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**Gallagher Sharp Newsflash: Cumulative Exposure Theory Insufficient to Meet Plaintiff's Standard Of Proof in Asbestos Cases**

In its February 8, 2018 decision in *Schwartz v. Honeywell Internatl., Inc.*, Slip Opinion No. 2018-Ohio-474, the Supreme Court of Ohio held that the cumulative exposure theory is insufficient to satisfy a plaintiff's causation burden in asbestos cases.

In Ohio, a plaintiff is required to prove that a particular asbestos product was a "substantial factor" in causing the plaintiff's injury. The cumulative exposure theory is based on the premise that the plaintiff's cumulative dose of exposure to asbestos caused the injury, therefore, every non-minimal exposure that contributed to the cumulative dose is a substantial factor.

The Court found that this theory is at odds with a statutory scheme that requires an individualized finding of substantial causation for each defendant. A plaintiff must show that the manner, proximity, frequency and length of the exposure to a particular product was a substantial factor, not that it simply contributed to the cumulative dose. Interestingly, the Court not only looked at the manner, proximity, frequency and length of the plaintiff's exposure, but also looked at it in relation to her other exposures to determine whether the particular exposure at issue was a substantial factor in causing her disease. The ruling reversed a \$1 million Cuyahoga County jury verdict rendered against a brake manufacturer.

The Court offered no further definition of the term "substantial factor." The concurring opinion of Judge Fischer called upon the General Assembly to amend the statute to provide clearer direction to the lower courts.

The *Schwartz* decision will require plaintiff's experts to develop stronger evidence about the manner, proximity, frequency, and length of each alleged exposure and to provide evidence that each exposure was a substantial factor in causing a disease. Defendants may also have a strong basis to exclude or limit expert testimony that relies upon the cumulative exposure theory.

The full opinion can be found at: <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-474.pdf>.

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