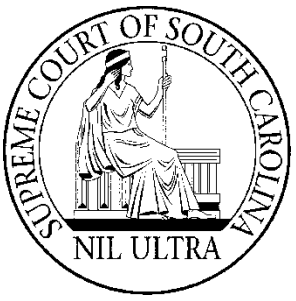

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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 8
February 28, 2024
Patricia A. Howard, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Stephen R. Edwards, Individually and as Personal Representative of the Estate of Steven Redfearn Stewart, Respondent,

v.

Scapa Waycross, Inc., Petitioner.

Appellate Case No. 2022-001574

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from York County
Jean H. Toal, Acting Circuit Court Judge

Opinion No. 28193
Heard February 6, 2024 – Filed February 28, 2024

AFFIRMED

C. Mitchell Brown, of Nelson Mullins Riley & Scarborough LLP, of Columbia; William Peele Early, of Pierce, Sloan, Wilson, Kennedy & Early, LLC, of Charleston; and S. Christopher Collier, admitted pro hac vice, of Lewis Brisbois Bisgaard & Smith LLP, of Atlanta, GA, all for Petitioner.

Mona Lisa Wallace and William M. Graham, both of Wallace & Graham, PA, of Salisbury, NC; Kathleen Chewning Barnes, of Barnes Law Firm, LLC, of

Hampton; Thomas H. Hart, III and Gregory Lynn Hyland, both of Hart, Hyland Shepherd, LLC, of Summerville; and Frederick John Jekel, of Leventis & Ransom, of Columbia, all for Respondent.

Caroline Marie Gieser, of Shook, Hardy & Bacon L.L.P., of Atlanta, GA, for Amici Curiae American Tort Reform Association, National Association of Manufacturers, National Federation of Independent Business Small Business Legal Center, Inc., National Association of Mutual Insurance Companies, American Property Casualty Insurance Association, and American Coatings Association.

Erik. R. Zimmerman, admitted pro hac vice, and Stephen M. Cox, both of Robinson, Bradshaw & Hinson, P.A., of Chapel Hill, NC, for Amici Curiae The Chamber of Commerce of the United States of America, and The South Carolina Chamber of Commerce.

JUSTICE JAMES: In this asbestos/mesothelioma case, we granted a writ of certiorari to review the court of appeals' decision (1) affirming the trial court's denial of Petitioner Scapa Waycross, Inc.'s (Scapa) motion for judgment notwithstanding the verdict, which was based on the ground Respondent failed to introduce legally sufficient evidence of causation; (2) affirming the trial court's order granting Respondent's motion for a new trial nisi additur; and (3) affirming the trial court's denial of Scapa's motion for reallocation of pretrial settlement proceeds. *Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 878 S.E.2d 696 (Ct. App. 2022).

We dismiss the writ of certiorari as improvidently granted with respect to the issues of additur and the reallocation of settlement proceeds.[1] We affirm the court

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[1] In its brief to this Court, Scapa argues for the first time that S.C. Code Ann. § 15-38-50 (2005) imposes a restriction on a plaintiff's ability to allocate settlement proceeds in a manner most advantageous to the plaintiff. The court of appeals mentioned section 15-38-50 in its opinion, but not in the context now argued by Scapa. 437 S.C. at 422-23, 422 n.3, 878 S.E.2d at 710 & n.3. Scapa's argument is not preserved, so we do not address it. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000), for "the long-established

of appeals' reasoning on the causation issue, but we address the issue to reaffirm South Carolina's adherence to the substantial factor causation test we adopted in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007).

In *Henderson*, we pronounced:

> In determining whether exposure is actionable, we adopt the "frequency, regularity, and proximity test" set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162[-63] (4th Cir. 1986): "To support a reasonable inference of *substantial causation* from circumstantial evidence, there must be evidence of exposure to a *specific product* on a *regular* basis over some *extended* period of time in *proximity* to where the plaintiff actually worked."

