

## State Court Finds No Duty to Spouse of Exposed Worker

August 4, 2011 by [Sean Wajert](#)

Delaware's supreme court held last month that an employer owes no duty of care to an employee's spouse, who allegedly contracted asbestos-related disease from exposure to her spouse's work clothes. Price v. E.I. du Pont de Nemours & Co., No. 719, 2009 (Del. 7/11/11).

Bobby Price worked as a maintenance technician in defendant's facility from 1957 until 1991. During his employment, Mr. Price allegedly worked with and around products containing asbestos. Allegedly, Mr. Price transported asbestos fibers home on his clothing, vehicle, and skin. Patricia Price, his wife, alleged that years of living with her husband, and handling and washing his work clothes, exposed her to the fibers. Mrs. Price claimed to suffer from bilateral interstitial fibrosis and bilateral pleural thickening of the lungs. These maladies, she claimed, stemmed directly from her exposure to the asbestos dust and fibers her husband brought home from work.

Plaintiff sued, alleging that the company wrongfully released asbestos from its plant and that she was a reasonably foreseeable victim of its asserted misconduct.

To prevail on a negligence claim under Delaware law, a plaintiff must prove that a defendant owed her a duty of care, the respondent breached that duty, and the breach proximately caused an injury. Whether a duty exists is a question of law, typically. To determine whether one party owed another a duty of care, Delaware courts look to the Restatement (Second) of Torts for guidance. Negligent conduct involves either (1) an act which the actor as a reasonable person should recognize as involving an unreasonable risk of causing an invasion of an interest of another (described in some cases as misfeasance), or (2) a failure to do an act which is necessary for the protection or assistance of another and which the actor is under a duty to do (sometimes described as nonfeasance).

Plaintiffs moved to amend the complaint to state a claim based on an asserted theory of misfeasance—that the release of asbestos was carried into a worker's home — rather than a claim of nonfeasance based on a failure to warn. The Delaware court noted that in the case of misfeasance, the party who does an affirmative act owes a general duty to others to exercise reasonable care, but, in the case of nonfeasance, the party who merely omits to act owes no general duty to others unless there is a "special relationship" between the actor and the other which gives rise to the duty.

DuPont contended that as a matter of substance the amended complaint really alleged nonfeasance—not misfeasance. Again, in order to recover for nonfeasance, a plaintiff must specifically allege a "special relationship" between herself and the defendant. Having not alleged any "special relationship" in this case, DuPont argued, Price's amendments were futile because they failed to state a claim as a matter of law.

The court noted that Price's allegations, stripped of all reformatory re-characterization, were that: (1) Mr. Price, an employee of defendant, worked with and around products containing asbestos for 34 years, (2) asbestos fibers settled on his skin, clothing, and vehicle, (3) defendant allegedly did not provide locker rooms, uniforms, or warnings to the Prices regarding the dangers of asbestos, (4) defendant did not prevent Mr. Price from transporting the asbestos fibers home on his skin, clothing, and vehicle, and (5) Mrs. Price, because she lived with Mr. Price and washed his clothes, developed disease. These alleged acts were pure nonfeasance—nothing more. Dupont's alleged failures to prevent Mr. Price from taking asbestos fibers home or to warn the Prices about the dangers of asbestos did not rise to the level of affirmative misconduct required to allege a claim of misfeasance. No amount of semantics can turn nonfeasance into misfeasance or vice versa.

Having alleged only nonfeasance, Price needed to allege that a "special relationship" existed between her and DuPont in order for DuPont to owe her a duty of care. But the relationship between Mrs. Price and DuPont did not fit any of the recognized "special relationships" giving rise to a duty to aid or protect. Just because her husband worked for DuPont for over thirty years, or DuPont provided health insurance to her as Mr. Price's spouse, or DuPont sponsored company picnics and participated in programs promoting a "family friendly" workplace, a special relationship did not exist.

The plaintiff's bar has been aggressive in efforts to create new methods of recovery from asbestos exposures -- new defendants, new legal theories, new injuries, new plaintiffs. For once, a court has put the brakes on this seemingly endless expansion.