ORIGINAL

CASE NO. 2009-0542

IN THE SUPREME COURT OF OHIO

CHERYL BOLEY, EXECUTRIX, AND CLAYTON ADAMS,
Plaintiffs-Appellants,

v.

THE GOODYEAR TIRE AND RUBBER COMPANY,
Defendant-Appellee.

ON APPEAL FROM THE CUYAHOGA COUNTY COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CASE NO. CA-08-091404

BRIEF OF *AMICI CURIAE*, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, AND THE TOLEDO EDISON COMPANY

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I. STATEMENT OF FACTS

The few essential facts underlying the issues presented to the Court are undisputed. Cheryl Boley and Clayton Adams ("Appellants") have asserted claims against Appellee, Goodyear Tire & Rubber Company ("Goodyear") arising from Mary Adams' exposure to asbestos. Appellants concede that there was no evidence Mrs. Adams was ever exposed to asbestos on Goodyear's property. (Apts.' Brf. at 3.) Indeed, Appellants clearly state that they "are not claiming that Mary Adams was exposed to asbestos on Appellee Goodyear's premises, and there is no evidence to support that Mary Adams was exposed to asbestos at any Appellee Goodyear facility." (*Id.*) Rather, Appellants allege that Mrs. Adams was exposed to asbestos through dust on her husband's clothes. (*Id.* at 2.) Mrs. Adams' husband testified that he was exposed to asbestos through his employment at Goodyear. (*Id.* at 3.) Thus, Mrs. Adams' claim against Goodyear falls in the category of "take-home" asbestos cases. Mrs. Adams was diagnosed with mesothelioma and subsequently passed away. (Apts.' Brf. at 3.)

Goodyear filed a motion for summary judgment with the Cuyahoga County Court of Common Pleas, arguing that Appellants' claims were barred by Ohio Rev. Code § 2307.941 (the "Statute"). (Apts.' Brf. at 3.) The Statute provides, in pertinent part, as follows:

> (A) The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property:
>
> > (1) 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.

Id. Appellants opposed Goodyear's motion, arguing that the Statute does not apply to their claim on behalf of Mrs. Adams. (Apts.' Brf. at pp. 3-4; *see* Amici's Suppl. at pp. SUPP 001-099 (Appellants' Brief in Opp.), SUPP 100-108 (Appellants' Sur-Reply).) After consideration of the arguments, the Trial Court granted Goodyear's motion.

Appellants subsequently appealed the decision to the Eighth District Court of Appeals. Appellants challenged the Trial Court's decision on the basis that the Trial Court misapplied § 2307.941 and that it, thus, erred in granting Goodyear's Motion for Summary Judgment. (*See* Apts.' Appx., p. 7.) The Court of Appeals affirmed the Trial Court's grant of summary judgment in favor of Goodyear, holding that "pursuant [to] R.C. 2307. 941(A)(1), unless the individual's exposure occurred on the premises, all tort claims against the premises owner are barred." (Apts.' Appx., at p. 12.)

For the reasons set forth herein, the Court should affirm the judgment of the Eighth District Court of Appeals and the Trial Court.

II. ARGUMENT

A. Ohio Rev. Code § 2307.941(A)(1) limits a premises owner's liability for exposure to asbestos to exposure that occurs while the plaintiff was on the property.

Pursuant to Ohio Rev. Code § 2307.941:

> (A) . . . [In] all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property:
>
> (1) 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.

Ohio Rev. Code § 2307.941(A)(1) (emphasis added). Appellants acknowledge that the law of Ohio requires the application, rather than the interpretation, of the plain and unambiguous language of the statute. (*See* Apts.' Brief, pp. 7-8.) Notwithstanding this acknowledgement, the rest of Appellants' Brief consists of a series of attempts to *avoid* the plain and unambiguous language of the Statute that bars their claim – all of which fail.

It is important to note at the outset that Appellants' arguments regarding the Statute are based entirely on the language of subsection (A) and their belief that their take-home asbestos

claim does not satisfy the triggers of that subsection and, thus, that subdivision (A)(1) cannot apply. This attack is not necessarily surprising given that there could be no opportunity to argue around the language of subdivision (A)(1), which unquestionably serves to bar their claim. But, Appellants' arguments regarding subsection (A) of the Statute are unavailing, as set forth below. Therefore, Appellants' claim is subject to and barred by subdivision (A)(1).