373 S.C. at 185, 644 S.E.2d at 727 (emphases added); *see also Lohrmann*, 782 F.2d at 1162 (applying Maryland law to a pipefitter's products liability claims and restating the substantial factor test employed in Maryland products liability cases: "To establish proximate causation in Maryland, the plaintiff must introduce evidence [that] allows the jury to reasonably conclude that it is more likely than not that the conduct of the defendant was a *substantial factor* in bringing about the result." (emphasis added)). While the *Lohrmann* substantial factor test relaxes the "but-for" requirement that applies in traditional tort cases, the test still requires the plaintiff to show "more than a casual or minimum contact with the product." *Lohrmann*, 782 F.2d at 1162.

In a products liability case, whether the plaintiff's theory is strict liability, negligence, or breach of warranty, the plaintiff must prove the defendant's defective product was a proximate cause of the plaintiff's injury. *See Bray v. Marathon Corp.*, 356 S.C. 111, 116, 588 S.E.2d 93, 95 (2003). To prove proximate cause, a plaintiff must establish both causation in fact and legal cause. *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 463, 494 S.E.2d 835, 842 (Ct. App. 1997). To establish causation in fact, the plaintiff must show the injury complained of would not have occurred "but for" the defendant's conduct, and to establish legal cause, the plaintiff must establish

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preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments."

the plaintiff's injury was a foreseeable consequence of the defendant's conduct. *See id.*

A defendant "cannot be charged with that which is unpredictable or could not be expected to happen. A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's act." *Id*. at 463, 494 S.E.2d at 843 (citation omitted) (first citing *Bramlette v. Charter–Medical–Columbia*, 302 S.C. 68, 393 S.E.2d 914 (1990); and then citing *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990)). The plaintiff may prove proximate cause by direct or circumstantial evidence, or some combination of the two. *Small*, 329 S.C. at 464, 494 S.E.2d at 843.

The *Lohrmann* causation test takes into the account the reality that "most plaintiffs sue every known manufacturer of asbestos products." 782 F.2d at 1162. Some defendants are dismissed pretrial or at the directed verdict stage for lack of evidence, some defendants settle, and some defendants go to trial. *Id.* Applying the test to Scapa's liability, it was incumbent upon Stewart to prove he was exposed to Scapa asbestos-containing dryer felts on a regular basis over an extended time in proximity to where he worked.

Scapa argues it was entitled to judgment notwithstanding the verdict because the evidence presented by Stewart fell short of the *Lohrmann* causation standard. Scapa points to the court of appeals' citation of the Supreme Court of Pennsylvania's opinion in *Rost v. Ford Motor Company*[2] and claims the court of appeals improperly approved the use of the cumulative dose theory rejected in *Henderson* and *Lohrmann*. We disagree. The court of appeals did not adopt a new causation test. Moreover, the court correctly noted Dr. Frank did not rely on the cumulative dose theory as a basis for his opinion that Scapa asbestos-containing dryer felts were a substantial factor in causing Stewart's mesothelioma. The trial court properly allowed Dr. Frank to explain to the jury that as the amount of asbestos accumulates in the body, the likelihood of developing mesothelioma increases. Dr. Frank's ultimate opinion was that Stewart's exposure to Scapa asbestos-containing dryer felts during his employment at Bowater was a substantial factor in causing his mesothelioma. Dr. Frank's testimony satisfied the requirements of *Henderson* and *Lohrmann*, and, as a whole, the evidence in the record created a jury issue on the issue of Scapa's liability.

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[2] 151 A.3d 1032 (Pa. 2016). Because we hold the court of appeals did not deviate from the *Lohrmann* test in this case, we need not decide whether the Supreme Court of Pennsylvania did or did not base its decision in *Rost* on the substantial factor test.

For the foregoing reasons, we affirm the court of appeals.

AFFIRMED.

BEATTY, C.J., KITTREDGE, FEW, and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Daniel O'Shields and Roger W. Whitley, a Partnership d/b/a O&W Cars, Petitioner,

v.

Columbia Automotive, LLC d/b/a Midlands Honda, Respondent.

