STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1381
A17-2040

Jenella Joyce Conda, as trustee for the heirs
and next of kin of Ronald Eugene Conda,
Respondent,

vs.

Honeywell International, Inc.,
Appellant.

Filed May 21, 2018
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CV-15-4651

Michael R. Strom, Chad C. Alexander, Ryan T. Gott, Sieben Polk Law Firm, Eagan, Minnesota; and

Lisa W. Shirley (pro hac vice), Dean Omar & Branham, LLP, Dallas, Texas (for respondent)

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Richard J. Thomas, Burke & Thomas PLLP, St. Paul, Minnesota (for amicus curiae Minnesota Defense Lawyers Association)

Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

In this appeal from judgment following a jury trial on respondent's asbestos-related wrongful-death claims, appellant argues that the district court erred by (1) denying its motions related to the admissibility and sufficiency of respondent's expert-testimony, (2) denying its request to include the U.S. Navy on the special-verdict form, (3) denying its request for a new trial based on opposing counsel's misconduct at trial, and (4) applying the pre-2003 version of Minn. Stat. § 604.02 to reallocate its fault from 10% to 50%. We affirm.

FACTS

In July 2015, Ronald Conda (decedent) and respondent Jenella Joyce Conda sued a number of companies, including appellant Honeywell International, Inc. (Honeywell), asserting negligence, strict liability, and breach-of-warranty claims. The complaint alleged that the defendants "were engaged in the manufacture, sale, installation, and distribution of asbestos-containing products and raw materials" and that as a result of the inhalation and ingestion of asbestos fibers released from the defendants' products during decedent's job as an iron worker, he developed mesothelioma.

Decedent died on December 11, 2015, as a result of his mesothelioma. In January 2016, Conda amended the complaint to convert it to a wrongful-death action. The wrongful-death complaint alleged that decedent "was exposed to asbestos from certain

defendants' joint compound and automotive products outside his employment with Northern States Power [(NSP)]" and that as a result of the inhalation and ingestion of asbestos fibers released from those products, he developed mesothelioma.

The case was tried to a jury over the course of three weeks in May and June 2016. At trial, Conda argued that decedent's repeated use of Bendix brakes, one of Honeywell's products, was a substantial contributing factor to decedent's development of mesothelioma. Honeywell generally argued that although Bendix brakes contained chrysotile asbestos, those fibers convert to forsterite, a harmless compound, as a result of the braking process and that Bendix brakes therefore were not a substantial contributing factor to decedent's mesothelioma.

Following Conda's closing argument, Honeywell moved for a mistrial, arguing that Conda's counsel had presented statute-of-limitations evidence to the jury that the district court had excluded pursuant to a motion in limine and that Conda's counsel had made improper corporate-conduct arguments. The district court took the mistrial motion under advisement and indicated that it would wait until after the jury's verdict to decide the motion.

The jury returned a special-verdict finding that Honeywell and Foster Wheeler Corp., another named defendant, "manufacture[d], install[ed], and/or suppl[ied] asbestos-containing products in a defective condition unreasonably dangerous because of their design" and that the defective designs of Honeywell's and Foster Wheeler's products were a direct cause of decedent's death. The jury found that Honeywell "fail[ed] to provide adequate warnings for the safe use of the product" and that this failure was a direct cause

of decedent's death. The jury also found that NSP was negligent and that its negligence was a direct cause of decedent's death. The jury allocated 10% of fault to Honeywell, 10% to Foster Wheeler, and 80% to NSP, and awarded $3,723,553 in damages. The district court stayed entry of judgment and ordered the parties to brief Honeywell's pending mistrial motion and "whether the 2003 amendment to the Minnesota Comparative Fault Act is applicable to this case and the extent to which, if at all, any reallocation principles are applicable to the fault attributed to [NSP]."

In July 2016, Honeywell moved for judgment as a matter of law (JMOL), arguing that Conda did not establish causation at trial and that Conda's "expert opinions lack[ed] foundational reliability." Honeywell also moved for a new trial, arguing that Conda's counsel "displayed documents to the jury during closing arguments containing material that the Court had specifically excluded from evidence" regarding Honeywell's statute-of-limitations defense, that Conda's counsel made improper remarks during its opening statement and closing argument that were "designed to inflame the jury's passion and prejudice," and that the "damages awarded [were] excessive and were given under the influence of passion and prejudice."

