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"Take-Home" Premises Liability Asbestos Exposure Claims -- 2009 Update ©

by Carter E. Strang and Karen E. Ross

Introduction

"Take home" liability continues to generate new plaintiffs, cases, and case law. As one plaintiff's practitioner noted, "[t]he housewife is the number one occupation listed for those now contracting mesothelioma." *Emerging Sources of New Plaintiffs Defined at Asbestos Litigation Conference*, The Record, by Scott Sabatini, March 13, 2009, *quoting* Anne Kearse of Motley Rice, LLC. Such claims are asserted on behalf of claimants that have never set foot on the premises but allegedly were exposed to asbestos through their spouses or others who brought it home on their clothing. They are referenced as "take-home" liability asbestos exposure claims, though they are also commonly referenced as "household," "bystander," "secondary," or "second-hand" exposure claims. Such claims are asserted against manufacturers of products allegedly utilized at such premises and against premises owners, and the number of both types of claims appears to be increasing. It is the latter claims that are the subject of this article.

In the Winter, 2008 edition of the DRI Toxic Tort and Environmental Law Newsletter, an overview of "take-home" premises liability asbestos exposure claims was published. At that time, the majority of the rulings on whether such claims could be asserted held that they could not. Since then there have been additional rulings from state and federal courts, with the result that even more jurisdictions bar them while there has been no increase in the number that permitted them. This article will provide a comprehensive overview and update of the status of such claims.
As of the time this article was submitted for publication, courts construing the law of Illinois, Delaware, Georgia, Iowa, Kentucky, Maryland, Michigan, New York, Ohio, Texas, and Washington have held there is no duty owed by a premises owner to a "take-home" claimant. However, courts construing the law of California, Louisiana, New Jersey, and Tennessee have permitted them.

Cases Denying Take-Home Premises Liability Exposure Claims

Illinois

In *Nelson v. Aurora Equipment Company,* Ill. App. Ct. No. 2--08--0186, --- N.E. 2d---, 2009 WL 1537855 (May 29, 2009), an Illinois appellate court affirmed that a premises owner had no duty to its employees' wife/mother in an asbestos premises liability case. Affirming summary judgment in favor of the defendant, Aurora Equipment Company ("Aurora"), the court noted that take-home premises liability was an issue of first impression. The court framed the issue as follows: "plaintiffs ask us to extend a duty in a premises liability case to a person who did not have contact with the premises but who was allegedly injured by asbestos fibers and dust that escaped from the premises."

Plaintiffs, the husband and son of the decedent ("Mrs. Nelson"), alleged that Mrs. Nelson washed her husband's and son's work clothes when they returned from work

at Aurora. As a result of this housework, Mrs. Nelson was allegedly exposed to the asbestos fibers and dust the men brought home from Aurora. At the trial court level, Aurora argued that it did not owe a duty to the decedent because it had no relationship with her and, absent a relationship, foreseeability of injury is not relevant. In response, plaintiffs argued that Aurora did owe a duty of ordinary care "to provide a reasonably safe place for persons lawfully on the property and to those who could foreseeably be harmed by dangerous conditions on [Aurora's] premises." Thus, the plaintiffs urged the trial court to impose a duty on Aurora to guard against off premises injury caused by airborne asbestos generated on the Aurora's premises because it was foreseeable that exposure would cause injury and death.

After reviewing the plaintiffs' arguments to the trial court and on appeal, the appellate court noted that it was restricted to the arguments presented to the trial court: a straight premises liability claim. That is, they were limited to considering whether a "duty arises within the context of the cause of action actually pleaded, not whether some other theory of liability not pleaded would dictate a different result."

The court found that the threshold question in a premises liability case is duty, which requires an analysis of the nature of the relationship between the parties. Thus, liability hinges on whether the plaintiff, or decedent in this case, was an entrant on the premises/present on the land. In that vein, the court noted that Mrs. Nelson was not an entrant on Aurora's land; thus, she was not an invitee, a licensee, or a trespasser. Accordingly, while Mrs. Nelson was alleged to have come into contact with the asbestos fibers and dust on her husband's and son's clothes, the court found that those fibers and dust were no longer a condition on Aurora's premises. With a relationship between the decedent and the defendant the key to a premises liability duty, and finding that Mrs. Nelson had no relationship with Aurora because she never encountered any condition on Aurora's premises or was in a position to enter the premises for any reason, the appellate court found no duty existed.

