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TEMPLE-INLAND V. CARTER

JONES: We come here today to ask this court to reverse the holding of the CA below and to hold that in Texas a person may not recover for fear of contracting a disease in the future until they have at present a physical manifestation of that disease.

Before I get to the holdings of this court which support that, however, I want to discuss a concern that has shown up in all the courts heretofore that have dealt with the fear of future injury type case. In *National North v. Buckley*, the US SC said that a rule, such as the CA's ruling, which would allow recovery for fear only without any injury would create a potential flood of comparatively unimportant and trivial claims. Every other court that has dealt with this issue has been concerned with the flood of trivial claims. That's the kind of case you have before you today. This is a trivial lawsuit.

ABBOTT: At what point does it cross the threshold: a 50% probability, 40%, 75%?

JONES: *Potter*, took the 50% rule, that you had to establish more likely than not...

ABBOTT: Is that what you advocate?

JONES: No. As a matter of fact, I think that *Buckley* is a better rule. *Buckley* held that there had to be a physical manifestation. It was not concerned with probability for the future.

ABBOTT: So you're saying a certainty, no probabilities?

JONES: Yes. The disease has to be there before the plaintiff should be able to bring suit.

ABBOTT: Have you thought about how that plays in with limitations?

JONES: That's one of the issues I want to discuss: why *Buckley* is a better rule. To explain why *Buckley* is a better rule, I ask the court to think with me in terms of groups, because we're going to start with a large group and carve our way down to several smaller groups. Under *Buckley,* a plaintiff cannot recover until it has some physical manifestations, some symptom of the disease which he feares. *Potter,* carved a group of that. *Potter* said: We're going to allow the group that can establish in reasonable medical probability that they will get the disease to recover. And that's where *Potter* stops. I submit to you, that *Potter's* analysis did not go far enough and it particularly did not go far enough for the jurisdiction of Texas. Because our courts and our rules apply things apparently a little bit different than California does.

Let's start with this subclass that *Potter* carves out. We established limits in this court, and this court established limits in *Merrell Dow v. Havner* and *Dupont v. Robinson* by which the standard of reasonable medical probability in this type of case is going to have to be created. I submit to you that with those standards in place, the number of plaintiffs (this court has dealt with disease cases before) that are going to be able to establish with reasonable medical probability that they will get a disease from a chemical exposure at some point in the future is going to be very small. So, ultimately, the difference between the *Potter* rule and the *Buckley* rule is this very small group of plaintiffs. But you're going to have to divide that group of plaintiffs now into two subgroups: those that will in fact get the disease as predicted, and those that will not.

Now if *Havener* and *Robinson* have done their job, the group that is going to get the disease in the future will be larger than the group that will not, because the doctors will have been right with their reasonable medical probability analysis. And I submit to you, that the larger of these two subgroups, the ones that will in fact get sick are the ones that need the court's attention more than the ones that were lucky enough not to get sick.

ABBOTT: I'm not understanding. It seems what you are talking about now is that they don't have to have it, they just have to have a distinct probability that they are going to have it, something that would satisfy the levels of probability to establish having it.

JONES: If you will let me finish, I will show why we shouldn't award for either of these two subgroups. The reason being that if we start with the subgroup that will get sick, under current Texas rules, you cannot separate liability and damages. You can't try liability separately from damages. This means that they would have to submit their disease claim at the same time they submitted their fear of the disease claim even though they did not yet have their disease. And even simple little things become a problem for this type of plaintiff. Will the disease manifest itself sooner or later? Will it be mild or severe? Will treatment options improve before it manifest itself? Will the plaintiff have a larger or smaller family before it manifest itself? Will other conditions exist that would affect liability and recovery in the future? These are unknown. These become a very difficult burden for a plaintiff who comes in the court saying: I have a fear that I am going to get this disease; when he has to prove them at that time.

If the court adopts the *Buckley* rule, and waits till he has the disease, he will know what size his family is, what his treatment options are, whether he got the disease early in life or late in life, his recovery will be more complete.

PHILLIPS: *Buckley,* of course was a compensation scheme case. A single individual suing a single defendant, pursuant to federal statutory scheme. Would your rule preclude future class settlements for instance?

JONES: For fear? Yes.

PHILLIPS: And then they are bound by that settlement. If they later develop injury they could no longer sue?

