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The Evolution of Secondary Exposure Claims in Toxic Tort Cases: The Genesis of Secondary Exposure Claims

Plaintiffs in asbestos cases allege that their exposure to asbestos-containing or asbestos-contaminated products contributed to their development of an asbestos-related disease. Most commonly, asbestos claims arise from diagnoses of mesothelioma, lung cancer or asbestosis. However, there are occasional cases of plaintiffs claiming that they developed other cancers or diseases arising from their exposures to asbestos, such as colon cancer, throat cancer or pleural plaques. Since the first wave of asbestos cases were filed in the 1980s, asbestos litigation has evolved to include a broader range of defendants. In addition to encompassing a wider variety of defendants, the allegations against defendants in asbestos cases have also expanded to include additional theories of liability against the companies named as defendants in asbestos cases. When asbestos cases first arose, the plaintiffs in those cases claimed exposure to asbestos from personally working with asbestos-containing products or working in the vicinity of other workers performing hands-on work with asbestos-containing products.

Present day asbestos plaintiffs often claim exposure vis-à-vis others, typically family members, with whom the plaintiffs resided. In these cases, plaintiffs allege that asbestos dust was carried home on the clothing, person, hair or in the vehicles of a family member who worked with or in the vicinity of others manipulating asbestos-containing products or materials. The plaintiffs diagnosed with the alleged asbestos-related disease typically never visited the family member's work site where the asbestos-containing materials were present. The pivotal question that arises in these lawsuits is whether a defendant product manufacturer, premises owner, supplier, employer or contractor owes a duty to a family member who never came into direct or even indirect contact with the products and materials that allegedly caused the plaintiff's disease. Illinois courts have not reached a cohesive answer on this complex issue.

Illinois Courts Have Reached Incongruous Holdings in Secondary Exposure Cases

The Illinois Supreme Court Evaluates an Employer's Duty to a Family Member

The Illinois Supreme Court confronted the issue of an employer's duty to take precautions to protect the family member of an employee from exposure to asbestos in *Simpkins v. CSX Transportation*.[1] The plaintiff Annette Simpkins

filed a lawsuit alleging that she developed mesothelioma as a result of her asbestos exposure through her husband's work with or in close proximity to asbestos-containing materials and raw asbestos fibers during his employment with CSX Transportation, a railroad company, from 1958 until 1964.[2] Mr. Simpkins unknowingly carried these asbestos fibers on his clothing and person to the home that he shared with the plaintiff.[3] The plaintiff alleged that these fibers that Mr. Simpkins transported home contributed to her development and death from mesothelioma.[4]

The circuit court in Madison County, Illinois granted the defendant's motion to dismiss.[5] The appellate court reversed and remanded the case back to the circuit court in Madison County.[6] The Illinois Supreme Court accepted the appeal to address the issues of the sufficiency of the plaintiff's complaint based on defects on its face under 735 ILCS 5/2-615.[7] Under section 2-615, a cause of action should not be dismissed until it is clearly apparent that no set of facts can be provided that would entitle the plaintiff to recovery.[8]

The plaintiff's complaint included counts against CSX Transportation based on three theories: (1) strict liability for engaging in the ultrahazardous activity of using asbestos-containing products and raw asbestos in its plants to cause the release of asbestos fibers; (2) negligence for failing to take precautions to protect Ronald Simpkins' family from take-home asbestos exposure; and (3) willful and wanton misconduct. CSX Transportation filed a motion to dismiss arguing that it owed no duty to the plaintiff, who was a third-party non-employee who did not come into contact with the asbestos-containing materials at the defendant's site.[9] The circuit and the appellate court did not distinguish between the counts, so the supreme court limited its discussion to the negligence count.[10]

CSX Transportation's argued the plaintiff failed to state a claim of action because no "direct relationship" existed between CSX Transportation and the plaintiff.[11] Specifically, CSX Transportation argued, "Employers do not owe any duty to a third-party, nonemployee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace."[12] Even if CSX Transportation owed a duty to her, CSX Transportation argued that the duty did not extend to the plaintiff, a non-employee who was never present at the defendant's work site.[13]

The supreme court affirmed its prior holdings that in determining whether a relationship exists between a plaintiff and defendant, "[t]he touchstone of the court's duty analysis is to ask whether a plaintiff and a defendant stood in such a *relationship* to one another that the law imposed upon a defendant an obligation of reasonable conduct for the benefit of the plaintiff."[14] The court examined four factors to evaluate whether a relationship exists such as to impose a duty on the defendant: (1) the reasonable foreseeability of the injury; (2) the likelihood of injury; (3) the magnitude of the burden of guarding against the injury; and (4) the consequences of placing that burden on defendant.[15] The supreme court noted that the analysis of whether such a relationship exists between a plaintiff and a defendant to establish a duty necessitates an analysis of policy considerations as well.[16]

Illinois law generally does not require an individual or company to take affirmative steps to protect or rescue a stranger. [17] This general rule is limited by the court's prior ruling that "'every person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act, and such a duty does not depend upon contract, privity of interest or the proximity of relationship, but extends to remote and unknown persons.'" [18] The court noted that a duty to take affirmative action to help another may exist where a "special relationship" exists.[19]

The court held that the duty analysis starts with the question of whether the defendant's actions or omissions "contributed to the risk of harm" to the plaintiff. If the answer to this threshold question is in the affirmative, then the court turns to the four factors discussed above to determine whether a duty exists.[20] In this case, the plaintiff alleged that CSX had a duty to her to guard against "reasonable and foreseeable injuries that naturally flow from defendant's use of asbestos" at its railroad.[21]

The court examined the four factors to determine whether the defendant did, in fact, owe a duty to the plaintiff to protect her from asbestos dust originating at its premises.[22] In considering the first factor, the court evaluated what CSX knew or should have known about the potential harm from asbestos between 1958 and 1964, when Mr. Simpkins worked at the CSX facility.[23] The court agreed with CSX that the plaintiff's complaint failed to set forth specific factual allegations to analyze whether her injuries were foreseeable to the defendant during that time period, if those facts were proven true.[24] The court noted that the plaintiff's complaint instead included only conclusory statements on one of the four prongs of the duty analysis.[25] CSX failed to raise the issue of the insufficiency of the plaintiff's complaint until the case was before the Illinois Supreme Court.[26] If CSX had raised this issue earlier at the trial court level, the plaintiff would have had an opportunity to address the issue.[27] However, it was too late to raise this issue, and the court remanded the case to the circuit court to allow the plaintiff to amend her complaint.[28]

The Illinois Supreme Court did not reach a conclusion on the ultimate issue of whether an employer owed a duty to a former employee's family member for exposure to asbestos. The court held that the available facts in *Simpkins* were insufficient to determine the existence of a duty.[29] From *Simpkins*, it is evident that a defendant's knowledge of the potential harms arising from asbestos exposure is a crucial component in the duty analysis.