1. The Statute applies to all asbestos claims against premises owners, not just "premises liability" claims.

Appellants' first attempt to avoid the language of the Statute is their argument that their take-home asbestos claim is not based on "premises liability." (*See* Apts.' Brf. at 6: "[T]his is not a premises liability claim. This is a common law negligence claim.") This attempt fails because, no matter how it is titled, Appellants' asbestos claim is one "brought against a premises owner," as the Statute provides for. Ohio Rev. Code § 2307.941(A) (emphasis added).

Appellants' claim is rooted on Goodyear's role as the owner of a premises containing asbestos. Appellants do not assert, and the evidence does not show, that Ms. Adams was exposed to asbestos from any product manufactured by Goodyear. Rather, Appellants concede that Ms. Adams' exposure resulted from asbestos located *on Goodyear's premises* that Clayton Adams brought home. It is Goodyear's status in this matter as a premises owner, rather than the label Appellants use for their claims, that determines whether the Statute applies. Had the General Assembly intended for the Statute to apply just to "premises liability claims," or "claims based on entry of plaintiff onto premises" of a property owner, the Statute would so state, but it does not. The Statute applies to *all* tort actions against premises owners for asbestos claims, however characterized by the claimant.

Indeed, Appellants' arguments that Mary Adams does not qualify as either an invitee, licensee, or trespasser illustrate the basis and proper effect of the Statute. As Appellants' note,

for liability arising out of the ownership or operation of a premises, the legal duties of premises owners are based on (and limited to) the individual/claimant's purpose for being on the premises. (Apts.' Br., p. 5 citing *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St. 3d 312, 315.) Appellants try to distinguish their claim from a premises liability claim because it is a "negligence claim." But, all "premises liability" claims are negligence claims. It is the duty (the first element of any negligence claim) that is established by the plaintiff's status as a member of the groups for invitees, licensees, and trespassers. As Appellants also note, Mary Adams is not a member of any of the groups. (Apts.' Br., p. 6.) Thus, the Statute is in line with basic common law principles in limiting a premises owner's duty -- for negligence claims -- to individuals on their premises.[1] Appellants cannot avoid the Statute, or well-settled common law principles, that bar claims against premises owners simply by naming a negligence claim against a premises owner something other than "premises liability."

2. The Statute applies to all claims arising from asbestos on the premises owner's property, not just on-site exposures.

The key phrase whose plain meaning Appellants seek to avoid is the phrase "exposure to asbestos on the premises owner's property." Ohio Rev. Code § 2307.941(A). The Court of Appeals correctly held that "the phrase 'on the premises owner's property' in subsection (A) refers to the origin of the asbestos itself." (Apts.' Appx. at pp. 11-12.) Subdivision (A)(1) then serves to bar all claims arising from asbestos originating at the premises owner's property, where the claimant's exposure did not occur on the property. Ohio Rev. Code § 2307.941(A)(1).

Appellants, by contrast, assert that the phrase "on the premises owner's property" in subsection (A) refers not to the asbestos but to the exposure, rendering the Statute inapplicable to persons who were exposed to the premises owner's asbestos, but were never on the premises

[1] The Statute's codification of common law negligence principles is discussed further in Section 3 *infra*.

owner's property. Appellants' interpretation is contrary to the rules of grammar and statutory construction — and common sense.

Appellants accuse Goodyear of seeking to re-write the Statute, but it is in fact Appellants who do so. Rather than have the Statute apply to all tort actions for damages from "exposure to asbestos on the premises owner's property," as the Statute reads, Appellants seek to have the Statute apply only to tort actions arising from damages from "exposure on the premises owner's property to asbestos." Appellants' argument, thus, removes "asbestos" from the middle of the phrase. However, when reading a statute, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." Ohio Rev. Code § 1.42. Appellants are reading the phrase "on the premises owner's property" out of order and out of context.

Ohio law is clear that "referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent." *Independent Ins. Agents v. Fabe* (1992), 63 Ohio St. 3d 310, 314 (quoting *Carter v. Youngstown* (1946), 146 Ohio St. 203, 209). In *Fabe*, the statute at issue provided for the revocation of an insurance license where the license was used "to procure, receive, or forward applications for insurance of any kind, other than life, or *to solicit, place, or effect such insurance directly or indirectly* upon or in connection with the property" of certain persons. *Id.* (quoting Ohio Rev. Code § 3905.04). The *Fabe* appellants asserted that the phrase "directly or indirectly" was to be applied to the types of persons listed at the end of the statute rather than the activity of soliciting, placing, or effecting insurance. *Id.* This Court, applying the "last antecedent rule," disagreed:

