

Rhode Island Superior Court Extends Employer's Duty of Care to Allegation by Non-Employee of Secondary Exposure to Asbestos



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On April 16, 2018, Judge Taft-Carter of the Rhode Island Superior Court issued Carolyn Marie Nichols, as Executrix of the Estate of Iva Pearl Jones and Oscar Andrew Jones, as Surviving Spouse of Iva Pearl Jones v. Allis Chalmers Product Liability Trust, et al., No. Civ. A. PC-2008-1134 (R.I. Super. Apr. 16, 2018), wherein the Court examined whether Rhode Island law imposes a duty of care on an employer to protect third party non-employees who allegedly came into contact with its employee's alleged asbestos-tainted work clothes. Specifically, the plaintiffs claim Iva Pearl Jones ("Ms. Jones") was exposed to asbestos fibers and dust on the clothing of her brother-in-law, who was employed by a defendant-employer, and while they resided in the same home.

The defendant-employer moved for summary judgment on the grounds that there was no duty of care to the third party. The plaintiffs filed an opposition, arguing that the defendant-employer did not take adequate precautions to ensure that asbestos fibers and dust did not leave the worksite on employees and failed to warn employees of the known risks of transmission, and therefore the defendant-employer created a foreseeable risk of harm to Ms. Jones, thereby establishing a duty of care.

The Court noted that the Rhode Island Supreme Court has not addressed the question of duty in a secondary exposure case. In determining whether there was a duty, the Court explained such a duty "turns on the particular facts and circumstances," based on the factors outlined in Flynn v. Nickerson Cmty. Ctr., 177 A.3d 468 (R.I. 2018): "(1) the foreseeability of harm to the plaintiff, (2) the degree of certainty that the plaintiff suffered an injury, (3) the closeness of connection between the defendant's conduct and the injury suffered, (4) the policy of preventing future harm, and (5) the extent of the burden to the defendant and the consequences to the community for imposing a duty to exercise care with resulting liability for breach." The Court also noted the "relationship between the parties" should also be considered.

In applying the factors, the Court determined the defendant-employer owed a duty of care, because (1) the defendant-employer knew the dangers of asbestos transmission and exposure, and that it was foreseeable individuals in the same household would likely come in contact with

asbestos fibers or dust on an employee's work clothes; (2) it was uncontested that Ms. Jones died of malignant mesothelioma; (3) there was sufficient evidence of the closeness of the connection of Ms. Jones' injury; (4) in considering factors four and five together, there was a "strong" public policy argument in favor of allowing Ms. Jones to recover based on "the number of deaths caused by asbestos exposure" and the defendant-employer's knowledge about the dangers of asbestos exposure evidenced; and (5) the relationship between Ms. Jones and her brother-in-law was not too attenuated, as the individuals lived together.

The defendant employer also argued summary judgment should be granted regarding causation, loss of consortium, and breach of warranty, which the Court denied.

In reaching its decision, the Court made clear that duty is determined on a case-by-case basis, and the duty recognized in this case was limited to the facts of this case. Claimants still bear the onus of proving that a duty was owed, a breach of that duty, causation, and injury.

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