IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

JIMMIE SANFORD MITCHELL and CONNIE MITCHELL,

Plaintiffs,

v.

GEORGIA PACIFIC CORPORATION (successor to BESTWALL GYPSUM COMPANY), et al.,

Defendants.

CIVIL ACTION FILE NO.
00-A-6983-3

COBB COUNTY, GA
FILED IN OFFICE
2005 OCT 10 PM 3:34
CLERK OF STATE COURT

DIANA MARLER PARADIS, Individually and as Personal Representative of the Heirs of the Estate of RAYMOND JEROME PARADIS, Deceased, and ROBERT C. DEVLIN, Individually and as Personal Representative of the Estate of RAYMOND JEROME PARADIS, Deceased,

Plaintiffs,

v.

GEORGIA PACIFIC CORPORATION (successor to BESTWALL GYPSUM COMPANY), et al.,

Defendants.

CIVIL ACTION FILE NO.
00-A-7539-3

GEORGE F. RUSSELL and BETTY GRACE RUSSELL, Plaintiffs, v. THE ANCHOR PACKING COMPANY, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-3682-6

CYNTHIA JONES, Personal Representative of the Estate of OSCAR DAVID CRUMPTON, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-4019-2

INNA MARTIN CARTER, Personal Representative of the Estate of DONALD EUGENE CARTER, SR., Deceased, Plaintiff, v. A.W. CHESTERTON, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-4587-5

AUBREY ALLEN RAMSEY, Personal Representative of the Estate of LOUIE HENDERSON RAMSEY, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-4614-5

GEORGE ALLDREDGE, Personal Representative of the Estate of CLARENCE JACKSON ALLDREDGE, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-4617-6

RONNIE CLYDE MORRISON and SANDRA MORRISON, Plaintiffs, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-5953-6

LAURA McNEIL, Personal Representative of the Estate of PERRY McNEIL, Deceased,	)	
Plaintiff,	)	CIVIL ACTION FILE NO.
v.	)	2004-A-5955-6
AEROFIN CORPORATION, et al.,	)	
Defendants.	)	

RHONDA FAY WHITE, Personal Representative of the Estate of ALBERT FARLEY, Deceased,	)	
Plaintiff,	)	CIVIL ACTION FILE NO.
v.	)	2004-A-6885-6
AEROFIN CORPORATION, et al.,	)	
Defendants.	)	

CECIL EDWARD BROWN and PHYLLIS BROWN,	)	
Plaintiffs,	)	CIVIL ACTION FILE NO.
v.	)	04-A-7175-3
AEROFIN CORPORATION, et al.,	)	
Defendants.	)	

JANICE JOHNSON, Personal Representative of the Estate of ARCHIE JOHNSON, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-8223-2

MATTIE G. WILLIAMS, Personal Representative of the Estate of PAUL L. WILLIAMS, Deceased, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-8225-2

JANET McDONALD, Individually and as Legal Representative of the Estate of JOHN MILLER, JR., Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-8441-6

DON HAMILTON, Personal Representative of the Estate of CLIFFORD HAMILTON, Deceased, Plaintiffs, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-8765-5

HELEN HICKS, Individually and as Legal Representative of the Estate of RICHARD EUGENE HICKS, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-9145-6

DONALD PRUITT FERRELL and MARTHA FERRELL, Plaintiffs, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-9530-3

LUCY JANE POTTS, Personal Representative of the Estate of LAFAYETTE POTTS, SR., Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-9552-2

VIVIAN MARGUERITE WOOLRIDGE, Personal Representative of Estate of BILLY CAMPBELL WOOLRIDGE, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-10002-5

EVELYN HANEY, Personal Representative of the Estate of SAMUEL MILTON HANEY, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-10307-3

EDNA D. NELSON, Personal Representative of the Estate of JAMES WALTER NELSON, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-10383-5

EARNESTINE GLENN, Personal Representative of the Estate of JAMES ERNEST BROWN, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-10395-3

JOHN EDWARD BROWN and FLORENCE BROWN, Plaintiffs, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2004-A-10398-5

DEANNE BETH DUNLAP, Personal Representative of the Estate of JAMES ROBERT DUNLAP, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION NO. 04-A-10452-2

JOAN KING WALLACE, Personal Representative of the Estate of MARDIS BRYAN WALLACE, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 04-A-10454-3

DONALD LEE SINYARD, Personal Representative of the Estate of GRADY MALVER SINYARD, Deceased, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2005-A-425-5

JAMES PHILLIP BARNETTE and BRIDGET BARNETT Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2005-A-948-5

WILBURN LEE CLANTON, Plaintiff, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION NO. 05-A-949-2

BELINDA GAIL EDGE and JEFFREY EDGE, Plaintiffs, v. AEROFIN CORPORATION, et al., Defendants.	)	CIVIL ACTION FILE NO. 2005-A-950-5

ORDER

These cases are before the court on "Plaintiffs' Motion to Declare O.C.G.A. § 51-14 Substantive in Nature and Therefore Unconstitutional as Applied to Pending Cases." The motions were heard October 5, 2005, by way of a consolidated hearing. Upon consideration of the motions, responses, arguments of counsel and of all matter filed of record pertinent to the motions, the court enters this order as follows.

