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## Beryllium

### Fewer Early Dismissals Predicted For New Jersey Toxic Take Home Suits

By PETER HAYES

**C**orporate defendants may have a harder time getting cases dismissed that seek liability for toxic substances sent home on workers' clothing, thanks to a recent New Jersey Supreme Court ruling (*Schwartz v. Accuratus Corp.*, 2016 BL 215980, N.J., No. A-73-14-076195, 7/6/16).

The court said non-spouses exposed to toxins may pursue claims—in this instance, a worker's girlfriend—but declined to construct a bright-line rule “as to who's in and who's out.”

The court instead directed trial courts to weigh the specific facts of each case to determine whether liability attaches (see related story).

“One thing is for sure—it will make summary judgment less likely to be granted,” defense attorney Carter Strang with Tucker Ellis LLP in Cleveland said.

Strang's practice includes toxic tort and hazardous waste law, and he has written extensively on take home asbestos claims.

“These cases will be fleshed out case-by-case and state-by-state in those states that permit claims against premises owners,” Strang said.

“It creates uncertainty that will need to be fleshed out,” he said.

**Narrow Extension of Liability?** Professor Robert Rabin at Stanford Law School, Stanford, Calif., agrees that the ruling will likely mean fewer summary judgment rulings in New Jersey take-home suits.

Rabin teaches tort law, and is the author of *Harms from Exposure to Toxic Substances: The Limits of Liability Law*, Pepperdine Law Review, Vol. 38, No. 2 (2011).

“The court says it's unwilling to decide this case without further analysis by the lower court. That suggests

that fewer of these cases will be decided on summary judgment,” he said.

“It's a cautious extension. Not even an extension that decides this particular case,” Rabin said.

The extension of liability beyond a spouse can still be read narrowly, he said.

The recent *Accuratus* ruling cites the factors established in *Hopkins v. Fox & Lazo Realtors*, 132 N.J. 426 (1993) for determining a premises owner's duty:

- the relationship between plaintiff and defendant;
- the nature of the attendant risk, including the danger of the toxin at issue and how easily the toxin is transmitted and causes injury;
- the opportunity and ability to exercise care; and
- the public interest in the proposed solution.

*Hopkins* involved a real estate agent's open house where a visitor was injured.

Under the new ruling in *Accuratus*, Rabin said, “the relationship of the parties could cut out people exposed on a bus, or working in a laundry.”

The ruling may also be limited by the type of substances for which take home liability applies, he said.

“The nature of the risk certainly extends to asbestos, but not to many other toxic substances,” Rabin said.

“There aren't that many substances like asbestos that could lead to cancer or other serious disease.”

“It is an extension, but whether it's a broad extension will turn on how concerned the court is on limitless liability,” he said.

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