The Next Frontier in Asbestos Litigation

Household Exposure Claims

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Household exposure claims are the next frontier for asbestos litigation, and in the coming years, these claims will comprise an increasing percentage of the overall numbers of mesothelioma claimants. These claimants allege that they developed an asbestos-related disease after encountering asbestos on a family member’s asbestos-laden clothing. Today’s claimants typically allege that these exposures resulted from a household member who worked with asbestos gaskets, packing, friction products or another product at a premises owner’s jobsite. Studies show that today’s claimants differ dramatically from cases reported in the historical medical and industrial hygiene literature that involved high levels of exposure to friable amphibole asbestos. Therefore, to defend these cases, attorneys must know the historical literature and legal standards on household claims.
The reports related to household exposures are found sporadically sprinkled throughout medical and industrial hygiene journals. The initial reports related to household asbestos exposures began surfacing in the 1960s, but these studies provided limited and conflicting information on the exposures. For example, the first report of household asbestos exposure and subsequent disease was one case of quasi-household exposure in 1960. The author reported that the patient also lived near a crocidolite mine, so that one cannot determine if her exposure resulted from living near the mine or a household contact. Newhouse and Thompson published a study discussing household exposure in 1965. The Newhouse and Thompson study reported cases of mesothelioma developing from laundering clothing, but the authors relied on reconstructed occupational histories from family members. These reconstructed histories frequently miss significant, even if short, occupational exposures that may have caused the disease. Subsequent publications by Lieben, Champion and Li were case reports and lacked the power of epidemiological studies to assess causation. All of the initial studies involved asbestos miners, insulators, factory workers or other trades known to have high levels of amphibole exposures. Sawyer was the first author to publish on the levels of fiber release from laundering clothing in 1977. He found that the levels of fiber release from shaking and laundering clothing after performing abatement reached occupational exposure limits in many cases. While subsequent studies confirmed his findings of high levels of exposure when working with raw and friable amphiboles, recent studies attempting to extrapolate the medical and fiber release articles to low dose chrysotile products prove untenable. The industrial hygiene literature shows that work with encapsulated products like friction products, gaskets and packing result in low levels of fiber release for the worker. The studies also report that laundering the clothes of a worker who encountered these encapsulated products results in undetectable or minimal levels of fiber release. Recent medical articles examined the epidemiological data to identify risks associated with household exposures. Price and Ware found that rates of mesothelioma in women remained consistent over the past 70 years. The findings show that asbestos did not cause the vast majority of these female mesothelioma cases because the mesothelioma rate did not rise with the increasing use of asbestos if asbestos. Therefore, the studies do not support an association between the development of mesothelioma and these low levels

6 Id.
10 Id.
11 Id.
of fiber release.

Despite the studies finding that many of these mesothelioma cases are unrelated to asbestos exposure, the advertising for mesothelioma claims results in plaintiffs’ firms filing an increasing number of cases with household allegations. The claimants are typically women or young adults who allege that they encountered asbestos from a family member’s clothing. The claimants and their attorneys argue that premises owner breached their duty to the claimant by failing to warn the family members or providing measures to launder the family member’s clothing. The differing rulings arise from differing legal analyses. The majority of states find that there is no duty for household claims, a minority of states hold premises owners responsible for household exposures. The differing rulings arise from differing legal analyses.

The majority approach to household claims finds that the absence of a legally significant relationship precludes liability for injury to an employee’s family member. Without a legally significant relationship, the premises owner is not required to provide warnings to an employee’s family member. Many of the courts also reject imposing a duty based on public policy concerns. These courts find that while society maintains an interest in minimizing potential public health issues, the burden on employers outweighs any policy concerns. These courts find that imposing a duty on a premises owner to household claimants would expose the employer to limitless liability without a method of warning the pool of potential claimants.

The minority of courts that impose a duty on premises owner do so by examining the foreseeability of harm. These courts find that the decision of whether to impose liability generally turns on the dates at the jobsite, available studies on

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13 Id. at 711.
16 Id. citing Van Fossen, 777 N.W.2d 689; Martin, 561 F.3d 439; In re Certified Question, 479 Mich. 498; and In re New York City Asbestos Litigation, 5 N.Y.3d 486.
household exposure, and applicable regulations.\textsuperscript{20} When claimants present evidence indicating that a premises owner should have known that there were risks associated with the take home exposures, the courts find liability. When the knowledge is absent, the courts generally decline imposing liability.\textsuperscript{21}

Delaware and Tennessee courts utilize a minority approach for household claims that examines the defendant’s liability based on malfeasance or nonfeasance.\textsuperscript{22} These courts find liability when a defendant’s malfeasance or affirmative act results in household exposures.\textsuperscript{23} The courts reject imposing liability when a defendant’s nonfeasance or failure to act results in the same exposure.\textsuperscript{24}

As advertising brings an increasing number of the mesothelioma diagnoses into asbestos litigation, the number of household claimants will inevitably increase. Epidemiological studies show that a large number of these cases are likely idiopathic and unrelated to asbestos use. Thus, attorneys must be prepared to defend the household cases legally and medically. The two-pronged approach should focus on the lack of a legal duty to the household claimant and challenging the state of the art knowledge related to household exposures.

\textsuperscript{21} Id.
\textsuperscript{22} Id. at 724-726 citing Price, 26 A.3d at 169–70; Riedel v. ICI Ams. Inc., 968 A.2d 17, 21 (Del. 2009); and Satterfield v. Breeding Insulation Co., 266 S.W.3d 347, 360 (Tenn. 2008).
\textsuperscript{23} Id.
\textsuperscript{24} Id.
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ABOUT HAWKINS PARNELL THACKSTON & YOUNG LLP

Hawkins Parnell Thackston & Young LLP is a national litigation firm with more than 150 lawyers in nine offices located in Atlanta, Austin, Charleston, Dallas, Los Angeles, Napa, New York, St. Louis and San Francisco. We have been the innovative leader in asbestos litigation in the United States since 1976. Over the past 40 years we have represented every type of asbestos defendant from the mine to the finished product. We serve clients as local, regional and national counsel and provide solutions that cannot be duplicated by less experienced firms. Having litigated in all 50 states, we have taken over 400 asbestos cases to verdict while acting as lead counsel and have taken the lead or participated in over 10,000 fact and expert depositions.