> [Appellants'] suggested construction would alter the plain and unambiguous language of R.C. 3905.04. The phrase 'directly or indirectly' modifies its antecedent, 'solicit, place or effect such insurance.' . . . [Appellants] would apply the words 'directly or indirectly,' which appear in the middle of the paragraph, to the list

> of relationships appearing at the end of the paragraph. . . . Such a construction is not in accord with the plain wording of the statute. The phrase 'directly or indirectly' **cannot be moved from one place in a sentence to another as part of statutory construction.**

Id. (emphasis added). Appellants urge this Court to do the same thing that the Court prohibited the *Fabe* appellants to do — to read the statute by moving a phrase. Here, Appellants seek to move "on the premises owner's property" to follow the word "exposure" rather than the word "asbestos." To do so, however, would misread the Statute.

Appellants attempt to project their wishful-thinking upon Goodyear by asserting that the phrase "on the premises owner's property" can refer to the origin of the asbestos only if the statute applies to "exposure to asbestos *from* the premises owner's property." (Apts.' Brf., pp. 8-9.) However, the use of "from" or "on" before the phrase "the premises owner's property" is immaterial. Moreover, Appellants' interpretation of the Statute ignores the fact that if both subsection (A) and subdivision (A)(1) apply only to on-site exposures, the two subsections are internally inconsistent. In short, Appellants advocate this interpretation: The Statute bars claims by people who were never on the premises, but only if they were on the premises. Appellants' construction of the Statute turns otherwise clear and straightforward statutory language into nonsense. "It is the duty of courts to construe a statute as to avoid unreasonable, absurd or ridiculous consequences." *Nielson v. Bob Schmidt Homes, Inc.* (1990), 69 Ohio App. 3d 395, 398 (citing *Ohio Cas. Ins. Co. v. Willis* (1985), 29 Ohio App. 3d 219). The Court of Appeals recognized the absurdity of Appellants' interpretation of the Statute as follows:

> [Appellants'] interpretation of R.C. 2307.941 would render the statute meaningless. That is, R.C. 2307.941(A)(1) could never apply in any case because **the very fact that would trigger the application** of subdivision (A)(1), exposure somewhere other than the defendant's premises, **would also render the statute inapplicable** under [Appellants'] interpretation of R.C. 2307.941(A).

(Apts.' Appx. at p. 6 (emphasis added).)

Appellants' argument is defeated by a simple, but unanswerable, question: If the Statute does not apply to Ms. Adams, then to whom *does* it apply? The answer is that Ms. Adams is exactly the type of person to whom the Statute applies, and claims against Goodyear based on Ms. Adams' "take home exposure" are barred.

3. To the extent consideration of anything other than the unambiguous statutory language is appropriate, the Statute simply codified well-established Ohio common law.

Appellants appear to acknowledge that the Statute is clear and unambiguous and, thus, that it should not be subject to interpretation. (Apts.' Br., p. 7.) However, to the extent such interpretation is warranted, the Statute just codifies negligence principles of Ohio common law. It is well-settled that, in order to establish an actionable claim of negligence, Appellants were required to establish that: (1) Goodyear owed Ms. Adams a duty of care; (2) Goodyear breached the duty of care; and (3) as a direct and proximate result of Goodyear's breach, Ms. Adams suffered an injury. *See Jeffers v. Olexo*, 43 Ohio St. 3d 140, 142 (1989). The existence of a duty is "fundamental to establishing actionable negligence . . . . If there is no duty, then no legal liability can arise on account of negligence." *Id.* Whether a duty to Ms. Adams existed on the part of Goodyear is a question of law for the court to decide. *See Mussivand v. David*, 45 Ohio St.3d 314, 318 (1989). Moreover, a defendant has no duty to a person to whom injury was not foreseeable. *See Commerce & Industry Ins. Co. v. Toledo* (1989), 45 Ohio St. 3d 96, 98. Here, the pre-section 2307.941 law also would not have imposed a duty on Goodyear to protect Ms. Adams from exposure to asbestos.

