

# VIRGINIA LAWYERS WEEKLY

NEWS STORY

## Household member can bring claim for asbestos

By Deborah Elkins"  
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A member of the household of an employee exposed to asbestos can sue for injuries from an employer's alleged failure to warn of the danger of exposure.

A Charlottesville circuit judge has overruled a demurrer in a suit brought by the estate of a woman who died from mesothelioma from asbestos fibers that allegedly came from her husband's work clothes.

David Mitchell was a 30-year employee of the former DuPont plant in Waynesboro.

Mitchell, a mechanical engineer, said in an affidavit filed in *Mitchell v. E.I. DuPont de Nemours & Co.* (VLW 007-8-218), that his work exposed him to machinery and equipment insulated with asbestos.

When Mitchell came home every day, he greeted his wife and had dinner in the same clothes he had worn to work that day. She did family laundry several times a week.

Mitchell's wife Constance died of mesothelioma in January 2006.

Mitchell sued DuPont, alleging it should have taken steps to protect employees' family or household members, such as providing a place to change clothes or shower, or warning of the risk of exposure to the deadly fibers.

Charlottesville Circuit Court Judge Edward L. Hogshire overruled DuPont's demurrer Sept. 11, allowing the wo-man's estate to sue for negligent failure to warn.

Hogshire said the estate had adequately alleged that DuPont reasonably should have foreseen it was probable that Mrs. Mitchell would come into contact with asbestos fibers from her husband and his work clothes.

Newport News lawyer Robert R. Hatten, who has been litigating asbestos cases for 30 years, said he has been settling similar cases for household members even without a Virginia court ruling that explicitly recognized such a claim.

But recent court decisions in New York and Georgia have prompted employers who are defending Virginia cases to contest claims by family members.

Last November a Newport News Circuit Court recognized a claim of negligence filed against Garlock Sealing Technologies LLC, in a case filed by the estate of a pipe fitter's wife who died from mesothelioma. That case is set for trial in August 2008, Hatten said.

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In the Charlottesville case, DuPont argued that the Mitchell estate's suit should be dismissed because the company owed no duty to Mrs. Mitchell.

In its demurrer, DuPont said the estate sought to impose upon the employer a legal duty to a "stranger" to its premises, someone who was never at the DuPont plant. Requiring a premises owner to give warnings or take actions for the benefit of such strangers would expand the scope of liability without parameters, DuPont warned.

Arguing for DuPont, Norfolk lawyer Robert W. McFarland distinguished David Mitchell's white-collar engineering job from that of a welder or a pipe fitter directly involved with asbestos, and said the only reason DuPont was being sued was because it owned the Waynesboro plant where the fibers were that Mr. Mitchell carried home.

"To say that DuPont owes some duty to someone who never stepped foot on its premises simply because it purchased a product which turned out to be hazardous is to create a brand new cause of action that had never existed in Virginia law before," McFarland told Hogshire, according to a transcript of the argument on demurrer.

The Charlottesville court overruled DuPont's demurrer, saying the estate properly alleged DuPont reasonably should have foreseen the probability that Constance Mitchell "would come into contact with asbestos fibers transferred" from DuPont's operations to the Mitchell home and that mesothelioma was a likely consequence of the asbestos exposure.

The *Mitchell* case is set for trial in March 2009, Hatten said. McFarland could not be reached for comment.

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