Filed 11/21/14 Beckering v. Shell Oil Co. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WANDA L. BECKERING, Plaintiff and Appellant, v. SHELL OIL COMPANY, Defendant and Respondent.	B256407 (Los Angeles County Super. Ct. No. BC518337)

APPEAL from a judgment of the Superior Court of Los Angeles County, Marc Marmaro, Judge. Affirmed.

The Lanier Law Firm, H. W. Trey Jones and Stephanie M. Taylor for Plaintiff and Appellant.

Nixon Peabody LLP, Jennifer A. Kuenster, Ross M. Petty and Aaron M. Brian for Defendant and Respondent.

Plaintiff and appellant Wanda L. Beckering (Beckering) appeals a judgment following a grant of summary judgment in favor of defendant and respondent Shell Oil Company (Shell) in a premises liability action.[1]

Beckering alleges she developed mesothelioma as a result of exposure to asbestos used by her late husband's employer, Shell.[2] He inadvertently carried home the asbestos fibers on his work clothing, which she laundered.

In *Campbell v. Ford Motor Co*. (2012) 206 Cal.App.4th 15 (*Campbell*), the court applied the *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*) factors, as further clarified in *Cabral v. Ralphs Grocery Co*. (2011) 51 Cal.4th 764 (*Cabral*), to hold a "property owner has no duty to protect family members of workers on its premises from secondary exposure to asbestos used during the course of the property owner's business." (*Campbell, supra,* at p. 34.)[3]

Guided by *Campbell*, we conclude that based upon the *Rowland* public policy factors, a premises owner has no duty to protect a family member from secondary exposure to asbestos off the premises arising from her association with a family member who wore asbestos-contaminated work clothes home. To hold otherwise would impose

---

[1] The record reflects the appeal was taken from the March 10, 2014 order granting Shell's motion for summary judgment. No appeal lies from an order granting a motion for summary judgment, as that is merely a preliminary nonappealable order; the appeal should be taken from the judgment entered. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 160(3).) Nonetheless, we exercise our discretion to order the trial court to enter a judgment nunc pro tunc as of March 10, 2014, the date of the order granting the motion for summary judgment, and we construe the notice of appeal to refer to said judgment. (*Donohue v. State of California* (1986) 178 Cal.App.3d 795, 800; *Ulta Salon, Cosmetics & Fragrance, Inc. v. Travelers Property Casualty Co. of America* (2011) 197 Cal.App.4th 424, 426, fn. 1.)

[2] Due to Beckering's medical condition, this court granted calendar preference and expedited the appeal. (Cal. Rules of Court, rule 8.240.)

[3] We note the issue of liability for secondary exposure to asbestos brought home on an employee's clothing is currently pending before the California Supreme Court. (*Kesner v. Superior Court*, No. S219534, rev. granted Aug. 20, 2014; *Haver v. BNSF Railway*, No. S219919, rev. granted Aug. 20, 2014.)

limitless liability on premises owners. Accordingly, we affirm the trial court's grant of summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Beckering's husband, Frank, worked at Shell's Wilmington and Dominguez facilities, primarily as a machinist, from 1954 until 1992, when he retired. He died in 2009. The Beckerings were married for 60 years. She laundered his work clothes but never visited his workplace.

On August 14, 2013, Beckering filed suit against numerous defendants, including Shell, alleging she developed mesothelioma as a result of exposure to asbestos brought home on her husband's clothing while he worked at Shell's facilities. The complaint pled three causes of action: two causes of action based on products liability and a third cause of action for negligence arising out of premises liability.[4]

On January 10, 2014, Shell filed a motion for summary judgment or in the alternative, summary adjudication of issues, asserting it owed no duty of care to Beckering. Relying on *Campbell*, *supra*, 206 Cal.App.4th 15, Shell contended the premises liability claim was barred as a matter of law because a property owner has no duty to protect family members of workers on its premises from secondary exposure to asbestos used during the course of the property owner's business. "Even though it might be foreseeable that a family member could conceivably come into contact with asbestos fibers brought home on the worker's clothing, the [*Campbell*] court analyzed the claim under the *Rowland v. Christian* factors and concluded that no legal duty of care existed as between the premises owner and the potentially exposed family member."

