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PRACTICE AREAS

Workers Compensation

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Does an employer have a duty to protect spouse of employee from exposure to asbestos?

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[Simpkins v. CSX Corp.](#), No 5-07-0346, raises the novel issue of whether an employer owes a duty to the spouse of an employee who contracted mesothelioma as a result of her exposure to her husband's work clothes. This was an issue of first impression for the Fifth District of the Appellate Court of Illinois.

The complaint in *Simpkins* included allegations that, from 1958-1964, Annette *Simpkins* was exposed to asbestos that her husband brought home on his work clothes. They divorced in 1964, at which point the asbestos exposure ceased.

Unfortunately, she died of mesothelioma cancer while the lawsuit was pending and her daughter was appointed Special Administrator of her estate and substituted in her place as the plaintiff.

In reaching its decision as to whether a duty to the plaintiff existed, the court noted that in Illinois, a duty exists if there is a relationship between the parties that would impose upon the defendant an obligation to act reasonably to the benefit of the plaintiff. The court then set forth the four factors to be considered in determining whether a duty exists:

Whether a relationship exists between the parties that will justify the imposition of a duty depends upon four factors: (1) the foreseeability of the harm, (2) the likelihood of the injury, (3) the magnitude of the burden involved in guarding



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against the harm, and (4) the consequences of placing on the defendant the duty to protect against the harm. Marshall, 222 Ill.2d at 436-37, 305 Ill.Dec. 897, 856 N.E.2d at 1057; Ward v. K mart Corp., 136 Ill.2d 132, 140-41, 143 Ill.Dec. 288, 554 N.E.2d 223, 226-27 (1990).

Because this was an issue of first impression, the court reviewed cases from other states that had addressed a similar issue and found the rationale of decisions handed down by Tennessee and New Jersey courts to be the most convincing.

After carefully reviewing the cases, the court concluded that it was foreseeable that immediate family members might be exposed to asbestos from the clothes of a worker expose to asbestos and that the steps that the defendant-employer could have taken to reduce the possibility of exposure was not unduly burdensome.

Accordingly, the court concluded that the defendant owed the plaintiff a duty to protect her from "take-home exposure" to asbestos. However, the court 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.

All-in-all a very favorable decision for family members of workers who are exposed to asbestos and later contract mesothelioma cancer. Asbestos is a dangerous substance and companies that expose their employees to it should not be allowed to avoid liability in [asbestos lawsuits](#) when it is foreseeable that others will be injured due to their failure to take reasonable steps to reduce exposure

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.