

New Jersey Extends “Take-Home” Toxic Tort Liability

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Expanding the scope of potential workplace-exposure liability, the New Jersey Supreme Court clarified that an employer may be liable for toxic exposures not just to the spouse of an employee, but potentially to people with more attenuated relationships as well. Under some circumstances, the so-called “take-home” liability of an employer may extend to people with whom an employee may live with or interact with regularly. *Schwartz v. Accuratus Corp.*, No. 12-cv-06189 (E.D. Pa. March 30, 2017).

Plaintiffs Brenda Ann and Paul Schwartz filed suit against Accuratus Ceramic Corporation alleging negligence, products liability and strict liability after Brenda was diagnosed with chronic beryllium disease. Paul had worked at the defendant’s ceramic facility in 1978 and 1979. By 1979, Paul and Brenda were dating and Brenda often visited and stayed overnight at Paul’s apartment, which he shared with a co-worker. Brenda did the laundry and other chores at the apartment, both before and after she and Paul were married in June 1980.

Plaintiffs filed their complaint in Pennsylvania state court claiming that Brenda was subjected to take-home beryllium exposure due to Paul and his roommate bringing the substance home from the facility on their work clothing, including during the time before she and Paul were married. The case was removed to the U.S. District Court for the Eastern District of Pennsylvania, which found that New Jersey had not recognized a duty for an employer to protect a worker’s non-spouse roommate from take-home exposure to a toxic substance. Plaintiffs appealed to the Third Circuit, which submitted a petition to the New Jersey Supreme Court, asking that court to better define the extent of potential “take-home” liability under New Jersey law.

The New Jersey Supreme Court held that the duty of care may extend to a plaintiff who is not a spouse, and set forth three factors to be considered in take-home toxic tort actions: (1) the relationship of the parties, including the relationships between the defendant’s employee and the injured person, as well as between the defendant and the injured person; (2) the opportunity for exposure to the toxin and the nature of the exposure that causes the risk of injury; and (3) the employer’s knowledge of the danger associated with exposure when the exposure occurred – not at a later time when more information may become available.

Upon remand, the federal court reversed its earlier decision and denied Accuratus’ motion to dismiss

the negligence claims. The court found that because of beryllium's particular "danger with minimal exposure," the "duty-creating relationship threshold... must be considered relatively low." The court found that an employer must be reasonably expected to foresee that "virtually all of its employees live with or have repeated close contact with *someone*," meaning that the "absence of a direct relationship" should not "count much against duty and liability." The court reasoned that for a toxin where even "a brief exposure could cause harm," the law "should not insist upon the closest, longest, most serious relationship."

By Jeffrey Clare

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