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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2300-15T4

THOMASINA FOWLER, individually
and as administrator and
administrator ad prosequendum
of the estate of WILLIS EDENFIELD,

Plaintiff-Appellant,

v.

AKZO NOBEL CHEMICALS, INC., AS
SUCCESSOR TO IMPERIAL CHEMICAL
INDUSTRIES PLC AND NATIONAL STARCH
AND CHEMICAL CO.; CORN PRODUCTS
INTERNATIONAL INC., AS SUCCESSOR
TO NATIONAL STARCH AND CHEMICALS
CO.; HENKEL CORPORATION,
INDIVIDUALLY AND AS SUCCESSOR IN
INTEREST TO THE ADHESIVE AND
ELECTRONICS DIVISION OF NATIONAL
STANDARD CHEMICAL CO.; NATIONAL
STARCH, L.L.C., INDIVIDUALLY AND
AS SUCCESSOR TO NATIONAL STARCH
AND CHEMICAL CO.,

Defendants,

and

UNION CARBIDE CORPORATION,

Defendant-Respondent.

Argued March 23, 2017 – Decided May 17, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Docket No. L-
4820-11.

Robert E. Lytle argued the cause for appellant
(Szaferman, Lakind, Blumstein & Blader, P.C.,
and Levy Konigsberg, L.L.P., attorneys; Mr.
Lytle and Jeffrey P. Blumstein, on the
briefs).

Richard D. Picini argued the cause for
respondent (Caruso Smith Picini, attorneys;
Mr. Picini, on the brief).

PER CURIAM

In October 2010, decedent Willis Edenfield, received a diagnosis of mesothelioma as a result of workplace exposure to asbestos and succumbed to his illness three months later. Following his death, plaintiff, decedent's widow, brought a wrongful death and product liability action against defendant Union Carbide Corporation (UCC) and other parties on behalf of the decedent's estate. The lawsuit was filed after decedent died, and he was never deposed. Plaintiff appeals from the trial court's December 23, 2015 order granting summary judgment to UCC. Because we are satisfied plaintiff presented sufficient evidence that a reasonable jury could infer decedent suffered asbestos exposure from defendant's products, we reverse.

Decedent worked at a chemical plant in Bloomfield from 1954 to 1994, which manufactured asbestos-containing adhesive products. UCC supplied Calidria asbestos to this facility from 1970 to 1982. From 1970 to 1971, UCC delivered at least 1550 pounds of a specific type of asbestos to the Bloomfield facility, and from 1971 to 1982, UCC delivered 36,823 pounds of another type of asbestos to the location.

During discovery, two of the decedent's former coworkers, Lucius Boyd and Rodney Dover, testified regarding decedent's job and the conditions at the facility. The facility contained a six-building compound. Asbestos-containing products were manufactured there. Various companies, including UCC, supplied asbestos to the facility's receiving department, and the facility then stored the asbestos in the warehouse. Decedent retrieved powdered materials, including asbestos, by scooping it out and placing it in bags before taking the material to work locations. Decedent worked in the mill room connected to the asbestos warehouse.

Dover testified he saw two types of asbestos in the facility. He remembered seeing bags with "John Mansville" on them that also said "asbestos." Dover did not remember the other asbestos providers. However, he recalled UCC provided materials to the company. Dover observed decedent using asbestos in the mill room and knew decedent was using asbestos. Dover stated "some of the

products we milled had asbestos in them," and "at that point [Dover] knew what asbestos was." In the mill room, decedent scooped, weighed, and mixed the necessary ingredients, including asbestos. The air of the mill room contained visible dust, and the decedent wore a mask while he worked for this reason.

Boyd worked at the facility from 1956-1964, outside the time UCC provided the facility with asbestos. Boyd testified decedent worked in the powder room with him during the period they both worked there. Boyd testified he "assume[d]" the company used asbestos when he worked there. He recalled seeing packaging that said "asbestos" on more than one occasion but did not recall where.

Following the completion of discovery, UCC moved for summary judgment, which the trial court granted, finding insufficient evidence the decedent was exposed to UCC's asbestos while working at the Bloomfield facility. This appeal followed.

On appeal, plaintiff argues the summary judgment order should be vacated because "the evidence is sufficient to create a genuine issue of material fact as to whether decedent . . . was exposed to respirable asbestos from [UCC]'s products." We agree.

In a products liability, failure-to-warn case, a plaintiff must prove (1) the product was defective; (2) the defect existed when the product left the defendant's control; and (3) the defect caused injury to a reasonably foreseeable user. James v. Bessemer

Processing Co., 155 N.J. 279, 296 (1998); Coffman v. Keene Corp., 133 N.J. 581, 593 (1993). In an asbestos failure-to-warn case, "a plaintiff must prove two types of causation: product-defect causation and medical causation." Becker v. Baron Bros., 138 N.J. 145, 152 (1994); Coffman, supra, 133 N.J. at 594; Hughes v. A.W. Chesterton Co., 435 N.J. Super. 326, 337 (App. Div.), certif. denied, 220 N.J. 41 (2014). Here the issue is medical causation.

