

tos products retain their hazardous characteristics throughout their use and injury may occur from any exposure. This is illustrated by facts alleged in this case in which plaintiffs relate that injury may have occurred not from the installation of new materials, which might be identifiable as to manufacture, but from the ripping-out of old materials, installed at unknown dates.

Although plaintiffs in asbestos related injury cases may not be able in all cases to identify potential defendants, the public policy favoring recovery on the part of an innocent plaintiff does not justify the abrogation of the rights of a potential defendant to have a causative link proven between that defendant's specific tortious acts and the plaintiff's injuries where there is a lack of circumstances which would insure that there was a significant probability that those acts were related to the injury. We therefore would not recognize the applicability of a market share theory of liability to asbestos injury litigation under Oklahoma law. Such an application would impose on the individual members of the asbestos industry a program of compensation for injuries potentially caused by any member of the industry devoid of considerations of actual causation by the individual named as defendant. The creation of a program of compensation for victims of asbestos related injuries *as a matter of policy* is a matter for the legislative body and not for the courts.

As we find market share theory of liability inapplicable under the facts presented to us in conjunction with the present question, we also find the various other theories of collective liability referred to us by plaintiffs to be inapplicable to forge a theory under which they might recover. The applicability of alternative liability theory, concert of action theory and enterprise liability theory were all considered in connection with the DES cases and rejected as inapplicable.¹⁵ The factors which rendered these theories inapplicable in the field of DES litigation are clearly present in the

area of asbestos litigation and also render the theories inapplicable.

Our answer to the United States Court of Appeals for the Tenth Circuit is that Oklahoma would not recognize a form of collective liability as a theory of relief in an asbestos related injury litigation where the plaintiff is unable to identify specific tortfeasors.

All the Justices concur.



Tom LEE, Appellant,

v.

VOLKSWAGEN OF AMERICA, INC.;
Volkswagen Werk, Inc., GmbH, a/k/a
Volkswagen Werk Aktiengesellschaft
(A.G.); and Marilyn V. Guffey, Appellees.

Nos. 63793, 63795.

Supreme Court of Oklahoma.

Sept. 22, 1987.

Dissenting Opinion Sept. 30, 1987.

Following affirmance of judgment for plaintiff in personal injury action, defendants applied to release judgment and exonerate bond. Plaintiff resisted application and separately moved to amend judgment with respect to interest. The District Court, Oklahoma County, Joe Cannon, J., refused to release judgment, allowed bond to be reduced and refused to retroactively apply latest amendment to postjudgment interest statute but applied amendments which become effective after date of judgment. On consolidated appeal, the Supreme Court, Lavender, J., held that: (1) trial court should not have applied statutory postjudgment interest rates provided

15. *Sindell v. Abbott Laboratories*, supra note 3; *Martin v. Abbott Laboratories*, 102 Wash.2d 581,

689 P.2d 368 (1984).

by amendments which became effective after date of judgment, and (2) trial court could refuse to compute postjudgment interest due on compound basis.

Affirmed in part, reversed in part, and remanded.

Summers, J., concurred in part and dissented in part and filed opinion in which Doolin, C.J., joined.

1. Interest ⇐31

Trial court should not have applied statutory postjudgment interest rates provided by amendments to judgment that was rendered prior to amendments' effective date. 12 O.S.1971, § 727.

2. Interest ⇐60

Trial court could refuse to compute postjudgment interest due on compound basis. 12 O.S.1971, § 727.

Appeal from District Court of Oklahoma County; Joe Cannon, Trial Judge.

Following affirmance on appeal of judgment entered on jury verdict for appellant, the trial court awarded postjudgment interest on the judgment in a manner giving effect to amendments to the applicable statute governing interest rates on a judgment, 12 O.S.Supp.1986 § 727, as of the effective date of those changes. Appellant appeals from the trial court's refusal to apply the latest and highest interest rate retroactively to the date of judgment and from the refusal to allow interest on the judgment to be compounded. Appellee, in the consolidated appeal, challenged the trial court's application of statutory interest rate amendments effective after the date of the judgment.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED WITH INSTRUCTIONS.