The Fourth District Holds that Injury to Wife Was Not Reasonably Foreseeable

The Illinois Appellate Court Fourth District's decision in *Holmes v. Pneumo Abex, L.L.C.*, has been widely cited and influential in subsequent cases when courts are confronted with the issue of an employer's duty to take precautions to protect the family member of an employee from exposure to asbestos.[30] In *Holmes*, the plaintiff, Roger Williams, filed a wrongful death action against Pneumo Abex, L.L.C. (Abex), Honeywell International, Inc. (Honeywell), Unarco Industries, Inc. (Unarco), and others on behalf of his deceased mother, Jean Holmes.[31] The plaintiff alleged that the decedent's husband, Donald Holmes, worked from 1962 to 1963 at an asbestos plant owned by Unarco, exposing him to asbestos fibers that he, in turn, brought home on his clothes and person.[32] The plaintiff argued this resulted in his mother's asbestos exposure and mesothelioma diagnosis.[33] According to the complaint, Johns-Manville supplied asbestos to Unarco and other companies, which Honeywell and Abex had assumed liabilities for as successor companies.[34] The plaintiff alleged that the defendants were engaged in a civil conspiracy to suppress information about the dangers of asbestos, refused to warn employees about the dangers, and these actions proximately cause the decedent's disease and death.[35]

At trial, the plaintiff presented evidence showing that multiple companies, including Johns-Manville and Abex, had entered into an agreement to sponsor industrial dust research studies.[36] The plaintiff also presented evidence showing an agreement among some of the companies to suppress, or otherwise limit, the dissemination of information warning of asbestos.[37] The evidence also showed that neither Unarco, Johns-Manville, nor Abex ever changed their asbestos business practices or attempted to warn employees.[38] Honeywell was sued as a successor to Bendix.[39] There was no evidence presented indicating that Bendix participated in or otherwise knew about the agreements.[40] It was also undisputed that the decedent's cause of death was mesothelioma from asbestos fibers attributable to her husband's work clothes and that the decedent and her husband were never exposed to any Honeywell or Abex products.[41] Despite this, however, the jury found for the plaintiff against all defendants, including Honeywell and Abex.[42] Accordingly, the defendants Honeywell and Abex filed posttrial motions, which were denied.[43] The defendants subsequently appealed, arguing that they were entitled to judgement notwithstanding the verdict as (1) they owed no duty to disclose the dangers of asbestos to the decedent and (2) no duty should exist in "take-home exposure" cases.[44]

Reviewing *de novo*, the court first noted the high bar posed by the defendants' appeal, stating that reversal would only be appropriate when the evidence, construed in favor of the plaintiff, overwhelmingly favored the defendants so that no contrary verdict based on that evidence could ever stand.[45] Setting this aside, the court continued by explaining that "the function of a civil-conspiracy claim is to extend liability for a tortious act beyond the active tortfeasor to individuals who have not acted but have only planned, assisted, or encouraged the act."[46] To succeed on a civil conspiracy claim, a plaintiff need only prove an agreement and a tortious action committed in furtherance of the agreement.[47] Further, while the agreement need not be explicit, it must be made intentionally and knowingly.[48]

Turning to the arguments raised by the defendants, the court began by stating that whether a duty existed depends on whether the parties 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." [49] The court noted that the Illinois Supreme Court had held that whether such a relationship exists depends upon the following four factors: (1) reasonable foreseeability of the injury; (2) likelihood of the injury; (3) magnitude of the burden of guarding against the injury; and (4) consequences of placing that burden on the defendant.[50] Accordingly, as stated by the court, the existence of a duty will depend in part on public policy considerations.[51]

In consideration of these factors, the court highlighted that only one Illinois appellate court had found that an employer owed a duty to protect against take-home asbestos exposure.[52] The court also noted, however, that in another recent premises-liability case the court held that a company owed no duty to a person who had never been on the premises but was allegedly injured by asbestos fibers from contaminated clothing.[53] With these decisions in mind, the court determined that no duty was owed to the decedent.[54] In explaining its decision, the court emphasized the lack of available information and research at the time tending to show the dangers of asbestos take-home exposure.[55] Because of this, the decedent's injury was not reasonably foreseeable to the defendants at the time.[56] Accordingly, the trial court's denial of the defendants' motions for judgement notwithstanding the verdict was reversed.[57]

The Northern District of Illinois Holds that a Defendant Manufacturer Does Not Owe a Duty

As a result of the Illinois Supreme Court's decision to remand in *Simpkins* and not to address the remaining four factors, whether a legal duty exists for secondhand asbestos exposure remains inconclusive in Illinois. Coupling this with diverging decisions in the appellate courts, some courts have piecemealed their own legal conclusions to address this complex issue. In *Neumann v. Borg-Warner Morse Tec LLC*, the United States District Court for the Northern District of Illinois surveyed these courts' decisions and others to reach its own conclusion.[58]

Similar to the plaintiff in *Simpkins*, the plaintiff Doris Jane Neumann filed a lawsuit based on negligence, alleging that she developed mesothelioma from take-home exposure to asbestos fibers as a result of her son's work.[59] Her son was employed as a gas station attendant and mechanic from 1970 to 1974 and, consequently, worked with asbestos-containing materials supplied by the various defendants, including friction paper supplied by the defendant MW Custom Papers (MWC).[60] Neumann alleged that asbestos fibers from these materials were then unknowingly carried home on her son's clothes and that she subsequently inhaled and ingested these fibers from contact with her son and through laundering his work clothes.[61]