The district court denied Honeywell's JMOL motion, reasoning that the "opinions of [Conda's] causation experts were foundationally reliable and properly admitted" and that "those opinions established a prima facie case of general and specific causation using the legal standard established by the court when trial commenced." The district court granted Honeywell's new-trial motion in part, reasoning that Conda's counsel's "decision to show the jury excluded testimony while magnifying its significance" had "destroyed all

semblance of a fair trial on the issue" and that Honeywell was therefore entitled to a new trial on its statute-of-limitations defense.[1] The district court otherwise denied Honeywell's new-trial motion, reasoning that the other alleged misconduct did not justify granting a new trial and that the jury's damages award was reasonable and not the result of prejudice. Finally, the district court concluded that a 2003 amendment to the Minnesota Comparative Fault Act was not applicable in this case and that, if Conda prevailed after Honeywell's statute-of-limitations defense was retried, Honeywell would be "responsible for its own fault plus 50% of [NSP's] fault," or $1,861,776.50, under the 1988 version of that statute.

In May 2017, the statute-of-limitations defense was re-tried to a jury, and Conda again prevailed on that issue. In July 2017, the district court entered judgment against Honeywell in the amount of $1,861,776.50. In August 2017, Honeywell appealed the July 2017 judgment. In October 2017, the district court amended the judgment to add $41,907.72 in prejudgment interest. Honeywell appealed the amended judgment, and this court consolidated the appeals.

D E C I S I O N

I.

Honeywell contends that "[t]he district court erred in denying [its] motions relating to the admissibility and sufficiency of [Conda's] causation experts." Honeywell argues

[1] Because granting Honeywell's new-trial motion regarding the statute-of-limitations defense produced the same outcome as granting Honeywell's mistrial motion, the district court deemed the mistrial motion moot.

that the district court should not have allowed Conda's causation experts to testify and that the district court should have granted Honeywell's JMOL motion.

Admissibility of Conda's Expert-Testimony

Honeywell contends that the district court erred by allowing Conda's causation experts, Dr. Edwin Holstein and Dr. Eugene Mark, to testify.[2] We review the district court's decision whether to admit expert testimony for an abuse of discretion. *City of Moorhead v. Red River Valley Coop. Power Ass'n*, 830 N.W.2d 32, 39 (Minn. 2013).

Minn. R. Evid. 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

For expert testimony to be admissible under rule 702, "(1) The witness must qualify as an expert; (2) the expert's opinion must have foundational reliability; (3) the expert testimony

[2] Honeywell challenged the admissibility of Conda's expert-testimony in a pretrial motion in limine and in its motion for JMOL. The district court rejected both challenges. The district court's memorandum denying Honeywell's motion for JMOL states, "In denying Honeywell's motion in limine . . . , the court fully explained the legal and factual bases for its rulings. Honeywell raised nothing in its JMOL motion that was not already addressed by the court's prior rulings. Those rulings are adopted and incorporated by reference herein." Because Honeywell's appellate arguments regarding the admissibility of Conda's expert-testimony focus on the testimony that was received at trial, and not on the testimony proffered before trial, we similarly focus on the admissibility ruling in the district court's denial of Honeywell's request for JMOL.

must be helpful to the trier of fact; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012).

Honeywell argues that this court must determine, under *Frye-Mack*, whether Conda's expert-testimony was based on scientific evidence that is generally accepted in the relevant scientific community and whether it had foundational reliability. *See Goeb v. Tharaldson*, 615 N.W.2d 800, 814 (Minn. 2000) (describing requirements of *Frye-Mack* standard). Conda counters that *Frye-Mack* is inapplicable here "because Honeywell has not properly raised a challenge to the general acceptance of the scientific theory utilized by [Conda's] experts." Whether scientific evidence is generally accepted in the relevant scientific community is a question of law that this court reviews de novo, whereas whether an expert opinion has foundational reliability is reviewed for an abuse of discretion. *Id*. at 815.

Because Honeywell does not argue that Conda's expert-testimony was based on a novel scientific theory and instead generally argues that the testimony was speculative and inconsistent with Honeywell's evidence, Honeywell raises a challenge to foundational reliability. We therefore review the district court's admissibility ruling for an abuse of discretion. *Doe*, 817 N.W.2d at 164.

The district court must follow a three-step process in analyzing the foundational reliability of expert testimony. *Id.* at 167-68. "First, the district court must analyze the proffered testimony in light of the purpose for which it is being offered." *Id.* "Second, the court must consider the underlying reliability, consistency, and accuracy of the subject

about which the expert is testifying." *Id.* at 168. Finally, "the proponent of evidence about a given subject must show that it is reliable in that particular case." *Id.* "As long as the district court considered the relevant foundational reliability factors, [an appellate court] will not reverse its evidentiary finding absent an abuse of discretion." *Id.*

The district court determined that Conda's expert-testimony on causation had foundational reliability because the testimony was not speculative and assisted the trier of fact:

