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When a take-home claim is asserted under a negligence theory of liability, a central question is whether a duty is owed to the take-home plaintiff. Courts typically apply one of two tests in making that determination: the "relationship" test or the "foreseeability" test.

The relationship test focuses on the relationship between the defendant and the take-home plaintiff. Absent the existence of a "special relationship" between those parties, such as "invitee" or "licensee" in premises liability cases, courts using this test hold that no duty is owed to take-home plaintiffs, such as spouses and other family members.

The foreseeability test focuses on the foreseeability of harm to the take-home plaintiff. Some courts hold that take-home exposure cannot be foreseeable under any circumstances, while others hold that it may be foreseeable, depending on the time period of exposure, knowledge of asbestos hazards, relationship between the take-home plaintiff and the person who tracked it home (spouse, uncle, etc.), and the ability to warn about, and protect, against the hazard, among other factors.

When take-home claims are asserted as products liability claims against manufacturers or suppliers, the products law of that jurisdiction governs. Trends as to such claims are hard to discern, with decisions closely tied to the product, time period at issue, and other case-specific factors. In this article, the take-home products liability decisions discussed are primarily those in which the court focused on the time period of the take-home exposure and its impact on the viability of such claims.

Significant 2016 Take-Home Decisions

Four state supreme courts ruled on take-home duty in 2016. The California Supreme Court held that employers and premises owners owe a duty to prevent take-home asbestos exposure of household members, resolving a split in California appellate courts on that issue. The Georgia Supreme Court held that take-home failure-to-warn products liability claims are not permitted, although product defect claims are allowed. The New Jersey Supreme Court – which had previously permitted take-home premises liability claims brought by spouses –

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expanded the pool of potential take-home plaintiffs beyond spouses by removing family or household member limitations. Finally, the North Dakota Supreme Court held that an employer owed no duty to warn a take-home plaintiff about the dangers posed by the contaminated workplace clothing of its employee.8

There were also several lower court opinions in 2016, including rulings of first impression from an Arizona appellate court and a Colorado trial court holding no duty was owed. The Arizona ruling was in the context of a take-home claim against an employer by an employee’s son.9 The Colorado ruling was asserted against a premises owner.10

2016 Take-Home Case Filings

While the focus of this article is on take-home duty decisions, it is interesting to note that KCIC Consulting reports that take-home filings in 2016 were consistent – as a percentage of all asbestos case filings – with recent years, coming in at 4.7 percent of all asbestos claims filings.11

State-by-State Review of Take-Home Duty Decisions

Alabama
The United States District Court, Northern District of Alabama, extended a duty of care to take-home plaintiffs in Bobo v. Tennessee Valley Auth.,12 where plaintiffs were the personal representatives of Barbara Bobo. Ms. Bobo alleged that she was exposed to asbestos from laundering her husband’s workplace clothing from 1975 to 1997 when he worked as a laborer for the Tennessee Valley Authority (TVA).

TVA argued in its motion for summary judgment that it owed no duty to the spouse, who had never set foot on its premises. After noting the lack of any Alabama appellate court take-home premises liability decisions, the court denied the defendant’s motion.13

The case proceeded to a bench trial. After hearing the evidence from both sides, the court certified the take-home duty issue to the Alabama Supreme Court, which declined to address the dispute.

Without the requested response to the certified question, the trial court held that TVA was negligent in (1) violating applicable workplace standards relating to permissible workplace levels of asbestos exposure, (2) failing to follow mandatory directives governing the monitoring of such exposure, and (3) failing to provide those exposed to asbestos with protective clothing, equipment, locker rooms, and showers. It further held that such negligence was the proximate cause of Barbara Bobo’s injuries, awarding plaintiffs over $3 million in damages.

The trial court’s take-home duty ruling was affirmed by the United States Court of Appeals for the Eleventh Circuit on April 26, 2017.14 In its de novo review of the duty issue, the court held that, under Alabama law, foreseeability of injury is the key factor in the determination of whether a duty exists.

On that issue, the court noted, there was sufficient evidence that the take-home hazard was foreseeable, citing TVA’s knowledge of applicable OSHA regulations and TVA policies that were designed to protect people like Mrs. Bobo from take-home asbestos exposure. Further weighing in favor of the imposition of a duty under Alabama law is, the court held, the fact that TVA engaged in “affirmative acts” creating the risk of injury to its employees’ family members, such as TVA’s use of asbestos-containing products at the worksite.

After an analysis of appellate decisions from other jurisdictions, the court noted that its holding may represent a minority

“The past year is notable because of the number of significant take-home asbestos duty decisions, including rulings of the Supreme Courts of California, Georgia, New Jersey, and North Dakota and lower court rulings in cases of first impression in Arizona and Colorado.
The appellate court, in upholding the trial court’s award of summary judgment, held that foreseeability was not the test to be applied to determine liability under Arizona law.”

California
In Kesner v. The Superior Court, a unanimous California Supreme Court held that the duty of employers and premises owners includes preventing secondary exposure to asbestos carried home on the bodies and clothes of on-site workers. California appellate courts had been split on the issue. The Kesner decision resolves that split and provides a clear path to viable take-home claims in California; however, the court restricted such claims to household members.

Arizona
In a 2016 case of first impression, Quiroz v. Alcoa, an Arizona appellate court held that no duty is owed by an employer to its employee’s son who alleged exposure to asbestos brought into the family home on his father’s workplace clothing. The plaintiff alleged his exposure occurred between 1952 and 1962.

The appellate court, in upholding the trial court’s award of summary judgment, held that foreseeability was not the test to be applied to determine liability under Arizona law. The proper test, it stated, was whether there was a “special or categorical” relationship between the plaintiff and defendant. Here, no such relationship existed. To hold otherwise, the court noted, would lead to a “dramatic expansion of liability [that] would not be compatible with public policy.”

In Haver, meanwhile, the plaintiff – the wife of a railroad employee – alleged that she was exposed to asbestos when washing her husband’s clothing contaminated from his work as a fireman and hostler at the premises of BNSF Railway Company’s predecessor from 1972 through 1974. The trial court dismissed the plaintiff’s claim, and the appellate court upheld that decision, finding that a premises owner did not owe a duty of care to household members for take-home exposure under a premises liability theory.

In addressing the intermediate appellate court split, the California Supreme Court noted that its task was to determine whether household exposure is “categorically unforeseeable” and whether the law should recognize such claims. In so doing, it refused to carve out an entire category of cases from the general duty rule of California Civil Code Section 1714, which establishes a duty to exercise reasonable care for the safety of others, holding that employers or premises owners who use asbestos in the workplace owe a general duty of care to protect household members from secondary exposures.