Neumann's complaint sounded in negligence, alleging that the defendants had a duty of reasonable care to family members of those working with or near their products.[62] Importantly, she claimed that the defendants (1) "failed to investigate the dangers of their asbestos-containing products to users and those in proximity to users," (2) "failed to warn [Neumann] or her son of the dangers to which they were exposed," and (3) "failed to instruct them as well as others in the proper handling of asbestos products."[63]

Neumann originally filed her lawsuit in the Circuit Court of Cook County, Illinois. The defendants subsequently removed the case to federal court in the Northern District of Illinois, Eastern Division, under diversity jurisdiction and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.[64] MWC then filed a motion to dismiss with prejudice under Fed. R. Civ. P. 12(b)(6), arguing in part that Neumann's complaint lacked sufficient facts and that her claim failed as a matter of law because it did not owe her any duty.[65] Accordingly, the court addressed both arguments in its decision, attending first to the sufficiency of Neumann's complaint.[66]

In evaluating a Rule 12(b)(6) motion to dismiss, the court must "accept all well-pleaded allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor."[67] "A court may grant a motion to dismiss under Rule 12(b)(6) only if a complaint lacks enough facts to state a claim for relief that is plausible on its face."[68] Facial plausibility requires that the plaintiff plead sufficient factual content to allow the court to draw the reasonable inference that the defendant is liable for the alleged misconduct.[69] Moreover, discrepancies in jurisdictional requirements may result in different plausibility findings.[70]

To state a claim for negligence under Illinois law, a plaintiff must allege that the defendant owed the plaintiff a duty of care, the defendant breached that duty of care, and the plaintiff's injury was proximately caused by said breach.[71] Under Illinois law, an individual has a duty of care to others if a particular course of action creates a foreseeable risk of injury.[72] Still, the imposition of a duty remains limited by the following four public policy considerations previously mentioned above.[73]

Foreseeability is essential to finding the existence of a duty and is determined from the perspective at the time the defendant engaged in the negligent conduct.[74] The consideration granted to the remaining factors depends upon the attendant circumstances.[75] As a question of law, the court determines the existence of a duty.[76]

Turning first to the sufficiency of the facts pleaded, the court noted the factual similarities between Neumann's allegations and those alleged in *Simpkins v. CSX Transport*, and the likewise lack of factual detail regarding the defendants.[77] Unlike *Simpkins*, the defendants in *Neumann* removed the case from Illinois state court, a fact-pleading jurisdiction, to federal court where "the complaint need only include enough facts so that the right to relief is more than speculative and so that the defendant can prepare a defense."[78] While the court agreed that Neumann could have included more specificity in her complaint, it ultimately determined that dismissal on these grounds was unwarranted as Neumann (1) alleged the defendants made or distributed asbestos-containing products, (2) identified said products, (3) and further alleged that the defendants knew or should have known of the dangers of asbestos and, as a result, should have foreseen injury to her and similarly situated persons.[79] In combination, these allegations were sufficient under the federal rule's broader notice pleading standards to establish that her injury was reasonably foreseeable.[80]

Having considered the foreseeability of the injury, the court turned its attention to the remaining public policy considerations raised—the magnitude of the burden of guarding against the injury and the consequences of placing that burden on the defendants.[81] Pointing to its position in this case as a manufacturer, not as an employer, MWC argued that the magnitude of the burden was far too great as it could not require Neumann's son or his employer to comply with any warnings or instructions, nor did it have any feasible means of warning or communicating with Neumann.[82] Moreover, MWC argued that the consequences of such a burden would be unreasonable and transform manufacturers, such as the defendant, into "defacto insurers" for a limitless pool of plaintiffs.[83]

In considering these arguments, the court first noted the lack of guidance on this issue from the Illinois Supreme Court, and as a result, it must "examine the reasoning of courts in other jurisdictions addressing the same issue for whatever guidance may be gleaned."[84] Unfortunately, this proved to be just as un-illuminating with the court finding that "there are no precedents or other authorities that convince us how the Illinois Supreme Court would rule on this novel duty question."[85] As a result, and in accordance with Seventh Circuit precedent disfavoring expansive liability, the court

held that MWC did not owe a duty to Neumann as the magnitude of the burden of protecting her, as well as the ramifications of placing that burden on manufacturers such as defendant MWC, would be far too great.[86]

The Second District Holds that an Employer Owed No Duties to a Wife and Mother

In *Nelson v. Aurora Equipment Company,* the plaintiffs, Vernon Nelson and John Nelson, alleged that Eva Nelson developed mesothelioma and colon cancer as a result of her exposures to asbestos fibers and dust that her husband Vernon and her son John brought home on their clothing, which resulted in her death.[87] Vernon was employed from 1968 to 1987 by the defendant Aurora Equipment Company (Aurora), a steel manufacturing company. John was employed by Aurora from 1977 to 1993. Eva Nelson was never personally present at Aurora's premises.[88] The plaintiffs alleged that she was exposed to asbestos originating from the Aurora plant when she laundered asbestos-containing clothing that the plaintiffs wore home after working at the facility.[89] The plaintiffs' claims against Aurora were based on common law premises liability, which is based on negligence.[90] The court noted that the plaintiffs' claims were not based on the Premises Liability Act.[91]

The trial court granted Aurora's summary judgment motion on the basis that Aurora did not owe a duty to Eva Nelson and the lack of evidence that she was exposed to asbestos as a result of Aurora's actions.[92] The plaintiffs appealed the case to the Illinois Appellate Court Second District.[93]

The court identified the following three principles of common-law negligence actions: (1) existence of a duty owed by the defendant to the plaintiff; (2) breach of that duty; and (3) an injury proximately caused by that breach.[94] To determine whether a duty exists, Illinois courts look to whether "the defendant and plaintiff stood in such relationship to one another that the law imposed upon the defendant an obligation of reasonable conduct for the benefit of the plaintiff."[95] Additionally, Illinois courts will consider the following factors: (1) likelihood of the injury; (2) the magnitude of the burden placed on the defendant guarding against it; and (3) the consequences of placing that burden on the defendant.[96] The traditional duty analysis arising from conditions on land distinguishing claims based on whether the injured person is an invitee, licensee or trespasser did not apply in this case because Nelson did not fall into one of those three categories.[97]

