

Massachusetts Supreme Judicial Court Strikes a Deathblow to Substantial Factor Causation in Most Cases; Is Asbestos Litigation Next?

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In *Doull v. Foster*, the Massachusetts Supreme Judicial Court (SJC) addressed the proper causation standard in a medical malpractice case. In reaching this issue, the SJC reached far beyond the medical malpractice case before it. The SJC concluded that the substantial factor test for causation, which had been regularly employed in the Commonwealth for decades, was "unnecessarily confusing." In doing so, the SJC effectively ended the use of the substantial factor test in all negligence cases going forward, except in toxic tort litigation. However, the SJC openly questioned its usefulness in toxic tort litigation and all but welcomed a direct challenge to its use there.

As to the proper causation standard that Commonwealth courts are to employ going forward, the SJC returned the focus to a maxim of tort law - but for causation. The SJC went on to explain that there can be many but for causes of a harm and, where applicable, a jury should be so instructed. Relying on the Restatement (Third), the SJC further detailed the appropriate jury instruction for cases involving multiple sufficient causes of plaintiff's harm.

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