Focusing on the general foreseeability of potential exposure, the court noted that a “reasonably thoughtful person making industrial use of asbestos during the time period at issue in this case (i.e., the mid-1970s) would take into account the possibility that asbestos fibers could become attached to an employee’s clothing and person, travel to that employee’s home, and thereby reach other persons who lived in the home.”

The timing of the alleged exposure was important given that broadly applicable regulations in the mid-1970s identified the potential health risks of asbestos traveling outside a worksite. The court found the 1972 OSHA regulations for employers using asbestos to be instructive, as it recognized the potential risk from asbestos-exposed clothing and required employers to take appropriate precautions – including providing showers and changing facilities for workers – to minimize exposure to employees and others.

Although the court noted that earlier regulatory standards and documentation in scholarly journals recognized the poten-
tial risk of take-home exposures to harmful substances, including asbestos, it did not decide the issue of whether a defendant responsible for a take-home exposure prior to the early 1970s would be subject to liability. This would present a factual question as to the potential breach of the general duty of care.\(^{19}\)

Recognizing that its holding could open the floodgates of litigation, the court limited the duty to members of a worker’s household, identified by the court as persons who live with the worker and are thus foreseeably in close and sustained contact with the worker over a “significant” period of time. Although it did not provide much guidance as to what period of time would be considered significant, the court stated that the limitation comported with its duty analysis in *Rowland v. Christian*,\(^{20}\) where a finding of foreseeability was based on the fact that a worker can be expected to return home daily and have close contact with household members on a regular basis over many years.

The interplay between this duty analysis and the standard for evaluating whether the alleged exposures in a given case were a substantial factor in contributing to the risk of disease will likely be the subject of future litigation.

The court – in returning both cases to their respective trial courts – also noted that the take-home plaintiffs were still required to prove breach of duty, causation, and damages. It also stated that fact-specific affirmative defenses and exceptions (i.e., supervisory control vs. passive consumer; no liability for negligence of independent contractor) may be available to premises liability defendants.

The court further held that products liability law was “inapposite” to its consideration of the take-home duty of employers and premises owners, in light of the different legal analysis employed, and the court, in *Kesner*, did not address the take-home duty owed by one contractor to household members of another contractor.\(^{21}\)

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In *Kesner*, did not address the take-home duty owed by one contractor to household members of another contractor. As a result, pre-*Kesner* decisions addressing both areas are discussed below.

In *Grigg v. Allied Packing and Supply, Inc.*\(^{22}\), an appellate court denied the motion for summary judgment of Owens-Illinois (O-I) in a strict products liability take-home asbestos case arising from a wife’s alleged exposure to contaminated workplace clothing from 1950 to 1965. Rejecting O-I’s no-duty argument, the court held that the relevant focus in assessing whether a product is defective is consumer expectation, not the knowledge of the scientific community. Strict liability, the court further noted, was developed to protect consumers by imposing a duty to manufacture defect-free products. It was not unreasonable, the court held, for the wife to expect that her husband could work with or around the defendant’s products without contracting cancer. The case proceeded to trial and resulted in a jury verdict of more than $27 million.

In *Bennett v. A.W. Chesterton, Inc.*\(^{23}\), a trial court denied defendant Goodyear’s motion for summary judgment where products liability claims for negligence and strict liability were asserted, arising from alleged take-home asbestos exposure from 1961 to 1965 as a result of a (former) spouse’s brake work. Addressing the defendant’s allegation that the asbestos hazard was not foreseeable prior to 1965, the court – in denying the summary judgment motion – noted the contrary testimony of Dr. Barry Castleman that the hazards of asbestos were known as early as the 1930s.

In *Sendle v. Pacific Gas and Elec. Co.*\(^{24}\), a trial court – in a case of first impression – denied a contractor’s motion for summary judgment, holding that California Civil Code 1714 created a duty extending to contractors to protect family members from take-home asbestos exposure caused by the work of other contractors, such as the defendant, at a job site. The plaintiff’s parents worked at a shipyard where the defendant’s employees generated asbestos dust while working with asbestos-containing products used in ship construction from 1942 to 1945. See also *Valenzuela v. Allied Packing & Supply*\(^{25}\), where a contractor defendant’s no-duty argument was similarly denied arising from take-home exposure from 1968 to 1978.

**Colorado**

In *Gergely v. ACE Hardware*, a 2016 case of first impression, plaintiff’s take-home premises liability claim against BNSF Railway was dismissed by the trial court, which applied a relationship test analysis pursuant to Colorado law. The plaintiff was the son of a BNSF employee who alleged exposure to asbestos brought home on his father’s contaminated workplace clothing from 1948 to 1968. The
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court held that, under Colorado law, claims against premises owners can be asserted only by plaintiffs who are members of the class of persons – such as an invitee or licensee – to whom the Colorado Premises Liability Act was intended to protect. Here, the plaintiff was not a member of that class, so his claims against the premises owner were dismissed.

Connecticut
In Reed v. 3M Co., the trial court denied a motion for summary judgment in which the defendant contended that the plaintiff’s alleged take-home asbestos exposure was not foreseeable. The plaintiff’s father was an auto mechanic at defendant Stamford Motors, Inc. until 1966, during which time the plaintiff lived in the family home and was allegedly exposed to asbestos from his father’s contaminated workplace clothing. In denying the defendant’s motion, the court cited the plaintiff’s submission of a number of studies published before 1966 that discussed the take-home asbestos risk, some going back as far as 1913, which sufficiently established foreseeability to overcome summary judgment.

Delaware
In Price v. E.I. DuPont Nemours & Company, the Delaware Supreme Court rejected a take-home asbestos claim where plaintiff claimed her asbestos-related disease was as a result of washing her husband’s asbestos-laden workplace clothing. The complaint alleged nonfeasance by her husband’s employer.

The court held that a claim of nonfeasance required evidence demonstrating that the defendant had a special relationship (employer, etc.) with the plaintiff. Here, it noted, there was no such relationship between the spouse and the defendant, rejecting claims that the husband’s long term employment with defendant, her coverage under defendant’s health coverage plan, and the employer’s publication of a home safety brochure for employees’ families were sufficient bases on which to find that a special relationship existed.

The plaintiff moved to amend the complaint to include a misfeasance claim, but her motion was denied because the court found the amendment was “predicated on exactly the same underlying facts earlier claimed to be nonfeasance.”