> Here, the jury and the experts did not have to speculate or guess about the extent of Mr. Conda's exposures to asbestos from Bendix brakes. The jury heard testimony that Mr. Conda replaced brakes two to three times a week for over two years and continued replacing brakes two to three times a year for the next thirty years. The jury could find that Mr. Conda performed full brake jobs—removing, sanding, beveling, blowing out, and replacing brake drums—mostly using Bendix brakes. A full brake replacement lasted approximately one hour and Mr. Conda testified that he always conducted a full brake replacement. The jury heard evidence that sanding and beveling brake drums cause .3 to 2 asbestos fibers per cc and blowing out a brake drum causes .3 to 87 asbestos fibers per cc. Dr. Holstein testified that depending on what study is referenced, this exposure is 10,000 to 1 million times larger than asbestos levels in the ambient air. Further, when replacing brakes, the asbestos fibers remain in the air for extended periods of time because of constant disturbances that keep the particles suspended. Thus, the jury could conclude that exposure to Bendix brakes substantially contributed to Mr. Conda's mesothelioma because there was fact-supported expert testimony that exposure at both ends of the spectrum are a substantial contributing factor.

(Citations omitted.)

The district court also concluded that there was "no basis for the court to question the foundational reliability of any expert opinion presented in this case" based on the

expert's qualifications or the relevant scientific literature upon which each expert relied at trial. The district court noted that "[t]he battle of the experts in this case focused [more] on an incredibly voluminous series of scientific articles published over the course of decades than on the qualifications and experience of the testifying experts themselves" and that "[w]ith few exceptions, the parties conceded that the literature utilized by the experts on each side were reliable authorities." The district court reasoned that "the experts punched and counter-punched using the articles, seizing upon phrases removed from the context of the entire article and using extreme nuance" and that the determination of which expert testimony was more reliable in this case was an issue of credibility for the jury rather than an issue of foundational reliability. Based on the district court's statements, we are satisfied that it gave due consideration to the foundational-reliability factors.

Honeywell argues that Conda's causation experts essentially testified that "because no particular asbestos exposure can be ruled out [as a cause of mesothelioma], all exposures (irrespective of their biological potency) must be ruled in as contributing causes" and asserts that this "every exposure" theory lacks foundational reliability because it is based merely "on the *lack* of scientific data definitively establishing the level of asbestos exposure below which there is no risk of disease."

Honeywell's assertion that Conda's causation experts presented an "every exposure" theory mischaracterizes the experts' testimony at trial. Honeywell is correct that both Dr. Mark and Dr. Holstein testified that asbestos is the main cause of mesothelioma and that there is not a safe level of asbestos exposure such that a person is guaranteed not to develop mesothelioma from that exposure. But Conda's causation experts did not testify

that all exposures to asbestos are substantial contributing factors to the development of mesothelioma. Instead, they based their causation opinions on specific exposure levels. For example, Conda's counsel asked Dr. Mark:

> [I]f you have a product with one percent asbestos or more, regardless of what the product is, that releases visible dust or is measured to be at least .1 fiber per cc that repeatedly exposes a person over the course of months, if not years, given the right latency, and that person develops mesothelioma, would those exposures to any of those, to the Navy, NSP, any of them, would those be substantial contributing factors for that mesothelioma?

Dr. Mark replied, "Yes."

Dr. Holstein testified that studies establish that working with asbestos-containing brakes releases a significant amount of asbestos, ranging from tenths of a fiber to 87 fibers per cc, into the air and that, based on the frequency of decedent's work with Bendix brakes, brake work was a substantial contributing factor to his development of mesothelioma. And when Honeywell's counsel asked Dr. Holstein whether decedent's exposure to asbestos when using joint compounds in home remodeling projects was a substantial contributing factor to his mesothelioma, Dr. Holstein testified, "There are ranges of exposures from trivial to very heavy, and at some point as you move up that spectrum, it becomes a substantial contributing factor. And I haven't tried to determine whether that was true or not for the joint compounds."

Honeywell also argues that Conda's expert-testimony lacked foundational reliability because it was unsupported by scientific literature, arguing that "numerous studies" have "concluded that there is no increased risk of mesothelioma in brake workers

exposed to asbestos." Dr. Holstein primarily relied on two epidemiological studies in support of his testimony that there is an increased risk of mesothelioma for brake mechanics: a study authored by Dr. Cora Roelofs and a study based on the Australian Mesothelioma Register. Both studies suggested that mechanics have an increased risk of mesothelioma. Dr. Holstein also discussed a study authored by Dr. Arthur Rohl regarding the release of asbestos fibers into the air during brake lining maintenance and repair. Honeywell thoroughly cross-examined Dr. Holstein regarding these studies, as well as the studies Honeywell presented in support of its argument that Bendix brakes were not a substantial contributing factor.

As the district court reasoned, whether to accept the findings of one study over another required a determination regarding the credibility and weight to be given to the competing expert testimony. The district court did not abuse its discretion by determining that the opinions of Conda's causation experts were foundationally reliable and properly admitted.