Plaintiff in each case makes the contention, among others, that O.C.G.A. Ch. 51-14 affects substantive rights and therefore cannot be applied retrospectively to claims which accrued prior to its effective date of April 12, 2005.

A statute which prescribes procedural matters may operate retrospectively; however, a statute which affects or impairs the substantive rights of the parties may operate prospectively only. See Polito v. Holland, 258 Ga. 54 (2) (1988); F.H. Ross & Co. v. White, 224 Ga. 324 (2) (1968). "In a negligence case the substantive rights of the parties are fixed at the time of the injury or event on which liability depends." F.H. Ross & Co. v. White, supra, at 325. Where the substantive rights of the parties have vested prior to its enactment, a statute which impairs those rights is unconstitutional to the extent that it provides for retrospective application. See Enger v. Erwin, 245 Ga. 753 (1980), where the Supreme Court held that the plaintiff's right to bring an action for alienation of affections was a "substantive right which had vested at the time" the General Assembly by statute abolished the cause of action and that "[t]herefore, the portion of the [statute] which made the repeal of the cause of action for alienation of affections retrospective as to pending actions is unconstitutional." Id. at 755.

O.C.G.A. § 51-14-5 provides for the dismissal of any asbestos claim pending on April 12, 2005, unless within 180 days from that date the plaintiff establishes "prima facie evidence of physical impairment" with respect to the asbestos claim. In order to establish "prima facie evidence of physical impairment" within the meaning of the statute, plaintiff must provide proof in certain specified forms and from certain specified sources "that exposure to asbestos was a *substantial* contributing factor" to the plaintiff's cancer or medical condition. O.C.G.A. §§ 51-14-2 (15) (A) and (B); 51-14-5 (a) (1). Such prima-facie evidence of physical impairment "shall be an essential element of an asbestos claim." O.C.G.A. § 51-14-3 (a).

However, the requirement that the exposure be a "substantial" contributing factor in causing plaintiff's medical condition establishes a new element to plaintiff's claim, one that did not exist when the original cause of action accrued in this case. The Georgia Supreme Court held in John Crane, Inc. v. Jones, 278 Ga. 747 (2004), that in an asbestos case a plaintiff need not prove that a particular defendant's conduct constitutes a "substantial" contributing factor in producing the injury in order to be considered a proximate cause of the injury. The Court held that "[i]n the analysis of a negligence action, the plaintiff must satisfy the elements of the tort, that is, the plaintiff must show a duty, a breach of that duty, causation, and damages. [Cits.] It would be a departure from the analysis to add the requirement that the causal connection must be substantial. [Cit.] Once the term 'substantial factor' is employed in the general negligence law vocabulary, there is the danger that it will be used not only to describe a general approach to the legal cause issue, but will turn into a separate and independent hurdle that the plaintiff will have to overcome in addition to the standard elements of a claim of negligence." Id. at 751. Although the John Crane, Inc. v. Jones case involved the issue of whether a particular defendant's conduct was the proximate cause of the plaintiff's medical condition, and not whether the exposure to asbestos was the proximate cause of that condition, the Supreme Court's analysis pertains to the element of proximate cause in general, regardless of the particular context.

At the time plaintiff's claim vested in this case, liability would attach if the asbestos exposure were in fact a mere contributing cause of the medical condition; that is, liability would attach even if the exposure were not in fact a *substantial* contributing cause. Because O.C.G.A. Ch. 51-14 would add such an element to an accrued and vested claim, the statute cannot be constitutionally applied in this case. Enger v. Erwin, supra.

Because the above is dispositive of the motion, the court will not rule on plaintiff's remaining contentions.

So ordered, this 10th day of October, 2005.

State Court of Cobb County

Russell Carlisle, Chief Judge
As to Civil Action File Nos. 04-A-4019-2, 04-A-8223-2, 04-A-8225-2, 04-A-9552-2, 04-A-10452-2, 05-A-949-2

Irma B. Glover, Judge
As to Civil Action File Nos. 04-A-6983-3, 00-A-7539-3, 04-A-7175-3, 04-A-9530-3, 04-A-10307-3, 04-A-10395-3, 04-A-10454-3

David P. Darden, Judge
As to Civil Action File Nos. 2004-A-4587-5, 2004-A-4614-5, 2004-A-8765-5, 2004-A-10002-5, 2004-A-10383-5, 2004-A-10398-5, 2005-A-425-5, 2005-A-948-5, 2005-950-5

Toby Prodgers, Judge
As to Civil Action File Nos. 04-A-3682-6, 2004-A-4617-6, 2004-A-5953-6, 2004-A-5955-6, 2004-A-6885-6, 2004-A-8441-6, 04-A-9145-6