See also Riedel v. ICI Americas Inc., citing Price with approval in holding that the defendant employer owed no take-home duty, and In re Asbestos Litigation, a February 2017 opinion extending the no-duty rule in Price and Riedel to bar failure-to-warn take-home claims against a manufacturer.

Georgia
In a November 2016 decision, a unanimous Georgia Supreme Court, with one concurring opinion, ruled in CertainTeed v. Fletcher that failure-to-warn take-home claims are not permitted against a product manufacturer; however, the court made clear that product defect take-home claims are permitted.

In CertainTeed, the plaintiff claimed she was exposed to asbestos from laundering her father’s workplace clothes that were contaminated with asbestos from CertainTeed pipe from 1960 to 1977. The trial court dismissed the plaintiff’s failure-to-warn and product defect claims. The appellate court reversed in part.

The Georgia Supreme Court reversed the appellate court’s ruling on the plaintiff’s failure-to-warn claim, holding that it is unreasonable to require that manufacturers provide warnings to take-home plaintiffs who do not see or use the products in question. Holding otherwise, the court said, would cause both the mechanism and scope of such warnings to be endless.

However, as noted, the court upheld the appellate court’s ruling on the plaintiff’s product defect claim, holding that CertainTeed failed to meet its burden of showing there was no evidence that its product was defective as designed.

In CSX Transp., Inc. v. Williams, the Georgia Supreme Court barred take-home claims against employers brought by family members of employees that allegedly tracked asbestos home on their clothing. The court noted that the initial inquiry, with such claims, is whether a duty exists, which is a matter of public policy. The court held that, as a matter of public policy, no duty is owed to such claimants because they did not work at and were not exposed at the workplace.

Illinois
In another 2016 case, Neumann v. Borg-Warner Morse TEC LLC, a federal district court – applying Illinois law – dismissed the plaintiff’s case, where she alleged that her mesothelioma was caused by take-home exposure to asbestos from washing her son’s clothing.

The asbestos-containing products at issue were friction paper and other materials supplied or manufactured by the defendants and used by the plaintiff’s son as a gas station attendant and mechanic from 1970 to 1974. The plaintiff alleged that the defendants were negligent, breaching their duty to exercise ordinary care to avoid injury to the end users of their products.

The district court looked to Illinois state court decisions to properly apply Illinois law on take-home claims. In doing so, it noted a split in Illinois state appellate courts on whether a duty is owed to such plaintiffs and that the Illinois Supreme Court had declined to address the issue. In light of the split of authority, the district court applied federal common law, which provides that when faced with two opposing and equally plausible interpretations of state law, the interpretation that restricts rather than expands liability is to be followed. The plaintiff’s claims would expand liability; thus, they were dismissed.
In Simpkins v. CSX Transp., Inc., the plaintiff alleged take-home asbestos exposure from her husband’s workplace clothing during the years 1958 to 1964. She contended that the defendant – her husband’s employer – owed her a duty to protect against the hazard. The trial court granted the defendant’s motion to dismiss; however, the appellate court reversed and remanded, holding that the complaint sufficiently states a cause of action to establish a duty of care.

The Illinois Supreme Court noted that the existence of a relationship is the touchstone of a duty analysis and that the existence of a relationship depends on the foreseeability of the injury, likelihood of the injury, magnitude of the burden of preventing the injury, and consequences of putting the burden on the defendant.

The court held that the plaintiff’s conclusory allegation that the defendant knew or should have known of the take-home asbestos hazard failed to allege any specific facts supportive of that claim, rendering the complaint insufficient; however, because the defendant had not raised the issue with the trial court, the Illinois Supreme Court, in its remand, gave the plaintiff leave to amend the complaint.

In Nelson v. Aurora Equipment Company, an Illinois appellate court held that premises owners owe no duty to take-home plaintiffs. The court held that the threshold question in a premises liability case is duty, which requires an analysis of the nature of the relationship between the parties. In the case at bar, the court noted, there was no relationship between the take-home plaintiff and the defendant, where the plaintiff was the spouse of one man and the mother of another, both of whom she alleged exposed her at home through their workplace clothing.

In Estate of Holmes v. Pneumo Abex, L.L.C., a state appellate court dismissed the take-home plaintiff’s failure-to-warn claims against two manufacturers of asbestos-containing products. The court held that the plaintiff failed to establish that the danger of take-home asbestos was foreseeable in 1962 or 1963 when the workplace clothing was worn home and laundered there. Key to that determination was the testimony of the plaintiff’s expert Dr. Barry Castleman, who stated that the first epidemiological study establishing the danger of take-home exposure was published in 1964. See also Rodarmel v. Pneumo Abex, where the same appellate court overturned a $2.5 million judgment, holding that no duty was owed during an earlier exposure period for the same reasons cited in Holmes.

In Stegemoller v. A.C. & S., Inc., the Indiana Supreme Court held that the wife of a union insulator was a “consumer” under Indiana’s Product Liability Act (the Act) and could sue the manufacturers of asbestos products for her injuries from take-home asbestos exposure. The court explained that the definition of “consumer” under the Act included any bystander injured by the product who would reasonably be expected to be in the vicinity of the product during its reasonably expected use.

The court noted that the normal, expected use of asbestos products entails contact with its “migrating and potentially harmful residue.” It further reasoned that clean-up was encompassed in product use, including cleaning asbestos off clothing after work. Thus, the plaintiff had standing to sue the defendant manufacturer under the Act. See also Martin v. A.C. & S., Inc., where the court – in a ruling issued the same day as Stegemoller – also held that the plaintiff’s decedent, a spouse allegedly exposed to asbestos through her husband’s workplace clothing, had standing to bring claims under the Act.

In Van Fossen v. MidAmerican Energy Co., the Iowa Supreme Court affirmed an award of summary judgment in favor of two companies sued for take-home exposure by the wife of an employee of an independent contractor. The court held that no duty of reasonable care is owed to a member of the household of an employee of an independent contractor. To hold otherwise, it further noted, would result in a drastic expansion of liability that would be incompatible with public policy.
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Kansas
Under K.S.A. 60-4905, Kansas plaintiffs cannot maintain an asbestos claim against a premises owner based on exposure to asbestos if the exposure did not occur while the “individual was at or near the premises owner’s property.”

Kentucky
In Martin v. Cincinnati Gas and Electric Co., the United States Court of Appeals for the Sixth Circuit, applying Kentucky law, affirmed the trial court holding that a premises owner and a manufacturer owed no duty under Kentucky law to a take-home plaintiff.

