

was considered proper. Although I know of no case holding this in an asbestosis case, our Federal Court in Beaumont, Texas has so held in a similar products case where the alleged defect, as in an asbestosis case, was the alleged failure to give an adequate warning. I am going to discuss this general subject in a little more detail in a moment.

Another difficult question has to do with the apportionment of the damages. In Borel, the court, following Texas law,^{17/} held that the damages should be apportioned equally. Stated more precisely, the court held that the plaintiff was under no duty to show how much of his injury was attributable to the product of any given defendant, and in the absence of any proof, the court would apportion the damages equally among these joint tortfeasors.

This would be well and good if all manufacturers were about the same size. However, it would seem manifestly unfair to hold a very small manufacturer, whose product had been used by the plaintiff on only a few occasions, equally liable with a large manufacturer whose products had been used by the plaintiff extensively over a period of many years.

^{17/} Landers v. East Texas Salt Water Disposal Co., 15, Tex. 251, 248 S.W.2d 731 (1952). See Prosser on Torts, Sec. 52. See too the annotation in 100 ALR (2d) 16. The same result is reached under the so-called "Concert of Action" theory. See Hall v. E. I. DuPont de Nemours and company, 345 F.Supp. 353 (E.D., N.Y., 1972).