JONES: Well I would say they should not be able to include a fear claim in the class settlement for the same reasons they should not be able to try their fear claim until they had the disease.

PHILLIPS: But under our *Childs* case, of course, accrual of limitations may be delayed for 10, 20, 30 years. So you're saying that someone who recognizes that they have caused an exposure to a large segment of the population, and wants to settle that claim and get it behind them, simply can't do so, they've really got a business problem for the rest of their existence?

JONES: I apparently misunderstood your first question on the class action suit. I think like any future cause of action if I had a doctor saying that in reasonable medical probability I was going to get leukemia, and I wanted to settle not only my fear claim but any claim I had arising out of the leukemia once it actually did occur, I think I can do that. I think under Texas law you can settle future claims.

PHILLIPS: So if the defendant here had wanted to settle based on this .002 to .1% chance of probability, they could have done that and that would be binding?

JONES: Yes. The plaintiff has the option to settle that claim. What we are concerned about is whether or not we make the plaintiff bring the claim when the doctor says, you have a reasonable medical probability, and he begins to worry about it, or whether we tell that plaintiff, no, you don't have to bring the claim then, you can wait till you have the disease. Because if he waits till he has the disease, his recovery from the jury is more likely to adequately compensate him for the disease than if he has to take it into the future when you don't know what that disease is actually going to be and what the costs of treatment of that disease is going to be.

PHILLIPS: Are you saying that an exposure to cancer is not a real injury, that is, that someone's life can't be altered, their mental peace of mind affected by knowing that folks in a class similar to them have been exposed and are going to get cancer? Or are you just saying as a policy grounds this should not be a compensable injury because actually getting it is so much worse?

JONES: Yes. I'm saying for policy grounds we should wait. I do not intend or even want to suggest that the turmoil that a person may go through between the time they know they are going to get a disease, and the time they get a disease might not be severe. That is not my intention to argue. But, if by making the plaintiff bring that lawsuit today this court reduces the chance of that plaintiff being fully compensated when he gets the disease, then the rule does that plaintiff more harm than it does him good.

ABBOTT: Let's say we rule your way along the guidelines that you prescribe, and the

next case is the AIDS case that is brought up here. And we have someone who has a blood transfusion and the blood they received has the HIV virus in it, and they go to the doctor and told they have a distinct probability that they are going to be getting AIDS. Under your test it seems as though all doctors would testify that they have a probability of getting AIDS. They can't sue until they actually do get AIDS.

PHILLIPS: Even though their life may be changed by that. They may not get married...

JONES: I would distinguish between getting AIDS and being infected by the HIV virus. One can know within 4-6 weeks whether or not one has the virus. Once one has the virus the virus is _____ injury and infection. And so it's an infectious disease at the point of the HIV infection, and I don't think it fits the pattern we're talking about.

ABBOTT: But as you are drawing the distinction there is a big difference between having HIV and having AIDS, and the compensability between the two can be quite distinct?

JONES: Yes. But under Texas rules right now, we have an indivisible injury rule and if he has the HIV virus and chooses to bring a cause of action for that infection, he has to include within that potential damages for the AIDS that he may or may not ultimately get. That is the current rule in Texas. I'm not asking the court to change that ruling in any way.

ABBOTT: Are you saying under that, then this person can sue for the cancer they may not get, but not for their mental anguish for the cancer?

JONES: No. If I have asbestosis today, I can sue for asbestosis. I can sue for fear of future cancer, and recover today. If I have the HIV virus today, I can sue for the HIV virus infection for fear of the AIDS disease and for any damages that the jury feels are in reasonable medical probability establish that I will incur because of that AIDS disease. But I cannot come back once I get AIDS and bring a second lawsuit. I cannot come back once I get cancer and bring a second asbestos lawsuit. I'm not saying you can't sue for and recover for fear of AIDS and for the medical cause of AIDS. I am saying you have to do that at the time you bring your HIV infection case. Just like I have to do that at the time I bring my asbestosis case with respect to cancer or mesothelioma. Recovery is there. I am talking about the timing of when you pursue the claim.

OWEN: We don't have to decide your second hypothetical today where you have asbestosis and not only do you sue for that, but you sue for fear of developing cancer. That's not the case before us today.