In sum, the court declined the plaintiffs' implicit requests to ignore the requirements of the cause of action they pleaded --- premises liability --- and rejected requests to hold "that a premises owner is liable to persons off the premises when it is foreseeable that a danger on the premises will cause injury to those persons." It, however, implicitly indicated that a different result may have been reached had the matter been pled differently. But, the case was pled as a straight premises liability action. Accordingly, the appellate court affirmed that no duty existed because premises liability requires "that a plaintiff either be an entrant onto the defendant's premises or otherwise have some special relationship with the defendant" --- neither of which existed in *Nelson*.

Ohio

In *Adams v. Goodyear Tire and Rubber Co.*, 8th Dist. No. 91404, 2009-Ohio-491, the Eighth District Court of Appeals declined to find that an employer owed a duty to its employee's wife who was exposed to asbestos brought home by her husband on his work clothes from 1973 to 1983. The appellate court affirmed the trial court's decision awarding summary judgment to the defendant because it determined that no duty existed under Ohio Revised Code 2307.941(A) (1) or under a negligence theory.

The court explained that R.C. 2307.91 through 2307.98 was codified in response to the asbestos litigation crisis in Ohio and it sets forth provisions regarding when a plaintiff has an accrued cause of action for asbestos injury and specifies what medical evidence entitles a plaintiff to the trial court's immediate attention. Id. at ¶9. R.C. 2307.941 was enacted to "address claims against a premises owner for exposure to asbestos on the premises owner's property" and provides:

> (A) The following apply to all tort actions for asbestos claims brought against a premises owner

> to recover damages or other relief for exposure to asbestos on the premises owner's property: (1) A premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property. Id. at ¶ 10.

The *Adams'* plaintiffs alleged that R.C. 2307.941 did not apply because the employee's wife was never exposed to asbestos on the defendant's property. The court was not persuaded. In fact, the court found that the plaintiffs' interpretation of R.C. 2307.941(A)(1) would render the statute meaningless because it "could never apply in any case because the very fact that would trigger the application of subdivision (A)(1), exposure somewhere other than the defendant's premises, would also render the statute inapplicable[.]". The court found that "[w]hen R.C. 2307.941 (A) is read as a whole, it is clear that the focus is on the presence of asbestos on the premises, not the presence of the individual on the premises[.]" Id. at ¶15. Based on a reading of R.C. 2307.941(A)(1) that would give effect to the intent of the General Assembly and "does not lead to an absurd result (such as only applying when the individual is exposed to asbestos on defendant's premises)", the court found that the phrase "'on the premises owner's property' in subsection (A) refers to the origin of the asbestos itself and, pursuant R.C. 2307.941(A)(1), unless the individual's exposure occurred on the premises, all tort claims against the premises owner are barred." Id. at ¶ 17. Because the court found no duty under R.C. 2307.941(A)(1), it also found no duty of care under a negligence theory because the exposure did not occur on the defendant's premises. Id. at ¶23.

On June 17, 2009, the Ohio Supreme Court accepted Adams' appeal for review. See June 17, 2009 Case Announcements, 2009-Ohio-2751, with Justice O'Donnell dissenting on accepting the case for review. Thus, whether a premises owner can be liable for "take-home" or secondary claims now rests in the hands of Ohio's highest court.

Kentucky

In *Martin v. Cincinnati Gas and Electric Co., et al.*, 6th Cir. No. 07-6385, 2009 WL 188051 (6th Cir. 2009), the Sixth Circuit Court of Appeals affirmed the United States District Court for the Eastern District of Kentucky's decision, construing Kentucky law, that an employer/premises owner owed no duty to the son of an employee who brought asbestos particles home on his clothes during his employment from 1951-1963. Interestingly, the utility company did provide locker and shower facilities for use its employees, and at times, the father use them. The utility alleged there was insufficient knowledge about take-home exposure, thus, no forseeability or duty owed to the son under Kentucky law.

The Sixth Circuit focused on the forseeability of harm at the time of injury. Id. at *4. The court explained that the plaintiff must show that the employer knew or should have known the danger of take-home asbestos exposure during the time his father was employed there. Id. The court found that there was no evidence that the employer had actual knowledge of the danger of take-home exposure. Similarly, the court agreed with the District court's conclusion that the plaintiff failed to show that the risk of take-home asbestos exposure was foreseeable at the relevant times. Id. at *5. The first studies regarding the dangers of take-home exposure were not published until 1965, two years after which plaintiff's father ended his employment with the defendants. Without evidence of any earlier "published studies or any evidence of industry knowledge of [take-home] exposure" there is "nothing that would justify charging CG&E [the employer] …with such knowledge[.]" Id. *6.

