

Substantial Cause Explored in Case of Multiple Exposures

October 3, 2011 by [Sean Wajert](#)

The Sixth Circuit issues and interesting opinion last week, exploring plaintiff's burden to prove that exposure to defendant's product caused his injury in the context in which plaintiff was exposed to numerous other similar products. See [Moeller v. Garlock Sealing Technologies LLC](#), No. 09-5670, (6th Cir., 9/28/11).

Plaintiff was a pipefitter who worked with asbestos-containing gaskets made by Garlock from about 1962 until about 1970. But from 1962 until about 1975, he also sustained significant exposure to asbestos insulation. He contracted mesothelioma and sued, alleging that his exposure to Garlock's asbestos-containing gaskets was a substantial factor in causing his injuries.

At trial, plaintiff's expert testified that exposure to asbestos from Garlock gaskets, along with his other exposures, contributed to the mesothelioma. And one of the treating oncologists opined that if plaintiff had worked for many years (as he did) scraping and grinding asbestos gaskets, and if plaintiff breathed those fibers, then that exposure would have caused his cancer. In rebuttal, Garlock presented evidence that plaintiff had sustained substantial exposure to asbestos insulation products for 13 years. It also presented evidence that whereas asbestos insulation was banned in the 1970s, leading asbestos safety authorities believed that gaskets, such as those sold by Garlock, posed "no health hazard," and were sold lawfully in the United States. Garlock also suggested that the plaintiff had only installed Garlock gaskets (an activity that both parties agree did not create a risk of injury), and had not ever removed them (the activity that the plaintiff alleges caused the injuries).

The jury returned a verdict for plaintiff, and defendant appealed.

To prevail on a negligence claim, Kentucky law requires a plaintiff to prove that a defendant's conduct was a substantial factor in bringing about the harm. *Deutsch v. Shein*, 597 S.W.2d 141, 144 (Ky. 1980). Causation requires a link between the specific defendant's conduct and the plaintiff's injuries. See *Estes v. Gibson*, 257 S.W.2d 604, 607 (Ky. 1953). Substantial causation refers to the probable cause, as opposed to a possible cause. One measure of whether an action is a substantial factor is the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it.

The appeals court concluded that the plaintiff failed to prove that Garlock's product was a substantial factor in bringing about the harm. The plaintiff presented various witnesses to support the claim that the mesothelioma was caused by his exposure to Garlock gaskets. But one expert never actually said that the exposure to Garlock gaskets was a substantial factor in causing the cancer; the others testified that all types of asbestos can cause mesothelioma and that any asbestos exposure counts as a "contributing factor." That testimony does not establish that exposure to Garlock gaskets in and of itself was a substantial factor.

Moreover, the evidence presented was insufficient to allow a jury to infer that exposure to Garlock gaskets was a substantial cause of the cancer. Plaintiff here presented no evidence quantifying exposure to asbestos from Garlock gaskets. There was testimony that he removed gaskets for several years, and that some of those gaskets were Garlock's. But the plaintiff failed to establish how many Garlock gaskets he removed, or how frequently he removed—as opposed to installed—them. The record also shows that plaintiff regularly tore out asbestos insulation during the relevant years, and that his exposure to asbestos from insulation would have been thousands of times greater than his exposure from removing gaskets.

Thus, while his exposure to Garlock gaskets may have contributed to his mesothelioma, the record simply does not support an inference that it was a substantial cause of his mesothelioma. Given that the Plaintiff failed to quantify his exposure to asbestos from Garlock gaskets and that the Plaintiff concedes that he sustained massive exposure to asbestos from non-Garlock sources, there is simply insufficient evidence to infer that Garlock gaskets probably, as opposed to possibly, were a substantial cause of the injury.

The court summed it up: saying that exposure to Garlock gaskets was a substantial cause of plaintiff's mesothelioma would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume.