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TOMORROW’S CAUSATION STANDARDS FOR YESTERDAY’S WONDER MATERIAL: 
REITER V. ACANDS, INC. AND MARYLAND’S CHANGING ASBESTOS LITIGATION

Timothy B. Mueller*

What do cookware,¹ innovative textiles, archival paper, candlewicks, thousands of universal commercial and industrial goods,² and many illnesses³ dating back to the Roman Empire⁴ all have in common? They are all products of asbestos. The causes of asbestos-related illnesses have been

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² ASBESTOS: RISK ASSESSMENT, EPIDEMIOLOGY, AND HEALTH EFFECTS 1, 3-4 (Ronald F. Dodson & Samuel P. Hammar eds., Taylor & Francis Group 2006) [hereinafter ASBESTOS: RISK ASSESSMENT].


⁴ ASBESTOS: RISK ASSESSMENT, supra note 2, at 1.
litigated during the past thirty years and have cost over fifty-four billion dollars. This extreme cost is due, in part, to courts becoming more lenient concerning the causal requirements plaintiffs must satisfy. For example, courts do not consistently require an unambiguous connection between the product, asbestos, and the injury. One commentator notes that in order "to establish causation, a plaintiff must prove that an identifiable hazardous substance caused his or her injuries. The Maryland courts use several standards of proof to determine whether a plaintiff has met his burden." The number of marginal asbestos claims is on the rise. Some may even involve plaintiffs who, while not having any current injuries, could have future problems due to past exposure. Pairing the increase in claims with the fact that companies that provide asbestos compensation are rapidly falling prey to bankruptcy, it is essential that courts articulate a clear and stern causal requirement for asbestos litigation.


6. RAND INST. FOR CIVIL JUSTICE, ASBESTOS LITIGATION COSTS AND COMPENSATION: AN INTERIM REPORT vii (RAND 2002) [hereinafter RAND INST.]

7. Cause in fact refers to the cause and effect relationship between the defendant’s tortious conduct and the plaintiff’s injury or loss. Thus, cause in fact deals with the ‘but for’ consequences of an act. The defendant’s conduct is a cause of the event if the event would not have occurred but for that conduct. In contrast, proximate cause, or legal cause, concerns a determination of whether legal liability should be imposed where cause in fact has been established. Proximate or legal cause is a policy decision made by the legislature or the courts to deny liability for otherwise actionable conduct based on considerations of logic, common sense, policy, precedent and ‘our more or less inadequately expressed ideas of what justice demands or of what is administratively possible and convenient.’


10. Id.

11. RAND INST, supra note 6. “Bankruptcies are becoming more frequent: a total of 16 bankruptcies were filed in the 1980s, 18 in the 1990s, and 22 between January 2000 and Spring 2002." Id.
After rubber-stamping asbestos claims and routinely providing compensation to alleged victims of asbestos exposure, Maryland courts departed from this practice and established a more stringent causal requirement.\textsuperscript{12} Traditionally, courts found that general exposure was sufficient to establish causation.\textsuperscript{13} Maryland courts began to deviate from this trend by adopting more stringent requirements. First, courts demanded "frequent, proximate, and regular exposure" to satisfy the asbestos causation requirement.\textsuperscript{14} Second, making the standard more exacting, Maryland courts rejected the "fiber drift theory," which had allowed a plaintiff to bring an asbestos claim so long as he or she had been present in a location where asbestos fibers could "drift."\textsuperscript{15} The courts then took a major step in 2002 in defining "substantial-factor causation" as the new evidentiary standard, requiring that the plaintiffs show the "nature of the product, the frequency of its use, the proximity in distance and time of the plaintiff to the use of the product and the regularity of the exposure of that plaintiff to the use of a product."\textsuperscript{16} Finally, in \textit{Reiter v. ACandS, Inc.}\textsuperscript{17} the Maryland Court of Special Appeals provided an unprecedented, yet much needed, improvement to traditional asbestos litigation requirements and expectations by actually applying a "substantial-factor causation" standard, rather than simply defining it.\textsuperscript{18} This standard required actual evidence of a claimant's interaction with the asbestos particles, rather than just the general product.\textsuperscript{19}

This Comment posits that Maryland's highest court should uphold \textit{Reiter} to satisfy the imperative need for a clear causal connection.\textsuperscript{20} Section I

\begin{itemize}
\item \textsuperscript{12} Eagle-Picher Indus., Inc. v. Balbos, 604 A.2d 445, 463 (Md. 1992) (providing that "[s]o extremely attenuated is causation in fact under the 'fiber drift theory' that it is inconsistent with the requirement of Maryland law that an actor's negligence be a substantial factor in causing the injury").
\item \textsuperscript{13} Georgia-Pacific Corp. v. Pransky, 800 A.2d 722, 724 (Md. 2002) (identifying that courts previously found "large quantity of possible exposure" rather than "clear and direct exposure" sufficed to establish causation); \textit{see also} Balbos, 604 A.2d at 463; Lockwood v. ACandS, Inc., 744 P.2d 605 (Wash. 1987); Roehling v. Nat'l Gypsum Co. Gold Bond Bldg. Prods., 786 F.2d 1225, 1228 (4th Cir. 1986).
\item \textsuperscript{14} \textit{Georgia-Pacific Corp.}, 800 A.2d at 725 (referring to the test for causation set forth in \textit{Eagle-Picher Indus.}).
\item \textsuperscript{15} \textit{Eagle-Picher Indus.}, 604 A.2d at 463 (quoting Robertson v. Allied Signal, Inc., 914 F.2d 360, 376 (3rd Cir. 1990)).
\item \textsuperscript{16} \textit{Georgia-Pacific Corp.}, 800 A.2d at 725.
\item \textsuperscript{17} \textit{Reiter v. ACandS, Inc.}, 947 A.2d 570 (Md. Ct. Spec. App. 2008).
\item \textsuperscript{18} \textit{Id.} at 580.
\item \textsuperscript{19} \textit{Id.}
\item \textsuperscript{20} In regard to an appeal derived from \textit{Reiter}, 947 A.2d 570, the Maryland Court of Appeals granted \textit{certiorari} for \textit{Reiter} v. Pneumo Abex, 954 A.2d 467 (Md. 2008) \textit{cert.}
discusses the mineral known as asbestos, the harms and diseases related to it, and the regulations currently in place to protect against asbestos. This section will provide information regarding early asbestos litigation and explain how these cases landed in the Maryland courts. Section II describes more recent Maryland asbestos litigation, the progression of cases leading up to Reiter, including the position taken by Eagle-Picher Industries, Inc. v. Balbos, which was the precedent applied by Maryland courts before the Reiter decision. Section III analyzes the advantages and disadvantages to Reiter, and the factors—for example, the great cost of asbestos litigation and the escalating number of asbestos suits—that demonstrate why Reiter should be upheld. This section will also discuss how Maryland can look to other jurisdictions to help determine the ideal causation requirements. Section IV explains the present state of Reiter. Section V concludes with a discussion of what is yet to come in the aftermath of Reiter, and the potential implications of the new causal requirements in the twenty-first century.

I. THE HISTORIC APPLICATIONS, ASSOCIATED DISEASES, REGULATIONS, AND EARLY LITIGATION OF ASPBESTOS

A. The Many Benefits and Concerns Associated with Asbestos

Asbestos has been used in roughly four thousand commercial products. Due to its widespread use, people come into contact with this substance on a daily basis. At one time, it was known as a “magic mineral” because of its extensive and incredible uses. Asbestos was used in ancient times to make pottery and wicks for oil lamps. Later, it was used for textiles, including a purse for Benjamin Franklin and even a suit that enabled a person to walk through fire. Asbestos was even incorporated into paper to increase the archival quality of important Vatican documents for Pope Pius IX. In

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22. ASBESTOS: RISK ASSESSMENT, supra note 2, at 2.
24. “In the United States alone, it was used in more than three thousand products—acoustic tiles, brake linings, air-conditioning systems, fireproofing.” James Surowiecki, Asbestos Inc., THE NEW YORKER, Mar. 6, 2006, at 31.
25. ASBESTOS: RISK ASSESSMENT, supra note 2, at 1.
26. Id. at 2.
27. Id.
more recent times, asbestos has been used for many products, including cigarette filters, flooring felt and tiles, shingles, and automotive brake parts.\(^\text{28}\)

This "magic mineral" is not man-made, but rather, occurs naturally on Earth and must be extracted through mining.\(^\text{29}\) Asbestos, although often thought of as "yesterday's mistake" in the United States, is currently being mined in many countries around the world.\(^\text{30}\) The Mesothelioma & Asbestos Awareness Center provides that "[a]sbestos is a highly-fibrous mineral with long, thin, separable fibers [which] can be spun and woven together [and] was the material of choice for many industries that were manufacturing products for which heat resistance, low electrical conductivity, flexibility, and high tensile strength were essential factors."\(^\text{31}\) However, asbestos is also extremely dangerous to its users.\(^\text{32}\) The dangers associated with asbestos were first observed during the Roman Empire when historians noted that slaves who worked in asbestos mines were not as healthy as other slaves and also tended to die young.\(^\text{33}\)


China has become a major producer and rivals Canada and Russia in terms of asbestos production. In 2000, Russia led the world with 700,000 tons, followed by 450,000 tons from China and 335,000 tons from Canada. In 2000, the United States was producing only some 7000 tons from mines in California. . . .

**ASBESTOS: RISK ASSESSMENT, supra note 2, at 2.**


A common misconception on the part of many individuals, however, is that asbestos is a hazardous man-made substance, conjured up in factories around the world for commercial use. The truth is, however, that asbestos is a naturally-occurring mineral that can be found in hundreds of countries on just about every continent. As a matter of fact, asbestos is still mined in several of these countries, including Canada and Russia.

\(^{ld.}\)

\(^{32}\) Surowiecki, supra note 24.

\(^{33}\) **ASBESTOS: RISK ASSESSMENT, supra note 2, at 1.**
The concerns surrounding asbestos continue today. Serious health problems, including certain types of cancer and asbestosis, do not arise until the asbestos breaks down and releases fibrous particles that are ingested or breathed in by those in the vicinity.\textsuperscript{34} According to the Agency for Toxic Substances & Disease Registry of the Department of Health and Human Services, “[s]ignificant exposure to any type of asbestos will increase the risk of lung cancer, mesothelioma and nonmalignant lung and pleural disorders, including asbestosis, pleural plaques, pleural thickening, and pleural effusions.”\textsuperscript{35}

Asbestosis,\textsuperscript{36} a disease first discovered in 1907, is a pneumoconiosis\textsuperscript{37} in which lung function is reduced due to fibrosis of the lung.\textsuperscript{38} A 1950s

\begin{itemize}
\item \textsuperscript{34} Cleveland Clinic, Occupational Lung Diseases, http://my.clevelandclinic.org/disorders/occupational_lung_disease/pul_overview.aspx (last visited Apr. 7, 2009).
\item \textsuperscript{35} “This conclusion is based on observations of these diseases in groups of workers with cumulative exposures ranging from about 5 to 1,200 fiber-year/mL. Such exposures would result from 40 years of occupational exposure to air concentrations of 0.125 to 30 fiber/mL.” Dep’t of Health & Human Servs., Agency for Toxic Substances & Disease Registry, Asbestos, Health Effects, General Information, http://www.atsdr.cdc.gov/asbestos/asbestos/health_effects/index.html (last visited Mar. 26, 2009).
\end{itemize}

Asbestosis is a scarring disease of the lungs which results from repeated exposure to high concentrations of asbestos in the ambient air over an extended period of time. The exposures to asbestos that lead to asbestosis far exceed those permitted by Federal regulations at the present time. Nonetheless, some workers in occupational settings in the past did develop asbestosis during the course of their work. Asbestosis is a scarring disease process, and is consequent to injury to the lung tissue which occurs when asbestos fibers accumulate in the small branches of the respiratory tree. When a fiber enters one of the several million air sacs in the lung, it provokes within minutes an irritation which results in an inflammatory response. The inflammatory response consists of the accumulation of various types of cells (known as alveolar macrophages and leukocytes) which are designed by the body to eliminate a foreign particulate or infectious organism. A sequence of responses occur which also have the capacity to injure and damage within minutes of the inhalation of the asbestos fibers the adjacent lung tissue if control mechanisms do not exist. These control mechanisms are often insufficient when the amounts of asbestos in the ambient air entering the air sacs are substantial.

\textit{Id.} at 479.

\textsuperscript{37} “Pneumoconiosis [is] inflammation commonly leading to fibrosis of the lungs caused by the inhalation of dust incident to various occupations . . . .” PDR MEDICAL DICTIONARY\textsuperscript{1409} (2d ed. 2000).
investigation showed a connection between asbestos and lung cancer, and in the early 1960s, mesothelioma was connected to asbestos exposure. Mesothelioma is a rare tumor that affects the tissues lining the thoracic and abdominal cavities, including the organs within those cavities.

B. The United States’ Response: Federal Regulation of Asbestos

Today, the United States heavily regulates the asbestos industry and many uses are banned. The United States Environmental Protection Agency (EPA) helps to minimize the harms produced by asbestos through utilizing two environmental laws: school environments are protected through the Asbestos Hazard Emergency Response Act (AHERA) and, pursuant to the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants (NESHAP) addresses general toxic emissions. One of the main concerns of NESHAP is the proper removal and disposal of asbestos. Another asbestos advisory agency is the United States Department of Labor, which requires record keeping of information and statistics on asbestos. The Department estimates that 1.3 million employees in construction and general industry may be exposed to asbestos, especially those involved in renovation and demolition projects.

Additionally, the Department utilizes the Occupational Safety and Health Administration (OSHA) to protect against many health concerns, including asbestos. The Department provides that “[OSHA] has issued revised

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38. Inst. of Med. of the Nat'l Acads., supra note 3.
39. Id.
40. Id.
41. Id.
42. Tracer Bullet 92-2, supra note 30.
46. Fact Sheet No. OSHA 92-06, supra note 45.
47. 29 C.F.R § 1910.1001(a)(1). “OSHA’s role is to promote the safety and health of America’s working men and women by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual process improvement in workplace safety and health.” U.S. Department of Labor,
regulations covering asbestos exposure in general industry and construction. Both standards set a maximum exposure limit and include provisions for engineering controls and respirators, protective clothing, exposure monitoring, hygiene facilities and practices, warning signs, labeling, recordkeeping, and medical exams.\textsuperscript{48} There are also numerous regulations promulgated by OSHA to protect against asbestos exposure and harm. One directive is to provide permissible exposure standards, which limits the exposure in general industry and construction to 0.2 fibers per cubic centimeter of air (f/cc).\textsuperscript{49} Exposure monitoring requires general industry employers to monitor employees who are exposed above the "action level" of 0.1 f/cc.\textsuperscript{50} Controls minimizing exposure are also required for compliance with OSHA’s regulations.\textsuperscript{51} The controls include the use of respirators, as well as regulations regarding the amount of time a person may be exposed to asbestos.\textsuperscript{52} Prohibited functions in these regulated areas include eating, smoking, drinking, chewing tobacco or gum, and applying cosmetics.\textsuperscript{53} OSHA regulations also require that warning signs be posted, labels be placed on all materials containing asbestos fibers, monitoring methods be recorded, and protective clothes be worn.\textsuperscript{54} There are also strict requirements regarding the maintenance of proper hygiene in the facilities, such as providing changing rooms, showers, specialized labeling of clothing, and filtration systems, as well as appropriate medical exams for exposed employees.\textsuperscript{55}

In current asbestos litigation, a plaintiff can demonstrate a violation of these regulations in order to prove fault and establish liability. However, the regulations were not in place when many of the current asbestos claimants


\textsuperscript{49} FACT SHEET No. OSHA 92-06, supra note 45; see also 29 C.F.R. § 1910.1001; 29 C.F.R. § 1926.1101.

\textsuperscript{50} FACT SHEET No. OSHA 92-06, supra note 45.

\textsuperscript{51} 29 C.F.R. § 1910.1001; see also FACT SHEET No. OSHA 92-06, supra note 45.

\textsuperscript{52} 29 C.F.R. § 1910.1001; see also FACT SHEET No. OSHA 92-06, supra note 45.

\textsuperscript{53} FACT SHEET No. OSHA 92-06, supra note 45; see also 29 C.F.R. § 1910.1001(c) & (g); see also FACT SHEET No. OSHA 92-06, supra note 45.

\textsuperscript{54} FACT SHEET No. OSHA 92-06, supra note 45; see also 29 C.F.R. § 1910.1001(i).

\textsuperscript{55} 29 C.F.R. § 1910.1001(j), (k), & (l); see also FACT SHEET No. OSHA 92-06, supra note 45.
were originally exposed. Potentially, many more individuals will file lawsuits after realizing the devastating effects asbestos had on their health prior to the enactment of these regulations. Congress has proposed new legislative measures to help organize asbestos litigation. However, all proposed legislation has been effectively killed by being dismissed, tabled, or permanently sent to Committee.

56. See Michael Milano, Asbestos Exposure and Building Materials, ASBESTOS.NET, Dec. 4, 2008, http://www.asbestos.net/asbestos/asbestos-exposure-and-building-materials.html. “Since the 1970s, the U.S. Environmental Protection Agency (EPA) has stepped in with bans of certain asbestos-containing materials and regulation of others.” Id. However, “[f]rom 1940 through 1970, an estimated 27.5 million individuals were exposed to asbestos at work, in a very wide range of job sites and trades.” Id.

57. “Asbestos disease will be disabling and killing people for decades to come. Indeed, the Environmental Working Group—a research group in Washington—estimates that at least 10,000 people in the United States will die each year of asbestos disease over the next 20 years.” Paul Brodeur, The Cruel Saga of Asbestos Disease, L.A. TIMES, Feb. 18, 2005, at B15.

58. See infra examples of legislation accompanying note 59.

59. S. 852, S.3274, and H.R. 1360 would create a trust fund to compensate workers exposed to asbestos and prohibit those workers from suing their former employers. The fund would use medical criteria and occupational exposure history to determine claimants' awards. The fund as written would be privately funded by companies, existing trust funds and insurers. S. 852 was brought to the floor of the Senate on Feb. 14, 2006. It was pulled from the floor after it received insufficient votes to waive a budget point of order. Sen. John Ensign (R-Nev.) raised the budget point of order, maintaining that the bill’s potential for more than $5 billion in expenditures by the federal government within any 10-year period would violate a prohibition against such spending after the year 2016. The 58-41 vote fell short of the 60 required to waive the budget point of order . . . . Earlier during consideration of S. 852, the Senate voted 70-27 to table an amendment offered by Sen. John Cornyn (R-Texas) that would have kept asbestos cases in the court system but would have required stringent medical criteria and covered malignant cases. In the House, Rep. Kirk (R-IL.) introduced H.R. 1360 on March 17, 2005. It is legislation to create a trust fund similar in many respects to S. 852. Another House bill, H.R. 1957, was introduced on April 27, 2005 by Representative Cannon, Chair of the House Judiciary Subcommittee on Commercial and Administrative Law. It would require claimants to meet specific criteria before they could file a cause of action in an asbestos case. It also provides for “tort reform” for asbestos cases. H.R. 1957 was referred to the House Judiciary Committee. No other action has taken place on the House bills. President Bush has called
C. Early Asbestos Litigation: Claims Rise Since 1966

Just as the use of asbestos and associated health concerns have not ended, neither has the litigation associated with it. For many years prior to the enactment of the federal regulations, a great deal of exposure went unchecked and consequently, many people suffer from the latent effects of asbestos today. Asbestos is considered a "mature" tort because it has been litigated for over thirty years. Most tort litigation requires the plaintiff to prove that the defendant's tortious conduct has a causal relationship with the injury, and early asbestos litigation was no exception. The first asbestos claim was filed on December 10, 1966, in Beaumont, Texas. After being diagnosed with asbestosis in July 1966, Claude Tomplait filed a suit against many manufacturers of asbestos products, including Johns-Manville, Fiberboard, and Owens Corning Fiberglass. Although the verdict favored the defendant manufacturers, Ward Stephenson, Tomplait's attorney won his next asbestos case in October 1969, when he filed a suit on behalf of Tomplait's co-workers.

There has been an incredible increase in asbestos litigation since Stephenson brought its lawsuit potential to light. In 1973, the United States Court of Appeals for the Fifth Circuit decided Borel v. Fibreboard Paper Products Corp., in finding asbestos manufacturers strictly liable to


61. Ashcraft & Gerel LLP, supra note 5.
62. SCHWARTZ ET AL, supra note 7.
64. Id.
65. Id.
66. Id.

67. Id. "Over 600,000 people have filed claims . . . for asbestos-related personal injuries through the end of 2000." RAND INST., supra note 6, at vi. "The contemporary legal scene has witnessed an explosive growth of mass tort litigation involving products such as asbestos . . . ." NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY, PROBLEMS OF THE PRACTICE AND THE PROFESSION 320 (4th ed. 2008).
injured workers, the court changed the requirements for tortious conduct.\textsuperscript{69} Although strict liability requires a defendant to pay damages regardless of whether the injury was caused intentionally or unintentionally, it does not completely remove the causation requirement.\textsuperscript{70} In a 2003 article, one analyst found that “a plaintiff with mesothelioma who was exposed to asbestos in his job at the shipyards for thirty years can offer scientific evidence that his ‘signature illness’ was caused by exposure to asbestos . . .”\textsuperscript{71} However, Maryland courts are far from requiring asbestos plaintiffs to present scientific evidence. In an attempt to provide for strict liability, Maryland courts actually discarded threshold elements that plaintiffs must prove in asbestos claims, such as not requiring a causal connection.\textsuperscript{72} Additionally, the court did not consider other factors that may have contributed to the disease, such as the inhalation of non-asbestos laden dust particles.\textsuperscript{73}

\begin{footnotesize}
\begin{enumerate}
\item Id. at 1081, 1092 (concluding “that the trial court did not err in instructing the jury on strict liability”); “In Borel v. Fibreboard Paper Products Corporation, we set forth the Texas standards for establishing the strict liability of a manufacturer.” Gideon v. Johns-Manville Sales Corp., 761 F.2d 1129, 1043 (5th Cir. 1985); “The Fifth Circuit Court of Appeals addressed the issue of what manufacturers ‘should know’ . . . [s]ummarizing the holding in Borel v. Fibreboard Paper Products Corp. . . .” Eagle-Picher Indus., Inc. v. Balbos, 604 A.2d 445 (Md. 1992) (quoting Dartez v. Fibreboard Corp., 765 F.2d 456 (5th Cir. 1985)).
\item SCHWARTZ ET AL, supra note 7, at 686. “When a court imposes ‘strict liability’ on a defendant, it is saying that the defendant must pay damages although the defendant neither intentionally acted nor failed to live up to the objective standard of reasonable care that traditionally has been at the root of negligence law.” Id.
\item Robert W. Loewen, \textit{Causation in Toxic Tort Cases: Has the Bar Been Lowered?}, 17 NAT. RESOURCES & ENV’T 228, 228 (2003).
\item “In Balbos, the Court ‘rejected rules for determining causation that respectively lie near opposite ends of a causation continuum. At the defense extreme, [the Court] rejected a ‘but for’ rule under which there would be no liability based on substantial factor exposure to a particular defendant’s product if the plaintiff would have suffered the disease even without that exposure.” Reiter v. ACandS, Inc., 947 A.2d 570 (Md. Ct. Spec. App. 2008) (quoting ACandS, Inc. v. Asner, 686 A.2d 250, 258 (Md. 1996) (citing Balbos, 604 A.2d 445)). See also SCHWARTZ, supra note 7.
\item Janet Raloff, \textit{How Inhaled Dust Harms the Lungs}, SCI. NEWS ONLINE, Jan. 31, 1998, \textit{available at} http://www.sciencenews.org/sn_arc98/1_31_98/ob1.htm (considering that “as many as 60,000 U.S. residents die each year from breathing federally allowed concentrations of airborne dust” alone).
\end{enumerate}
\end{footnotesize}
II. CONTEMPORARY MARYLAND ASBESTOS LITIGATION

A. The Start of the Maryland Asbestos Litigation Shift: Causation Requirements Become More Stringent

The path toward a more stringent causation requirement began with the seminal case in contemporary Maryland asbestos litigation: *Eagle-Picher Industries, Inc. v. Balbos.*\(^74\) The *Balbos* test required a showing of "frequent, proximate, and regular exposure"\(^75\) to asbestos, a standard that is not difficult for many plaintiffs to meet.

*Balbos* arose out of the deaths of shipyard workers from malignant mesothelioma.\(^76\) The named party, Leslie Balbos, died in 1983 from exposure that occurred between 1942 and 1944 when he was working in the Fairfield Shipyard of Bethlehem Steel Corporation.\(^77\) A co-plaintiff, Sutton Knuckles, who was employed at another shipyard owned by Bethlehem, died in 1984 from exposure between 1941 and 1982.\(^78\) Plaintiffs filed suit against several manufacturers, suppliers, and installers of asbestos.\(^79\) At the trial level, Balbos won two million dollars in compensatory damages against several of the defendants.\(^80\) Knuckles was awarded 1.8 million dollars in compensatory and 150,000 dollars in punitive damages against select defendants.\(^81\) The defendants raised multiple issues on appeal, including several causation disputes.\(^82\) The court required the plaintiffs to show that they were frequently exposed to fibers from the asbestos-containing material.\(^83\) This requirement ultimately led the Court of Appeals of Maryland to reverse the judgment against some of the defendants because there was no evidence of a connection between the products and the plaintiffs’ deaths.\(^84\) The court found "that the proof [in the present case]
does not even place Knuckles on the same ship, much less during the same repair," where defendants' asbestos-laden products were being used.\footnote{Id. at 463-64.}

One failed causation argument presented by the defendant was the "sophisticated user argument."\footnote{Id.} This argument provides that the causal chain breaks when the product passes through several hands before reaching the end user.\footnote{Id. at 466-68.} Therefore, it is not the manufacturer, but rather the later distributors, who bear the ultimate responsibility of warning users in regard to the dangers associated with the product. This challenge was unsuccessfully used by the defendants to demonstrate that, "suppliers of dangerous or defective products are not negligent in failing to warn ultimate users of the product because the supplier reasonably relies on an intermediary who redistributes the product to give the warning."\footnote{Eagle-Picher Indus., 604 A.2d at 463-64.}

In an attempt to avoid liability, the defendant also relied on a superseding cause defense, which posits that an additional phase in the causal chain induced the injury.\footnote{Id. at 466.} The defendants stated that "even if they negligently failed to warn, their failures are not substantial factors in causing the deaths because the jury could have found that the failure of Bethlehem to warn was a superseding cause of the deaths."\footnote{Id. at 466.} The \textit{Balbos} court rejected the defendants' arguments, and by discarding the "fiber drift theory,"\footnote{Id. at 466-68.} the court established a stricter causal standard, wherein the product and the injury must have a stronger connection. \textit{Robertson v. Allied Signal, Inc.} first rejected this theory.\footnote{Id. at 466.} The theory states that once an asbestos-containing product can be placed anywhere in [a] plant, any plaintiff working at any point within that plant is entitled to have the question of causation submitted to the jury because it is likely, given that fibers can drift, that a given plaintiff was exposed to fibers originating in a particular defendant's product.\footnote{Reiter v. ACandS, Inc., 947 A.2d 570, 579 (Md. Ct. Spec. App. 2008).}
However, Balbos does allow for the establishment of asbestos exposure to be circumstantial. As long as a witness can place the victim in the same vicinity as the asbestos product, the Balbos requirements are met.

After the Balbos decision, many courts used the "frequent, proximate, and regular exposure" factors presented by the court to support an outcome favoring employees, so long as the employee could show a minimal connection between the product and the alleged exposure. Following Balbos, the court in Georgia-Pacific Corporation v. Pransky stated the need for "substantial factor evidence" to prove that the plaintiff's "mesothelioma was caused by the exposure." However, after stating the requirement for a substantial factor analysis, the court nonetheless used the Balbos factors to conclude that even in a non-occupational setting, as long as a plaintiff can show that he or she was in the proximity of a product that contained asbestos, and that he or she then suffered from an asbestos-related disease, the causation requirement was satisfied.

B. The Current Status of Maryland Asbestos Litigation: the Court of Special Appeals Decides Reiter

Despite changing the causal requirement, the courts did not uniformly apply the more stringent standard until Reiter in 2008. The Maryland courts, through Reiter, seemingly have added an additional requirement to the traditional showing that the plaintiff was in the wrong place at the wrong time. In Reiter, appellants brought the case on appeal for the decedents, William H. Johnson, Harold R. Williams, and William A. Reiter, after the Circuit Court for Baltimore City dismissed the case and granted summary

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94. Id. at 580 (citing Eagle-Picher Indus., 604 A.2d 445).
95. Id. (citing Eagle-Picher Indus., 604 A.2d 445). "The evidence, circumstantial as it may be, need only establish that [a] plaintiff was in the same vicinity as witnesses who can identify the products causing the asbestos dust that all people in that area, not just the product handlers, inhaled." Id. (citing Eagle-Picher Indus., 604 A.2d at 460).
97. Georgia-Pacific Corp., 800 A.2d 722 (applying Balbos test to a non-occupational situation allowing manufacturer liability for a bystander's asbestos exposure); Owens-Illinois, Inc. v. Hunter, 875 A.2d 157, 161 (Md. App. 2005) (finding that whether "exposure of any given bystander to any particular supplier's product will be legally sufficient to permit a finding of substantial-factor causation is fact specific to each case").
98. See Georgia-Pacific Corp., 800 A.2d 722.
99. Id. at 723.
100. Georgia-Pacific Corp., 800 A.2d 722.
judgment to the defendants, on the basis that the plaintiffs failed to show substantial causation.\(^{101}\)

In *Reiter*, the plaintiffs worked at Bethlehem Steel’s Sparrows Point facility.\(^{102}\) In 1957, the facility was over 2,500 acres in size, employed over 25,000 people, and had many mills throughout the site.\(^{103}\) The case arose from possible asbestos-laden dust that originated from brake pads or linings used in cranes throughout the complex.\(^{104}\) The wear of the breaks created the dust.\(^{105}\) This dust had a connection to the plaintiffs because, according to a witness, the dust would “just go in the atmosphere.”\(^{106}\) This dust often fell when the brakes were changed or when workers used air hoses to blow the dust off in order to clean the brakes.\(^{107}\) All of the plaintiffs proved their proximity to the cranes, that dust was emanating from the brakes, and that they were present when the dust was in the air.\(^{108}\) However, each plaintiff’s area and timeframe of exposure was unique.\(^{109}\)

Johnson, who died of lung cancer on May 16, 2003, was allegedly exposed to asbestos from 1960 to 1972.\(^{110}\) Johnson, like the other defendants, attempted to utilize the *Balbos* standard allowing for circumstantial evidence by having a personal witness testify to his general proximity to an asbestos product.\(^{111}\) A former co-worker testified that Johnson worked in a slab yard that was covered by a roof and only contained one solid wall, while the remaining sides were open to the elements.\(^{112}\) The six cranes that used asbestos brake pads were located at least thirty feet in the air above the same yard where Johnson worked.\(^{113}\) The second plaintiff, Williams, worked “all over the facility” between 1964 and 1993.\(^{114}\) He died on October 17, 2003.\(^{115}\) He reportedly worked under cranes that often dropped dust from twenty-five to thirty feet above the work floor.\(^{116}\)

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102. *Id*.
103. *Id*. at 573.
104. *Id*.
105. *Id*. at 574.
106. *Id*.
108. *Id*. 580-81.
109. *Id*.
110. *Id*. at 576, 580.
111. *Id*. at 576.
112. *Id*.
114. *Id*. at 578.
115. *Id*.
116. *Id*.
testimony of a co-worker supported this allegation.\footnote{117} The third plaintiff, Reiter, who worked at Sparrows Point from 1947 to 1990, died on November 25, 2002, of carcinoma of the lung.\footnote{118} Through a co-worker, Reiter demonstrated that he was in the vicinity of the cranes that produced brake dust, as well as the dust produced through steel production.\footnote{119}

To determine whether the lower court’s holding was correct, the Court of Special Appeals of Maryland applied the \textit{Balbos} test.\footnote{120} The court analyzed each of the deceased’s situations separately.\footnote{121} With regard to Johnson, the court determined that because the witness “could not identify the dust as having come from the wear of the crane brake linings,” there was no significant connection between the lung cancer and the brake product.\footnote{122} Thus, while Johnson could show that he was in an open air space that also contained brakes that used asbestos, he could not establish direct, personal exposure to the asbestos particles.\footnote{123} Williams failed to establish the traditional causational showing between products and resulting injuries because he could not identify the company that supplied any of the brake pads that were used.\footnote{124} Finally, although Reiter, like Johnson, showed a connection between the dust and his injuries, he was unable to prove that the dust was a “substantial factor cause” of his lung cancer.\footnote{125} Consequently, the Court of Special Appeals of Maryland found that the Circuit Court for Baltimore City did not err in allowing for summary judgment.\footnote{126}

\section*{III. Analyzing Reiter: Why the Maryland Court of Appeals Should Affirm}

\subsection*{A. Advantages of Reiter: Plaintiffs Need to Prove a Realistic Connection with Asbestos}

The \textit{Reiter} case, like much asbestos litigation, involved plaintiffs who alleged continual exposure to asbestos during the course of their careers.\footnote{127} Traditionally, if plaintiffs could prove that they were in the same location as asbestos, they would satisfy the \textit{Balbos} test of “frequent, proximate, and
regular exposure"128 and would therefore be entitled to damages. However, the court in Reiter, while following the Balbos precedent, requires a more stringent demonstration of actual contact with the asbestos particles, which the Reiter plaintiffs were unable to prove.129

Reiter ensures that future asbestos claims will fail unless a plaintiff can show a "realistic" connection between the disease suffered from and the personal contact with the asbestos product.130 By forcing a more reasonable connection between asbestos and the disease, the individuals who are the most deserving of help, such as those who were harmed solely due to contact with asbestos, will still be compensated. This reasonable connection standard will not be difficult to satisfy for those who can prove that they were in direct contact with asbestos or that they reasonably could have inhaled asbestos particles. However, those plaintiffs who were present in an area that provided a possibility of being affected will now be required to show that this exposure could have reasonably caused their harm. Plaintiffs will no longer be able to meet the causation requirement simply by showing that there was an asbestos product in a location near the plaintiff and that the plaintiff contracted a disease as a result of this proximity. Plaintiffs must prove that their frequent, proximate, and regular exposure was connected to the asbestos product; they may not rely upon circumstantial evidence alone to prove their harm.

Analyzing the facts of Reiter, it is reasonable for the court to require more than circumstantial evidence regarding the decedent's physical proximity to an area that contained asbestos-related products. The Balbos court touched upon the first multiple factor connection standard by requiring "frequent, proximate, and regular exposure."131 However, because circumstantial elements could also be considered, alternative harmful factors did not carry much weight.132 The court must carefully review situations like those presented in Reiter, where workers were exposed not only to the asbestos dust but also to other kinds of dust that cause injuries, such as dust from a steel mill. Steel mills have historically been associated with mass pollution, to

128. Id. (citing Eagle-Picher Indus., Inc. v. Balbos, 604 A.2d 445 (Md. 1992)).
129. See Reiter, 947 A.2d 570.
130. Id. at 581.
131. Georgia-Pacific Corp., 800 A.2d at 725 (citing Eagle-Picher Indus., 604 A.2d 445).
132. Eagle-Picher Indus., 604 A.2d at 459 (citing W. KEETON, PROSSER & KEETON ON THE LAW OF TORTS § 41, at 266 (5th ed. 1984) (Prosser), providing that "[i]f two causes concur to bring about an event, and either one of them, operating alone, would have been sufficient to cause the identical result, 'some test of proximate causation, other than 'but-for' is needed").
the point that the dust emitted would cover entire cities. In situations like those presented in *Reiter*, asbestos from brake pads used in cranes between twenty-five and thirty feet above the ground would have to be so extensive that, when mixed with the dust, it reaches levels that cause an increased health risk. Based on *Reiter*, a court can identify other factors that deserve consideration, such as the general dust and filth associated with steel production. These factors could be significant, if not the sole, causes of the disease that affected the deceased, making the likelihood that the injury was caused by the crane brake asbestos more attenuated.

**B. Concerns with Reiter: Will Stringent Causation Requirements Make Litigating Asbestos Claims Too Costly for Plaintiffs?**

Those opposed to more stringent requirements will likely point to the fact that people are dying, and asbestos is a clear and scientific cause of their disease. Based on this argument, individuals harmed by the "magic mineral" should be compensated without requiring the extreme expense that is often associated with satisfying extensive causation standards. A commentator expressed the concern that "asbestos manufacturers are better able to distribute the liability among themselves since they benefited from asbestos use at the expense of hundreds of thousands of victims." In addition to a scheme based on financially shifting the damages to the deep pockets of the manufacturers, who then shift the cost back to consumers, this commentator also argues that plaintiffs may not receive their right of due process:

> [w]hen the rights of the victims of crime are becoming a rallying cry for critics of our legal system, it is particularly inappropriate to bury the rights of the victims of the asbestos industry by adopting technical legal standards which deny these victims not only a remedy, but their very day in court.

Additionally, jurisdictions like Ohio identify the need to retain the "fiber drift theory"—which Maryland rejected—because asbestos is a very dangerous material, even at very low levels, and plaintiffs should not be

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133. "By the end of the nineteenth century, the industrial cities were badly sooted-over." GEORGE RIPPEY STEWART, NOT SO RICH AS YOU THINK 171 (Houghton Mifflin Co. 1967).


136. *Id.*
required to present proof that is often not available.\textsuperscript{137} As more courts hear asbestos cases, there is the concern that courts will continue the trend of the past decade, and become even more stringent in their rulings, which may eventually make it impossible to bring an asbestos claim without direct scientific proof and expert testimony.

In response to these arguments, the number of asbestos claims filed is increasing annually, while the severity of individual claims is on the decline.\textsuperscript{138} There is slow growth for serious claims, yet massive growth in claims relating to less serious injuries.\textsuperscript{139} The Reiter decision allows seriously injured victims to not only get their day in court, but to also receive adequate compensation, while minimizing the diminutive cases that cost the court systems and taxpayers a great deal of money. The American Bar Association (ABA) is concerned with the rising number of asbestos claims that clog the court systems and prevent those that are ill from obtaining much needed compensation.\textsuperscript{140} The ABA recommends that "[w]e should help people who are sick when they are actually sick."\textsuperscript{141} To promote this

\begin{itemize}
  \item \textsuperscript{137} In Horton the Supreme Court [of Ohio] explicitly rejected the rule of law set forth in Lohrmann v. Pittsburgh Corning Corp. According to Lexis's prior history notes in Horton, Lohrmann set forth the 'frequency-proximity' test. Under this test, in order to escape summary judgment, a plaintiff had to present 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.' The Supreme Court reasoned that this test would undermine debate in the scientific and medical community concerning the possibility that even short periods of exposure to asbestos can cause harm to persons. Further, it would make it impossible for plaintiffs to ever prevail on the 'fiber drift' theory, which is a belief held by some scientists that asbestos "fibers and particles to 'take flight' and sail into the air" and could injure persons not in the immediate proximity of the asbestos product.

  \item \textsuperscript{138} RAND INST., supra note 6, at 40.
  \item \textsuperscript{139} Id.
  \item \textsuperscript{140} Each year, 50,000 to 75,000 new asbestos-related lawsuits are filed. A large and growing proportion of these cases involve claimants who do not now, and may never, suffer from an asbestos-related illness. This has created a backlog of more than 200,000 claims against more than 6,000 companies that is crowding dockets across the country. As a result, seriously ill people who file claims are facing longer and longer delays in having their cases heard.

  \item ABA 2006 Legislative Priorities, supra note 9.
  \item \textsuperscript{141} Id.
\end{itemize}
policy, “people who bring asbestos-related claims should be required to meet a clear, consistent and medically-sound standard for impairment before bringing suit.”\(^{142}\)

Besides minimizing the less serious cases, there is also the need to have set rules and standards in order to mitigate the danger that courts will make asbestos injuries too difficult to prove. To not have elemental cause and effect requirements would be to ignore traditional tort causation standards.\(^{143}\) Therefore, while upholding established tort law, courts need to draw a bright line so that plaintiffs and defendants know what is required of them to either prove or defend against an asbestos suit.

**C. Alternatives for Maryland: How Other Jurisdictions Address Asbestos Causation Requirements**

While maintaining respect for the strict liability standard currently associated with asbestos, the causal chain must be limited in order to remove frivolous asbestos litigation.\(^{144}\) To determine the best balance when following an asbestos causation analysis, Maryland should look to other jurisdictions that require more than a simple showing of a causal connection.

For example, California courts require asbestos exposure to be a “substantial [medical] factor” in the injury.\(^{145}\) Like many California courts, the Reiter court requires a more substantial test.\(^{146}\) Reiter, however, does not require proof of medical probability.\(^{147}\) Unlike the California standard, Reiter only requires increased causation between the interaction with the asbestos and the injured plaintiff.\(^{148}\) This requirement is likely to help plaintiffs seek judicial guidance, without the costly expert fees associated with medical proof.

\(^{142}\) *Id.*

\(^{143}\) SCHWARTZ, *supra* note 7.

\(^{144}\) See Borel v. Fibreboard Paper Prods. Corp., 493 F.2d 1076, 1092 (5th Cir. 1973) (applying strict liability to asbestos litigation).


\(^{147}\) *Reiter*, 947 A.2d 570.

\(^{148}\) This conclusion can be reached by comparing *Reiter* with *Ferris*, 132 Cal. Rptr. 2d 819. While *Reiter* does not require medical probability, as was required by the court in *Ferris*, *Reiter* requires clear evidence linking exposure and disease. *See* *Reiter*, 947 A.2d at 579-80.
Connecticut courts have weighed the extent to which exposure to other elements, beyond those containing asbestos, could have had adverse health effects. According to the Connecticut Supreme Court, when there are multiple sources that could lead to asbestos-related disease, the court should weigh both sources to determine the level of harm caused by each. The court then provides that asbestos damages sought by the employee should be reduced or mitigated by the amount of injury related to non-occupational circumstances. Unlike Connecticut, Maryland courts do not weigh factors beyond those associated with asbestos. However, a plaintiff's health remains a legitimate concern that should be considered in addition to the factors weighed in Reiter.

Similar to Maryland, one lawyer described the progression of asbestos litigation in Texas as a shift "from the 'one fiber' theory of causation in asbestos cases. Instead, plaintiffs must now present evidence of the approximate 'dose' to which they were exposed and that the dose was a 'significant factor' in causing their disease." Alternatively, Maryland could look to Illinois, where the Illinois Court of Appeals utilizes a two-prong test: the employee must have worked in an area where asbestos products were frequently used and where the employee could come into contact with the asbestos.

Finally, Tennessee courts have looked to public policy factors where

149. The court then concluded that, as a matter of causation, 'chronic obstructive lung disease may be an occupational disease provided the occupation in question exposed the worker to a greater risk of contracting this disease than members of the public generally, and provided the worker's exposure to cotton dust significantly contributed to, or was a significant causal factor in, the disease's development. This is so even if other non-work-related factors also make significant contributions, or were significant causal factors.' Deschenes v. Transco, Inc., 953 A.2d 13 (Conn. 2008) (citing Rutledge v. Tultex Corp., 301 S.E.2d 359 (N.C. 1983)).

150. Id.

151. Id.

152. Andrew K. Meade, Texas Abandons the 'One Fiber' Causation Theory and Imposes a Higher Burden of Proof for Plaintiffs in Asbestos Cases, HOUSTON LAWYER, November/December 2007 (discussing changes to the Texas judicial review of asbestos cases due to the Borg-Warner case).

153. "To prove proximate cause in asbestos cases, the evidence must show the decedent (1) worked in an area where OC's asbestos-containing products were frequently used and (2) the decedent worked sufficiently close to this area so as to come into contact with OC's products." Spain v. Owens Corning Fiberglass Corp., 710 N.E.2d 528 (Ill. Ct. App. 1999).
the existence of a particular duty is not a given or when the rules of the established precedents are not readily applicable, courts will turn to public policy for guidance. Doing so necessarily favors imposing a duty of reasonable care where a 'defendant's conduct poses an unreasonable and foreseeable risk of harm to persons or property.'