JONES: That is correct. The case before you today is a plaintiff who has absolutely no symptoms of the disease, no illness, no disability, no problems whatsoever, and very little chance of getting AIDS. This is the problem that *Buckley and Potter* dealt with. They resolved it in slightly different ways. But both of them held that plaintiffs such as these here today would not be entitled

to recover. And that would be consistent with this court's holding in *Boyles*.

HANKINSON: Why is this not just a *Boyles* case? Why doesn't this, because of the nature of the damages being alleged, why isn't this actually just a negligent infliction of emotional distress claim?

JONES: I believe that is exactly what it is. The only damages that the plaintiffs are seeking are emotional, mental anguish damages to the extent that it has upset their lives. And that is what *Boyles* was about.

HANKINSON: It doesn't matter if you call it a product's case, or whatever, you're backing up from the damages into the cause of action, and any way you characterize it it is still a negligent infliction of emotional distress?

JONES: The issue that goes to the jury is their emotional upset, their emotional distress. Whether we call it mental anguish, fear of cancer, fear of future disease, whatever it is, it's the same issue. *Boyles* says: There is no negligent infliction of emotional distress. In *Rodriguez* this court said: Only certain relationship will allow you to recover for emotional distress and the landowner/tenant one is not one of them. That was a per curiam opinion from the court. It means it was unanimous and the court felt it was settled. Subsequently in *Likes(?)*, the court also reaffirmed this principle that the landowner/tenant relationship is not the type of relationship. We submit that this is broader than landowner/tenant. But that's particularly what we are dealing with here, and *Boyles* was broad enough to include this case as well as any product's case..

ENOCH: If I inhale asbestosis dust, those little fiber dusts, have I suffered an injury?

JONES: I do not think you have suffered a justiciable injury.

ENOCH: Is that really critical to what gets decided in this case, whether or not inhaling foreign substance in your lungs is the injury, or whether the manifestation of a physical ailment as a result of that is the injury?

JONES: I think the symptom or disability is the important thing. Their own expert, Dr. Jenkins, testified that everybody in metropolitan areas has inhaled asbestos. If that constitutes an injury everybody in the courtroom today is injured. That's an unworkable definition of injury for our courts. If we are all sitting here healthy talking and carrying on our daily lives, we are not injured in the sense that the courts deal with injury. So it would be the symptom or the illness and not the mere exposure that would constitute the injury.

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HANKINSON: Why doesn't *Boyles* take care of this issue?

POTTS: The *Boyles* case declared that there was no general duty not to negligently inflict emotional distress. However, the court concluded that a claimant may recover mental anguish damages only in connection with defendant's breach of some other legal duty. And in this situation there are other legal duties.

This is a premises liability case. The respondents were subcontractor/electricians working on the premises of Temple-Inland. They were invitees on the premises and Temple had a duty to maintain its premises in a reasonably safe condition. The premises' owner has superior knowledge of the dangers and hazardous substances on the property. And under the Hazardous Communications Program of OSHA has a duty to warn invitees and subcontractors of any hazards that are on their premises.

OWEN: What about *Motor Express v. Rodriguez*, that was a premises case where we said you cannot recover emotional injuries standing alone?

POTTS: I think there is some conflict then within the *Boyles* decision and that decision. I think the *Boyles* case quite clearly laid out that there is a cause of action.

OWEN: We said in *Rodriguez* that premises liability is not one of them. How do you square your position here today with that holding?

POTTS: Well, I think in ordinary negligence law there are certain duties upon a landowner and also under federal law, which the State of Texas has adopted. The OSHA guidelines have been adopted by all the states. These are minimum standards for the protection of workers. We operate under these guidelines and the OSHA rules do declare that there are certain responsibilities for plant owners with regard to multi-employer workplaces. The regulations state specifically that employers who produce or use hazardous chemicals at a workplace in such a way that employees or other employees may be exposed, for example, employees of construction contractors working on the premises, shall additionally ensure that the hazardous communications program includes the following: They have a duty to provide MSDS sheets; to advise such subcontractor folks of any dangers of hazardous materials that they may encounter under normal working conditions or in foreseeable emergencies. And these are the duties that I believe that *Boyles* addresses.

HANKINSON: I am having some difficulty understanding why this is a rule that really would benefit plaintiffs, and I would like for you to address that. Under the indivisible injury rule that is the law in Texas. If a plaintiff brings a claim for fear of cancer, prevails on the claim, settles it, whatever and disposes of, and then let's say 10 years or 5 years down the line develops meso, wouldn't that plaintiff then be precluded from bringing their claim having already been compensated

for the injury flowing from their exposure to asbestos?