In opposition, Beckering argued *Campbell* was distinguishable because in that case, the connection between the plaintiff's injury and Ford's conduct was too attenuated to support a duty of care; in *Campbell*, there was no evidence that Ford provided the insulation used by the insulation subcontractor or that Ford had exercised any control

[4] Beckering did not oppose Shell's motion for summary adjudication with respect to first and second causes of action, so only the third cause of action for premises liability remains in issue.

over the insulation work performed by the subcontractor. Here, in contrast, Beckering's husband was an employee of Shell and performed work under Shell's direct and unfettered control.

Beckering further argued that application of the *Rowland* factors did not support an exception to the general duty of reasonable care. The causal link between asbestos exposure and mesothelioma is well established and the health risks of household exposure have been known for decades, making the harm foreseeable. Further, there "is moral blame attached to Shell's conduct as well, when one considers the fact that this disease was preventable by simple hygiene measures . . . . The burden on Shell to educate its employees about known asbestos hazards, issue warnings and instructions, implement dust suppression and control measures, and provide mandatory laundering services was minimal and inexpensive. Further, the breach of Shell's duty sounds in negligence, an insurable risk. (Ins. Code, § 533.) The *Rowland* factors, including the factors of foreseeability and closeness of connection, all weigh in favor of finding against an exception to the general duty of reasonable care."

On February 14, 2014, the matter came on for hearing. The trial court ruled *Campbell* "does provide a bright-line that provides for no legal duty by a property owner to a family of a worker." On March 10, 2014, the trial court entered an order granting Shell's motion for summary judgment. This appeal followed.

CONTENTIONS

Beckering contends: California law supports a duty of care owed by employers to family members of employees to prevent their secondary asbestos exposure; her dismissal of the products liability claims had no impact on the remaining negligence-based cause of action; the *Rowland* factors weigh in favor of finding a duty of care owed by an employer to family members of employees to prevent secondary asbestos exposure; California, along with other jurisdictions, recognizes negligence-based duties in addition to, and distinct from, those related to land ownership; and *Campbell*, which limits the duty of premises owners only with regard to family members of independent contractors on their premises, must be limited to those facts and circumstances.

DISCUSSION

1. *Standard of appellate review.*

"We independently review an order granting summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) We determine whether the court's ruling was correct, not its reasons or rationale. (*Salazar v. Southern Cal. Gas Co*. (1997) 54 Cal.App.4th 1370, 1376.) 'In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment.' (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925.)" (*Shugart v. Regents of University of California* (2011) 199 Cal.App.4th 499, 504-505.) In performing our de novo review, we view the evidence in the light most favorable to Beckering, as the party opposing summary judgment. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

The pivotal issue is whether Shell owed a duty of care to Beckering. Duty is a question of law for the court, to be reviewed de novo on appeal. (*Cabral, supra*, 51 Cal.4th at p. 770.)

2. *Duty of a landowner.*

"The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917-918.) The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages. (*Ortega v. Kmart Corp*. (2001) 26 Cal.4th 1200, 1205; see Civ. Code, § 1714, subd. (a).)" (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.)

The general rule in California is that " '[e]veryone is responsible . . . for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person . . . ." (Civ. Code, § 1714, subd. (a).) In other words, 'each person has a duty to use ordinary care and "is liable for injuries caused by his failure to exercise reasonable care in the circumstances . . . ." ' [Citations.] In the *Rowland* decision, [the Supreme Court] court identified several considerations that, when balanced together, may justify a departure from the fundamental principle embodied in Civil Code

section 1714: 'the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.' (*Rowland*, [*supra*, 69 Cal.2d] at p. 113; . . . ." (*Cabral, supra*, 51 Cal.4th at p. 771.) The *Rowland* factors determine the scope of a duty owed whether the risk of harm occurs on the landowner's premises or off the premises. (*Barnes v. Black* (1999) 71 Cal.App.4th 1473, 1479.)

