

## SUPREME COURT OF KANSAS

### Kuxhausen v. Tillman Partners, L.P.

291 Kan. 314 (2010) · No. 98,442 · Decided October 15, 2010

#### SUMMARY

The Kansas Supreme Court affirmed summary judgment for Tillman Partners in a personal injury action arising from the plaintiff's alleged exposure to epoxy paint fumes. The court held that the plaintiff's expert causation opinion lacked a sufficient factual basis under K.S.A. 60-456(b), relying on speculation rather than evidence showing that the exposure more likely than not caused her ongoing symptoms. Because the causation testimony was inadmissible, the plaintiff could not establish an essential element of her claim.

#### CASE DETAILS

|                       |                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kansas                                                                                                    |
| WRITING FOR THE COURT | Rosen, J.                                                                                                                  |
| JURISDICTION          | Kansas                                                                                                                     |
| DECIDED               | October 15, 2010                                                                                                           |
| DOCKET                | 98,442                                                                                                                     |
| DISPOSITION           | affirmed                                                                                                                   |
| PROCEDURAL POSTURE    | On review from the Kansas Court of Appeals, which affirmed the district court's summary judgment in favor of the appellee. |
| STANDARD OF REVIEW    | De novo for summary judgment; abuse of discretion for the underlying evidentiary ruling on expert testimony.               |
| PRECEDENTIAL VALUE    | published                                                                                                                  |
| PARTIES               | Stacy Lee Kuxhausen v. Tillman Partners, L.P.                                                                              |

#### TOPICS

expert testimony summary judgment premises liability proximate cause personal injury

#### PRACTICE AREAS

Personal Injury Premises Liability Evidence

#### QUESTIONS PRESENTED

1. Whether the district court erred in concluding that Kuxhausen had no admissible expert testimony on causation, thereby dismissing her action.

## HOLDINGS

1. The district court did not abuse its discretion in excluding Dr. Kanarek's causation opinion because it was based on speculation and lacked a reasonable factual basis; therefore, summary judgment was appropriate.

## KEY QUOTATIONS

*“In support of her claim, Kuxhausen presented a medical doctor's testimony that she suffers from what that doctor and some others call multiple-chemical sensitivity. But most medical authorities say that multiple-chemical sensitivity is not a recognized diagnosis, and the district court ruled that the expert testimony Kuxhausen sought to present wasn't sufficiently reliable to be admitted in a Kansas court.” (78)*

*“In this case, Dr. Kanarek's opinion is ultimately based on nothing more than post hoc ergo propter hoc logic: the symptoms follow the exposure; therefore, they must be due to it. Such reasoning is nothing more than speculation.” (80)*

*“He provided no supporting basis for concluding that those substances did make Kuxhausen sick in this case. This evidence affords no reasonable basis for the conclusion that Kuxhausen's symptoms more likely than not resulted from the defendant's conduct. In other words, Dr. Kanarek's causation opinion is totally lacking in a factual basis.” (81)*

## FACTUAL BACKGROUND

Stacy Lee Kuxhausen reported for work at an accounting firm in Manhattan, Kansas, and smelled paint, becoming ill within minutes. She later learned that epoxy-based paints had been applied in the basement the previous Friday and Saturday. She returned twice more over the following days, spending about 8 hours total in the building. She sued the building owners, claiming ongoing sensitivity to a variety of chemicals due to paint-fume exposure, seeking approximately \$2.5 million in damages. Her primary expert, Dr. Henry Kanarek, diagnosed her with multiple-chemical sensitivity and concluded the exposure caused her condition, but he had no data on the level or mechanism of exposure, and his physical examination and other tests revealed no abnormalities.

## PROCEDURAL HISTORY

Kuxhausen filed a personal injury action against Tillman Partners, the building owners. The district court excluded expert testimony on causation and granted summary judgment for the defendant. The Court of Appeals affirmed in *Kuxhausen v. Tillman Partners*, 40 Kan. App. 2d 930, 197 P.3d 859 (2009). Kuxhausen sought review from the Kansas Supreme Court, which granted review and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Kuxhausen v. Tillman Partners, 40 Kan. App. 2d 930, 197 P.3d 859 (2009)
- State v. Papen, 274 Kan. 149, 50 P.3d 37 (2002)
- State v. Struzik, 269 Kan. 95, 5 P.3d 502 (2000)
- Peatie v. Wal-Mart Stores, Inc., 112 Conn. App. 8, 961 A.2d 1016 (2009)
- Central Natural Resources v. Davis Operating Co., 288 Kan. 234, 201 P.3d 680 (2009)
- Klose v. Wood Valley Racquet Club, Inc., 267 Kan. 164, 975 P.2d 1218 (1999)
- State v. Shadden, 290 Kan. 803, 235 P.3d 436 (2010)
- American Family Mut. Ins. Co. v. Grim, 201 Kan. 340, 440 P.2d 621 (1968)
- Deal v. Bowman, 286 Kan. 853, 188 P.3d 941 (2008)
- Yount v. Deibert, 282 Kan. 619, 147 P.3d 1065 (2006)
- Rhoten v. Dickson, 290 Kan. 92, 223 P.3d 786 (2010)
- Hale v. Brown, 287 Kan. 320, 197 P.3d 438 (2008)

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