John W. Norman, Inc. by John W. Norman, Oklahoma City and Lampkin, McCaf-

1. See *Lee v. Volkswagen of America*, 688 P.2d 1283 (Okla.1984).

frey & Tawwater by Larry A. Tawwater, Oklahoma City, for appellant.

Rhodes, Hieronymus, Jones, Tucker & Gable by Richard M. Eldridge, Tulsa, for appellees.

LAVENDER, Justice:

This matter is before us for a second time.¹ In the previous appeal this Court affirmed a judgment for appellant Tom Lee rendered on a jury verdict awarding appellant 1.8 million dollars plus prejudgment interest and costs for injuries arising from an automobile accident. Following affirmance, appellees filed application to release judgment and exonerate bond alleging that they had made payment of the judgment plus applicable postjudgment interest. Appellant resisted the application and filed a separate motion to amend the judgment to conform to appellant's position that the highest and most recent amendment to the statute governing interest on a judgment be given effect retroactively to the date of the judgment² and that such interest be compounded.

The trial court refused to release the judgment, finding that appellees should have paid postjudgment interest at rates reflecting amendments to the statute governing interest on judgments effective as of the dates of those amendments. The trial court did allow the bond to be reduced. Both sides have appealed from the order of the court and those appeals have been consolidated. Appellant challenges the trial court's refusal to retroactively apply the latest amendment to the date of the judgment and the refusal to allow the interest to be compounded. Appellees challenge the application of amendments to the statute governing interest rates on a judgment which became effective after the date of the judgment.

I.

[1] Appellees point out that the version of the statute in effect at the date judg-

2. The amendment in effect at the date of the disputed ruling was 12 O.S.Supp.1984 § 727 providing for an interest rate of 15 percent.

Cite as 743 P.2d 1067 (Okla. 1987)

ment was rendered, 12 O.S.1971 § 727, provided for an interest rate of 10 percent to be applied to judgments from the date rendered. In the case of *Timmons v. Royal Globe Insurance Co.*,³ this Court stated, in regards to the application of 12 O.S.1971 § 727:

The postjudgment interest rate in effect at the time of the judgment's rendition does not vary with any subsequent changes in the statutory rate level. Both the effect and the validity of a judgment are governed by the law in force when the judgment is rendered. No term of a judgment may be affected by after-enacted legislation. To hold otherwise would undermine the constitutionally-shielded concept of an "accrued" or "vested" right in the adjudicated obligation. After-passed enactments can neither destroy nor alter that right. . . .

(footnotes omitted)

The cases cited by appellant as supporting the position that an amendment to the statutory postjudgment interest provision may be given effect to a judgment rendered prior to the effective date of the amendment are inapposite.⁴ The cases cited dealt with the application of provisions allowing for either costs, attorney fees or interest in a matter pending at the effective date of the respective provisions and not with the application of the provisions to a judgment rendered prior to the effective date. Thus the cases did not deal with the question of the effect such application would have on the accrued right in the adjudicated obligation.⁵

We find that it was error for the trial court to apply interest rates provided by

3. 713 P.2d 589, 594 (Okla.1985).

4. See *Qualls v. Farmers Ins. Co.*, 629 P.2d 1258 (Okla.1981); *Fields v. Volkswagen of America, Inc.*, 555 P.2d 48 (Okla.1976); *Benson v. Blair*, 515 P.2d 1363 (Okla.1973).

5. *Timmons v. Royal Globe Ins. Co.*, 713 P.2d at 594 (footnote 18).

6. Appellant has cited one case in support of his proposed result, *Todd Shipyards Corp. v. Turbine Service, Inc.*, 592 F.Supp. 380 (E.D.La. 1984). However, the allowance of compounded

amendments to 12 O.S.1971 § 727, which became effective after the date of the judgment in this case, to the determination of the amount of postjudgment interest due on that judgment.

II.

[2] The remaining issue is appellant's contention that postjudgment interest provided by statute should be computed on a compound rather than simple interest basis. Appellant argues that public policy supports this result.⁶

The pertinent portion of the text of 12 O.S.1971 § 727, provided, "All judgments of courts of record shall bear interest, at the rate of ten percent (10%) per annum, from the date of rendition. . . ." We find nothing in the language used in this statute to imply an intent that the interest provided for be computed on a compound basis.⁷

Accordingly we find no error in the trial court's refusal to compute postjudgment interest due on a compound basis.