POTTS: That is a perplexing question that I do think needs to be addressed.

HANKINSON: But under current Texas law wouldn't that be the effect? So a plaintiff on a fear of cancer claim would then be precluded from bringing their more serious damage claim which would be when they in fact manifested meso, correct?

POTTS: It would probably cutoff the suit against the plant where the worker inhaled the asbestos fibers, but he would have other avenues.

HANKINSON: If he brings his claim, doesn't he have to bring it against all the potential defendants, for example, the manufacturer that produced or manufactured and supplied the asbestos that was in the plant? He doesn't get to split his cause of action as to various defendants, does he?

POTTS: I would venture to say that - well let's look at it from two aspects. One of the reasons I think that fear of cancer cases have a real place in today's society is because the asbestos manufacturers and the petro chemical facilities have long known of the hazards of exposure to asbestos.

HANKINSON: I understand, but my concern really is the fact that couldn't this ultimately do more harm to a plaintiff by recognizing this than ultimately to put the plaintiff in a position, because the flip of it would also be this: What if there is a claim where you can recover damages for fear of cancer, and I have that claim, I've been exposed to asbestos and I have that fear, and I choose not to bring my cause of action, and I develop lung cancer 5 years from now, and my deposition is taken, and the defendant's lawyer asks me: Well weren't you afraid you were going to get it, and that's a recognizable claim and you were injured back 5 years ago and now your claim is barred because when you first injured, you didn't come to the courthouse within 2 years? Similarly, couldn't it cut-off a plaintiff and require a plaintiff to come to the courthouse earlier as well? I mean might this while on the surface looking like something that as you are saying would be beneficial to plaintiffs ultimately cause more harm?

POTTS: Possibly it could. But the flip-side of that coin is, if individual plaintiffs have a right to bring this lawsuit because of exposures that they have encountered, then this potential threat of a lawsuit, I think, has a better effect of keeping asbestos being handled properly in the workplace. If you will look at the OSHA regulations, and all of these employers do, they look at the regulations, they know what proper abatement techniques are, they know that they have to shut their equipment down, they know that they have to bring in qualified people to do it, and if they don't do it this way, they are subject to a fine by OSHA. These fines are not that onerous.

BAKER: Do those regulations you are discussing now provide for a private cause of action if it's violated by an employer?

POTTS: No, they don't.

BAKER: Your argument sounds like that the duty that you're talking about is one of negligence per se for violating an OSHA regulation leads to recovery for a plaintiff in the position that you find yourself. Is that your basic argument?

POTTS: That is my argument, yes, that the companies have not followed the governmental regulations exposing workers.

HANKINSON: Mr. Jones has told us why it would be good public policy not to recognize this duty that you're asking us to recognize or this cause of action. Would you give us your reasons why it would be good public policy to recognize this fear of cancer claim?

POTTS: Yes, I would. Most of the petro chemical plants that are located in the state of Texas routinely undergo turnarounds in their processing units. They will call in large crews of independent contractors to perform these jobs. And I would suggest that some of these employers will look at the costs. They will make an economic evaluation of what is the best way to do this job. Do we do it properly to where we don't expose people, or do we just bring in contract crews knowing full well that these contractors work throughout the chemical industry, they won't get the disease 20-30 years down the road. If they do get the disease, how are they going to pin it on me? It's a question of economics. And I think that even though we have adopted OSHA regulations in the state, we do have a right to have more stringent laws governing asbestos exposure. And I think the current situation as evidenced in the *Poole* case is a deterrent to employers to set such economic evaluations on whether or not they are going to comply with the regulations.

If a company is looking at a week's downtime to bring in certified asbestos abatement folks, plus the increased cost of bringing in the certified asbestos folks who will use negative pressure containment and properly abate asbestos prior to bringing in construction crews, then we have a real problem that may be outweighing the situation of waiting until one actually develops a disease. If there is no penalty for employers doing this, then it doesn't sound reasonable to wait 20 years and see what these actions bring up in the way of diseases.

ABBOTT: What quantum of proof do you think is necessary in order to establish a fear of cancer?