The plaintiff alleged that his father brought asbestos particles home on his workplace clothing during the father’s employment – which concluded in 1963 – with the utility where GE products were used. Focusing on the foreseeability of harm at the time of injury, the court held that the plaintiff must show that the employer knew or should have known of the danger of take-home asbestos exposure during the time his father was employed there; however, it found no such evidence, noting that the evidence introduced at the trial court showed that the first studies regarding the dangers of take-home exposure were not published until 1965, two years after the father’s employment had ended. The court applied the same reasoning to grant summary judgment in favor of the manufacturer defendant.

Louisiana
In a 2016 take-home duty decision, Sutherland v. Alma Plantation, L.L.C., a Louisiana appellate court overturned the trial court’s grant of summary judgment for the defendant premises owner. The take-home plaintiff alleged exposure to asbestos from contaminated workplace clothing between 1964 and 1972, when her husband was employed as an independent contractor at the defendant’s plant. In rejecting the defendant’s no-duty argument, the court noted the existence of expert testimony and applicable statutes and regulations, including the 1950s Walsh-Healey Act, which required workplace precautions to avoid take-home contamination.

And in another 2016 take-home duty case, Williams v. Ingersoll-Rand, a Louisiana trial court judge awarded $7 million to the family of a spouse who alleged asbestos exposure in the mid-1970s from her husband’s workplace clothing as a result of his work on and around defendant manufacturer’s compressors. The court, applying Louisiana products liability law, determined that the defendant was aware of the dangers of asbestos in the 1950s but failed to provide a warning with its products.

In Catania v. Anco Insulations, Inc., a federal district court, applying Louisiana law, held that an employer owed a duty of care to the niece of three of its employees. The niece spent “significant time” at the homes of the uncles, where she was exposed to asbestos from their workplace clothing. Applying Louisiana products liability law, the court also held

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that a duty was owed to the niece by a product manufacturer defendant.

Both defendants in *Catania* contended that the take-home danger was not foreseeable at the time of the alleged exposure. In rejecting that argument, the court cited the existence of the 1950s Walsh-Healey Act as putting the defendants on notice of the hazards posed by asbestos, including the danger of off-site contamination from workplace clothing. The court also rejected the argument that because she was not an “immediate household family member,” no duty was owed. Noting the nature of the niece’s relationship with her uncles, the court held that it was sufficiently similar for a duty to extend to her.

In *Chaison v. Avondale Industries, Inc.*, a Louisiana appellate court upheld a jury’s award of over $3.8 million, where the alleged take-home exposure occurred from 1976 to 1978. The court noted that the exposure occurred after the issuance of the 1972 OSHA regulations pertaining to the dangers of taking-home exposure from contaminated clothing. Thus, the court held, the danger was foreseeable, so a duty was owed by the defendant employer to protect the plaintiff, who was the spouse of the defendant’s employee.

In *Zimko v. American Cyanamid*, an appellate court – applying a foreseeability test to a premises liability claim – rejected the defendant’s contention that it owed no duty to the take-home plaintiff who alleged exposure through his father’s workplace clothing from 1945 to 1966. The court cited the 1950s Walsh-Healey Act as evidence that the hazard was foreseeable.

**Maine**

There is no state court ruling on the issue of whether a duty of care is owed to prevent take-home exposure; however, Maine law on that duty was discussed in the federal appellate case of *In Dube v. Pittsburgh Corning*. The issue on appeal in Dube was the discretionary function exception to the Federal Tort Claims Act brought by manufacturers who were seeking contribution from the U.S. Navy. The contribution sought was for settlement payments made to the daughter of a private employee who was a pipe insulator at a Navy facility, alleged to have exposed his daughter to asbestos from his contaminated workplace clothing from 1959 to 1973.

In addressing the issue on appeal, the United States Court of Appeals for the First Circuit discussed the applicability of Maine law to take-home claims against premises owners. It noted that the trial court held that the Navy was negligent in its operation of the shipyard and such negligence was the cause of the daughter’s asbestos-related death, as the Navy knew or should have known no later than 1964 of the dangers posed to family members of those that worked at its shipyard. As such, the trial court found the Navy one-third liable for the daughter’s injuries; however, as the First Circuit noted, the trial court ultimately held that the Navy was immune from liability by application of federal law.

After a considerable analysis of the evidence presented at trial regarding the Navy’s knowledge and failure to provide warnings or take any protective action to avoid take-home contamination through workplace clothing, the First Circuit held that the trial court erred in holding that the Navy was immune under federal law and remanded the case for entry of judgment against the Navy.

**Maryland**

In *Georgia Pacific v. Farrar*, the Maryland Court of Appeals – the state’s highest court – held that the defendant product manufacturer owed no duty to the take-home asbestos plaintiff, who alleged asbestos exposure from laundering her grandfather’s workplace clothing in 1968 and 1969. The court held that a connection between asbestos-related disease and take-home exposure from workplace clothing was not generally recognized until the 1972 OSHA regulations, which addressed the issue of offsite contamination from workplace clothing. Even then, the court noted, the 1972 regulations provided only minimal written justification and lacked reference to any supportive study.

The court further stated that there was no practical way for manufacturers to warn the plaintiff and others exposed off-site through workplace clothing, given the absence of computers and social media at that time. Thus, the court held that imposing a duty that either cannot easily be implemented or would have no practical effect if implemented, would be poor public policy. See also *Doe v. Pharmacia & Upjohn Co., Inc.*, where the same court – on a certified question from a federal court – also held that no duty was owed the wife of an employee, where the take-home hazard at issue was an HIV virus.

In *Adams v. Owens-Illinois, Inc.*, a case cited with approval in *Farrar*, a state appellate court held that an employer owed no duty to warn an employee’s wife of the take-home hazards of asbestos from washing her husband’s workplace clothing. The court held that the take-home claim asserted against the employer was based on negligence law that requires proof of a legally cognizable duty owed. Here, the wife was a mere stranger to the employer and, thus, was owed no duty. To hold otherwise would permit anyone who came into close contact with the employee, such as passengers in the employee’s automobile, to sue the employer.

And in *Sherin v. Crane-Houdaille, Inc.*, a federal district court applying Maryland products liability law granted summary judgment to a manufacturer of joint compound and against failure-to-warn claims arising from take-home asbestos exposure from 1968 to 1976. Following *Farrar*, the court cited the failure to provide evidence that better warnings would
have prevented the alleged exposure of the wife from the contaminated workplace clothing she washed at home.