The court engaged in a brief analysis of the case law regarding imposition of such a

duty, and noted that those finding a duty existed based on forseeability failed to persuasively explain how the defendants could have known of the risk of secondary exposure. Id. at *6. The court also found that that other cases finding a duty were factually or legally distinguishable because the cases involved employers who knew of the danger of bystander exposure and failed to warn their employees of the danger. Id. at *6. The court concluded its case analysis by noting that while the decisions do not reach a uniform result, "we find the cases declining to find a duty to be more persuasive based on our reading of Kentucky law and the facts of this case." Id. at *6.

The court also rejected plaintiff's strict liability claim -- that the defendant was liable based on a proximity argument similar to injury to a customer from an exploding bottle on a store shelf -- because such claim still requires proof of forseeability, and such proof was lacking for the exposure period. Id.

Delaware

In *Riedel v. ICI Americas Inc.*, Del. Super No. 156, ---A.2d ---, 2009 WL 536540 (Mar. 4, 2009), a Delaware appellate court affirmed the trial court's decision granting summary judgment to an employer in an employee's wife's negligence action based on her asbestosis diagnosis allegedly caused by laundering her husband's asbestos contaminated work clothes during his employment from 1962-1990. The appellate court held that the employee's wife did not have a legally sufficient relationship with her husband's employer to establish a duty. While the court found no duty, it recognized that the Tennessee Supreme Court reached the opposite result in *Satterfield v. Breeding Insulation Co., et al.*, 266 S.W.3d 347 (Supreme Tenn. 2008), which adopted the Restatement (Third) of Torts. Unlike *Satterfield*, the Delaware Appellate Court declined to adopt any sections of the Restatement (Third) of Torts, because it "redefined the concept of duty in a way that is inconsistent with [Delaware's] precedents and traditions." *Riedel*, at *2.
The court also found that it is the legislature's job, not the court's, to create a new duty. In declining to create a new duty, the court rejected the plaintiff's argument that the employer's act of publishing a newsletter regarding maintaining safe homes established a duty. Id. at *7. The court found, like the trial court, that the employer did not undertake a duty to warn its employees' families of all dangers. The court also agreed with the trial court that the plaintiff and her husband's employer were "legal strangers in the context of negligence." Id. at *8. Accordingly, the court declined to find a take-home duty.

Michigan

In *In re Certified Question from Fourteenth Dist. Court of Appeals of Texas* (*Miller et al. v. Ford Motor Company)*, 479 Mich. 498, 740 N.W.2d 206 (July 2007), *reh'g denied*, a certified question from a Texas state appellate court, the Michigan Supreme Court denied the take-home exposure claim of the stepdaughter of an employee of an independent contractor who relined furnaces at a Ford plant from 1954-1965. The stepdaughter developed mesothelioma, allegedly as a result of washing her stepfather's work clothing during the years he worked at Ford.

In denying the claim, the court held that Ford owed the stepdaughter no duty to protect her from exposure to asbestos. It reached that conclusion after an analysis of the benefits of imposing such a duty against the social costs of doing so. That analysis required consideration of the relationship between the parties, the forseeability of the harm, the burden on the defendants, and the nature of the risk prevented.

Most important of these considerations is the relationship of the parties. Where none exists, no duty will be imposed. Here, the court characterized the stepdaughter's relationship to Ford as "highly tenuous," at best. She had never been on or near the plant. Her alleged exposure consisted solely of off-site laundering of

her stepfather's clothing.

The "burden on defendant" prong is also held in Ford's favor. Ford could not be reasonably expected to protect everyone who may come in contact with employees of an independent contractor.
As to the "forseeability of the harm" prong, no duty should be imposed, the court held, because there were no OSHA rules in effect during the relevant period regarding potential exposure of that type. Such rules were not in effect until the 1972, when OSHA regulations first mandated that asbestos-contaminated clothing not leave the workplace. Further, the court noted, the first suggestion of a link between asbestos disease and exposure from washing clothing was not published until 1965. Thus, the take-home exposure was not foreseeable to Ford during the relevant time period (1954-1965).