The *Nelson* court rejected the plaintiffs' argument that the court should look only at the four factors and entirely disregard the relationship component of the duty analysis.[98] The court affirmed the trial court order granting summary judgment in favor of Aurora.[99] The court noted that the plaintiffs' claims against Aurora were based only on one theory—premises liability.[100] A claim of common law premises liability requires that "a plaintiff either be an entrant onto the defendant's premises or have some special relationship with the defendant."[101] The plaintiffs admitted that Nelson lacked a "special relationship" with Aurora.[102] The court noted that it was not asked to examine whether the plaintiffs may have succeeded on some other claim of liability.[103]

Looking Beyond Illinois

Secondary Exposure in Other Jurisdictions

Many plaintiff attorneys file asbestos lawsuits in Illinois involving plaintiffs from across the United States, Canada and Mexico, as Illinois has low evidentiary standards, and Illinois courts are perceived to be plaintiff-friendly with judges that allow meritless lawsuits to persist. In Illinois, Madison County, St. Clair County, and Cook County, in particular,

have been described as "judicial hellholes" due to the vast number of asbestos filings in those counties each year.[104] In fact, a 2023 review of asbestos filings in the United States found that Madison County had the most asbestos filings that year totaling 905, St. Clair County had the second most with 591, and Cook County had the seventh most with 168.[105] This is despite an overwhelming number of asbestos plaintiffs being non-residents of Illinois, with approximately 97% of filings coming from non-residents of the state.[106]

In theory, many of these cases would be subject to a successful motion to dismiss due to the lack of personal jurisdiction. However, the reality is much more nuanced. There are many factors that come into play, the most significant being the risk a client is the only defendant sued in a different jurisdiction. While there were 3,787 total asbestos filings in 2023, almost 75% of those (2,822) were filed by just 15 law firms.[107] In fact, a single firm, which files most of its lawsuits in Madison County and St. Clair County, filed an overwhelming 757 asbestos cases in 2023.[108] Most of the plaintiff firms that file in these counties also have offices in other jurisdictions and could file in the proper jurisdiction without having to seek local counsel.

As it relates to secondary exposure, however, another important consideration is how another jurisdiction would handle the claims. Not all jurisdictions treat secondary exposure cases similarly. In fact, two states—Kansas and Ohio—have enacted laws specifically barring take-home exposure to asbestos claims against premises owners. Kansas Statute § 60-4905(a) states:

> No premises owner shall be liable for any injury to any individual resulting from silica or asbestos exposure unless such individual's alleged exposure occurred while the individual was at or near the premises owner's property.[109]

Similarly, Ohio also has a statute protecting premises owners:

> A premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.[110]

Kansas and Ohio are currently the only two states that have explicit laws regarding secondary exposure to asbestos. However, many other jurisdictions have ruled on the issue. The factors that courts seem to consider are whether the secondary exposure to asbestos is foreseeable and/or whether allowing a lawsuit involving secondary exposure would be in the public interest.

Jurisdictions Receptive to Secondary Exposure

A majority of jurisdictions that have ruled on the issue of secondary exposure to asbestos have found that a duty exists, with an emphasis on the foreseeability of the exposure when making that determination. In fact, nearly every time a court has recognized a duty of care for a premises owner, contractor, or product manufacturer, the foreseeability of risk was the main, or sometimes only, consideration of the court.[111]

In *Bobo v. Tennessee Valley Authority*, the United States Court for the Eleventh Circuit held that Alabama should impose a duty on employers to prevent take-home asbestos exposure when secondary exposure is foreseeable.[112] Barbara Bobo's husband worked for the Tennessee Valley Authority for more than 22 years, and during the course of his employment, she washed his work clothes.[113] Doing her husband's laundry resulted in Barbara Bobo being diagnosed with malignant pleural mesothelioma.[114] The appellate court held that Alabama courts must impose a duty of care on

employers to prevent take-home exposure to asbestos in cases in which the secondary exposure is foreseeable.[115] This duty should extend only to people whose harm is foreseeable, such as an employee's family members or others living in the employee's household.[116] The court also determined that finding employers liable in these types of cases supported public policy concerns.[117]

Kesner v. Superior Court was a consolidated California case, which involved *Kesner v. Superior Court* and *Haver v. BNSF Ry. Co.*[118] In *Kesner*, the party who was diagnosed with mesothelioma was the nephew of an employee of an industrial plant who wore his work clothes home each day.[119] The nephew stayed at the employee's house an average of three nights each week between 1973 and 1979 and was exposed to asbestos fibers that allegedly led to a diagnosis of mesothelioma.[120] The injured party in *Haver* was the former spouse of a railroad employee between 1972 and 1974.[121] The defendants relied, in part, on a California law that would put the onus on the person who was directly exposed to asbestos:

> Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.[122]

California courts generally invoked this duty to limit the extreme liability that would follow from every negligent act.[123] However, the court in *Kesner* found that policy considerations weighed in favor of an exception when considering the following factors:

> the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach . . . .[124]

The court concluded that the secondary exposure of household members to asbestos was foreseeable.[125]

Boynton v. Kennecott Utah Copper LLC is a more recent Utah case that involved a wife who was secondarily exposed to asbestos fibers from her husband's work clothes.[126] In Utah, to establish a duty of care, the court must ask: (1) whether the defendant's allegedly tortious action consisted of an affirmative act; (2) the relationship of the parties; (3) the foreseeability of injury; (4) public policy; and (5) other general policy considerations.[127] The court in *Boynton* held the following:

(1) directing, requiring, or otherwise causing employees to utilize asbestos was an affirmative act;
(2) engaging in a wrongful action, even if unintentional, negates the need for a special legal relationship that would require a duty of care;
(3) take-home exposure to members of the household is foreseeable;
(4) the factor of public policy is in favor of the employee, as premises operators have the greater control and knowledge that would allow them to prevent injury; and
(5) asbestos litigation is a narrow subsect of law, especially as it relates to premises operators, and therefore, carving out a duty of care would not infringe on public policy concerns.[128]

A broader duty of care was found in the Louisiana case of *Hernandez v. Huntington Ingalls, Inc.*[129] The case involved an injured party who worked at his family's grocery store and delicatessen from 1957 to 1966.[130] During this time, the plaintiff was allegedly exposed to asbestos from individuals who worked at a plant near the delicatessen and went there

for lunch.[131] The court ruled that the district court did not err in denying the defendant's motion to dismiss, as the allegations established that the injury to the plaintiff was foreseeable.[132]