It is established that a landowner owes a duty to exercise reasonable care to maintain his or her property in such a manner as to avoid exposing others to an unreasonable risk of injury. (*Barnes v. Black*, *supra*, 71 Cal.App.4th at p. 1478.) A landowner's duty of care to avoid exposing others to a risk of injury is not limited to injuries that occur on premises owned or controlled by the landowner; "the duty of care encompasses a duty to avoid exposing persons to risks of injury that occur off site if the landowner's property is maintained in such a manner as to expose persons to an unreasonable risk of injury offsite. [Citations.]" (*Ibid*.)

3. *The Campbell decision, holding a premises owner owes no duty to protect family members of employees from secondary asbestos exposure.*

Campbell, supra, 206 Cal.App.4th 15, like this case, involves secondary exposure by a family member who laundered asbestos-contaminated work clothes.

In *Campbell*, the plaintiff filed a premises liability action against Ford Motor Company, alleging she contracted mesothelioma as a result of her secondary exposure to asbestos, which occurred when she shook out and laundered her father's and brother's work clothes. The evidence showed that Ford hired a general contractor in the 1940's to construct a plant; the contractor hired a subcontractor; and that subcontractor hired another subcontractor, which employed the plaintiff's father and brother, who were exposed to asbestos on the job. (*Campbell, supra*, 206 Cal.App.4th at p. 31, fn. 6.)

Following a jury verdict, the trial court entered judgment in favor of the plaintiff. (*Id.* at p. 23.)

On appeal, Ford contended it owed the plaintiff no duty as a matter of law because a property owner is not responsible for injuries caused by the acts or omissions of an independent contractor unless the property owner controlled the work that allegedly caused the injury, or failed to warn of a known pre-existing concealed hazardous condition on the property. (*Campbell, supra*, 206 Cal.App.4th at p. 29.) The *Campbell* court reversed, but not on the narrow ground assert by Ford.

The *Campbell* court rephrased the issue as follows: "In our view, the issue before us is whether a premises owner has a duty to protect family members of workers on its premises from secondary exposure to asbestos used during the course of the property owner's business. Our examination of the *Rowland* factors leads us to the conclusion Ford owed [the plaintiff] no duty of care." (*Campbell, supra*, 206 Cal.App.4th at p. 29, fn. omitted.)

The *Campbell* court applied the *Rowland* factors to conclude the premises owner did not owe a duty.

With respect to the first three *Rowland* factors, i.e., foreseeability of harm to the plaintiff, degree of certainty that the plaintiff suffered injury, and closeness of the connection between the defendant's conduct and the injury suffered, the *Campbell* court reiterated that foreseeability alone was insufficient to impose a duty. (*Campbell, supra*, 206 Cal.App.4th at pp. 29-31.) Ford acknowledged the second factor that plaintiff suffered asbestos-caused harm. (*Id.* at p. 29.) But, even if it were foreseeable to Ford that workers on its premises could be exposed to asbestos dust and fibers, the third factor addressing the " 'closeness of the connection' " between Ford's conduct (hiring a general contractor) and the injury to a worker's family member off the premises was "attenuated." (*Id.* at p. 31.) In a footnote, the court stated: "Although our analysis does not turn on this distinction, we note that in this case, the relationship between Ford's conduct and the injury [plaintiff] suffered is even more attenuated inasmuch as Ford hired a general contractor to perform the work, that general contractor hired a subcontractor,

that subcontractor hired another subcontractor, and that subcontractor employed [plaintiff's] father and brother." (*Ibid*., fn. 6.)