Like Tennessee, Maryland courts could utilize the duty of reasonable care, and evaluate the foreseeability of the risks associated with each case, to develop the duties required by both the plaintiff and defendant.

A greater causal connection is necessary due to the enormous societal costs associated with asbestos litigation. Over fifty-four billion dollars have been spent on asbestos litigation and the number of asbestos claims is on the rise. Additionally, as the number of asbestos-producing companies decreases, and the resources available to pay compensation on claims dwindle, there is an even greater need to ensure that only the most harmed victims receive compensation. Determining which victims are the most deserving of this compensation presents obvious difficulties. However, if the future holds the possibility of insufficient financial resources to pay asbestos claims, courts will have no other alternative but to consider that very issue. Many companies have been forced into bankruptcy because of the extensive cost of asbestos litigation. Between 1980 and 2002, fifty-six companies filed for bankruptcy.

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155. RAND INST., supra note 6.

156. "Asbestos litigation is the longest running mass tort in U.S. history. Within the past few years, there have been sharp increases in the number of asbestos claims filed annually, the number and types of firms named as defendants, and the cost of the litigation to these defendants." Id. at v.

157. These trends have led many people to question whether compensation is being divided among claimants fairly and in proportion to need, and whether responsibility for paying compensation is being allocated among defendants fairly and in proportion to culpability. Moreover, the system is costly to administer, may impose indirect cost to the economy, and may have little or no funds to pay future asbestos victims.

Id.

158. Id. at vii.

159. Id. "Bankruptcies are becoming more frequent: a total of 16 bankruptcies were filed in the 1980s, 18 in the 1990s, and 22 between January 2000 and Spring 2002." Id.
IV. THE CURRENT STATUS OF REITER

Maryland’s highest court, the Maryland Court of Appeals, granted certiorari\(^{160}\) and, on January 13, 2008, heard oral arguments for *Reiter v. Pneumo Abex*.\(^{161}\) The court of appeals, in order to demonstrate the need for a clear and definitive bright line rule, should affirm the Maryland Special Court of Appeals’ ruling for summary judgment. In the situation of *Reiter*, the court must continue to grant summary judgment to those manufacturers and suppliers facing cases that lack adequate causation. Under current law, post-*Reiter*, a plaintiff bringing a case in Maryland must be able to show that he or she was not only in a location where asbestos was present, but also that he or she had frequent, proximate, and regular exposure to the product, and that the product had a substantial causal connection to the diseases from which the plaintiff suffers.\(^{162}\)

V. RECOMMENDATION: EXTENDING THE LEGACY OF REITER

Historically thought of as the “magic mineral” for its amazing strength and resistant characteristics, asbestos’s true ramifications are currently manifested in the suffering of those who had substantial exposure to it.\(^{163}\) However, along with the compensation for those suffering a great deal from the many diseases associated with asbestos, courts have had to contend with a dramatic rise in less severe cases and may soon find themselves inundated with minor claims initiated by plaintiffs who hope to exploit the courts’ practice of rubber stamping asbestos claims.\(^{164}\) Upholding *Reiter* would enforce a clear causal requirement of evidence that asbestos was a substantial factor in the disease from which the plaintiff is suffering.

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A court can determine whether there is substantial factor evidence in many ways. First, courts can turn to the evaluation standards of other jurisdictions. Beginning with the most stringent requirements, a court can look to states like California that require actual medical probability. However, this may require an injured plaintiff to retain expensive experts in order to have a case heard. Instead, the court can set standards that are based on moderate determination requirements, allowing for the protection of plaintiffs against escalating trial costs and defendants against unnecessary disputes. Texas case law reflects such requirements, as courts have required a demonstration of the approximate "dose" of asbestos to which a plaintiff must have been exposed. By making it approximate, the plaintiff is not required to endure the financial hardships that may accompany expert testimony and extensive research; however, plaintiffs must still show that asbestos was a "substantial factor." In order to further determine whether asbestos was a significant factor, the court can employ other methods, such as the two-prong test utilized in Illinois. Under that test, a plaintiff must not only prove presence in a work area containing asbestos products, but also that he or she came into contact with the asbestos. The court can also take an approach similar to Connecticut, where there is a weighing of health factors, in order to ensure that those who have made unhealthy choices are not helped to the same extent as those who are truly suffering from the effects of asbestos. Finally, the court can use public policy to guarantee the offender is penalized in a situation where a wrong has been committed. This use of public policy can provide assurance, as it does in Tennessee, that asbestos manufacturers will utilize a standard of reasonable care when developing and distributing asbestos products.

The Maryland Court of Appeals may consider, weigh, and balance factors in determining whether asbestos substantially caused harms that merit compensation. These factors include: (1) frequency of the plaintiff's exposure to the asbestos product; (2) proximate location of the plaintiff as compared to the asbestos; (3) length of the time the plaintiff was typically exposed to the asbestos; (4) regularity of the exposure; (5) legitimacy of a

166. Meade, supra note 152.
167. Id.
169. Id.
case due to general medical probability of the injury; (6) extent to which other non-asbestos laden elements were in contact with the exposed; and (7) duties placed on all parties by the public. Utilizing standards that require a causal link between the plaintiff's disease and the asbestos products in question will ensure that those who suffer today from mesothelioma and other asbestos-related diseases will receive the help and reparation they need and deserve.

Other state courts can easily incorporate these requirements into their own analysis of causation. As revealed by Reiter and the Maryland courts, the need for a clear foundation of causal requirements is not only essential for determining liability, but is also required to uphold traditional legal standards. By providing factors that can be weighed, each case can be resolved based on the specific, individual situation presented, without having a completely ad hoc determination.

The only way to ensure compensation for those who truly suffer from the destructive effects of asbestos is to draw a bright line causal requirement making the interaction between asbestos and the plaintiff's injury a necessity. This would not only protect companies from being forced into bankruptcy, but would also prevent the courts from becoming clogged with unnecessary litigation. However, a bright line causal requirement would also limit the recent trend of increasingly stringent requirements in the Maryland courts, thereby making certain that gravely ill plaintiffs receive fair judgments. In this spirit, the Maryland Court of Appeals should affirm the lower court's decision in Reiter, and in so doing, definitively resolve many concerns associated with future asbestos litigation.