Sufficiency of Conda's Expert-Testimony

Honeywell argues that "[i]n addition to lacking any sound basis in science, the every-exposure theory [Conda's] experts utilized at trial is not sufficient as a matter of law to prove legal causation." Honeywell argues that because Conda's experts failed to present sufficient evidence of causation, her wrongful-death claim against Honeywell fails as a matter of law.

If a party moves for JMOL after a jury returns a verdict, the district court may "(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a

matter of law." Minn. R. Civ. P. 50.02(a). "The jury's verdict will not be set aside if it can be sustained on any reasonable theory of the evidence." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (quotation omitted). "Courts must view the evidence in the light most favorable to the nonmoving party and determine whether the verdict is manifestly against the entire evidence or whether despite the jury's findings of fact the moving party is entitled to judgment as a matter of law." *Id.* (quotation omitted). "JMOL is appropriate when a jury verdict has no reasonable support in fact or is contrary to law." *Id.* Construing the evidence in the light most favorable to the verdict "does not mean that [courts] are precluded from actually examining the evidence to assess whether there is a sufficient basis for the jury's finding." *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 229 (Minn. 2010).

An appellate court reviews a district court's decision whether to grant JMOL de novo. *Longbehn*, 727 N.W.2d at 159. This court therefore independently determines whether there is "any competent evidence reasonably tending to support" the jury's verdict. *Janke v. Duluth & Ne. R.R. Co.*, 489 N.W.2d 545, 548 (Minn. App. 1992), *review denied* (Minn. Oct. 28, 1992).

Minnesota applies the substantial-factor causation test. *George v. Estate of Baker*, 724 N.W.2d 1, 10 (Minn. 2006). Under the substantial-factor test, a "negligent act is a direct, or proximate, cause of harm if the act was a substantial factor in the harm's occurrence." *Id.* Decedent's deposition testimony, which was admitted at trial, indicated that he began working on brakes at age nine, had replaced brakes about two to three times a week during his two-and-a-half years working at a gas station, and continued to replace

brakes for himself and friends and family about two or three times a year afterwards. Decedent testified that while doing brake jobs, he used compressed air to blow off dust and that he sandpapered and beveled new brake shoes to ensure that they fit each vehicle. Decedent testified that most of the brakes he used were Bendix brakes.

The deposition testimony of Joel Cohen, Honeywell's corporate representative, was also admitted at trial. Cohen indicated that from 1939 to 1983, Bendix's drum brakes contained 25-50% asbestos. Dr. Mark and Dr. Holstein testified that exposure to asbestos is the primary cause of mesothelioma. Dr. Holstein testified that replacing asbestos-containing brakes releases a significant amount of asbestos into the air, especially when the person replacing the brakes sandpapers and bevels the new brake shoes before inserting them in the vehicle, as decedent did. Finally, Dr. Holstein testified that, based on the frequency with which decedent did brake work with Bendix brakes, his brake work was a substantial contributing factor to his development of mesothelioma.

Viewing the evidence in the light most favorable to the verdict, the jury's causation determination was not manifestly contrary to the evidence. The district court therefore did not err by denying Honeywell's motion for JMOL.

II.

Honeywell contends that "[t]he district court erred in declining to include the U.S. Navy on the Special Verdict Form as an entity to whom the jury could allocate fault."

When apportioning negligence, a jury must have "the opportunity to consider the negligence of all parties to the transaction, whether or not they be parties to the lawsuit and whether or not they can be liable to the plaintiff or to the other tort-feasors either by

operation of law or because of a prior release." *Lines v. Ryan*, 272 N.W.2d 896, 902-03 (Minn. 1978) (quotation omitted). The negligence of an entity should be submitted to the jury "[i]f there is evidence of conduct which, if believed by the jury, would constitute negligence (or fault) on the part of the person inquired about." *Frey v. Snelgrove*, 269 N.W.2d 918, 923 (Minn. 1978). "To recover on a claim of negligence, a plaintiff must prove: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014).

The parties disagree regarding the standard of review that this court should use in reviewing the district court's decision not to include the Navy on the special-verdict form. Honeywell argues that this decision was a legal determination, which we review de novo. *See, e.g., SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011) (stating that appellate courts review the district court's legal determinations de novo). Conda argues that "[a]n appellate court reviews challenges to the special verdict form under an abuse of discretion standard." Neither party cites precedent that is directly on point or provides meaningful analysis of the issue. However, we need not decide the issue because Honeywell's argument fails under either standard.

In denying Conda's request that "the United States Navy be placed on the special verdict form when it comes to allocation of fault," the district court reasoned that an entity may be included on the special-verdict form regarding allocation of fault only if there is "a prima facie case under which a reasonable jury without speculating can assess fault to that entity." The district court reasoned that although "there's plenty of evidence that the Navy

was arguably a substantial contributing factor" to decedent's mesothelioma, "causation . . . doesn't equal failure to use reasonable care." The district court concluded that "[t]here isn't any evidence that the Navy did or did not employ any protective measures on the ship for people who were going to be working in the vicinity of asbestos" and that because "the jury would have to speculate" to determine whether the Navy was negligent, the district court would not include the Navy on the special-verdict form.

