

NJ Supreme Court Opens Door to More Take-Home Exposure Claims against Landowners

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On July 6, 2016, in [*Schwartz v. Accuratus Corporation*](#), No. A-73-14-076195, the New Jersey Supreme Court held that individuals other than spouses exposed to take-home toxins may pursue claims against landowners.

Facts

This case on appeal from the Third Circuit involved the diagnosis of Brenda Ann Schwartz with chronic beryllium disease (BCD), which is caused by exposure to beryllium. Brenda and her husband, Paul, filed a complaint raising claims of negligence, product liability and strict liability against defendant Accuratus Ceramic Corporation (Accuratus), a ceramics facility where Paul worked in 1978 and 1979. In 1979, Paul began sharing an apartment with an Accuratus co-worker Gregory Altemose. At the time, Paul and Brenda were dating and Brenda frequently visited and stayed overnight at the apartment, where she performed chores, including laundry. After the couple married in June 1980, Brenda and Paul resided in the apartment, where Altemose also continued to live.

Background

Accuratus sought dismissal on the ground that the duty of care in take-home exposure claims recognized by New Jersey's Supreme Court in *Olivo v. Owens-Illinois, Inc.*, 186 N.J. 394 (2006) was limited to spouses. The trial court agreed with the defendant and dismissed Schwartz's claims, concluding as a matter of law that it did not owe a duty of care to the plaintiff, who was a roommate, girlfriend and later spouse of one worker and a roommate of the other. The plaintiff filed a Notice of Appeal with the Third Circuit Court of Appeals as the matter, which was initially filed in state court, was removed to the U.S. District Court. The Third Circuit then filed a Petition for Certification of a Question of State Law to the New Jersey Supreme Court asking the question: "Does the premises liability rule set forth in *Olivo* extend beyond providing a duty of care to the spouse of a person exposed to toxic substances on the landowners' premises, and, if so, what are the limits on that liability rule and the associated scope of duty?" New Jersey's Supreme Court answered "yes" and "it depends on the circumstances."

In *Olivo*, New Jersey's Supreme Court held that a landowner could be liable for injuries allegedly caused from asbestos exposure experienced by the wife of a worker who performed welding and

steam fitting tasks that brought him into contact with asbestos on the landowner's premises. There, the Court explained "whether a duty of care can be owed to one who is injured from a dangerous condition on the premises, to which the victim is exposed off-premises, devolves to a question of foreseeability of the risk of harm to that individual or identifiable class of individuals." Once foreseeability is established, a court must evaluate whether recognition of a duty accords with fairness, justness and predictability applying the following factors: (1) the relationship of the parties; (2) the nature of risk, *i.e.*, how easily the toxin is transmitted; (3) opportunity and ability to exercise care; and (4) the public interest in the proposed solution. Applying such factors to the facts of the case, the Supreme Court in *Olivo* recognized a duty owed to spouses allegedly injured from "handling the workers' unprotected work clothing, based on the foreseeable risk of exposure from asbestos borne home on contaminated clothing."

NJ Supreme Court Ruling

Relying upon *Olivo*, New Jersey's Supreme Court in *Schwartz* explained that landowners' concerns about essentially limitless liability were unfounded because the duty recognized under the circumstances in *Olivo* was "focused on the particularized foreseeability of harm to plaintiff's wife." The duty was found to exist based on the foreseeability of regular and close contact with the contaminated material over an extended period of time. That is, the duty of care for take-home toxic tort liability was not defined by the role of a lawfully wedded spouse to someone who worked on the landowner's premises, but rather by the foreseeability of the plaintiff's wife who would be handling and laundering the plaintiff's soiled, asbestos contaminated clothes, which the landowner failed to protect at work and allowed to be taken home by workers.

The Court in *Schwartz* further explained that *Olivo* does not state either explicitly or implicitly that the duty of care for take-home toxic tort liability cannot extend beyond a spouse and was not based on some definition of "household" member, or even biological or familial relationships. Accordingly, the Court held that the duty of care recognized in *Olivo* may extend, in appropriate circumstances, to a plaintiff who is not a spouse and that an assessment should take into account a weighing of the above factors to determine whether the foreseeability, fairness and predictability concerns should lead to the conclusion that a duty of care should be recognized under common law.

Takeaway

The fallout from *Schwartz* is that defendant landowners will now have more difficulty in securing early dismissals of claims filed by non-spouses. Thanks to *Schwartz*, defendant landowners will be barred from filing Motions to Dismiss based upon marital status alone at the start of the litigation since the question of liability to a non-spouse is no longer a question of law but a fact question for which discovery is needed. Defendant landowners will now have to go through discovery to investigate the nature of the relationship between the exposed worker and the plaintiff and move for dismissal via a Summary Judgment Motion at the conclusion of discovery. Moreover, even Summary Judgment Motions will be less likely to be granted since trial courts will have to weigh the specific facts of each case and conclude that there is no dispute of material facts. Therefore, to position such claims for early dismissal, aggressive and targeted discovery must be undertaken, as soon as possible, to establish the non-spouse's lack of close and regular contact with the worker's exposed clothes.

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