Significant Asbestos "Take-Home Exposure" Opinion

By Amaryah K. Bocchino

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Persuasive precedent likely as PA judge holds employer/premises owner *does not owe duty to warn.*

*On August 28, 2014, the Honorable Judge Eduardo C. Robreno, in the Multi-District Litigation for asbestos in the United States District Court for the Eastern District of Pennsylvania, issued a significant opinion in which he held that an employer and/or premises owner does not owe a duty "to an employee's spouse to warn or take measures to protect against take-home exposure to asbestos under Pennsylvania law" Gillen v. The Boeing Co., 2014 WL 4211354, *2 (E.D. Pa. Aug. 27, 2014) (Robreno, J.).*

In Gillen, Mrs. Gillen alleged that she developed mesothelioma as a result of, among other things, take-home exposure to asbestos transmitted to her husband's clothes while he was employed at Boeing, then transported to the family home, and inhaled by her when laundering his clothes. Boeing moved to dismiss claims based on the take-home theory, and argued that Boeing did not owe a duty to a take-home plaintiff.

In granting Boeing's motion, the Court recognized that there was not any controlling law, either from the Pennsylvania Superior Court or the Pennsylvania Supreme Court, which squarely addressed whether an employer/premises owner owed any duty to a third party under Pennsylvania law, and analyzed cases from multiple jurisdictions which reached divergent conclusions. Judge Robreno determined that the Pennsylvania Supreme Court would conclude that an employer/premises owner does not owe a duty to warn a third-party of potential asbestos exposure for any exposure which did not occur on the employer's premises.

The Gillen decision should be most persuasive in cases where Pennsylvania law is applied. It may also, however, serve as persuasive precedent in other jurisdictions, due to Judge Robreno's extensive history as the presiding judge of the MDL asbestos docket and the detailed analysis he employed in resoundingly concluding that the employer/premises owner does not owe a duty to a third party for take-home exposure.

Manion Gaynor & Manning (MG&M) represented Boeing in this case as national coordinating counsel. Segal McCambridge Singer & Mahoney served as Boeing's Pennsylvania local counsel.

Please contact us if you would like to discuss the opinion and/or if you would like copies of the associated briefing.

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