

VIRGINIA LAWYERS WEEKLY

OPINION DIGEST

Negligence

Asbestos Exposure - Failure To Warn - Household Member

By Virginia Lawyers Weekly Staff
October 15, 2007

The estate of a woman who died from mesothelioma contracted from her exposure to asbestos fibers on the clothing of her husband, a DuPont engineer, states a claim against DuPont for failure to warn of the potential for exposure to the harmful substance.

Plaintiff alleges DuPont acted negligently because it owed a duty to warn plaintiff of the dangers of his exposure to asbestos particles, which plaintiff unknowingly transmitted via his work clothes into his home and which proximately caused his wife to die from mesothelioma.

DuPont maintains it did not owe plaintiff a duty under Virginia law, which is required as an element to prove negligence.

Plaintiff has properly alleged that defendant reasonably should have foreseen that it was probable that wife, as a member of the DuPont employee's household, would come into contact with asbestos fibers transferred from defendant's operation to the employee's house on his person and work clothing. Further, plaintiff alleges defendant did know, or reasonably should have known, that lung injury, including mesothelioma, was a likely consequence of such exposure. Hence, plaintiff has sufficiently pleaded that defendant had reason to know that its actions were likely to produce injury to its workers' housemates, including decedent.

Further, plaintiff properly alleges that asbestos is a "dangerous article" by asserting that asbestos is dangerous to human health, since asbestos is a "substance," which brings it under the Black's Law Dictionary definition of "article." Since defendant used asbestos, a dangerous article, in a manner that it had reason to know was likely to cause injury, DuPont had a duty to take actions to prevent reasonably foreseeable harm to others, such as decedent.

Plaintiff properly alleges that DuPont did not take sufficient precautions to prevent reasonably foreseeable harm to decedent, thus breaching its duty of care to her. Plaintiff further alleges this breach proximately caused decedent to develop mesothelioma and die, which caused a variety of damages to plaintiff.

Plaintiff adequately alleges the existence of the necessary elements to establish a cause of action for defendant's negligence to withstand demurrer.

Demurrer to negligence claim overruled.

Mitchell, Executor v. E.I. DuPont de Nemours & Co. (Hogshire, J.) No. CL05-251, Sept. 11, 2007;
Charlottesville Cir Ct · Robert B Hatten for plaintiff · Robert W McFarland for defendant VI W 007-R-

218, 4 pp.

[Click here for the full text of the decision.](#)

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