Because the existence of a duty is a combination of foreseeability of the risk and a weighing of public policy considerations, the *Campbell* court addressed the remaining factors outlined in *Rowland*, concluding "strong public policy considerations counsel against imposing a duty of care on property owners for such secondary exposure." (*Campbell, supra*, 206 Cal.App.4th at p. 32.) Ford's negligence did not rise to the level of moral culpability. (*Ibid*.) As for the next two *Rowland* factors, that is, the extent of the burden to the defendant, and the consequences to the community if the court imposes on a particular defendant a duty of care toward the plaintiff, these factors weighed heavily against plaintiff. (*Ibid*.) The court noted the difficulty with these factors is drawing the line between persons to whom a duty is owed and those persons to whom no duty is owed.

Relying on the analysis in *Oddone v. Superior Court* (2009) 179 Cal.App.4th 813, 822, describing the difficulty in determining the scope of the duty to those secondarily exposed to toxic chemicals, the *Campbell* court stated, "in a case such as [this], where the claim is that the laundering of the worker's clothing is the primary source of asbestos exposure, the class of secondarily exposed potential plaintiffs is far greater, including fellow commuters, those performing laundry services and more." (*Campbell, supra,* 206 Cal.App.4th at pp. 32-33.) Imposing such a duty would create a burden that is uncertain and potentially large in scope. (*Id.* at p. 33.) *Campbell* also cited with approval cases from other jurisdictions that have rejected the imposition of a duty on premises owners for secondary asbestos exposure, recognizing that tort law must draw a line between the competing policy considerations of providing a remedy to everyone who is injured and extending limitless liability. (*Id*. at p. 34.) Accordingly, the *Campbell* court declined to impose a duty on the premises owner.

4. *Beckering's attempts to avoid the impact of Campbell are unavailing.*

a. *No merit to Beckering's contention that Campbell applies only to family members of independent contractors.*

Beckering contends *Campbell* limits the duty of premises owners only with respect to family members of independent contractors on their premises, and therefore *Campbell*'s holding must be limited to those facts and issues. The argument is unpersuasive.

The issue addressed in *Campbell* is the duty of a premises owner to family members injured off premises from secondary asbestos exposure. The *Campbell* court's conclusion that Ford did not owe plaintiff a duty did not turn on the fact that plaintiff's father and brother were employees of an independent contractor. *Campbell* expressly addressed the independent contractor status of plaintiff's family members in a footnote, stating "our analysis does not turn on this distinction." (*Campbell*, *supra*, 206 Cal.App.4th at p. 31, fn. 6.) Therefore, we reject Beckering's narrow reading of *Campbell*.

b. *No merit to contention that Campbell was incorrectly decided.*

"Nearly every case that has turned on relationship or public policy considerations has concluded that the defendant did not owe a duty to the plaintiff. The courts either determined that the relationship between the parties was too attenuated or that the 'specter of limitless liability' was too disconcerting to hold the defendant liable." (Note, Continuing War with Asbestos: The Stalemate Among State Courts On Liability for Take–Home Asbestos Exposure (2014) 71 Wash. & Lee L. Rev. 707, 724, fns. omitted; see *In re Asbestos Litig.*, C.A. No. N10C-04-203 ASB, 2012 WL 1413887, at 2 (Del. Super. Ct. Feb. 21, 2012) [noting that courts focusing on relationship between plaintiff and defendant and not merely the foreseeability of injury " 'uniformly hold that an employer/premises owner owes no duty to a member of a household injured by take home exposure to asbestos' "].)

We conclude *Campbell* was correctly decided and is controlling. Because Shell did not owe Beckering a duty, the grant of summary judgment was proper.

DISPOSITION

The trial court is ordered to enter, nunc pro tunc as of March 10, 2014, a judgment in favor of Shell. (See fn. 1, *ante*.) Said judgment is affirmed. The parties shall bear their respective costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

I concur:

KITCHING, J.

KLEIN, P. J., Dissenting.

I respectfully dissent. I would reverse the judgment with respect to the third cause of action for premises liability on the ground defendant and respondent Shell Oil Company (Shell) owed plaintiff and appellant Wanda L. Beckering (Beckering) a duty of care.