Honeywell argues that the "evidence was sufficient to include the U.S. Navy on the verdict form," pointing to decedent's deposition testimony and the trial testimony of Thomas McCaffery (Honeywell's naval expert), Charles Blake (Honeywell's industrial hygiene expert), and Dr. Holstein. Decedent testified at his deposition that he had been exposed to asbestos while in the Navy. McCaffery and Blake testified extensively regarding the asbestos exposure that someone in decedent's position would have had during his time in the Navy. Dr. Holstein testified that if it was a person's normal and regular duty to work with and around insulation containing asbestos in the Navy, that exposure ordinarily would be a substantial factor in causing that person's mesothelioma. Dr. Holstein also testified, "I've seen Navy documents from, if I remember correctly, the 1920s that mandated certain measures to control uses of asbestos, but those were rare. It was mostly in the '30s and '40s, and clearly they were not adequate for protection."

However, as the district court noted, none of the witnesses testified regarding the appropriate standard of care or whether the Navy breached its duty of care to decedent. In fact, on cross-examination, McCaffery testified that it was not his intention to testify regarding the "engineering standard of care" or whether it applies to the Navy. Without

evidence regarding the appropriate standard of care, the jury would have been unable to determine whether the Navy breached its duty of care without speculating regarding what protective measures, if any, the Navy's duty of care required. Because there is insufficient evidence in the record that the Navy breached its duty of care to decedent, the district court did not err in denying Honeywell's request to include the Navy on the special-verdict form.

III.

Honeywell contends that the district court erred in refusing to grant a new trial based on opposing counsel's misconduct.

Under Minn. R. Civ. P. 59.01(b), a district court may grant a new trial based on "[m]isconduct of the . . . prevailing party." The determination of whether to grant a new trial because of attorney misconduct "is not governed by fixed rules, but instead rests wholly within the discretion of the [district] court." *Johnson v. Washington County*, 518 N.W.2d 594, 600 (Minn. 1994). This court reviews the district court's decision whether to grant a new trial because of attorney misconduct for an abuse of discretion. *Wild v. Rarig*, 302 Minn. 419, 433, 234 N.W.2d 775, 785 (1975). "The primary consideration in determining whether to grant a new trial is prejudice." *Id.* at 433, 234 N.W.2d at 786.

Honeywell argues that several of opposing counsel's remarks in Conda's opening statement and closing argument were improper corporate-conduct arguments. For example, Honeywell argues that it was improper for opposing counsel to argue that Honeywell has "never come close to putting enough value on a husband, on the value of a father," that Honeywell "is a corporation that understood they had in their memos and own

files in the 1960s that asbestos was causing death," and that Honeywell responded by "join[ing an] asbestos subcommittee" and "fight[ing] OSHA regulations."

Arguments by counsel in closing argument that call "the attention of the jury to the comparative circumstances of a large, wealthy company on the one hand, and a poor, unfortunate individual on the other" and that are thereby intended to "take the jury beyond the case and induce a verdict against the company" are improper and can be the basis for a new trial. *Anderson v. Hawthorn Fuel Co.*, 201 Minn. 580, 582-83, 277 N.W. 259, 260-61 (1938). However, when a party fails to object to attorney misconduct, this court will not grant a new trial unless the misconduct was "so reprehensible as to require the action of the [district] court on its own motion." *Russell v. Strohochein*, 305 Minn. 532, 535, 233 N.W.2d 289, 292 (1975).

Honeywell did not object to the allegedly improper corporate-conduct arguments when they were made. In rejecting Honeywell's posttrial challenge, the district court reasoned that the statements by opposing counsel were relevant to disputes in this case regarding the appropriate amount of damages, causation, the credibility of the scientific evidence Honeywell presented at trial, and Honeywell's knowledge and failure to warn.

We have reviewed the challenged arguments, and we assess them in light of the standard that applies given Honeywell's failure to object during trial. The arguments were not so reprehensible as to have required the district court to act on its own motion. They therefore do not justify the grant of a new trial.

Honeywell also argues that several of opposing counsel's statements in Conda's closing argument improperly invoked decedent's pre-death pain and suffering and urged

the jury to punish Honeywell. For example, Honeywell argues that it was improper for opposing counsel to argue that mesothelioma "is a horrific way to die," that Honeywell committed a "blatant, explicit, known, eyes wide open violation of the law," and that the jury should make a "decision . . . as calculated and deliberate as the decision of [Honeywell's] decision makers over decades."

