

[Products Liability Law Daily Wrap Up, TOP STORY—CHEMICAL PRODUCTS—N.J. Sup. Ct.: Employer may have duty of care to non-spouse roommate in toxic take-home case, \(Jul. 7, 2016\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

A ceramic maker may have a duty of care to a non-spouse roommate of an employee who developed chronic beryllium disease after being exposed to beryllium from washing the employee's work clothes, the New Jersey Supreme Court unanimously stated in response to questions certified to it by the U.S. Court of Appeals for the Third Circuit. However, the state high court declined to specify the scope of the duty or the limits on liability or to create a bright-line rule because a case-by-case assessment would be required ([Schwartz v. Accuratus Corp.](#), July 6, 2016, LaVecchia, J.).

In 1979, a machinist employed by Accuratus Corp. began sharing an apartment with another Accuratus employee. At that time, the machinist's then-girlfriend frequently visited and stayed overnight. After he began working for another company, they were married in 1980 and she moved into the apartment, in which the roommate continued to live. The machinist's wife did the laundry both before and after the marriage and also cleaned their portion of the apartment and the common areas. According to the complaint filed by the machinist and the wife, employees at Accuratus were exposed to manufacturing processes involving beryllium oxide ceramics and other beryllium-containing materials and beryllium dust was deposited upon their clothes. It further alleged that the machinist's wife was exposed to this beryllium when she did the laundry, including during the time before the marriage when she stayed over at the apartment, as well as after the marriage from the roommate's clothes as he continued to work at Accuratus.

In 2011, the wife was diagnosed with chronic beryllium disease. She and her husband brought claims in Pennsylvania state court for negligence, products liability, and strict liability against Accuratus and Materion Brush Inc., the husband's second employer. The case was removed to the Eastern District of Pennsylvania. In denying their motion for remand, the district court observed that neither New Jersey (where Accuratus was located) nor Pennsylvania recognized a duty of an employer to protect a worker's non-spouse roommate. It cited the New Jersey Supreme Court's 2006 ruling in *Olivo v. Owens-Illinois, Inc.*, which held that a duty of care to protect onsite workers from asbestos exposure in the workplace extended to spouses handling the workers' unprotected work clothing at home because there was a foreseeable risk of asbestos exposure from the clothes. The *Olivo* court determined that the employer's concerns about limitless liability were unfounded because its holding was limited to the facts of the case, and the duty it found was focused on "the particularized foreseeability of harm to the plaintiff's wife."

According to the district court, finding a duty by Accuratus to the machinist's then-girlfriend would stretch the ruling of *Olivo* further than it could go with regard to foreseeability. In granting Accuratus' motion to dismiss, the district court found as a matter of law that the company had no duty to her, saying that the company could not have had the foresight to realize that she would marry one of its employees. The machinist and his wife appealed to the Third Circuit, which certified to the New Jersey Supreme Court the question of whether the premises liability rule of *Olivo* could extend beyond providing duty of care to the spouse of a person who was exposed to toxic substances while on the landowner's premises.

**Duty of care.** The New Jersey Supreme Court answered the Third Circuit's question by clarifying that the *Olivo* duty of care may extend to a plaintiff who is not the spouse of an employee. The high court observed that in *Olivo* it had acted in its role as a court of common law, and the common law evolves to reflect changing societal values and public policy. The duty of care in *Olivo* was not based upon the wife's status as the worker's spouse,

but because it was foreseeable that while doing laundry she would be handling the asbestos-contaminated clothes that the company had failed to protect at work. *Olivo* did not suggest that this duty of care could not extend beyond a spouse handling take-home toxins, nor was liability based upon a definition of a household member or upon any biological or familial relationship.

Although the court found no precedent in another jurisdiction outside of a strict liability context for imposing a duty in a take-home toxic tort case that did not involve household members, it said that it could not define the contours of the duty owed to others through a certified question of law. A case-by-case assessment was needed in order to analyze particularized risk, foreseeability, and fairness. The relationship of the parties is important in determining whether it would be foreseeable, predictable, and just to find a duty of care, the court instructed. The foreseeability analysis is affected by the opportunity for exposure to the toxic substance and the nature of the risk that causes the exposure. Courts also must consider the employer's knowledge at the time of the exposure. Because of all the factors that must be considered, the high court said that it could not create a bright-line rule regarding "who's in and who's out."

The case is No. [076195](#).

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Companies: Accuratus Corp.; Materion Brush Inc., c/o CT Corporation System

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