While I agree with the majority's basic premise that *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*) provides the analytical framework for resolving the issue of duty, I disagree with the majority in its application of the *Rowland* factors to this fact situation. In my view, the *Rowland* factors clearly militate against terminating liability at the door of the employer's premises.

"The general rule in California is that '[e]veryone is responsible . . . for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person . . . .' (Civ. Code, § 1714, subd. (a).) In other words, 'each person has a duty to use ordinary care and "is liable for injuries caused by his failure to exercise reasonable care in the circumstances." ' " (*Cabral v. Ralphs Grocery Co*. (2011) 51 Cal.4th 764, 771.) Departures from the general rule favoring liability are warranted only when clearly supported by public policy. (*Rowland, supra,* 69 Cal.2d at p. 112.)

"A departure from this fundamental principle involves the balancing of a number of considerations; the major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and the prevalence of insurance for the risk involved." (*Rowland, supra,* 69 Cal.2d at pp. 112-113.)

The factors are addressed below, *seriatim*.

1. *Foreseeability that a close family member such as Beckering would suffer harm.*

The initial *Rowland* factor is foreseeability of harm to the plaintiff. (*Rowland, supra,* 69 Cal.2d at p. 113.)

"[T]he Rowland factors are evaluated at a relatively broad level of factual generality. Thus, as to foreseeability, [our Supreme Court has] explained that the court's task in determining duty 'is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may be appropriately imposed . . . .' " (*Cabral, supra,* 51 Cal.4th at p. 772.)

The causal link between asbestos exposure and mesothelioma is well established (see, e.g. *Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1135 ["strong linkage between mesothelioma and exposure to asbestos fibers"]) and asbestos has been a known toxin since the 1930's. (*Campbell v. Ford Motor Co*. (2012) 206 Cal.App.4th 15, 21.) Further, the dangers of toxic substances being transferred from the workplace to the home through workers' clothing have been known for many years. (*Campbell, supra*, at p. 21.)

Thus, harm to third parties that can arise from a lack of precautions to control asbestos fibers that may accumulate on employees' work clothing is generally foreseeable. Consequently, the harm to a close family member, such as Beckering, who would be laundering an employee's work clothes, was foreseeable.

2. *Degree of certainty that Beckering suffered injury*.

The second *Rowland* factor is the degree of certainty that the plaintiff suffered injury. (*Rowland, supra,* 69 Cal.2d at p. 113.)

Here, there is a high degree of certainty Beckering has suffered injury, in that she has been diagnosed with mesothelioma, a disease closely linked to exposure to asbestos. (*Hamilton v. Asbestos Corp., supra*, 22 Cal.4th at p. 1135.)

3. *Closeness of the connection between Shell's conduct and Beckering's injury.*

The third *Rowland* factor is the closeness of the connection between the defendant's conduct and the injury suffered. (*Rowland, supra,* 69 Cal.2d at p. 113.)

Here, there is a close connection between Shell's conduct and the injury suffered, in that mesothelioma is strongly linked to asbestos exposure. (*Hamilton v. Asbestos Corp., supra,* 22 Cal.4th at p. 1135.) "The causal link between asbestos exposure and mesothelioma contraction has been demonstrated to such a high degree of probability, while at the same time few if any other possible causes have been identified, that a universal causal relationship had been recognized; to wit: if A is diagnosed as having mesothelioma and A was exposed to asbestos, A's exposure to asbestos is recognized to be the cause of A's mesothelioma. [Citation.]" (*Zimko v. American Cyanamid* (2005) 905 So.2d 465, 484, fn. 21.)

4. *Moral blame attached to the defendant's conduct.*

The fourth *Rowland* factor, moral blame attached to the defendant's conduct (*Rowland, supra,* 69 Cal.2d at p. 113), also supports recognition of a duty owed to close family members, such as Beckering.