**Michigan**

In *In re Certified Question from Fourteenth Dist. Court of Appeals of Texas (Miller et al. v. Ford Motor Company)*, the Michigan Supreme Court, reviewing a certified question from a Texas state appellate court, denied the take-home exposure claim of the stepdaughter of an employee of an independent contractor who relined furnaces at a Ford plant from 1954 to 1965. In denying the claim, the court held that Ford owed the stepdaughter no duty to protect her from exposure to asbestos. It reached that conclusion after an analysis of the benefits of imposing such a duty against the social costs of doing so. After noting the existence of a litigation crisis created by the existing asbestos docket, the court held that expanding a duty to “anybody” who may come into contact with someone that expanding a duty to “anybody” who may come into contact with someone who has been simply on the premises who has been simply on the premises would expand traditional tort principals beyond manageable bounds.

**New Jersey**

In its unanimous 2016 decision in *Schwartz v. Accuratus*, the New Jersey Supreme Court expanded the pool of potential take-home plaintiffs beyond spouses, removing family or household member limitations. Although the take-home contaminant at issue was not asbestos, the decision is clearly applicable to asbestos claims.

In *Schwartz*, the plaintiff alleged that her chronic beryllium disease was caused by beryllium brought home on the contaminated workplace clothing of her husband, both while she was his girlfriend (and a frequent visitor to his apartment) and after they were married and living together. She also alleged exposure from her husband’s roommate, who occupied the same apartment unit with her boyfriend before his marriage to the plaintiff and with both of them after their marriage. The plaintiff contended that at all relevant times she helped wash contaminated clothing and towels and helped clean the apartment.

While the plaintiff also asserted products liability claims, the only question pending before the New Jersey Supreme Court pertained to her premises liability claims and the duty owed, if any, during her alleged exposure while a girlfriend, guest, and roommate. On that issue, the trial court denied her non-spousal claims, citing the seminal *Olive v. Owens-Illinois, Inc.*, which permitted take-home claims by a spouse against a premises owner. Specifically, the trial court held that the duty recognized was focused on the particularized foreseeability of the harm to the plaintiff’s wife, who ordinarily would perform typical household chores, such as laundering the workplace clothes worn by her spouse.

The trial court’s ruling was appealed to the United States Court of Appeals for the Third Circuit, which certified the following question to the New Jersey Supreme Court:

“What are the limits on that liability rule and the associated scope of duty?”

As to the certified question, the court refused to restrict take-home liability to spouses. In so ruling, it stated that its *Olive* decision was not based on Eleanor Olivo’s legal status: “Olivo does not state, explicitly or implicitly, that a duty of care for take-home toxic-tort liability cannot extend beyond a spouse. Nor does it base liability on some definition of ‘household’ member, or even on the basis of biological or familial relationships.”

In addressing the second half of the certified question, the Court rejected any bright line test in favor of a case-by-case approach that includes a “refined analysis for particularized risk, foreseeability, and fairness.”

Schwartz returned to the Third Circuit, which remanded it to the trial court for further handling. On March 30, 2017, the trial court reconsidered its dismissal, and in light of the New Jersey Supreme Court’s holding, it denied the defendant’s motion to dismiss, holding the allegations against it are sufficient at that stage of the proceedings.

In *Kaenzig v. Charles B. Chrystal Co. Inc.*, a state appellate court upheld a $1.6 million verdict for a take-home plaintiff and against a talc supplier. Plaintiffs argued that their son’s mesothelioma was caused by take-home exposure – from 1965 to 1975 – to asbestos from the contaminated talc his father brought home on his person and clothing from his work at a facility that manufactured cosmetic talcum products. The defendant alleged that the plaintiff failed to provide sufficient evidence in support of the failure-to-warn claims asserted by plaintiffs. The appellate court, in rejecting the appeal on that issue, held that sufficient evidence was presented at trial showing the defendant knew that its raw talc contained asbestos – during the relevant time period – and was dangerous. That danger extended to those exposed off site through workplace clothing. Thus, the court held, the lack of a warning rendered the talc defective.

A state appellate court, in *Anderson v. A.J. Friedman Supply Co., Inc.*, upheld a $7.5 million verdict for a take-home plaintiff who laundered her husband’s asbestos-contaminated work clothes from 1969 to 2003. The husband was an employee of Exxon – the sole remaining defendant at the time of trial – during the relevant time period. Citing *Olive*, the court held that employers owe a duty...
of care to employee’s spouses for injuries caused by take-home asbestos exposure, and sufficient evidence was presented to show that the defendant was aware of the hazard of take-home exposure but failed to take sufficient precautions to protect plaintiff from it.

New York

In In re New York City Asbestos Litigation (Holdampf, et al. v. A.C. & S. Inc., et al. and the Port Authority of New York and New Jersey), the Court of Appeals for New York – the state’s highest court – denied the take-home asbestos exposure claim of a wife for alleged exposure from 1971 to 1996, asserted against her husband’s employer. The court held that the initial analysis required a determination of whether any duty was owed by the defendant to the wife, not whether plaintiff’s alleged exposure and injury were foreseeable.

Foreseeability, the court noted, is only considered once a duty is determined to exist. Duties arise from a special relationship, such as master-servant or premises invitee, where the relationship limits the scope of the liability. No such duty, the court held, should extend to the wife or others not actually present at the workplace and over whom no control can be exercised by the employer/premises owner. To hold otherwise, the court further noted, would be unworkable in practice and unsound as a matter of public policy.

In so ruling, it rejected its sister state’s holding in Olivo, noting New Jersey’s greater focus on foreseeability, as well as the fact that the defendant in the instant case – unlike Olivo – did take precautions by providing uniform and laundry service that plaintiff’s husband selectively utilized.

In a New York state trial ruling, In re Eighth Judicial District Asbestos Litigation (Rinfleisch v. AlliedSignal, Inc.), a wife’s take-home asbestos exposure claim – alleging exposure from washing workplace clothing from 1984 to 1990 – was dismissed, citing In re New York Asbestos Litigation with approval. The court was not swayed by the plaintiff’s evidence that the employer/premises owner did not comply with the 1972 OSHA regulations regarding steps to be taken to avoid take-home exposures.

North Dakota

In a 2016 case of first impression, Palmer v. 999 Quebec, Inc., the North Dakota Supreme Court unanimously held that the defendant employer owed no duty to warn the son of its employee of the take-home hazards of asbestos. The son was allegedly exposed to asbestos from his father’s workplace clothing from 1961 to 1965 and again from 1974 to 1999.

The trial court granted summary judgment for the defendant, holding that no duty was owed to the son by the employer because there was no special relationship between them.

The North Dakota Supreme Court held that whether a foreseeability or relationship test was employed, no duty was owed. As to the former, the court said no evidence was presented to the trial court showing that the defendant had knowledge of the hazard at issue during the father’s first period of employment. As to the second period of employment, there was no evidence of any asbestos use that would have been tracked home on the father’s clothing. In regard to the relationship test, the court agreed with the trial court’s conclusion that there simply was no special relationship between the defendant and its employee’s son.

Ohio

In Boley v. Goodyear Tire & Rubber Co., the Ohio Supreme Court held that O.R.C. 2307.941 barred the plaintiff’s take-home premises liability claim arising from a wife’s laundering of her husband’s asbestos-contaminated workplace clothing from 1973 to 1983. The court noted that the legislation was part of a revision of Ohio law to address what the Ohio General Assembly characterized as an unfair, inefficient asbestos personal injury litigation system that is imposing a severe burden on litigants and taxpayers.

O.R.C. 2307.941 states that “a premises owner is not liable in tort for claims arising from asbestos exposure originating from asbestos on the owner’s property unless the exposure occurred at the owner’s property.”

That language, when taken in context of the legislative intent, the court held, bars all tort actions against premises owners relating to exposure originating from asbestos on the premises owner’s property.

Oklahoma

The take-home case law in Oklahoma has been developed by federal courts, as no Oklahoma state court has directly ruled on the issue of the duty of care – and those courts have ruled that no duty is owed, both in the context of take-home claims asserted against employers and product manufacturers.

The duty of care in the context of claims asserted against an employer for alleged take-home asbestos exposure to the employee’s spouse was addressed in Bootenhoff v. Hormel Foods Corp., where it was claimed that Norma Bootenhoff was exposed to asbestos from her husband Eugene’s workplace clothing.

Eugene was employed by predecessors of defendant International Paper Corporation (IPC) from 1958 to 1966 and again from 1972 to 1976. It was alleged that he first worked with or around asbestos at his place of employment in 1959 when he removed and installed pipe insulation on two separate occasions for 1-2 hours each time. All other exposures were alleged to have occurred from being around asbestos as a supervisor beginning in 1966.
The employer moved for summary judgment, contending it owed no duty to its employee’s spouse. In granting the employer’s motion, the federal trial court held that under Oklahoma law, a duty of care analysis is multifactored; however, the most important factor is foreseeability. Key in a determination of foreseeability is the type, frequency, and time period of exposure. In that determination, the court rejected the plaintiff’s offer of the 1950s Walsh-Healey Act and 1972 OSHA regulations as evidence. As to the former, it did not address take-home exposures, and as to the latter, the regulations addressing take-home exposures were only applicable where fiber levels at the workplace were exceeded, and there was no such evidence presented as to the husband’s place of employment.

The court similarly rejected the plaintiff’s offer of medical evidence as showing foreseeability, noting that the studies offered did not address the type of exposures at issue, which the court described as being only “intermittent” and “non-occupational.” The court also rejected claims that IPC had actual knowledge of the take-home danger, noting that IPC’s knowledge showed only a general understanding of asbestos hazards, not a specific hazard of take-home exposure of the type and manner alleged to have injured Norma Bootenhoff.

In the Bootenhoff rulings referenced above, the court cited other federal court decisions as precedent, including Rohrbaugh v. Owens Corning Fiberglas Corp., where the United States Court of Appeals for the Tenth Circuit vacated and remanded a jury’s award in favor of plaintiffs who alleged their mother died as a result of exposure to asbestos from Owens Corning Fiberglas (OCF) products tracked home on her husband’s workplace clothing.

The Tenth Circuit, in Rohrbaugh, held that Oklahoma products liability law extends to ordinary purchasers and users of products, but here it was clear the mother was not a purchaser or user of the product. The court also held that the defendant could not have known the danger associated with its asbestos-containing products before 1969, the last date of any alleged exposure. Key in that determination was the lack of evidence that the types of asbestos in the products at issue – amosite and chrysotile – were known to cause mesothelioma prior to 1969.

On remand the plaintiffs offered no additional evidence, and the trial court granted OCF’s motion for summary judgment. Plaintiffs appealed. In Rohrbaugh v. Celotex Corp., citing law of the case, the Tenth Circuit upheld the trial court’s dismissal of OCF.

The final case take-home duty cited with approval in Bootenhoff was Carel v. Fibreboard Corp. In Carel, the Tenth Circuit – citing both of its Rohrbaugh decisions as precedent – upheld the trial court’s grant of summary judgment in favor of the defendants and against the plaintiffs’ product liability claims arising from Mary Ann Lowry’s alleged exposure to asbestos as a result of washing her spouse’s workplace clothing from 1950 to 1977.

Pennsylvania

In Gillen v. Boeing Co., the United States District Court, Eastern District of Pennsylvania, refused to extend a duty in premises and employer liability cases to take-home plaintiffs under Pennsylvania law, based in large part on what the court referenced as “the specter of limitless liability.” The court explained that while no Pennsylvania appellate court had directly considered the issue, its holding was consistent with lower court decisions applying Pennsylvania negligence law. The plaintiff alleged that her mesothelioma was caused by asbestos tracked home on her husband’s workplace clothing that she laundered from 1966 to 1970 and 1973 to 2005, when he was employed as a machinist with defendant Boeing at its facility.

The court’s analysis examined the relationship between the parties, the social utility of the actor’s conduct, the nature of the risk imposed and foreseeability of the harm incurred, the consequences of imposing a duty on the actor, and the overall public interest in the proposed solution. It held that the relationship between the parties – which were “legal strangers” under Pennsylvania law – weighed in the defendant’s favor, in contrast to the social utility analysis, which it called “equipoise” (not favoring either side).

On the nature of the risk and foreseeability of the harm – which the court noted was not a dominant factor under Pennsylvania law – the court held that the plaintiff failed to establish that the defendant knew, or should have known, that the plaintiff could be exposed to asbestos from washing her husband’s workplace clothing. Thus, this factor weighed in the defendant’s favor.

In considering the consequences of imposing a duty on the defendant and overall public interest in the proposed solution, the court reasoned that the imposition of duty would mean that liability for take-home exposure would essentially be infinite, noting that the majority of courts had declined to recognize such a duty. Thus, these considerations also weighed in the defendant’s favor.