The final prong was a consideration of the risks prevented. The court held that assuming Ford directed the independent contractor to work with asbestos-containing material, the "nature of the risk" was serious, which suggests a duty should be imposed.

However, all the prongs must be met, not just one, and even if all are met, the court must still ultimately balance social benefits of imposing a duty against the social costs of imposing one. That requires consideration of competing policy considerations, not just of logic and science. After noting the existence of a litigation crisis created by the existing asbestos docket, the court held that expanding a duty to "anybody" who may come in contact with someone who has simply been on the premises owner's property would expand traditional tort principals beyond manageable bounds. It would create an almost "infinite universe" of potential plaintiffs, which the court refused to do.

New York

In *In re New York City Asbestos Litigation (Holdampf, et al. v. A.C. & S. Inc., et al. and the Port Authority of New York and New Jersey*), 5 N.Y. 2d 486, 806 N.Y.S. 2d 146 (2005), the New York Court of Appeals (New York's highest court) denied the take-home asbestos exposure claim of a wife asserted against the owner of the premises where the husband worked. The court held that the initial analysis required a determination of whether any duty was owed by the premises owner to the wife, not whether the exposure/injury was foreseeable. Forseeability, the court noted, is only considered once a duty is determined to exist. Duties arise from a special relationship, such as master-servant, where the relationship limits the scope of the liability. No such duty, the court held, should extend to the wife or others not actually present at the workplace and over whom no control can be exercised by the premises owner.

To hold otherwise, the court further noted, would be unworkable in practice and unsound as a matter of public policy. The potential for open-ended liability would exist, because anyone (babysitter, renters, car pool members, taxi drivers, servants, delivery people, home repair people, etc.) who might come in contact with the worker may have a cause of action. A veritable "avalanche" of litigation could be triggered by such persons, none of whom worked with or around asbestos at the premises.

It should be noted that the court also found it significant that the husband did have the opportunity at work to have his laundry sent offsite for cleaning but did not avail himself of it, therefore leaving the premises owner entirely dependent on the husband's willingness to reduce the risk of take home exposure. See also *In re Eighth Judicial District Asbestos Litigation (Rinfleisch v. AlliedSignal, Inc.),* 12 Misc. 3d 936, 815 N.Y.S 2d 815 (N.Y. Sup. Ct. 2006), where a wife's take-home premises liability asbestos exposure claim based on exposure during the 1984-1990 period the was denied, despite the fact that the premises owner did not provide protective work clothing, laundry service, changing rooms or advice as to how to avoid

exposure to asbestos.

Georgia

The Georgia Supreme Court, in *CSX Transp., Inc. v. Williams*, 608 S.E. 2d 208 (Ga. January, 2005), similarly refused to create a duty extending to those who allege off-site contact with asbestos-contaminated work clothing. The take-home claimants were the wife and children of the worker. The court held the initial inquiry in such claims is whether a duty exists, which question is a matter of public policy, not mere forseeability. As a matter of public policy, the court held, no duty is owed to such claimants because they did not work at and were not exposed at the workplace.

Washington

In *Rochon v. Saberhagen Holdings Inc*., 140 Wash. App. 1008 (Wash. Ct. App., Div. 1 2007), a Washington state appellate court upheld the trial court's dismissal of the take-home premises liability asbestos exposure claim of a wife against her husband's former employer that arose from alleged exposure during 1956-1966. However, the court reversed the trial court's holding that no duty of care was owed under ordinary negligence theory. The court held that there was a genuine issue of material fact regarding whether the company operated and maintained its plant in an unreasonably unsafe manner that caused foreseeable and proximate harm to the wife, and it remanded the case to determine those issues.

Texas

A Texas appellate court, in *Exxon Mobile Corp. v. Altimore*, No. 14-04-0113-CV, 2007 WL 1174447 (April 19, 2007), also held no duty was owed by the premises owner to the take-home exposure plaintiff, who claimed asbestos exposure from washing her husband's work clothing during the 1942-1972 period. In so ruling, the court reversed the trial court's award of almost $2 million dollars to the wife. It did so because the wife's exposure was not foreseeable during the time it occurred. Mobil, the premises owner, had not been sufficiently put on notice prior to 1972 of the take-home exposure risk. That changed in 1972 with OSHA's contaminated clothing regulations (previously referenced). The court held that prior to the adoption of OSHA's regulations there had been no clear consensus in the scientific community as to the degree of the danger posed by take home exposure. While the court reversed the trial court for the reasons stated, it agreed with the trial court's holding that, generally, a duty may be owed by a premises owner to a take-home claimant. However, the exposure would have to be after 1972. See also *Alcoa Inc. v. Behringer*, 235 S.W.3d 456 (Tex. Ct. App. 2007) (holding no legal duty based on 1950s take-home exposure), Texas Supreme Court declined review November 21, 2008.

