

SCHWARTZ V. ACCURATUS CORP.: NONSPOUSE'S "TAKE-HOME" LIABILITY CASE

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By: Tara L. Pehush, Michael E. Waller, Stephanie S. Gomez

INTRODUCTION

The U.S. District Court for the Eastern District of Pennsylvania recently issued a decision that permitted a frequent visiting nonspouse to maintain a "take-home" exposure claim under New Jersey law. Although the Court was careful to define the narrow circumstances permitting such a case to survive a motion to dismiss, the Court's decision may be used by creative claimants to expand "take-home" liability.

In *Schwartz v. Accuratus Corp.*, [1] Plaintiffs Brenda Schwartz ("Brenda") and her husband Paul Schwartz ("Paul") sued Accuratus Corp. ("Accuratus"), a ceramics company where Paul worked in the late 1970s for Brenda's injuries caused by beryllium exposure. Paul and Brenda married in 1980, after Paul's work at Accuratus. Although Brenda never personally worked with or around beryllium, and never worked at Accuratus, Brenda allegedly developed chronic beryllium disease from contact with Paul and then his roommate, Gregory Altemose ("Altemose"), both of which were alleged to have "taken home" beryllium used in manufacturing processes at Accuratus. Paul and Altemose did not—nor were they instructed to—change out of their work gear before leaving the Accuratus premises and Brenda, who frequently visited their apartment and spent overnights there, cleaned their apartment and work clothing that was alleged to be contaminated with beryllium.

The District Court initially dismissed the negligence claim against Accuratus, holding that Accuratus's liability under New Jersey law for take-home exposure did not extend to Brenda because she was merely a roommate and girlfriend of an Accuratus employee rather than a spouse. [2] Plaintiffs appealed and the Third Circuit certified to the New Jersey Supreme Court [3] the question of whether New Jersey state law limits take-home exposure liability to spouses pursuant to its opinion in *Olivo v. Owens-Illinois, Inc.* [4] In short, the New Jersey Supreme Court held a landowner's duty of care may, in proper circumstances, extend beyond a spouse of a worker exposed to the toxin. [5] Consequently, the Third Circuit vacated the District Court's decision and remanded the case for further proceedings consistent with the guidance provided by the New Jersey Supreme Court. [6] In light of that guidance and absent a categorical bar to Brenda's claim as a nonspouse, the District Court recently denied Accuratus's motion to dismiss.

ANALYSIS

When the District Court revisited Accuratus' motion to dismiss, it reiterated the "paramount importance of foreseeability" in analyzing whether a duty of care exists. [7] Although the New Jersey Supreme Court refused to

endorse a categorical limit on the scope of duty in take-home exposure cases, it offered three important factors that a court should consider in cases: (1) relationship of the parties; (2) opportunity for exposure to the substance at issue and the nature of the exposure that causes the risk of injury; and (3) employer's knowledge of the dangerousness of exposure at the time of the exposure. [8]

The District Court first focused on the second and third factors and determined that the "duty-creating relationship threshold in this case must be considered relatively low" because beryllium is "known to travel on clothes to workers' homes, can remain dangerous in the home for some time, and importantly, can cause serious damage with only minimal exposure." [9] The District Court next examined the relationship of the parties, paying particular attention not just to the relationship between the Accuratus and Paul but to the relationship between Paul and Brenda, to determine whether Brenda was owed a duty of care. [10] The District Court explained that it was reasonably foreseeable to Accuratus that virtually all of its employees live with or have repeated close contact with someone. [11] The District Court, therefore, found the dangerous nature of beryllium substance coupled with the relationship between Paul and Brenda was sufficient to generate a duty of care to Brenda. Nevertheless, the District Court found it would be "inappropriate to impose upon [Accuratus] a duty to a random stranger on a bus or an occasional visitor to the home of an employee." [12]

CONCLUSION

The decision in *Schwartz v. Accuratus Corp.* serves as a warning that given the right set of circumstances and relationships, take-home liability cases by a nonspouse may survive a motion to dismiss. However, the New Jersey Supreme Court and the U.S. District Court for the Eastern District of Pennsylvania carefully noted that take-home liability is not limitless. Indeed, the New Jersey Supreme Court expressly instructed that the outcome of each case is extremely fact sensitive, and the District Court cautioned that it may reach a different conclusion at the summary judgment stage. [13] *Schwartz* did not create a bright-line rule as to "who's in and who's out" in a negligence-based take-home exposure liability cause of action, but identified certain factors that may help a take-home exposure case proceed to the discovery phase, if not further.

Notes:

1 CV 12-6189, 2017 WL 1177171, at *1 (E.D. Pa. Mar. 30, 2017).

2 *Schwartz v. Accuratus Corp.*, 7 F. Supp. 3d 490 (E.D. Pa. 2014), *certified question accepted*, 118 A.3d 347 (2015), *certified question answered*, 139 A.3d 84 (2016), and *vacated in part*, 655 F. App'x 111 (3d Cir. 2016).

3 *Schwartz v. Accuratus Corp.*, 139 A.3d 84 (N.J. 2016).

4 *Olivo v. Owens-Illinois, Inc.*, 895 A.2d 1143 (2006). The issue before the Supreme Court in *Olivo* was "whether a landowner can be liable for injuries allegedly caused from asbestos exposure experienced by the wife of a worker who had performed welding and steam fitting tasks that brought him into contact with asbestos on the landowner's premises." *Id.* at 1145. The Supreme Court recognized a duty owed to spouses allegedly injured from handling the workers' unprotected work clothing based on the foreseeable risk of exposure from asbestos borne home on contaminated clothing. *Id.* at 1149–50.

5 *Schwartz*, 139 A.3d. at 92.

6 *Schwartz v. Accuratus Corp.*, 655 F. App'x 111, 113 (3d Cir. 2016).

7 *See Schwartz*, 2017 WL 1177171, at *4.

8 *Id.* (citing *Schwartz*, 139 A.3d at 92).

9 See *Schwartz*, 2017 WL 1177171, at *4–5.

10 *Id.* at *4.

11 *Id.* at *5.

12 *Id.*

13 *Id.*

KEY CONTACTS



TARA L. PEHUSH
PARTNER

NEW YORK
+1.212.536.4852
TARA.PEHUSH@KLGATES.COM



MICHAEL E. WALLER
PARTNER

NEWARK
+1.973.848.4132
MICHAEL.WALLER@KLGATES.COM

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