POTTS: I think that the proof that we looked at in the *Poole* case, a Texarkana CA case, that did come before this court some time back on application for writ of error. The court did hear evidence in that case and then sent it back saying writ granted. But in that case, the Texarkana court states: that a plaintiff may recover for mental anguish based upon fear of cancer even though the evidence shows that plaintiff does not have and in reasonable medical probability will not have cancer so long as there has been exposure to the causative agent and the fear is reasonable.

ABBOTT: So one thing that you establish as a requirement, the exposure to a causative agent?

POTTS: Yes. And in this case before you today is uncontroverted that these two gentlemen were exposed to asbestos.

ABBOTT: Is it uncontroverted that exposure to asbestos causes brain cancer?

POTTS: No, it's not uncontroverted.

ABBOTT: And so what quantum proof is required to establish the fact that the causative agent will in fact cause the cancer?

POTTS: In the present case, the plaintiffs did not plead for damages for getting cancer. They pled for damages for their fear of getting cancer.

ABBOTT: There has been literature in existence for several years now, some of it written by doctors saying that exposure to cell phones causes cancer, or may cause cancer. Are we going to be able to have everyone who's had exposure to cell phones be able to sue cell phone manufacturers for fear of cancer if we apply your test?

POTTS: No, I don't think that would be a reasonable avenue to follow at all. I think that there's a clear distinction though in asbestos fibers causing cancer verses cancer that may be caused by cell phones.

ABBOTT: Well a doctor says it's so.

POTTS: I don't know that we have had any cases pursued along these lines. But I think there are a wealth of doctors that have, including Dr. Sellacoft(?), who has studied the effects of asbestos and the causes of cancer for years, and I think those causes are much more pronounced than what we're looking at in cell phones.

OWEN: But it's true that we all have inhaled asbestos fibers?

POTTS: Yes, we have. I have myself. I was in the Navy and I inhaled asbestos fibers. But the distinction is, that we had no control over inhaling asbestos fibers. If you're in a plant somewhere there is a control and you're not there to voluntarily inhale asbestos fibers. If the rules are followed appropriately, there should not be the inhalation of asbestos fibers and there should not be an onslaught of lawsuits because of fear of cancer.

The other issues that have been addressed go to the reasonableness of the fear. In *Adam Dante Corporation*, this court declared that whether conduct is reasonable is a question of

fact and not a matter of law. In the El Paso CA's case, *Tri-State Wholesale Association of Grocers v. Barrera*, they stated that the question of reasonableness is one peculiarly tailored to the province of the jury.

Petitioners have argued in their motion that plaintiffs must exhibit a high-degree of mental pain to recover mental anguish damages. They cite *Parkway* and *Saenz*.

In *Parkway*, the plaintiffs did not demonstrate compensable mental anguish. This case was a case where plaintiffs' homes were flooded. In *Saenz*, the plaintiff's only mental anguish concerns involved her inability to pay medical bills. I think that fear of developing cancer are mesothelioma can easily be distinguished from the mental anguish associated with flooding of homes and one's inability to pay bills.

HANKINSON: Well should there be some sort of minimum requirement in terms of the likelihood of a person contracting a disease before the fear injury would be compensable?

POTTS: In my own opinion, that would be a very difficult standard to apply because each individual is different. And as your honor well knows, if you inhale asbestos fibers they by in large remain in your lungs. Some people may develop a disease down the road, some people may not. I don't know what kind of standard one could set based strictly on fear of cancer.

BAKER: Is it your view that if you don't have a cause of action now for fear of future disease, that an individual in that situation then has no right of recovery in the future?

POTTS: No, I don't believe that. I think if an individual has an election to file for fear of cancer today and does not, later on if he develops a disease he files for recovery for the disease, I would think that the door would be open for past mental anguish and future mental anguish resulting from his disease.

BAKER: So would you agree then that in a case where the exposure ultimately manifest itself in the disease, then part of the remedy is the mental anguish between the exposure and the manifestation?

POTTS: I would agree with that.

BAKER: On the other hand, what if that person doesn't get something, and so it's an unfounded fear. What's the result if you allow this kind of cause of action to exist and to be filed at the time of exposure? Do you have people then that are being compensated for a fear that's nonexistence? In effect, the fear is there but the unfounded one?