CONCLUSION

Insofar as the order of the trial court applied postjudgment interest rates other than that in effect at the time the judgment in this case was rendered that order is REVERSED. Insofar as the order declined to compute postjudgment interest on a compound basis that order is AFFIRMED. The matter is REMANDED for disposition in accordance with the views expressed in this opinion.

HARGRAVE, V.C.J., SIMMS and OPALA, JJ., and ROBINSON and HANSEN, Special Judges, concur.

interest in that case was a matter of the discretionary powers of a court setting as an admiralty court and is inapposite to the present case. See *Todd Shipyards Corp. v. Auto Transportation, S.A.*, 763 F.2d 745 (5th Cir.1985).

7. Accord, *Alyeska Pipeline Service Co. v. Anderson*, 669 P.2d 956 (Alaska 1983); *Westberry v. Reynolds*, 134 Ariz. 29, 653 P.2d 379 (Ct. App.1982); *Lewis v. Stran-Steel Corp.*, 58 Ill. App.3d 280, 15 Ill.Dec. 368, 373 N.E.2d 714 (1978), construing similar statutory language providing for a certain rate of interest per year on a judgment.

DOOLIN, C.J., and SUMMERS, J., concur in part, dissent in part.

HODGES, ALMA WILSON and KAUGER, J.J., disqualified.

ROBINSON and HANSEN, Special Judges, appointed in place of ALMA WILSON and KAUGER, J.J., who disqualified.

SUMMERS, Justice, concurring in part and dissenting in part.

I dissent from the Court's treatment of postjudgment interest in Part I of the opinion. I would hold that the rate of such interest recoverable under 12 O.S.1981 § 727 varies with subsequent amendments of that statute. I would thus overrule *Timmons v. Royal Globe Insurance Co.*, 713 P.2d 589 (Okl.1985) on that subject, and do so for the reasons stated in Justice Kauger's concurring opinion in *Fleming v. Baptist General Convention, et al.*, 742 P.2d 1087 (Okl.1987). As to the remainder of the opinion I concur.

I am authorized to state that DOOLIN, C.J., joins in the views expressed herein.



**Preston WADE, Geraldine
Wade, Appellants,**

v.

Michael GEREN, Appellee.

Nos. 67271, 67828.

Supreme Court of Oklahoma.

Sept. 22, 1987.

Unwed mother and father had child, but mother moved to Oklahoma after relationship disintegrated. Father visited child for period of time but was informed by child's grandparents he was allowed no more visitation. Father then began pater-

nity and custody proceedings in his home state, and served mother and grandparents as defendant in this action. Grandparents then adopted child. Out-of-state court concluded that father had established paternity. Father filed motion to set aside adoption decree and for habeas corpus. The District Court, Le Flore County, George H. McBee, J., vacated adoption decree and awarded custody to father. Grandparents appealed. The Supreme Court, Summers, J., held that: (1) "discovery rule" prevented statute of limitations from denying father's claim; (2) father took sufficient steps to attach his substantive due process rights to notice of child's adoption; (3) out-of-state proceeding establishing paternity was due full faith and credit; and (4) absent showing natural father was unfit, he was entitled to custody as against anyone else.

Affirmed.

Kauger, J., concurred by reason of stare decisis.

Simms, J., dissented.

1. Adoption ⇐16

Statute providing that no adoption may be challenged after one year from its final decree, even if it was void, applied to situation where grandparents perpetrated fraud upon court to get adoption decree, rather than general statute providing that judgment based on fraud may be vacated within two years and void judgment may be vacated at any time. 10 O.S.1981, § 58; 12 O.S.1981, § 1038.

2. Adoption ⇐16

Statute providing that no adoption may be challenged after one year from its final decree, even if it is void, had "discovery rule" exception in that statute did not commence to run until natural father knew or with exercise of reasonable diligence should have known of fraud practiced upon him. 10 O.S.1981, § 58; 12 O.S.1981, § 1038.

3. Adoption ⇐12

Constitutional Law ⇐309(1)

Unwed father of child, who established paternity in court with notice to all inter-