



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Illinois Court Considers Asbestos Claim Made by Spouse of Employee

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Last year [we wrote](#) about an [Illinois asbestos case](#) that addressed the issue of whether an employer could be liable to the spouse of an employee who contracted mesothelioma cancer from asbestos found on the work clothes worn home by the employee. In [Simpkins v. CSX Corp.](#), No 5-07-0346, the Fifth District of the Appellate Court of Illinois concluded that the defendant owed the plaintiff a duty to protect her from “take-home exposure” to asbestos, but noted that the finding of a duty does not amount to a finding of liability and that the plaintiff would still have to prove her case in court.

Just last month, the Fourth District of the Appellate Court of Illinois considered the a similar issue in [Rodarmel v. Pnuemo Abex L.L.C.](#), No. 4–10–0463—namely, whether, during the 1950s, the employer owed a duty to the wife of an employee to warn her of the dangers of asbestos brought home on clothing.

In [Rodarmel](#), the court focused on the issue of whether a duty to warn was owed. In reaching its decision, it analyzed what was known about the hazards of asbestos in the 1950s and came to the opposite conclusion of the court in [Simpkins](#) on the issue of foreseeability. Specifically, the court concluded that the risk of sustaining injuries from asbestos on clothing worn in the factory and then worn home wasn’t foreseeable and thus the defendant didn’t owe the plaintiff a duty:

(Defendant) owed Juanita Rodarmel no duty, in the period of 1953 to 1956, to warn her against the danger of asbestos carried home on clothing (in contrast to the danger of intensive exposure to asbestos in factories). Our

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reason for so holding is that in 1953 through 1956, the infliction of illness merely from asbestos carried home on clothing was not reasonably foreseeable, given what was known during that period....Therefore, we hold that Abex, like Honeywell, was entitled to a judgment notwithstanding the verdict, not only because of a lack of duty but also because of a lack of evidence on the agreement element of a civil conspiracy.

Perhaps the contrary holdings can be explained by the different time frames at issue. In *Rodarmel*, the exposure occurred from 1953-56, whereas in *Simpkins* it occurred from 1958-64, when, presumably, more was known regarding the harmful effects of exposure to asbestos. However, *Simpkins* wasn't referenced in the *Rodarmel* decision so it's difficult to surmise whether that fact alone distinguished the two holdings.

Either way, it's an unfortunate result for Mrs. Rodarmel and the decision will stand unless she decides to file another appeal.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles workers' compensation and personal injury cases. Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.