Iowa

In *Van Fossen v. MidAmerican Energy Co*., Case No. 7-747/06-1691, 2008 WL 141194 (Iowa Ct. App. Jan. 2008), an Iowa appellate court affirmed the trial court's decision granting summary judgment in favor of two companies that hired an independent contractor, an employee of which claimed that his wife was exposed to asbestos from his clothing, which she washed from 1973-1997. The court held that the trial court correctly balanced and weighed the three factors required by Iowa law: "the relationship between the parties, reasonable forseeability of harm to the injured person, and public policy considerations." Here, no duty was owed by the defendants as landowners to the spouse of an employee on an independent contractor who was in control of the premises when the exposure occurred and, further, no evidence was presented showing that the defendants "knew or should have known that such exposure to the microscopic fibers created a risk of harm to persons in the position of Mrs. Van Fossen."

Maryland

In *Adams v. Owens-Illinois, Inc.,* 705 A.2d 58 (Md. Ct. App. 1998), a Maryland appellate court held no duty should extend to a wife who was exposed to asbestos when her husband tracked it home on his clothing. It so held because the wife, who never set foot on the premises and had no relationship to or with the premises owner, was a mere stranger. Holding otherwise would impose a broad duty that would necessarily extend to other strangers with similarly had no relationship with the premises owner, such as those sharing a ride to work or other relatives of the employee.

Case Permitting Take-Home Exposure Premises Liability Claims

Tennessee

In *Satterfield v. Breeding Insulation Co., et al.*, 266 S.W.3d 347 (Supreme Tenn. 2008), the Tennessee Supreme Court, affirming the appellate court, held that a duty existed to the daughter of a worker who wore asbestos-contaminated work clothes home from work when the employer knew of the danger at the relevant time (1970s – 1980s) and failed to abide by OSHA regulations regarding the danger and/or warn the employee of the danger. At issue was whether the daughter's claim could withstand a motion for judgment on the pleadings. The court held it could.

First, the court found that it was foreseeable that an employee's child would come into close contact with the employee's work clothes, which contained asbestos fibers, on an extended and repeated basis. Second, the court ruled that the employer had a duty to use reasonable care to prevent exposure to asbestos fibers not only to its employees, but also to those who came into close regular contact with its employees' contaminated work clothes over an extended period of time.

In reaching its conclusion, the court noted that inconsistent conclusions have been reached by courts across the country when deciding if a "take home" duty exists. The court explained that courts finding a duty focus on the forseeability of the harm resulting from the employer's failure to warn of or to take precautions to prevent the exposure. On the other hand, the courts finding no duty focus on the relationship/lack of relationship between the employer and the injured party. Id. at 361. Declining to follow the relationship method, the court found that Tennessee law has long recognized a duty of reasonable care wherever a defendant's conduct poses an unreasonable and foreseeable risk of harm to persons or property. Id. at 362. Agreeing with the Restatement (Third) of Torts § 37, the court found that privity does not define the line between duty and no duty. Rather, the court found that a duty existed based on a risk created through misfeasance --- the employer's "injurious affirmative act of operating its facility in such an unsafe manner that dangerous asbestos fibers were transmitted outside the facility to others who came in regular and extended close contact with the asbestos." Id. at 364. Next, the court reviewed public policy consideration. Id. at 365.

Finding that a foreseeable risk and duty existed, the court indicated that the duty extends to those "who regularly and repeatedly come into close contact with an employee's contaminated work clothes over an extended period of time, regardless of whether they live in the employee's home or are a family member." Id. at 374. This extension could lead to claims from neighbors, friends, and strangers that came into repeated contact with an employee's work clothes.

New Jersey

The most-oft cited case for the existence of a duty owing to one asserting a take-home premises liability claimant is *Olivo v. Owens-Illinois, Inc*., 895 A. 2d 1143 (N.J.

