

Illinois Appellate Court Rules That Employers Must Protect Family of Employees From Asbestos Dangers

By: Dave Scriven-Young, Attorney at Peckar & Abramson, P.C.

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In *Simpkins v. CSX Corp.*, No. 5-07-0346, the Illinois Appellate Court, Fifth District, recently ruled that employers owe the immediate families of their employees a duty to protect against take-home asbestos exposure.

The Plaintiff alleged in her complaint that she contracted mesothelioma cancer due to exposure to asbestos brought home on her husband's body and work clothes (commonly referred to as "take-home" asbestos exposure). The complaint named numerous defendants, including asbestos manufacturers and former employers. The three counts of the complaint here at issue named only CSX (as a successor to the B&O Railroad) and the Dow Chemical Company, where the husband worked from 1964 through the end of the marriage in 1965. Count VII of the complaint alleged that both former employers negligently failed to take precautions to protect the family from take-home asbestos exposure, count VIII alleged that both defendants were strictly liable for engaging in an ultrahazardous activity, and count IX alleged willful and wanton conduct on the part of both employers.

The trial court granted CSX's motion to dismiss, which argued that an employer does not owe any duty to the families of its employees. On appeal, the Appellate Court disagreed and reversed the the trial court's decision. The Appellate Court held that "ordinary principles of Illinois negligence law" supported the conclusion that employers owed a duty to protect family members of employees in take-home asbestos cases. The Court ruled:

- (1) That the harm to be prevented was reasonably foreseeable: "We believe that it takes little imagination to presume that when an employee who is exposed to asbestos brings home his work clothes, members of his family are likely to be exposed as well."
- (2) That the likelihood of serious or fatal injury to anyone foreseeably exposed to asbestos is substantial enough to warrant the imposition of a duty on employers.
- (3) That "the burden of guarding against take-home asbestos exposure is not unduly burdensome when compared to the nature of the risk to be protected against."
- (4) That the consequences of placing the burden on employers are acceptable if the scope of liability is limited to immediate family members.

According to the opinion, this is the first time that an Illinois appellate court ruled on the issue of liability for take-home asbestos exposure. CSX is likely to appeal this decision to the Illinois Supreme Court.

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