Where punitive damages are not permitted, statements by counsel in closing argument directing the jury to punish a defendant for the defendant's "outrageous and reckless conduct" are improper. *Johnson v. Washington County*, 506 N.W.2d 632, 40 (Minn. App. 1993), *aff'd*, 518 N.W.2d 594 (Minn. 1994); *see Vanskike v. ACF Indus., Inc.*, 665 F.2d 188, 209-10 (8th Cir. 1981) (reversing and remanding for new trial on damages where jury awarded excessive damages after counsel made an improper punitive-damages argument). Honeywell objected to several of opposing counsel's remarks on this ground. The district court sustained objections to some of the remarks and instructed the jury to disregard them. Although the district court did not issue a specific curative instruction regarding the other remarks, it generally instructed the jury to "not include amounts for punishing the defendants, grief or emotional distress of the surviving spouse and the next of kin, [or] the pain and suffering of Ronald Conda before his death" when calculating damages.

"If the [district] court instructed the jury to disregard the improper remarks or arguments, a new trial will rarely be granted by [an appellate court]." *Wild*, 302 Minn. at 433, 234 N.W.2d at 785-86. The district court's admonition that the jury generally disregard the statements that Honeywell alleges were improper reduced the potential for

prejudice to Honeywell from those statements. Moreover, as the district court noted, the jury's verdict suggests that it was not improperly swayed by counsel's comments and did not punish Honeywell. For example, the jury awarded Conda $3.5 million in pecuniary loss damages, whereas Conda requested $8 million in closing argument.[3] And the jury found Honeywell to be 10% at fault, and not 65% at fault as Conda argued in closing argument. Lastly, we note that the district court granted Honeywell a new trial on its statute-of-limitations defense because Conda's counsel engaged in significant misconduct by showing the jury excluded evidence regarding the statute-of-limitations issue. On this record, we are satisfied that the district court appropriately exercised its discretion.

IV.

Honeywell contends that the "district court erred in using an old version of Minn. Stat. § 604.02 to reallocate NSP's assigned fault to Honeywell." Honeywell argues that Conda's "claim for wrongful death damages accrued in 2015, when Mr. Conda died. Therefore, the current version [of section 604.02] applies."

Honeywell raises an issue of statutory interpretation, which this court reviews de novo. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014). The goal of statutory interpretation is to effectuate the intent of the legislature. Minn. Stat. § 645.16 (2016); *Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 501 (Minn. 2018). "The first step in interpreting a statute is to examine the language to determine whether it is clear and unambiguous." *A.A.A. v. Minn. Dep't of Human Servs.*, 832 N.W.2d 816, 819 (Minn.

[3] Honeywell did not propose an alternative damages amount for the jury's consideration.

2013). "If the Legislature's intent is clear from the unambiguous language of the statute, [appellate courts] apply the statute according to its plain meaning." *Staab*, 853 N.W.2d at 716-17. "But if a statute is susceptible to more than one reasonable interpretation, the statute is ambiguous, and [appellate courts] will consider other factors to ascertain the legislature's intent." *Id.* at 717.

In interpreting a statute, appellate courts "give effect to all of the statute's provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (quotation omitted). We construe nontechnical words and phrases according to their plain and ordinary meanings and look to dictionary definitions to determine the plain meanings of words. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014); *see Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 759 n.2 (Minn. 2010) (recognizing usefulness and appropriateness of consulting *Black's Law Dictionary* when conducting plain-language reading of a statute).

The current version of Minn. Stat. § 604.02, subd. 1, provides that "[w]hen two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each." Under the current statute, a person is jointly and severally liable for an entire award only if the person's fault is greater than 50%, if the person acted in a common scheme or plan with one or more other persons that resulted in injury, if the person committed an intentional tort, or if the person's liability arose under specific statutes not relevant here. Minn. Stat. § 604.02, subd. 1 (2016).

The legislature amended Minn. Stat. § 604.02, subd. 1, to its current language in 2003. 2003 Minn. Laws ch. 71, § 1, at 386. It previously provided that "[w]hen two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award." Minn. Stat. § 604.02, subd. 1 (2002). Thus, the 2003 amendment significantly changed the substantive law of joint and several liability in Minnesota.

The dispute in this case centers on the following language in the current statute: "This section applies to claims arising from events that occur on or after August 1, 2003." Minn. Stat. § 604.02, subd. 1 (2016). Honeywell argues, "This section has only one reasonable meaning in the context of a wrongful-death claim: the current version applies to claims arising out of deaths that occurred on or after August 1, 2003." Honeywell further argues that because Conda's wrongful-death claim accrued in 2015 when decedent passed, the current version of the statute applies. Conda similarly argues that the relevant language is unambiguous. However, Conda argues that the current statute does not apply in this case because the asbestos exposures, which were the events giving rise to Conda's claim, all occurred before August 1, 2003.