Other jurisdictions that have made rulings allowing for secondary exposure claims include Indiana, Delaware, Virginia, and Washington.[133]

Jurisdictions Less Receptive to Secondary Exposure Claims

Despite multiple jurisdictions allowing for secondary exposure claims to proceed, not all courts have ruled this way. The general rationale is the opposite of jurisdictions that allow those claims to proceed. Jurisdictions that do not allow for personal injury claims due to secondary exposure to asbestos generally feel that the harm is not foreseeable or that public policy dictates that asbestos-related claims should be restricted to the person directly exposed.[134]

In *Quiroz v. Alcoa*, the Arizona Supreme Court held that an employer does not owe a duty to the public regarding secondary asbestos exposure.[135] This case involved the son of a Reynolds Metal Company plant employee who was allegedly exposed to asbestos fibers on his father's clothing and developed mesothelioma as a result of that secondary exposure.[136] The court found that foreseeability of a future injured plaintiff should not be considered in cases involving exposure to asbestos.[137] The court further determined that public policy concerns should be defined by the legislature and that Reynolds did not owe a duty to the plaintiff because the plaintiff was not an employee of Reynolds and did not suffer an injury on Reynolds' property.[138]

The United States District Court, Eastern District of Pennsylvania considered a wife's take-home exposure and whether the employer and premises owner owed her a duty in *Gillen v. Boeing Co*.[139] The plaintiff's husband worked at a Boeing facility in Ridley Park, Pennsylvania from 1966 to 1970 and from 1973 to 2005, and the plaintiff allegedly contracted mesothelioma due to laundering her husband's clothing.[140] The court noted that the alleged asbestos exposure did not occur at the Boeing facility; therefore, the plaintiff would essentially be considered a "legal stranger" under the law of negligence.[141] The court indicated that, under Pennsylvania law, the court must look to "whether the harm to [the plaintiff] was foreseeable in the first instance."[142] In a secondary exposure case, it is not enough to simply claim that someone was directly exposed to asbestos. Instead, a plaintiff must allege that a premises owner knew that a different person would be secondarily exposed to asbestos.[143] Finally, the court held that there needed to be a limiting principle on liability in secondary asbestos exposure cases. If a premises owner owes the spouse of an employee a duty, it could feasibly be said to owe a duty to others, such as children, babysitters, and neighbors.[144] Other states have made similar rulings limiting the scope of secondary exposure, including Georgia, Maryland, and Michigan.[145]

In *Alcoa, Inc. v. Behringer*, the Court of Appeals of Texas, Fifth District, looked at the foreseeability of secondary exposure from a different angle when it held that Alcoa would not owe a spouse a duty because the asbestos exposure occurred prior to when the dangers of secondary exposure were known.[146] The case involved the wife of an Alcoa employee who worked for the company from 1953 to 1955 and from 1957 to 1959.[147] The wife did her husband's laundry, which exposed her to asbestos fibers and eventually led to her developing mesothelioma.[148] The court noted that foreseeability should not be measured by today's standards, but rather what an entity knew or should have known at the time that the alleged negligence took place.[149] As such, the issue in a secondary exposure case should be whether it was generally foreseeable at the time of the alleged negligence that intermittent non-occupational exposure to asbestos could put a non-employee at risk of developing an illness.[150] The court determined that in this case the danger of the plaintiff's secondary exposure to asbestos was neither known nor reasonably foreseeable, and therefore, the premises owner did not have a duty to her.[151]

Importance of Scientific and Medical Developments

In Illinois, individuals who are alleged to be exposed to asbestos through take-home or bystander work and the release of asbestos fibers may be able to find Illinois law to support their claims. However, the concept of the duty of care is more complex, and expert opinions differ depending on whether the elicited opinion is on behalf of plaintiffs or defendants. Take-home exposure cases, also called secondary or non-occupational exposures, generally pertain to a spouse or parent who worked with or around asbestos-containing products and then unintentionally brought the asbestos fibers into the household. Laundering of the work clothes, exposures to the family or in vehicles, or personal contact are usually also a factor in transmitting the alleged exposures.

The Illinois Supreme Court considered whether a duty exists to those who were never directly involved in the work with the asbestos-containing products yet claim exposure to their family members.[152] Asbestos litigation has its own rules in Illinois that are distinct from other toxic torts. It assumes that there is "no safe dose," and therefore, the dose does not matter. Plaintiffs' experts in Illinois present what they call cumulative exposure opinions. They rely on any exposure and cumulative exposure theories, in the broadest possible terms, to make these opinions extreme and in no way based on any quantitative or qualitative data, other than stating the exposures are above current background levels in ambient air.

The speculative nature of the opinions also extends to experts' testimony in take-home exposure cases. While courts in other jurisdictions certainly recognize the flaws of these theories, Illinois jurisprudence is not there yet.

For example, in 2024 in New York, the trial and higher court forced a plaintiff to provide a dose-exposure to substantiate the opinion that the exposure was above background.[153] In 2014, the Texas Supreme Court re-affirmed that exposure dose matters and rejected the each and every exposure theory.[154]

To determine a dose in take-home cases, aerodynamics and re-entrainment theories also differ between plaintiff and defense experts. Plaintiff experts often heavily rely on studies associated with exposures to ship workers that brought their clothing home and caused the asbestos fibers to transfer to the breathing zone of their wives or other family members doing the laundry. Starting in 1960, experts for plaintiffs attempted to establish that the knowledge of take-home exposure had existed by virtue of identification of occupational, para-occupational and neighborhood exposures.[155] The Wagner study described patients with no exposure other than living as a child in the vicinity of asbestos mines or as relatives of workers working in asbestos mines.[156]

The United States Environmental Protection Agency released a report in 1971 in the Annals of Occupational Hygiene entitled "*Asbestos Dust Concentrations In Ship Repairing: A Practical Approach To Improving Asbestos Hygiene In Naval Dockyards*."[157] This survey taken in the Devonport Dockyard measured the asbestos fiber concentrations associated with work involving asbestos-insulating materials.[158] The results revealed that both the application and removal of asbestos materials created high dust concentrations, and the report discussed measures to reduce the health hazards associated with such processes.[159]

