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Nelson v. Aurora Equipment Company, 391 Ill. App.3d 1036, 909 N.E.2d 931 (2nd Dist. 2009)

The Illinois Appellate Court, Second District, in a case of first impression held a "take home" cause of action does not exist under Illinois law. A "take home" claim is brought by a family member (usually the spouse) of a person who allegedly worked with asbestos where the family member claims exposure at home from the asbestos allegedly brought there on the clothing of the worker. The *Nelson* Court declined to recognize a duty to take home plaintiffs because no legally recognized relationship existed between the person exposed at home and the premises owner. *Id*. at 1.

In *Nelson,* the Decedent's husband and son were employed by Aurora Equipment Company, which painted, packaged, and sold steel manufactured items. Aurora never employed the Decedent; she never entered upon Aurora's premises; and she did not encounter any condition on Aurora's premises as a result of being an entrant onto those premises. The Complaint alleged Decedent's husband and son were regularly exposed to asbestos fibers and dust at Aurora's facility and that those fibers and dust attached themselves to their work clothing, which they wore home. Plaintiffs claimed Decedent was exposed to asbestos while washing her husband's clothes.

Plaintiffs alleged a cause of action for premises liability against Aurora. Aurora filed a motion for summary judgment on the basis it did not owe a duty to Decedent and that there was no evidence Decedent was exposed as a result of its activities. The trial court granted Aurora's motion for summary judgment. On appeal, Plaintiffs argued a duty should be imposed on Aurora to guard against off-premises injuries caused by airborne asbestos generated on its premises because it was foreseeable such exposure would cause injury and death. *Id*.

The Court rejected Plaintiffs' argument regarding foreseeability, noting foreseeability alone provides an inadequate foundation upon which to base the existence of a legal duty. The Court stated the touchstone of the duty analysis is whether a plaintiff and a defendant stood in such a relationship to one another that the law imposed upon the defendant an obligation of reasonable conduct for the benefit of the plaintiff. Thus, the relationship between the parties is the threshold question in the duty analysis and foreseeability, along with other factors such the likelihood of injury, the magnitude of the burden of guarding against the injury, and the consequences of placing the burden on the defendant, are only to be addressed when considering whether to create an exemption from that duty. The *Nelson* Court concluded a relationship must exist between the parties and, absent such a relationship, duty cannot be established on the basis of policy considerations such as foreseeability.

Nelson puts Illinois in line with Delaware {*Riedel v. ICI Americas, Inc.,* 968 A.2d. 17 (Del. 2009)}, Michigan {*Miller v. Ford Motor Co.,* 740 N.W.2d. 206, 479 Mich. 498 (2007)}, Maryland {*Adams v. Owens-Illinois, Inc.,* 119 Md. App. 395, 705 A.2d 58 (Md. App. 1998)}, Georgia {*CSX Transp. Inc. v. Williams,* 608 S.E.2d 208 (Ga. 2005)}, and New York {*Widera v. Enco Wire and Cable Corp.,* 204 A.D.2d 306 (N.Y. App. 1994) and *New York City Asbestos Litigation v. A.C. & S., Inc.,* 840 N.E.2d 115 (N.Y. App. 2005)}

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