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## Causation Standards And Scientific Evidence In Mesothelioma Lawsuits

The asbestos plaintiffs' lawyers seek to have the Legislature substitute its judgment for that of our courts about standards relating to proximate cause and scientific evidence in mesothelioma lawsuits.

Their efforts stem from the 8-0 Texas Supreme Court opinion in *Borg-Warner v. Flores*, which set the evidentiary standard of causation that a claimant must meet to show that a particular defendant caused a claimant's asbestos-related disease. Chief Justice Jefferson's opinion discusses the complex issue of whether a particular defendant's product or conduct was a cause of a claimant's disease:

"In a case like this, proof of mere frequency, regularity, and proximity is necessary but not sufficient, as it provides none of the quantitative information necessary to support causation under Texas law."

"Thus substantial-factor causation, which separates the speculative from the probable, *need not be reduced to mathematical precision*. Defendant-specific evidence relating to the *approximate dose* to which the plaintiff was exposed, coupled with evidence that the dose was a *substantial factor* in causing the asbestos-related disease, will suffice."

The issues in *Borg-Warner* address the intersection of scientific knowledge and legal standards. The common law in the English and American tradition is that the law evolves through court decisions. The law develops by judges giving thorough consideration and making careful determination in specific cases. This allows growth and elasticity in the law.

This is especially important in areas of law in which scientific evidence is critical, such as asbestos-related litigation. Through the development of the common law, courts can account for advances in scientific evidence. As scientific knowledge advances, so do evidentiary standards.

Mesothelioma is a terrible and deadly disease. But the issue presented to this Legislature is not whether mesothelioma is an awful disease or whether a person having mesothelioma is entitled to compensation. Everyone agrees that a mesothelioma claimant is entitled to compensation from any defendant who caused that disease. And, both before and after the *Borg-Warner* decision, these litigants have received large settlements and judgments. The issue presented to this Legislature is whether an innocent defendant—sued along with 40 to 100 other defendants—is allowed a reasonable opportunity to extricate itself from the litigation.

If the Legislature seeks to review the evidentiary standard established in *Borg-Warner* and to substitute its judgment for that of the courts, then certainly it should do so with greater consideration than is allowed by a floor debate on an amendment to an Insurance Sunset Bill.