Appellate Case No. 2021-001388

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
R. Ferrell Cothran Jr., Circuit Court Judge

Opinion No. 28194
Heard September 13, 2023 – Filed February 28, 2024

AFFIRMED

C. Steven Moskos, of C. Steven Moskos, PA, of North Charleston; and Brooks Roberts Fudenberg, of the Law Office of Brooks R. Fudenberg, LLC, of Charleston, both for Petitioner.

James Y. Becker, of Columbia; Sarah Patrick Spruill, of Greenville; and Harry Clayton Walker Jr., of Charleston, all of Haynsworth Sinkler Boyd, PA, for Respondent.

JUSTICE KITTREDGE: We granted a writ of certiorari to review the court of appeals' decision in *O'Shields v. Columbia Automotive, L.L.C.*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021). The primary issue before us is the court of appeals' affirmance of the trial court's reduction of the punitive damages award. We affirm the court of appeals.[1]

The facts are fully set forth in the court of appeals' opinion, so we provide only a brief summary. In short, Respondent Midlands Honda, a South Carolina car dealership, learned it had sold a car that consisted of two cars welded together—known as a "clipped car." As a result, it re-purchased the car from the buyer. Subsequently, to avoid returning the car to the hands of a consumer, Respondent sold the car "as is" through a North Carolina auction open only to licensed car dealers.

Only four months prior, the auction's terms and conditions of sale changed to require the disclosure of a car's damage, even when it is sold "as is." Respondent was unaware of that new disclosure obligation as it did not receive written notice of the rule change—despite the auction's policy mandating such notice. Accordingly, Respondent did not affirmatively disclose the car's clipped condition. Instead, Respondent relied on the "as is" nature of the auction sale.

At the auction, Petitioner O&W Cars, a North Carolina used car dealership, purchased the car for $5,200. Petitioner did not discover the clipped nature of the car in its inspection. Petitioner sold the car for $6,800. The purchaser subsequently discovered the car's true, clipped condition and returned it to Petitioner.

Petitioner then sued Respondent for actual and punitive damages, asserting fraud and unfair trade practices claims. The jury returned a verdict of $6,645 in actual damages and $2,381,888 in punitive damages, equaling a 358:1 ratio of punitive to actual damages. Pursuant to Respondent's post-trial motion, the trial court found the punitive damages award constitutionally excessive in violation of Respondent's right to due process and reduced the award to $46,515, representing a 7:1 ratio. The trial court made several important factual findings regarding the evidence supporting the punitive damages award. First, the trial court found Respondent had "a good-faith basis for believing no duty to disclose exist[ed]." *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996) (stating a good-faith omission "of a material fact may be

[1] We affirm the balance of the court of appeals' decision pursuant to Rule 220, SCACR.

less reprehensible than a deliberate false statement"). Second, "there is no evidence that [Respondent] ever made a false representation." Third, this was an "isolated incident." Finally, the trial court found "there was little, if any, chance of harmful consequences to the [Petitioner]." The reduced punitive damages award was, according to the trial court, the "upper limit of the range of punitive damages awards consistent with due process" given the facts presented. *See generally Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 276 (1989) (noting the Due Process Clause places "outer limits" on the size of civil damages awards); *Hollis v. Stonington Dev., L.L.C.*, 394 S.C. 383, 404, 714 S.E.2d 904, 915 (Ct. App. 2011) ("In reducing the amount of the punitive damages, . . . in deference to the jury, we may do no more than determine the upper limit of the range of punitive damages awards consistent with due process on the facts of this case, and set the amount of punitive damages accordingly.").

As noted, the court of appeals affirmed the trial court's reduced punitive damages award. Having carefully reviewed the record and governing federal and North Carolina law,[2] we affirm and adopt the court of appeals' thorough analysis and determination that the punitive damages award represents the highest award due process allows considering the particular facts of this case. As a result, and as explained more fully by the court of appeals, this case will be remanded to the trial court for consideration of additional matters unrelated to the punitive damages award.

AFFIRMED.

FEW, JAMES, and HILL, JJ., concur. BEATTY, C.J., concurring in result only.

[2] As fully explained in the court of appeals' decision, the parties and lower courts all agree North Carolina's substantive law governs this dispute.