In 1979, a paper entitled "*Household exposures to asbestos and risk of subsequent disease"* was published by several individuals.[160] The paper concluded that household asbestos contact carried a risk of developing mesothelioma and that household environmental contamination from industrial sources may be more widespread.[161] Other literature described how amphibole asbestos was found in the settled dust of workers' homes even 30 years after they ceased working with asbestos.[162]

Moving to 2002, Dr. Victor Roggli issued a report analyzing 1,445 cases of mesothelioma in individuals with known asbestos exposure history; 268 of these individuals also had a fiber burden analysis done.[163] The 1,445 cases of mesothelioma were subclassified into 23 predominant occupational or exposure categories.[164] Asbestos-body counts per gram of wet lung tissue were determined by light microscopy.[165] Asbestos fiber content and type were determined by scanning electron microscopy and energy dispersive x-ray analysis.[166] Results were compared with a control group of 19

lung tissue samples.[167] Ninety-four percent of the cases occurred among 19 exposure categories.[168] Median asbestos body counts and levels of commercial and noncommercial amphibole showed elevated levels for each of these 19 categories.[169] Chrysotile fibers were detectable in 36 out of 269 cases.[170] All but two of these also had above-background levels of commercial amphiboles.[171] When compared to commercial amphiboles, the median values for non-commercial amphibole fibers were higher in four of the 19 exposure groups.[172] All but one of the occupational categories analyzed had above-background levels of commercial amphiboles.[173] Consequently, the commercial amphiboles are responsible for most of the mesothelioma cases observed in the United States.[174]

The importance of a fiber-type analysis and dose are indispensable in take-home cases. It has been recognized since the 1960s that amphibole fibers are far more potent than chrysotile fibers. Thus, the physical and chemical characteristics of asbestos fibers do indeed matter. Chrysotile is curly and pliable, whereas amphiboles are straight and not pliable. Elements such as magnesium or iron may be leached or mobilized intracellularly or extracellularly from chrysotile and crocidolite.[175]

Similarly, the importance of specific fiber dose is fundamental in not only establishing a dose-response relationship but also in determining whether the dose is sufficient to increase someone's risk in developing an asbestos-related disease. For instance, all experts generally agree that exposure to background levels of asbestos does not pose any risk. This uniform opinion is supported by epidemiological studies.

Epidemiological studies also support a conclusion that chrysotile-exposed cohorts suggest that there is a cumulative chrysotile exposure below which there is negligible risk of asbestos-related diseases.[176] Consequently, the take-home exposures which are far removed from the direct work with asbestos-containing products should be given a very careful analysis to establish a threshold above which an increased risk exists to develop an asbestos-related disease.

Arguably, the take-home path of asbestos exposure was not recognized in the scientific literature to pose an above-background and identifiable risk until studies were published in 1976. The scientists at the Mt. Sinai School of Medicine first established a link between take-home household exposures and an asbestos-related disease.[177]

In 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a report to Congress regarding the dangers associated with household exposures to not only asbestos, but various substances.[178] Accordingly, NIOSH reported that the hazards of take-home exposures to asbestos are associated with workers directly exposed while mining, shipbuilding, insulating, and removal operations, which are associated with heavy asbestos exposures with large concentrations.[179]

Recently, a simulation study was performed by evaluating take-home exposures associated with the handling of clothing contaminated with chrysotile asbestos.[180] In the 2014 study, three target airborne chrysotile concentration ranges (low, medium, and high) were used during a total of six loading events on clothed mannequins to establish levels representative of a variety of workplace exposure scenarios.[181] The average transmission electron microscopy (TEM) concentrations for each loading event ranged between 0.01 f/cc and 3.30 f/cc, as measured by NIOSH Method 7402.[182] Following the loading events, six matched 30-minute clothes-handling and shake-out events were conducted, each including 15 minutes of active handling (15-minute means: 0.014 - 0.097 f/cc) and 15 additional minutes of no handling (30-minute means: 0.006 - 0.063 f/cc).[183] The 2014 study showed that take-home airborne concentrations associated with the handling and shake-out of clothing contaminated with chrysotile from a low level occupational setting would be extremely low.[184]

The 2016 study was designed to investigate a much more intense occupational exposure scenario than the 2014 study, with an average phase contrast microscopy equivalent (PCME) airborne concentration for the two loading events of 11.4 f/cc.[185] The average 15-minute PCME concentration during active clothes handling and shake-out was 2.9 f/cc.[186] The

results of both studies confirmed that weekly time-weighted average exposures from laundering activities would be a small fraction (less than 1%) compared to worker exposures.[187]

Practical Defense Strategies for Secondary Exposure Claims

Defending secondary exposure cases involves an analysis of whether the product manufacturer, premises owner, supplier or employer stood in such a relationship to owe a duty to the family member diagnosed with an allegedly asbestos-related disease. As in all asbestos cases, deposition preparation and witness examination are integral to a successful defense strategy. It is crucial to elicit details in depositions from witnesses regarding family practices during the time that the plaintiff was purportedly exposed to asbestos through a family member. This information includes, but is not limited to, details regarding the clothing worn by the employee to work, family laundry responsibilities and procedures, family cleaning practices, plaintiff's time within the home and the length of time that a person's clothing was worn inside the home. As with all depositions, preparation is one key component to defending your clients in secondary exposure cases.

In addition to potential secondary exposure to asbestos allegedly attributable to a defendant, a plaintiff may also have secondary exposure to asbestos-containing products and materials originating from non-parties and/or bankrupt companies. Eliciting information from witnesses regarding these exposures is critical to ascertaining a complete picture of a person's asbestos exposures and evaluating where your client fits in the picture, if at all. Plaintiffs often resided with extended family members who may serve as a sources of asbestos exposure beyond the ones attributable to your clients.

Further, as referenced throughout the section regarding secondary exposure law in states outside of Illinois, it is important to determine what the proper jurisdiction(s) may be. The majority of asbestos cases filed in Illinois involve out-of-state plaintiffs. Once you have details regarding the location of a plaintiff's secondary asbestos exposure, it is time to examine whether the law of Illinois or another state may be applicable to your case. Certain jurisdictions, such as Alabama, California, Utah, and Louisiana, seem to be more open to lawsuits involving secondary asbestos exposure. On the other hand, other jurisdictions, such as Arizona, Pennsylvania, and Texas, have been more reluctant to allow such claims. Being cognizant that the lawsuit pending against your client is in a jurisdiction reluctant to allow claims for secondary exposure could be the difference between a quick dismissal and a settlement or verdict that could reach over eight figures.

