales Corp. (1987), 33 Ohio St. 3d 40, 514 N.E.2d 691
- Davis v. Loopco Industries, Inc. (1993), 66 Ohio St. 3d 64, 609 N.E.2d 144
- Schultz v. Keene Corp. (N.D. Ill. 1990), 729 F. Supp. 609
- Hardy v. Johns-Manville Sales Corp. (E.D. Tex. 1981), 509 F. Supp. 1353, 1355, rev'd on other grounds, 681 F.2d 334 (5th Cir. 1982)
- Zurich Ins. Co. v. Raymark Indus., Inc. (1987), 118 Ill. 2d 23, 37, 112 Ill. Dec. 684, 690, 514 N.E.2d 150, 156
- Robertson v. Allied Signal, Inc. (3d Cir. 1990), 914 F.2d 360
- Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156
- Summers v. Tice (1948), 33 Cal. 2d 80, 199 P.2d 1
- Minnich v. Ashland Oil Co. (1984), 15 Ohio St. 3d 396, 15 OBR 511, 473 N.E.2d 1199