

P R O D U C T L I A B I L I T Y

## A L E R T

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MARYLAND LAW AND CAUSATION IN  
ASBESTOS EXPOSURE CASES*By Gordon S. Woodward*

It has been recently reported in *Law360* that the Court of Appeals of Maryland, in *Dixon v. Ford Motor Co.*, No. 82, 2013 Md. LEXIS 465 (Md. July 25, 2013), broke with established precedent and endorsed the “any exposure” theory of asbestos causation. See *Law360*, July 26, 2013, “Md. Court OKs ‘Any Exposure’ Asbestos Theory In Ford Case.” This conclusion misconstrues the Court’s decision. In fact, the Court of Appeals, Maryland’s highest court, continues to endorse “substantial-factor causation.” As the court notes, “the ... ‘frequency, regularity, and proximity’ test remains ‘the common law evidentiary standard used for establishing substantial-factor causation in negligence cases alleging asbestos exposure.’” *Dixon*, 2013 Md. LEXIS 465, at 18 (quoting *Scapa v. Saville*, 418 Md. 496, 503, 16 A.3d 159, 163 (2011)). As a result, any entity defending asbestos claims in Maryland should continue to consider, in appropriate circumstances, defenses based on substantial-factor causation.

Misunderstandings with regard to the holding in *Dixon* arise out of testimony by plaintiffs’ principal expert that “every exposure to asbestos is a substantial contributing cause and so brake exposure would be a substantial cause even if [the decedent] had other exposures.” *Id.* at 14-15. Based on this statement, Ford argued on appeal that the trial court erred in not conducting a *Frye/Reed* hearing regarding the admissibility of the expert’s testimony. This argument prevailed with the Court of Special Appeals not, however,

with the Court of Appeals. The Court of Appeals considered the expert’s statement in context. In particular, the court noted that the expert’s ultimate opinion was based not just on the number of “occasions that dust was brought into the home” — “twice a week over a 13-year period, but as well on evidence that, because the asbestos fibers brought in on each occasion remained in the home for a considerable period of time, the exposure was continuous and cumulative in effect.” *Id.* at 19. With this “background and context,” the court was not willing to conclude that the expert’s opinion “involved a novel scientific theory not generally accepted in the scientific community.” *Id.* at 19-20.

With its opinion in the *Dixon* case, the Court of Appeals has loosened the restrictions on what experts can say regarding causation in asbestos cases, and some commentators will argue that this creates an opening in Maryland for the “any exposure” theory. In the end, however, it is clear that the Court of Appeals was simply not willing to reverse the trial court given the context of the expert’s testimony, which indicated that the decedent had significant and sustained secondary exposure to dust from defendant’s product. In fact, the court went out of its way to reaffirm substantial-factor causation as the law in Maryland, and to note that the expert’s opinion “was not in the context of one or two incidental exposures to Ford brakes.” *Id.* at 21 (emphasis added).

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As a result, it is important to note that Maryland continues to endorse substantial-factor causation as the evidentiary standard “for establishing ... causation in negligence cases alleging asbestos exposure.” *Id.* at 18. With this in mind, any entity defending asbestos claims in Maryland should continue to consider defenses based on the lack of substantial-factor causation. ◆

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