Equally important is an evaluation of the applicable standards for admissibility of experts' opinions and how useful they can be to your client's needs and goals. A prospective consultant should be capable of calculating relevant exposure dose(s) and be able to lay a proper foundation for his or her opinion to be admissible in court. Finally, when preparing your defense, it is pivotal to understand the chemical composition of your client's products to be able to build the defenses that root in science and will speak to the jury on directly relatable issues.

(Endnotes)

1 *Simpkins v. CSX Transportation*, 2012 IL110662, ¶ 3.

2 *Simpkins*, 2012 IL110662, ¶ 3.

[3] *Id.* ¶ 3.

[4] *Id.* ¶¶ 1-3.

[5] *Id.* ¶¶ 1, 7.

[6] *Id.*

[7] *Id.* ¶ 4.

[8] *Simpkins,* 2012 IL110662, ¶¶ 12-13.

[9] *Id.* ¶¶ 4-5.

[10] *Id.* ¶ 5.

[11] *Id.* ¶ 11.

[12] *Id.* ¶ 15.

[13] *Id*.

[14] *Simpkins,* 2012 IL110662, ¶ 18 (*citing Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006)).

[15] *Id*. ¶ 18.

[16] *Id*.

[17] *Id.* ¶ 19.

[18] *Id.*) 19 ¶*citing Widlowski v. Durkee Foods*, 138 Ill. 2d 369, 373 (1990)).

[19] *Id.* ¶ 19.

[20] *Simpkins,* 2012 IL110662, ¶ 21.

[21] *Id.* ¶ 22.

[22] *Id.*

[23] *Id.* ¶¶ 3, 22.

[24] *Id.* ¶ 27.

[25] *Id.* ¶ 28.

[26] *Simpkins,* 2012 IL110662, ¶ 28

[27] *Id.*

[28] *Id.*

[29] *Id.* ¶¶ 28-30.

[30] *Holmes v. Pneumo Abex, L.L.C. (In re Estate of Holmes*), 2011 IL App (4th) 100462; *see also Partners, Ltd. v. Growth Head GP, LLC*, 2011 IL App (1st) 110381, ¶ 3.

[31] *Holmes*, 2011 IL App (4th) 100462, ¶ 1.

[32] *Id.* ¶ 4.

[33] *Id.*

[34] *Id.* ¶ 6.

[35] *Id.* ¶ 5.

[36] *Id.* ¶ 8.

[37] *Holmes*, 2011 IL App (4th) 100462, ¶ 8.

[38] *Id.* ¶ 9.

[39] *Id.* ¶ 10.

[40] *Id.*

[41] *Id.* ¶ 7.

[42] *Id.* ¶ 13.

[43] *Holmes*, 2011 IL App (4th) 100462, ¶ 1.

[44] *Id.* ¶ 15.

[45] *Id.* ¶ 16.

[46] *Id.* ¶ 17.

[47] *Id.*

[48] *Id.*

[49] *Holmes*, 2011 IL App (4th) 100462, ¶ 19.

[50] *Id.* (*citing Marshall*, 222 Ill. 2d 422, 436 (2006)).

[51] *Holmes*, 2011 IL App (4th) 100462, ¶ 19.

[52] *Id.* ¶ 20 (*citing Simpkins v. CSX Corp.*, 401 Ill. App. 3d 1109, 1119 (5th Dist. 2010)).

[53] *Holmes*, 2011 IL App (4th) 100462, ¶ 23.

[54] *Id.* ¶ 24.

[55] *Id.*

[56] *Id.*

[57] *Id.* ¶¶ 28-30.

[58] *Neumann v. Borg-Warner Morse Tec LLC*, 168 F. Supp. 3d 1116 (N.D. Ill. 2016).

[59] *Neumann*, 168 F. Supp. 3d at 1118-19.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.* at 1119 (internal quotations omitted).

[64] *Id.*

[65] *Neumann*, 168 F. Supp. 3d at 1119.

[66] *Id.*

[67] *Id.* (*citing Thompson v. Ill. Dep't of Prof'l Regulation*, 300 F.3d 750, 753 (7th Cir. 2002)).

[68] *Id.*

[69] *Id.* (*citing Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

[70] *Id.*

[71] *Neumann*, 168 F. Supp. 3d at 1120.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 1120-21.

[75] *Id.* at 1120.

[76] *Id.*

[77] *Neumann*, 168 F. Supp. 3d at 1121.

[78] *Id.* at 1121-22.

[79] *Id.* at 1122.

[80] *Id.*

[81] *Id.*

[82] *Id.* at 1122-23.

[83] *Neumann*, 168 F. Supp. 3d at 1123.

[84] *Id.* at 1124.

[85] *Id.* at 1125.

[86] *Id.*

[87] *Nelson v. Aurora Equip. Co.*, 391 Ill. App. 3d 1036 (2nd Dist. 2009).

[88] *Nelson*, 391 Ill. App. 3d at 1036.

[89] *Id.*

[90] *Id.* at 1039-40.

[91] *Id.* at 1039; *see* 740 ILCS 130/1 *et seq*. (West 2004).

[92] *Id.*

[93] *Id.*

[94] *Nelson*, 391 Ill. App. 3d at 1039.

[95] *Id.*

[96] *Id.*

[97] *Id.* at 1039-40.

[98] *Id.* at 1040-44.

[99] *Id.* at 1044-45.

[100] *Nelson*, 391 Ill. App. 3d at 1044.

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] American Tort Reform Foundation, *Everlasting Judicial Hellholes: A Long, Hot 20 Years*, https://www.judicialhellholes.org/hellhole/everlasting-judicial-hellholes/illinois/#:~:text=Asbestos%20Litigation,-Illinois%20continues%20to&text=In%202020%2C%20Madison%20County%20alone,for%2011.5%25%20of%20national%20filings.

[105] KCIC Industry Report, *Asbestos Litigation: 2023 Year in Review*, https://www.kcic.com/media/2345/kcic_report_asbestos-annual-report_2023.pdf.

[106] American Tort Reform Foundation, *supra* note 104.

