

SUPREME COURT OF LOUISIANA

No. 97-C-3188

ROBERT ANDREW BOURGEOIS ET AL.

Versus

A.P. GREEN INDUSTRIES, INC. ET AL.

LEMMON, J., Concurring

Under a duty-risk analysis, the defendants had a duty not to expose the plaintiffs to products that were unreasonably dangerous because of their asbestos content. For purposes of the exception of no cause of action, the defendants breached that duty, and the conduct constituting a breach of duty was a cause-in-fact of damages sustained by the plaintiffs.¹

The fourth element of the duty-risk analysis is, at least in this case, largely a policy question — whether the duty imposed on the defendants not to expose the plaintiffs to these substances encompasses the risk that the plaintiffs may be required to undergo medical monitoring to facilitate early detection and possibly successful treatment of a disease that medical science at this stage cannot accurately predict will ensue. Because of the devastating consequences which often result from significant exposure to asbestos and the long-term latency of the serious diseases caused by asbestos, the reasonable cost of necessary medical monitoring should fall within the scope of liability for the defendant's breach of duty.²

¹These elements of the analysis are questions of fact for trial by the trier of fact.

²As the majority points out, the medical necessity for the monitoring, the reasonableness of the cost, the likelihood that early detection will enhance the probability of successful treatment, and other such factors must be proved at trial.