April, 2006). In *Olivo*, the New Jersey Supreme Court upheld the appellate court's reversal of the summary judgment granted in favor of a premises owner, holding that it was foreseeable that asbestos might be brought home on the clothing of one working in the vicinity of it.

Plaintiff was the wife of a steamfitter/welder who from 1947-1984 worked at a number of job sites, including at defendant Exxon Mobile's facility in Paulsboro, New Jersey. The court held that the proper standard to apply to determine whether any duty extends from the premises owner to the wife "devolves to a question of forseeability of the risk of harm to that individual [the wife] or identifiable class of individuals," as the "risk reasonably to be perceived defines the duty to be obeyed." Once it is determined that the risk is foreseeable, the court considers whether imposition of a duty is fair by weighing and balancing factors, including the relationship of the parties, nature of the risk, opportunity and ability to exercise care, and the public interest. The plaintiff's status as someone who was never actually at the work site is one consideration in a fairness analysis, but not the primary one in determining whether liability can attach. It simply becomes a factor in that analysis. Evidence demonstrating Mobile's knowledge of the hazards of asbestos caused the court to hold that the risk that asbestos may be carried home on a worker's clothing was forseeable. The *Olivo* court distinguished *Holdampf* and *Williams*, by noting that those jurisdictions do not consider forseeability when determining whether a duty exists.

Louisiana

In a lengthy opinion addressing many of the cases cited in this article, a Louisiana appellate court, in *Chaisson v. Avondale Industries, Inc*., 947 So.2d 171 (La. App. 4 Cir. December, 2006), held that a duty does extend off-site to the wife of a man who wore asbestos-contaminated clothing home, which wife shook it out then washed it during the 1976-1978 period. The wife contracted mesothelioma. A multi-million dollar trial verdict in favor of plaintiff was appealed. In rejecting the appeal, the court noted that the employer did not provide any work clothing, laundry facilities or changing facilities, nor did it warn of the dangers of take- home exposure in light of the increased recognition of such danger by the scientific community and despite adoption of the (earlier referenced) 1972 OSHA regulation addressing that danger.

Citing *Olivo* with approval, the court noted that Louisiana, like New Jersey and unlike Georgia, relies heavily on forseeability in its duty/risk analysis. It distinguished *Holdampf* based on the fact that the premises owner in that case provided uniforms and laundry services which were not utilized by the worker. It also stated that *Holdampf's* concern about "limitless liability" was misplaced, noting that not only is the duty limited by time of exposure (after 1972) but also by the nature of the association between the worker and the person exposed off-site. The court noted that there should be no hard and fast rule as to whom the duty will extend. Such claims should be considered on a case-by-case basis. The court did cite an "ease of association" component to consideration of the extent to which such duty will extend, finding the wife at issue, who daily washed her husband's work clothing, to be within that group of people to which the duty extends. See also *Zimko v. American Cyanamid*, 905 So. 2d 465 (La. Ct. App. 2005), which also found a duty exited, though it relied on a New York decision since reversed.

California

In *Condon v. Union Oil Company*, Case No. A 102069, 2004 Ca. App. Unpub.LEXIS 7975 (Cal App., August, 2004), the court upheld a jury verdict in favor of the wife (ex-wife as of the time of trial) of an employee who allegedly brought asbestos home on his work clothing, which the wife washed during the 1948-1963 time period. Change rooms were provided at the plant, but no showers or laundry facilities. The court found that there was substantial evidence, including expert testimony, to support a finding that during the relevant time period, it was known that worker

clothing could be the source of contamination to others; thus, it was foreseeable that the husband's contaminated clothing could lead to contamination of his wife. In the face of such knowledge, the premises owner did not provide adequate protection against it. See also *Honer v. Ford Motor Co*., Case No. B18916, 2007 WL 298271 (Cal. App., October, 2007), where the court overruled the grant of summary judgment based on take-home exposure during the 1940s.

Conclusion

An emerging majority of jurisdictions that have considered the issue hold that no duty is owed by a premises owner to a take-home claimant. However, some of the cases so holding are case specific because they focus on the time-period of the exposure and whether the exposure would was foreseeable within such period. Such analysis is utilized by some of the courts holding a duty is owed, as well. Thus, the period of exposure and the testimony regarding the knowledge the premises owner had or should have had is often a key fact in such jurisdictions.

It is likely that take-home claims against premises owners will increase in those jurisdictions where such claims are permitted or where the law is unsettled as the number of more traditional asbestos claims begins to wane.

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