"[M]edical causation means that exposure to the defendant's asbestos proximately caused the injury." Becker, supra, 138 N.J. at 152 (citing Coffman, supra, 133 N.J. at 581). To prove medical causation, a plaintiff must show the exposure to the defendant's asbestos products was a "substantial factor" in causing the injured party's disease. James, supra, 155 N.J. at 299 (citing Sholtis v. Am. Cyanamid Co., 238 N.J. Super. 8, 30-31 (App. Div. 1998)). We look to the "frequency, regularity, and proximity," as pronounced in Sholtis, supra, 238 N.J. Super. at 28-29, in order to determine whether the party's exposure to the defendant's asbestos-containing product was a "substantial factor" in causing the alleged injury. James, supra, 155 N.J. at 302-04; Hughes, supra, 435 N.J. Super. at 337-38; Provini v. Asbestospray Corp., 360 N.J. Super. 234, 239 (App. Div. 2003). The frequency, regularity, and proximity test "is not a rigid test with an absolute threshold level necessary to support a jury verdict."

James, supra, 155 N.J. at 302 (quoting Tragarz v. Keene Corp., 980 F.2d 411, 420 (7th Cir. 1992)). "[T]he phraseology should not supply 'catch words[,] ' [and] the underlying concept should not be lost." Sholtis, supra, 238 N.J. Super. at 29. However, "liability should not be imposed on mere guesswork," and the "[i]ndustry should not be saddled with . . . open-ended exposure based upon 'a casual or minimum contact.'" Hughes, supra, 435 N.J. Super. at 345.

Here, it was undisputed that from 1970 to 1971, UCC delivered at least 1550 pounds of a specific type of asbestos to the Bloomfield facility, and from 1971 to 1982, 36,823 pounds of another type of asbestos to the location. We recognize mere presence of products supplied by UCC at the location decedent worked does not provide sufficient "actual proof linking the exposures of [plaintiffs] to those products." Goss v. Am. Cyanamid Co., 278 N.J. Super. 227, 236 (App. Div. 1994). Plaintiff must "prove the source of that asbestos was the asbestos-containing product of a particular defendant." Kurak v. A.P. Green Refractories Co., 298 N.J. Super. 301, 311-12 (App. Div.), certif. denied, 152 N.J. 10 (1997).

However, the evidence also shows decedent regularly worked directly with the injury-producing element of asbestos, the contaminated friable dust, during that twelve-year period. See

Hughes, supra, 435 N.J. Super. at 345 ("We have required that plaintiffs present proof the injured party has had such exposure to specific products manufactured or sold by the defendant."). The testimony establishes decedent's contact with asbestos was frequent, regular, and proximate. The causation of injury by defendant's products can be proven through use of circumstantial evidence, as courts have recognized "proof of direct contact is almost always lacking" in these matters. Ibid. (citation omitted).

Here, the trial judge granted summary judgment, citing to Provini; however, unlike the plaintiff in Provini who could not provide evidence of the work the decedent performed, plaintiff here presented testimony specifically describing the job decedent performed at the Bloomfield facility. See Provini, supra, 360 N.J. Super. at 238. Also unlike Provini, who presented no evidence the decedent was actually exposed to asbestos, the testimony established decedent's work involved frequent, direct contact with asbestos. See Ibid. Plaintiff is not merely claiming asbestos was present within the building, but decedent frequently touched asbestos while performing his daily job duties.

Decedent suffered exposure that is more direct than in other cases upon which UCC relies. In Kurak, the plaintiffs suffered asbestos exposure from asbestos in the pipes where they worked. Kurak, supra, 298 N.J. Super. at 311. In Goss, the plaintiffs

spent at least thirty percent of their time working with asbestos insulation and sometimes worked with boilers containing asbestos insulation. Goss, supra, 278 N.J. Super. at 237. Here, the decedent regularly scooped, weighed, and mixed ingredients, including asbestos.

While UCC presented evidence other companies provided asbestos during this period and no witness could unequivocally link UCC's asbestos to decedent, plaintiff presented evidence UCC provided over 40,000 pounds of asbestos to the facility over a twelve-year period while the decedent worked handling asbestos. Thus, we are satisfied plaintiff has presented at least enough evidence to survive a motion for summary judgment. Based on the evidence presented, a reasonable jury could infer the decedent suffered from exposure to UCC's asbestos.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION