

LITIGATION
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2006NEW JERSEY SUPREME COURT BROADENS LIABILITY OF
PROPERTY OWNERS TO PROTECT SPOUSES OF THOSE
WORKING ON THE PREMISES

Last week, the New Jersey Supreme Court expanded the potential liability of premises owners by holding that a company had a duty to warn the spouse of a worker on its premises of exposure to asbestos, even if the spouse never set foot on the premises. *Olivo v. ExxonMobil Corp.*, A-23-05, 2006 N.J. LEXIS 485 (N.J. Apr. 24, 2006).

Anthony Olivo brought a wrongful death and survival action in 2001, after his wife died of mesothelioma. In the lawsuit, Mr. Olivo alleged that Mrs. Olivo developed mesothelioma from daily laundering of Mr. Olivo's work clothes, which contained asbestos dust from his job as a steamfitter and pipe-welder.

ExxonMobil, which allegedly owned a refinery where Mr. Olivo worked, filed a motion for summary judgment, arguing that it owed no duty to Mrs. Olivo because she had never been to the refinery. The trial court granted the motion and dismissed the action. On appeal, the Appellate Division reversed, holding that a duty exists because the risk of harm to a worker's spouse was foreseeable and that ExxonMobil was in the best position to prevent the harm.

Writing for a unanimous court, New Jersey Supreme Court Justice Jaynee LaVecchia affirmed the Appellate Division's decision, balancing public policy and fairness considerations to hold that the duty of a premises owner to warn others of hazards on its property extends to spouses of workers on the premises. The key to the Court's analysis was the

foreseeability of the risk of harm caused by a dangerous condition on the premises to an individual indirectly exposed to that dangerous condition. Noting that its holding applies only to *wives* of such workers, the Court ruled that because ExxonMobil knew or should have known of the health effects of asbestos, it should have foreseen that a spouse laundering the clothes of a worker directly exposed to asbestos on the premises also would come into contact with asbestos fibers.

The Court's decision runs counter to decisions in Georgia, Maryland, and New York. *See Holdampf v. A.C.&S. Inc. (In re NYC Asbestos Lit.)*, 840 N.E.2d 115 (N.Y. 2005), *Adams v. Owens-Illinois, Inc.*, 705 A.2d 58 (Md. Ct. Spec. App. 1998), and *CSX Transport, Inc. v. Williams*, 608 S.E.2d 208 (Ga. 2005), *respectively*. Although Pennsylvania's appellate courts have not yet addressed this issue, Schnader has prevailed on summary judgment for the defense in a case involving this issue. *Hand v. AC&S, Inc.*, et al., 0202-00618 (Phila. Ct. Common Pleas, Mar. 24, 2004). That decision was not appealed.

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