

Alert | Labor & Employment



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VA Supreme Court Holds Employer Owes Duty to Employee's Family Members

On Oct. 11, 2018, the Virginia Supreme Court extended the duty of care owed by an employer beyond just employees to any family members or third parties who may be affected by the employer's action. In a 4-3 decision, the court ruled in *Quisenberry v. Huntington Ingalls, Inc.* that if an employer knew or should have known that an employee's clothing dusted with asbestos could be handled by others, the employer owed a duty of care to those other people. Recognizing that the impact of this decision on tort law and business litigation in general will extend beyond the asbestos claims at issue in the case, the dissent warned that after this decision, "no one will be able to predict who else among the host of possible targets will be subjected to this novel theory of liability."

The case arose from Bennie Plessinger's employment at Huntington Ingalls, where he was regularly exposed to asbestos and, as a result, regularly brought home asbestos fibers stuck to his clothing. Bennie's daughter, Wanda, eventually died from asbestos exposure, the result of her regularly helping her father with his laundry, shaking off his work clothing, and thus, inevitably inhaling asbestos particles. Wanda's estate filed suit against Huntington Ingalls, alleging the employer was negligent in failing to exercise reasonable care by, among other things, failing to warn workers not to wear work clothes home or provide other necessary safeguards designed to prevent exposure to third parties. Huntington Ingalls denied it owed any such duty.

The Virginia Supreme Court considered the following question: "Does an employer owe a duty of care to an employee's family member who alleges exposure to asbestos from the work clothes of an employee,

where the family member alleges the employer's negligence allowed asbestos fibers to be regularly transported away from the place of employment to the employee's home?" The majority, answering in the affirmative, held that "a general duty is owed to those within the reach of defendant's conduct." Accordingly, Wanda, as a person who regularly interacted with and assisted her father, as well as those persons "similarly situated," were all within Huntington Ingalls's "zone of danger." The fact that Wanda and Huntington Ingalls were otherwise strangers was apparently of no consequence under the law.

The dissenting justices strongly criticized the majority's ruling, warning that "[t]he duty created by the majority today is limitless" and it "does not propose any framework for limiting an employer's duty to those who share living quarters with its employees." The ruling, the dissent said, will "push a wave of indeterminacy into [Virginia's] reputation for stable and predictable tort law." The dissent explained that prior to the majority's ruling, "no one could have predicted that an employer owed a legal 'take home' duty to a non-employee based solely on a tort committed by an employer against an employee, occurring at the employer's work site, and arising out of and in the course of the employer's work."

Post-*Quisenberry*, businesses should take steps to evaluate their workplace practices because of the ruling's potential to expand a business' liability to third parties outside of the workplace that are nevertheless in a "zone of danger." The boundaries of that zone, however, remain undefined and an open question. For example, can an employer be sued by an employee's family members if the employer allowed a sick employee to work, and other employees who were exposed to him contracted the illness and carried it to their families or others? And will this case undermine and circumvent Virginia's well-established Workers Compensation Act by bestowing standing upon relatives of employees to seek their own redress for injuries that arose in the workplace?

Future litigation will need to further define this "zone of danger" and interpret how far the holding extends beyond the foreseeable handling of toxic materials. In the meantime, companies should review workplace conditions that potentially expose third parties to foreseeable harm. The full impact of *Quisenberry* is yet to be known, but it will likely play out in courts across the Commonwealth as plaintiffs' attorneys seek to test the limits of the decision. Attorneys at Greenberg Traurig are well-suited to help employers evaluate their workplace practices, develop strategies to mitigate these new risks, and litigate cases that may arise in this newly expanded realm of potential legal liability.

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