In Hudson v. Bethlehem Steel Corp., the plaintiff brought strict liability and negli-
A different Pennsylvania trial court reached a different result in A.O. Smith, where it denied a premises-owner defendant’s motion for summary judgment arguing that it owed no duty to the take-home plaintiff, a spouse alleging exposure through her husband’s workplace clothing. The court held that, unlike Hudon, the plaintiff did not provide evidence that the defendant knew or should have known of the take-home danger during the relevant time period (1952-1983).

A Delaware trial court, applying Pennsylvania law In re Asbestos Litig. (McCoy v. PolyVision Corp.), granted summary judgment to a premises owner/employer, holding that the defendant did not owe a duty to the take-home plaintiff, a spouse who alleged take-home asbestos exposure from her husband’s workplace clothing from 1974 to 1983. The court held that under Pennsylvania law, many factors must be examined to determine whether a duty exists; however, the relationship analysis is the “most persuasive factor” in that analysis, and here the plaintiff and the defendant were mere “legal strangers.”

**Tennessee**

In Satterfield v. Breeding Insulation Co., the Tennessee Supreme Court held that a duty extended to the take-home plaintiff, whose father was alleged to have exposed her through asbestos-contaminated workplace clothing during the 1970s and 1980s. The court held that during that period the dangers of asbestos were known and OSHA regulations existed to help guard against take-home exposure; however, the defendant failed to warn or follow the applicable regulations.

Applying Tennessee law in Millsaps v. Aluminum Co. of Am., the United States District Court, Eastern District of Pennsylvania, held that take-home asbestos-exposure plaintiffs need not be residents of the same household to establish a duty of care. Citing Satterfield, the court held that the class of foreseeable people includes persons who “regularly and for extended periods of time” come into close contact with the asbestos-contaminated workplace clothing of employees.

The court denied the defendants’ motion for summary judgment because of evidence presented that the plaintiff spent a great deal of time at her father-in-law’s home, hugged him while he was in work clothes, and did laundry, including her father-in-law’s dusty work clothes, at the home.

**Texas**

In Alcoa Inc. v. Behringer, a Texas appellate court overturned a multimillion-dollar jury award for a take-home plaintiff, holding that the risk was not foreseeable by the defendant employer at the time of her exposure in the 1950s. The take-home plaintiff was the wife of an Alcoa employee who allegedly tracked home asbestos on his clothing that she washed from 1951 to 1955 and again from 1957 to 1959, which asbestos was from insulation he worked around at Alcoa’s plant in Rockdale, Texas.

The court noted that under Texas negligence law, a legal duty must be found to exist, and of the several factors in that analysis, the most important is foreseeability, which requires a showing of both the foreseeability of the general danger and that a particular plaintiff, or one similarly situated, would be harmed by that danger.

Applying that standard, the court reviewed the evidence, which showed that the first study of non-occupational exposure was in 1965 and the first regulations regarding it were by OSHA in 1972. The court rejected the 1950s Walsh-Healey Act and a 1958 Texas workplace atmospheric contamination regulation as evidence of foreseeability of the hazard because they pertained only to worker/workplace safety, not non-occupational exposures.

In so ruling, the court – in a footnote – said Alcoa’s status as an employer differed from that of a manufacturer of an asbestos-containing product, which is subject to strict liability that does not require proof of foreseeability.

See also Exxon Mobile Corp. v. Altimore, where an appellate court held that the plaintiff’s take-home claim against her husband’s employer was not foreseeable during the time period at issue, which exposure period ended in 1971.

**Washington**

In a January 2017 unpublished opinion in Estate of Brandes v. Brand Insulations, Inc., a Washington appellate court affirmed a jury’s 2015 award of $3.5 million based on the asbestos-related injuries to the decedent arising from her launder-
In *Rochon v. Saberhagen Holdings Inc.*, a Washington appellate court upheld the trial court’s dismissal of plaintiff’s take-home asbestos exposure claims based on premises and employer liability; however, the appellate court reversed the trial court’s holding that no duty of care was owed under a general negligence theory.

The plaintiff was the spouse of an employee of a predecessor in interest of Kimberly-Clark from 1956 to 1996, where it was alleged that he was exposed to asbestos that he tracked home on his clothing, which his spouse laundered. In reversing the dismissal of the claims against Kimberly-Clark based on premises and employer liability, the court held that there was no showing of a special relationship between the plaintiff and the defendant that would create a duty of care extending to her.

In *Rochon v. Saberhagen Holdings Inc.*, an appellate court reversed the trial court’s dismissal of take-home asbestos exposure claims asserting premises liability asserted by the wife and son of an insulator who worked at defendant’s shipyard in the 1960s.

As we look ahead, it will be particularly interesting to see whether the California Supreme Court’s holding in *Kesner* reverses what has been an emerging majority of courts holding that no duty is owed take-home claims asserted as negligence claims against premises owners, employers, and contractors.”
The plaintiff claimed that exposure resulted from her contact with the workplace clothing, tools, and hair of both her father and ex-husband who both worked for the same employer at the same shipyard. She further claimed that the employer was negligent in failing to provide its employees with a safe workplace environment and that it was reasonably foreseeable that such negligence would result in exposure to employees’ family members when the clothing came home. The district court – after first noting there was no Washington State Supreme Court ruling on the issue – looked at Washington state appellate decisions and those from other jurisdictions. It cited Rochon and Arnold in support of the proposition that the Washington Supreme Court would recognize a company’s duty to take reasonable precautions to protect family members from take-home asbestos exposure.

Turning to the question of the foreseeability of harm in the case before it, the court held, as noted, that no duty was owed to the plaintiff in light of the fact that the last alleged exposure was in 1958. In so holding, it rejected the plaintiff’s offering of the Walsh-Healey Act, a report of Dr. Barry Castleman, and 1945 shipyard safety conference minutes as evidence that the defendant knew or should have known, since the first studies of an asbestos-related diseases in family members employed with the defendant’s workplace clothing of multiple family members employed with the defendant’s predecessor-in-interest.

In Lumford v. Saberhagen Holdings, Inc., an appellate court reversed the trial court’s grant of the defendant’s motion for summary judgment where product liability claims were asserted by a son alleging take-home asbestos exposure from the defendant’s products tracked home in 1958 by his father, an insulation installer. The defendant – who provided asbestos-containing insulation to the workplace in question – argued that the son was not a product “user” under Restatement (Second) of Torts § 402A.

The court, after noting that it was a matter of first impression, considered the policy considerations for imposing strict liability, including forced reliance on sellers by consumers, placing the burden of accidental injuries caused by products on those who market them as a cost of production, and the need for consumer protection generally.

It held that policy considerations support application of strict liability to a household family member of a user of an asbestos-containing product if it is reasonably foreseeable that household members would be exposed in this manner. That, the court held, was a question for the jury to determine.

On remand, the trial court granted the defendant’s motion for partial summary judgment as to the strict products liability claim because it arose from asbestos exposure before Washington’s adoption of strict liability. The appellate court, however, reversed and remanded on grounds that strict liability retroactively applied to the action, and the Washington Supreme Court affirmed that holding and remanded it to the trial court, yet again.91

Wisconsin

In Huvel v. Albany Intern. Corp., a Missouri trial court applied Wisconsin law in denying an employer’s motion for summary judgment in a take-home claim where it was alleged that the decedent was exposed from 1951 to 2003 from the workplace clothing of multiple family members employed with the defendant’s predecessor-in-interest.92

After noting that there were no published cases in Missouri (where the case was filed) or Wisconsin (where the alleged exposures occurred), the court acknowledged the split in authority in other jurisdictions on the issue before it: whether asbestos-related diseases in family members of employees are reasonably foreseeable to the employer.

In denying the defendant’s motion for summary judgment, the court held that under Wisconsin law everyone owes a duty of care to the world at large to protect others from foreseeable harm. And, in the case of an employer, that duty extends to the foreseeable risks of danger to household members from take-home exposures.

Further, the court stated, assuming the defendant knew or should have known of the dangers of take-home exposure to family members who routinely come into contact with employee clothing and personal effects, such knowledge would certainly fall within the range of foreseeable harm that may result from an employer’s negligence.

Conclusion

2016, along with the first few months of 2017, provided a number of important take-home decisions addressing the duty owed to take-home plaintiffs, including...
landmark rulings by the Supreme Courts of California, Georgia, New Jersey, and North Dakota.

As we look ahead, it will be particularly interesting to see whether the California Supreme Court’s holding in Kesner reverses what has been an emerging majority of courts holding that no duty is owed take-home claims asserted as negligence claims against premises owners, employers, and contractors.94

Endnotes
1 The article includes take-home decisions through May 1, 2017.
2 “Bystander” claims more accurately describes direct asbestos exposure arising from working with/around an asbestos-containing product rather than from off-site contamination, such as through workplace clothing.
3 Courts have held that no duty is owed for such claims applying the laws of Arizona, Colorado, Delaware, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, and Washington. Take-home premises claims are barred by statute in Kansas and Ohio, and there is Ohio case law supporting the statute’s application to such claims. In Illinois, Pennsylvania, and Washington there are also decisions stating that a duty is owed.
4 Such claims include failure-to-warn and product defect claims. Excluded from discussion in this article are take-home products liability decisions focused on product identification, the Substantial Factor Test, and other aspects of take-home claims that do not directly address the duty question.
6 CertainTeed v. Fletcher, 794 S.E.2d 641 (Ga. 2016).
8 Palmer v. 999 Quebec, Inc., 874 N.W. 2d 203 (N. Dak. 2016).
11 Asbestos Litigation: 2016 Year in Review, KCIC Consulting (2016), where it states: “Given the data reviewed here, we do not see evidence supporting the theory that the steady filing rate for asbestos claims is being supported by secondary exposures while primary exposures decline.” See http://www.kcic.com/.
13 The Memorandum Opinion and Order can be found at 2014 WL 4269128 (N.D. Ala. 2014).
14 Case No. 15-15271 (11th Cir. 2017) (while affirmed on the take-home duty – and other issues – the case was remanded on the issue of damages).
15 See fn. 9.
16 See fn. 5.
17 A hostler is a person who moves locomotives at a railroad yard.
18 Kesner at 292.
19 443 P. 2d 561 (Cal. 1968).
24 See fn. 10.
26 A. 3d 162 (Del. 2011).
27 968 A. 2d 17 (Del. 2009).
29 See fn. 6.
30 608 SE 2d 208 (Ga. 2005).
31 168 F. Supp. 3d 1116 (N.D. Ill 2016).
32 965 N.E. 2d 1092 (Ill. 2012).
33 The dissenting opinion said the case should not be remanded; rather, the Illinois Supreme Court should hold no take-home duty exists.
37 767 N.E. 2d 974 (Ind. 2002).
38 768 N.E. 2d 426 (Ind. 2002).
39 777 N.W. 2d 689 (Iowa 2009).
40 561 F. 3d 439 (6th Cir. 2009).
42 Williams v. Ingersoll-Rand, Case No. 76,787 (La. 10th Dist. 2016).
44 The take-home time period was not stated in the opinion.
48 870 F. 2d 790 (1st Cir. 1989).
49 432 Md. 523, 69 A. 3d 1028 (Md. 2013).
50 879 A. 2d 1088 (Md. 2005).
51 There was, the court noted, no test available for the type virus (HIV-2) at issue during the relevant time period, so the employer could not have tested the employee for it.

56 See fn. 7.


58 139 A. 3d 84, 86.

59 Id. at 91.


64 12 Misc. 3d 936, 815 N.Y.S 2d 815 (2006).

65 See fn. 8.


70 965 F. 2d 844 (10th Cir. 1992).

71 53 F. 3d 1181 (10th Cir. 1995) (unpublished).

72 1996 WL 3917 (10th Cir. 1996).


76 The trial court ruling is sparse on facts. The alleged dates of exposure and other facts were determined from a review of the summary judgment filings. See 2006 WL 6599056 and 2006 WL 4476093 for plaintiff’s and defendant’s filings.


79 Supplemental information regarding the plaintiff’s claims was located at 2008 WL 5182891 (Petition for Writ of Certiorari). 266 S.W. 3d 347 (Tenn. 2008).


82 Compare Baker v. The University of Texas-M.D. Anderson Cancer Center, Inc., 401 S.W. 3d 246 (Tex. App. 2012) (permits take-home lead contamination claim but – at fn. 13 -- notes differing foreseeability analysis for lead that “markedly” distinguishes it from asbestos take-home cases.)


86 2013 WL 3270371 (W.D. Wash. 2013), aff’d sub nom., 2013 WL 4804408 (9th Cir. 2013).

87 540 Fed. Appx. 590 (9th Cir. 2013).


89 208 P. 3d 1092 (Wash. 2009).

90 2014 WL 4654947 (Mo. Cir. 2014).

91 Interestingly, one form of alleged take-home exposure resulted from a toupee worn at the workplace and cleaned at home.

92 The authors acknowledge Marcus H. Pryor II, a Tucker Ellis LLP associate, for his research assistance in preparing this article.