As discussed, the risks of exposure to asbestos have been known for decades. Assuming that Shell was aware of the risks to those exposed directly or indirectly to the asbestos fibers in its workplace and failed to take steps to avoid those risks, such indifference would be morally blameworthy. What Shell actually knew and the sufficiency of steps it may have taken to prevent harmful exposure go to the question of whether Shell in fact breached its duty. However, at this juncture, the focus is on the "relatively broad level of factual generality" (*Cabral, supra,* 51 Cal.4th at p. 772) that bears on the existence of a duty. The moral blame potentially attached to Shell's conduct weighs in favor of a finding of duty.

5. *Policy of preventing future harm*.

The fifth *Rowland* factor, the policy of preventing future harm (*Rowland, supra*, 69 Cal.2d at p. 113), also militates in favor of recognizing a duty owed to close family members, such as Beckering.

It is self evident a rule of law that holds an employer responsible for avoiding injury to nonemployees who may foreseeably be harmed by exposure to toxins disseminated in its industrial process can be expected to prevent harm to others in the future.

6. *The extent of the burden to the defendant*.

We now turn to the sixth *Rowland* factor, the extent of the burden to the defendant. (*Rowland, supra*, 69 Cal.2d at p. 113.)

Beckering asserted the burden on Shell to educate its employees about known asbestos hazards, issue warnings and instructions, implement dust control and suppression measures, and provide laundering services, was minimal and inexpensive. Shell did not argue that instituting proper precautions to prevent take-home exposure would be too burdensome.

Moreover, weighing the cost of such precautions against the catastrophic injury that can result from asbestos exposure, it cannot be said the burden is one the employer should not be required to bear.

7. *Availability of insurance*.

The final *Rowland* factor is the availability, cost, and prevalence of insurance for the risk involved. (*Rowland, supra*, 69 Cal.2d at p. 113.) There is no reason to believe that industry cannot obtain insurance coverage to protect against liability to nonemployees for exposure to asbestos.

In sum, weighing the pertinent considerations, the balance falls far short of terminating liability at the door of Shell's premises for secondary exposure to asbestos. Given the high degree of foreseeability of harm to *family members or members of the household*, persons whose contact with an employer's workers is not merely *incidental* -- compounded by the moral blame attributable to disregarding a known risk to others and

the important public policy of preventing future harm, a duty should lie in these circumstances.

This court should not be deterred by the specter of mass tort actions brought by persons who had casual contact with the worker, such as extended family members, house guests, fellow commuters and workers at commercial enterprises visited by the worker while he or she was wearing contaminated work clothes. In "light of the magnitude of the potential harm from exposure to asbestos and the means available to prevent or reduce this harm, we see no reason to prevent carpool members, babysitters, or the domestic help from pursuing negligence claims against an employer should they develop mesothelioma *after being repeatedly and regularly in close contact with an employee's asbestos-contaminated work clothes over an extended period of time*." (*Satterfield v. Breeding Insulation Co.* (Tenn. 2008) 266 S.W.3d 347, 374, italics added.)

Similarly, the Supreme Court of New Jersey unanimously found a duty to protect spouses from household asbestos exposure in *Olivo v. Owens-Illinois, Inc*. (N.J. 2006) 895 A.2d 1143. *Olivo* stressed the importance of foreseeability in determining whether a duty exists. (*Id*. at 1148.) However, "[o]nce the ability to foresee harm to a particular individual has been established . . . considerations of fairness and policy govern . . . ." (*Ibid*.) *Olivo* found that notice of the dangers of asbestos dust came as early as 1937 and that Exxon Mobil did not provide precautions to prevent employees from carrying dust home. (*Id*. at 1149.) Limiting liability, the court focused on the "particularized foreseeability of harm to plaintiff's wife." (*Id*. at p. 1150.) The court reasoned that this restriction would satisfy "public policy concerns about the fairness and proportionality of the duty." (*Ibid*.)

I would reverse the judgment with directions to reinstate Beckering's third cause of action against Shell.

KLEIN, P. J.