POTTS: I believe that allowing one to file a suit now for the mental anguish is a strong deterrent to industry because it will perhaps force industry to comply with the governmental

regulations that are presently in place. We've known of the hazards of asbestos from the 70's, and today we still have asbestos exposure cases occurring within industry that should not have occurred. I think that allowing this remedy is certainly a deterrent to plant exposures.

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REBUTTAL

JONES: I want to return briefly to two points. Justice Abbott asked me about how this would affect limitations, and in the questioning I did not get to get to all those things. I would like to add one thing to the questions that were suggested by Justice Hutcheson. The problem even with *Childs*, when you get to limitations on this type of case is, if the person can recover when it's reasonably medically probable that they will get the disease, what is the standard by which you determine when that person knew or should have known that it was reasonably medical probable to get the disease? Reasonable medical probability itself can be a very mushy issue. And now you're saying that a lay person has a duty to know when it's reasonably medical probable before his fear to start. That becomes a very complicated limitations issue. Which medical standard applies, the specialist or the general practitioner for reasonable medical probability, the scientist that's experimenting or the person that's treating? The court doesn't have to get to these uncertainties if they go with the *Buckley* rule.

HANKINSON: You talked about a lot of policy reasons why the court should go with the *Buckley* rule and why we shouldn't recognize this claim. Why doesn't the argument that Justice Ginsberg made in her dissent in *Buckley*, something that the court should consider where she says: Yes you should recognize the claim but there should just be a minimum threshold level. In other words, the disease has to be - the probability of getting a disease has to reach a certain level before the fear is compensable. Why doesn't that take care of a lot of the policy considerations? Does it have to be an all or nothing thing?

JONES: I think it has to be an all or nothing thing. In part, for the reason that we've already talked about with respect to the harm it does to those plaintiffs that actually do get the disease if they have to bring their lawsuit today when the fear exist. I would suggest that this court has also dealt with that problem in *Boyles,* when the court looked at the possibility of having a negligently inflicted fear of severe emotional distress, and decided that that standard was too difficult because you could not distinguish between the severe and the nonsevere. I think you will have the same problem between distinguishing between the reasonable medical probable and the not reasonable medical probable, and certainly between the 30%, 40%, the lower levels of reasonable medical probability. I think a nice, clear, even standard is going to be more workable for the court.

HANKINSON: But given some of the advances in medical technology today where oftentimes in fact medicine can tell us as a result of gene studies or various alterations or things, that we are going to get certain diseases in the future, or that we have an 80% probability of getting a disease. Why if I go to the doctor and they can tell me that it's more likely than not that I am going to have

a certain form of cancer 10 years from now, isn't that fear very real to me and therefore a compensable injury? I am mean given the advances where we all are now being able to see the future in some circumstances why shouldn't that be a consideration?

JONES: I believe it can be a real fear. But I believe if you bring your lawsuit today for that disease, which you have an 80% chance of catching in the future, that your recovery for that disease will be less than if you wait and bring your cause of action before the courts when you have the disease. And if the goal is to adequately compensate plaintiffs for real suffered injuries and diseases they might have, then waiting for them to have the disease will more adequately compensate them than making them bring their disease when they have the fear.

SPECTOR: When there has been exposure, would you allow a plaintiff to sue and recover for the increased medical expenses that are necessary to monitor their health?

JONES: Yes, if they meet the currently established medical monitoring standards across the US. So, is generally required probability of getting the disease. They require a monitoring that's above and beyond what would be normal routine health monitoring. There are a lot of standards that would have to be met. I would say, yes, that is a conceivable recovery, but I would want them to comply with those standards which we really haven't briefed or presented to the court here. But there are a number of criterias, some of which are even discussed in both *Buckley* and *Potter,* as to what must be done and what must exist before the medical monitoring claim can be brought.

I would point out one other thing to the court, back to the question of where to draw the line. And I would point out to the court one case that wasn't cited in any of our briefs or any of the amicus briefs. *Fonteroy v. Owens*, 155 3d 239, decided just this year was a case in which a federal prisoner brought a claim for mental anguish because he was exposed to asbestos in the prisons. Under the CA's ruling this is a viable claim regardless of the severity of that exposure, and it has to go to the jury, and the jury has to decide. It's an unworkable rule. Our courts can't be bogged down with prisoners who have the time to sit and file mental anguish claims and pursue those. And when does the mental anguish become adequate? How many trips to the prison doctor do they have to make complaining of sleepiness, nervousness, etc.?