We start by defining the relevant terms in the statute. A "claim" is synonymous with a "cause of action," which is defined as "[a] group of operative facts giving rise to one or more bases for suing." *Black's Law Dictionary* 266, 302 (10th ed. 2014). Thus, a claim does not exist until all of the operative facts giving rise to the claim have come into being. That is the point at which a claim arises or accrues. *See Sanchez v. State*, 816 N.W.2d 550, 559 n.8 (Minn. 2012) ("[A] claim arises when the cause of action accrues.").

The word "events" is not defined in Minn. Stat. § 604.02, but "event" is generally defined as "[s]omething that takes place; an occurrence" and "[a] significant occurrence or happening." *The American Heritage College Dictionary* 484 (4th ed. 2007).

The date on which a claim arises or accrues is not necessarily the same as the dates of the underlying events giving rise to the claim. Those are the circumstances here: decedent's asbestos exposures occurred long before 2003, but Conda's wrongful-death claim did not accrue until decedent's death in 2015. These circumstances require us to determine whether the current version of section 604.02, subdivision 1, applies when a claim accrues on or after August 1, 2003, but the events giving rise to the claim occurred before that date.

Our analysis is influenced by the following principle: "When the legislature amends a statute, it is usually presumed that it intends some change in the law." *County of Washington v. Am. Fed'n of State, Cty. & Mun. Emps., Council No. 91*, 262 N.W.2d 163, 168 (Minn. 1978). "This presumption will not apply where it appears on examination that the statutory amendment was only for the purpose of rearrangement, clarification, or to make a second statute applicable to a situation theretofore covered by another statute." *Id.* at 168 n.5. None of those exceptions applies here. We therefore apply the presumption.

The prior version of Minn. Stat. § 604.02 applied to "*causes of action arising* on or after" its effective date. 1988 Minn. Laws ch. 503, §§ 3, 6, at 378 (emphasis added). Because the legislature amended the statute to provide "[t]his section applies to *claims arising from events that occur* on or after August 1, 2003," we presume the legislature intended to change the class of claims to which the current statute applies. 2003 Minn.

Laws ch. 71, § 1, at 386 (emphasis added). Indeed, if the legislature did not intend to do so, and instead intended to continue to base application of the statute on the date of claim accrual, there was no need to amend the phrase, "causes of action arising on or after."[4] Yet the legislature amended the language to indicate that application of the current statute would depend on the dates of the events giving rise to the claims. The plain language of the current statute indicates that those events must occur on or after August 1, 2003, for the current statute to apply.

Despite the new language in the current statute, Honeywell argues that the plain meaning of the current language is that the statute applies to claims accruing on or after August 1, 2003, even if events giving rise to the claims occurred before that date. Honeywell's reading of the statute is unreasonable for two reasons. First, it does not result in any change in the law. Second, Honeywell's reading of the statute does not give any meaning or effect to the new statutory language, "from events that occur." Again, tort claims do not necessarily arise or accrue at the same time as the underlying tortious conduct, that is, the events giving rise to the claims. Honeywell's restrictive reading of the current version of section 604.02 inappropriately renders the phrase, "from events that occur," meaningless.

[4] Although the "causes of action arising on or after" effective-date provision applicable to the 1988 version of section 604.02 appeared in session laws, rather than in the text of the statute, we equate the legislature's addition of new effective-date language in the statute's text with an amendment of the existing effective-date language. 1988 Minn. Laws ch. 503, §§ 3, 6, at 378.

Honeywell also argues that we should presume that the legislature intended the "claims arising from events" phrase to mean claim accrual based on the decisions in *Anderson v. City of Minneapolis*, 296 N.W.2d 383 (Minn. 1980), *Miller v. Chou*, 257 N.W.2d 277 (Minn. 1977), and *Schaeffer v. State*, 444 N.W.2d 876 (Minn. App. 1989). Relying on *U.S. Bank N.A. v. Cold Spring Granite Co*., Honeywell asserts that although "the current effective-date language is different from that used in prior amendments, the language is not unique in Minnesota and, for 40 years, courts have consistently interpreted it to refer to the date on which a plaintiff's cause of action accrues." 802 N.W.2d 363, 372 (Minn. 2011). *Cold Spring Granite* states that "when the legislature uses a phrase we assume the legislature is aware of the common law understanding of the phrase and that the legislature intended to use the phrase according to its commonly understood meaning." *Id.* (quotation omitted). The supreme court applied that principle and concluded that when the legislature used the term "fraud" in a statute, "it was referring to common law fraud." *Id*. Honeywell's reliance on *Cold Spring Granite* is questionable because the legislature's use of the phrase "claims arising from events" did not incorporate a common-law definition.