[107] KCIC Industry Report, *supra* note 105.

[108] *Id.*

[109] Kan. Stat. § 60-4905(a).

[110] Ohio Rev. Code Ann. § 2307.941(A)(1).

[111] Mark A. Behrens, *What's New in Asbestos Litigation?*, 28 REV. LITIG. 501, 547-48 (2009).

[112] *Bobo v. TVA,* 855 F.3d 1294 (11th Cir. 2017).

[113] *Bobo*, 855 F.3d at 1296.

[114] *Id.* at 1295.

[115] *Id.* at 1313.

[116] *Id.* at 1327.

[117] *Id.* at 1313.

[118] *Kesner v. Superior Court*, 210 Cal. Rptr. 3d 283 (Cal. 2016).

[119] *Id.* at 288.

[120] *Id.* at 289.

[121] *Id.*

[122] *Id.* at 291 (*citing* Cal. Civ. Code § 1714(a)).

[123] *Id.* (*citing Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 397 (1992)).

[124] *Kesner*, 210 Cal. Rptr. 3d at 291.

[125] *Id.*

[126] *Boynton v. Kennecott Utah Copper, LLC,* 500 P.3d 847 (Utah 2021).

[127] *Boynton*, 500 P.3d at 855.

[128] *Id.* at 857-62.

[129] *Hernandez v. Huntington Ingalls, Inc.*, No. CV 19-14685, 2020 U.S. Dist. LEXIS 86506 (E.D. La. May 18, 2020).

[130] *Hernandez*, 2020 U.S. Dist. LEXIS 86506, at *23.

[131] *Id.*

[132] *Id.*

[133] *See Stegemoller v. AC&S, Inc.*, 767 N.E.2d 974 (Ind. 2002); *Ramsey v. Ga. S. Univ. Advanced Dev. Ctr. & Hollingsworth & Vose Co.*, 185 A.3d 1255 (Del. 2018); *Quisenberry v. Huntington Ingalls Inc.*, 296 Va. 233 (2018); *Rochon v. Saberhagen Holdings, Inc.*, 140 Wash. App. 1008 (2007).

[134] Behrens, *supra* note 111, at 547-48.

[135] *Quiroz v. Alcoa,* 416 P.3d 824 (Ariz. 2018).

[136] *Quiroz*, 416 P.3d at 827.

[137] *Id.* at 830.

[138] *Id.* at 832-33.

[139] *Gillen v. Boeing Co.*, 40 F. Supp. 3d 534 (E.D. Pa. 2014).

[140] *Gillen*, 40 F. Supp. 3d at 536.

[141] *Id.* at 538.

[142] *Id.* at 539 (*citing Commerce Bank/Pennsylvania v. First Union Nat'l Bank,* 911 A.2d 133, 139 (Pa. Super. Ct. 2006)).

[143] *Id.* at 539-40.

[144] *Id*. at 540.

[145] *CertainTeed Corp. v. Fletcher,* 300 Ga. 327 (2016) (finding that the daughter of an employee is not a proper plaintiff); *Georgia Pacific, LLC v. Farrar,* 432 Md. 523 (2013) (finding that a granddaughter of an employee is not a proper plaintiff); *Miller v. Ford Motor Co. (In re Certified Question),* 479 Mich. 498 (2007) (finding that a stepdaughter of an employee is not a proper plaintiff).

[146] *Alcoa, Inc. v. Behringer*, 235 S.W.3d 456 (Tex. Ct. App. 2007).

[147] *Alcoa*, 235 S.W.3d at 458.

[148] *Id.*

[149] *Id.* at 460.

[150] *Id.* at 460-61.

[151] *Id.* at 462.

[152] *Simpkins*, 2012 IL 110662.

[153] *Tippin v. 3M Co*., No. 190062/21, slip op. (N.Y. Sup. Ct. Dec. 31, 2024).

[154] *Bostic v. Georgia-Pacific Corp*., 439 S.W.3d 332 (Tex. 2014).

[155] J.C. Wagner, *et al.*, *Diffuse Pleural Mesothelioma and Asbestos Exposures In the North Western Cape Province*, 17 BRIT. J. IND. MED. 260-271 (1960).

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[159] *Id.*

[160] H.A. Anderson, *et. al.*, *Household Exposure to Asbestos and Risk of Subsequent Disease*, 330 ANN. N.Y. ACAD. SCI. 387-99 (1979).

[161] *Id.*

[162] William J. Nicholson, *Recent Approaches to the Control of Carcinogenic Exposure: Asbestos – The "TLV" Approach*, 271 ANN. N.Y. ACAD. SCI. 152-169 (1976).

[163] Victor L. Roggli, *et. al.*, *Malignant Mesothelioma and Occupational Exposure to Asbestos: A Clinicopathological Correlation of 1445 cases*, 26 ULTRASTRUCT. PATHOL. 55-65 (2002).

[164] *Id.*

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] Roggli, *supra* note 169.

[170] *Id.*

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] B.T. Mossman, *et. al.*, *Mechanisms In the Pathogenesis of Asbestosis and Silicosis*, 157 AM. J. RESPIR. CRIT. CARE MED. 1666-80 (1998).

[176] J.S. Pierce, *et. al.*, *An Evaluation of Reported No-Effect Chrysotile Asbestos Exposures for Lung Cancer and Mesothelioma,* 38 CRIT. REV. TOXICOL. 191-214 (2008).

[177] Anderson, *supra* note 166.

[178] National Institute for Occupational Safety and Health (1995). *Report to Congress on Workers' Home Contamination Study Conducted Under the Worker's Family Protection Act* (29 U.S.C. 671a).

[179] *Id.*

[180] J. Sahmel, *et. al.*, *Airborne Asbestos-Take Home Exposures During Handling of Chrysotile-Contaminated Clothing Simulated Full Shift Workplace Exposures*, 26 J. EXPO. SCI. ENVIRON. EPIDEMIOL. 48-62 (2016).

[181] J. Sahmel, *et. al.*, *Evaluation of Take-Home Exposure and Risk Associated With the Handling of Clothing Contaminated With Chrysotile Asbestos,* 34 RISK ANAL. 1448-68 (2014).

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] Sahmel, *supra* note 186.

[186] *Id.*

[187] Sahmel, *supra* notes 186-87.

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