

## Ohio Supreme Court Upholds Eliminations of Cause of Action for “Take Home” Asbestos Exposure



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In asbestos exposure claims, plaintiffs have often alleged that a family member who develops mesothelioma was exposed to asbestos brought home on the clothes of relative; such claims, often referred to as “take home” exposure claims, are a common staple in asbestos tort litigation. The facts of *Boley v. Goodyear Tire & Rubber Co.*, Slip Opinion No. 2010-Ohio-2550; mirror this common “take home” exposure fact pattern. In *Boley*, Plaintiff Clayton Adams was an employee for Defendant Goodyear where he was exposed to asbestos. Mary Adams, Clayton’s wife, developed malignant mesothelioma and later died in 2007. Her Estate alleged that she had been exposed to asbestos at her home when she laundered Clayton’s work clothes which had asbestos on them.

Prior to 2004, no Ohio statute addressed the viability of a “take home” case. In 2004, the legislature passed a comprehensive reform aimed specifically at asbestos cases and directly addressed “take home” claims against premises owners. Revised Code Section 2307.941, which governs asbestos claims against premises owners in Ohio, provides that, a “premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual’s alleged exposure occurred while the individual was at the premises owner’s property.” Goodyear moved for summary judgment, arguing that because Mary Adams was not exposed to asbestos on Goodyear’s premises, she could not recover. Plaintiffs opposed Goodyear’s Motion, arguing that the statute was only intended to govern premises liability actions and did not encompass a general negligence claim for asbestos exposure. The trial court granted Goodyear’s motion for summary judgment and the Eighth District Court of Appeals later affirmed dismissal.

In a 5-1 decision, the Ohio Supreme Court affirmed the Eighth District and trial court’s decisions, holding that a premises owner is not liable for any tort claims arising from asbestos exposure unless the exposure occurred on the owner’s property. In enacting R.C. § 2307.941, the Court concluded that the General Assembly intended the statute to include all claims arising from asbestos exposure and not merely premises liability claims, thereby eliminating the viability of “take home” exposure claims in Ohio against premises defendants.

The Ohio Supreme Court’s decision in *Boley* is significant to asbestos tort litigation in Ohio in light of the recent trend of pursuing claims against premises owners. Under *Boley*, premises defendants will be able to obtain judgment as a matter of law as to any plaintiffs who allege “take home” exposure; in order to survive summary judgment, plaintiffs must now affirmatively prove that the individual plaintiff’s asbestos exposure occurred on the defendant’s premises.

The impact of *Boley*, however, is not limited to Ohio but is of national significance as well. Currently, there is national split of authority in states regarding the validity of “take home” exposure claims. The supreme courts of Tennessee and New Jersey have previously upheld claims of “take home” exposure; this view is also endorsed by the Restatement of Torts (3rd edition). With *Boley*, Ohio joins Michigan, New York, and Georgia, whose supreme courts have also eliminated “take home” exposure liability.

If you would like a copy of the full opinion or if you have any other questions regarding Environmental / Mass Tort Liability, feel free to contact one of our Practice Area Attorneys.

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