Nonetheless, Honeywell argues that the decisions in *Anderson*, *Miller*, and *Schaeffer* "are important and instructive because they interpret a clause virtually identical to the clause at issue here, which the Legislature used in 2003 when amending Minn. Stat. § 604.02." But *Anderson*, *Miller*, and *Schaeffer* must be read in context. In *Nieting v. Blondell*, 306 Minn. 122, 132, 235 N.W.2d 597, 603 (Minn. 1975), the supreme court prospectively "abolish[ed] the tort immunity of the State of Minnesota with respect to tort

claims arising on or after August 1, 1976, subject to any appropriate action taken by the legislature." The legislature responded by enacting Minn. Stat. § 3.736 (1976), which, among other things, allowed the state to be sued in tort, and expressly provided that the statute "appl[ied] to claims arising from events occurring on and after August 1, 1976." 1976 Minn. Laws ch. 331, §§ 33, at 1293-97; 45, at 1301.

Because the claims in *Anderson* and *Miller* arose before August 1, 1976, the supreme court held that *Nieting*'s abolition of common law immunity did not apply. *Anderson*, 296 N.W.2d at 384 (claims arose in 1974 and 1975); *Miller*, 257 N.W.2d at 281 (claim arose in 1973). In doing so, the supreme court relied solely on its holding in *Nieting*; it did not analyze the effective date language of Minn. Stat. § 3.736. *Anderson*, 296 N.W.2d at 385 n.1 (acknowledging section 3.736 in a footnote without applying it in the supreme court's analysis); *Miller*, 257 N.W.2d at 281 n.6 ("Since the instant cause of action arose before the effective date of [the provisions of section 3.736], their interpretation is not before us."). Accordingly, the decisions in *Anderson* and *Miller* did not provide the legislature with a common-law interpretation of the phrase "claims arising from events."

As to this court's treatment of section 3.736, in *Schaeffer*, we held that "[l]egislation abolishing [the] state's sovereign immunity is applicable to all actions arising on or after August 1, 1976, even if acts or omissions creating liability occurred prior to that date." 444 N.W. 2d at 877. In doing so, this court considered the effect of section 3.736 and concluded that the legislative language was intended to reflect the effective date for abolition of immunity set forth in *Nieting*, explaining:

> Common law sovereign immunity was abolished by the supreme court in *Nieting v. Blondell*, 306 Minn. 122, 235 N.W.2d 597 (1975). In so abolishing immunity, the court stated that its decision was applicable to "*tort claims arising* on or after August 1, 1976." *Id.* at 132, 235 N.W.2d at 603 (emphasis added). Thus, the court expressly stated the deciding factor was the date upon which the claim arose. It did not in any way suggest its decision would be inapplicable simply because the negligent act or omission occurred prior to August 1, 1976. . . . [W]e believe the 1976 legislature did not intend to alter the supreme court's effective date.

Id. at 880. In the ensuing discussion, this court described the supreme court's holdings in *Anderson* and *Miller* as follows: "[A]lthough the supreme court has not directly addressed the 'events occurring' language, it has reiterated that governmental immunity has been abolished with respect to claims arising on or after August 1, 1976." *Id.*

In sum, the supreme court's opinions in *Anderson* and *Miller*, as well as this court's opinion in *Schaeffer*, do not suggest that the supreme court has interpreted the statutory language of section 3.736 to mean claim accrual. The supreme court did not base its decisions in *Anderson* and *Miller* on statutory interpretation, as this court acknowledged in *Schaeffer*. *See id.* And unlike the circumstances in *Schaeffer*, there is no supreme court holding dictating that the current version of section 604.02 applies to claims that accrue on or after the effective date of the statute even though the claims are based on events occurring before the effective date.

We appreciate Honeywell's attempt to aid our resolution of the issue before us by directing our attention to another statute with similar language and related caselaw. But for the reasons set forth above, we are not persuaded that the caselaw applies here. Instead of relying on that caselaw, we presume that when the legislature amended section 604.02,

it intended to change the law and did not intend any of the amended statutory language to be superfluous. If we read the amended language in the current version of section 604.02 to mean only "claim accrual," as Honeywell advocates, no change in the law results and the words "from events that occur" are superfluous. In contrast, if we read the amended language as Conda advocates, the law changes such that the focus of the inquiry is the date of the events underlying the claims and not the date of claim accrual. In addition, we give effect to all of the new language in the amended statute. We therefore conclude that the current version of Minn. Stat. § 604.02, subd. 1, does not apply if some of the events giving rise to the claim occurred before August 1, 2003, even though the claim accrued on or after that date.[5] Because decedent's asbestos exposures occurred long before August 1, 2003, the district court correctly applied the prior version of Minn. Stat. § 604.02, subd. 1.

Affirmed.

[5] We recognize that in amending Minn. Stat. § 604.02, the legislature limited the availability of joint and several liability. However, it is not inconsistent to on one hand reduce the availability of joint and several liability and on the other hand limit that reduction to claims based on future events.