"Ordinarily, an individual possesses no duty to act affirmatively for the protection of others and the fact that harm to another is foreseeable as a result of the failure to act does not create a duty to prevent harm." *Jackson v. Forest City Enterprises* (1996), 111 Ohio App. 3d

283, 285 (citing 2 RESTATEMENT OF THE LAW 2D, TORTS, § 314). Moreover, this Court, in *Gelbman v. Second Nat'l Bank of Warren* (1984), 9 Ohio St. 3d 77, declined to impose an affirmative duty on a property owner to protect third parties from acts which occur outside the owner's property and are beyond the owner's control. *Id.* at 78. Ohio Revised Code § 2307.941 simply codifies the principle that a premises owner should foresee certain potential injuries to people that actually come to the property, but it cannot foresee what harm might occur to those who come in contact with those persons, or people who later come in contact with *those* persons, *ad infinitum.*

Ohio's limitation of premises owners' duties to bar claims of persons not on the premises is followed by a number of other states as well. For example, in *CSX Transp., Inc. v. Williams*, 608 S.E.2d 208 (Ga. 2005), the Supreme Court of Georgia answered the following certified question from the United States Court of Appeals for the Eleventh Circuit:

> Whether Georgia negligence law imposes any duty on an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace, such as the employee's home?

Id. at 889 (attached hereto as Appx., pp. A-1-A-3). The plaintiffs, individuals who were exposed to a family member's work clothes, obtained a ruling from the District Court that the defendant-premises owner "reasonably should have foreseen that its employees' family members would come in contact with the same airborne asbestos to which its employees were exposed." *See Williams v. Owens-Corning Fiberglass Corp.*, 369 F. 3d 1269, 1270 (11th Cir. 2004). The Georgia Supreme Court, however, recognized that "these cases do not involve CSXT itself spreading asbestos dust among the general population, thereby creating a dangerous situation in the world beyond the workplace." 608 S.E.2d at 891 (Amici's Appx., p. A-3). The court held that "an employer does not owe a duty of care to a third-party, non-employee, who comes into

contact with its employee's asbestos-tainted work clothing at locations away from the workplace." *Id.*

This Court should recognize, as did the Supreme Court of Georgia, that the law seeks to limit the recent attempts by the asbestos plaintiffs' bar to expand their scope of potential clients beyond those who were directly exposed to asbestos by a defendant. This Court should further recognize that Ohio Revised Code § 2307.941 is simply a codification of this principle and affirm the Court of Appeals.

B. Appellants Have Waived Any Constitutional Challenge to the Statute And, Even If They Have Not, Such a Challenge Fails.

In a few brief sentences, Appellants appear to throw in an eleventh-hour constitutional challenge to the Statute, asserting that the application of the Statute "violates Appellants' right to due process of the law" and Ohio Constitution Article I, Section 16. (Apts.' Br., p. 9.) However, Appellants' waived this argument and, thus, the Court should disregard it. The failure to raise at the trial court level the issue of the constitutionality of the Statute's application constitutes a waiver of such issue. *See State v. Awan* (1986), 22 Ohio St. 3d 120, syl.; *In re Gibson* (1991), 61 Ohio St. 3d 168, 170 (argument regarding denial of equal protection waived because not raised at trial court level); *see also Cicco v. Stockmaster* (2000), 89 Ohio St. 3d 95, 100. Indeed, in this case, Appellants did not even attempt to raise this issue in front of the Trial Court, including both a brief in opposition and a sur-reply in response to Goodyear's motion for summary judgment, or the Court of Appeals. (*See* Amici's Suppl., pp. SUPP 001-099 (Brief in Opp.), SUPP 100-108 (Sur-Reply); *see also* Apts.' Appx., p. 9 (Court of Appeals acknowledging that "Boley does not challenge the constitutionality of R.C. 2307.941. Rather, she argues that R.C. 2307.941 does not apply to Mary's case."); Apts.' Suppl., pp. 1-33 (Complaint).) Appellants surely cannot raise the issue, for the first time, on the second to last page of their Supreme Court Merit Brief.

Moreover, even if a constitutional challenge to the Statute was properly before this Court, it would fail. Appellants assert that the Statute violates Article I, Section 16 of the Ohio Constitution because it "slams the courthouse door" and effectively deprives Appellants of "any legal recourse against Appellee Goodyear." (Apts.' Brf., p. 9.) Appellants are wrong. "Section 16, Article I guarantees a remedy for every **legally cognizable** injury to person, property, or reputation. And it must ultimately be up to the legislature to define what injuries are legally cognizable." *Vrabel v. Vrabel* (1983), 9 Ohio App. 3d 263, 271 (emphasis in original); *see also Strock v. Pressnell* (1988), 38 Ohio St. 3d. 207, 213 ("There is no property or vested right in any of the rules of the common law, as guides of conduct, and they may be added to or repealed by legislative authority."). Here, the Legislature has determined that a person exposed to asbestos has no legally cognizable injury against a premises owner when the plaintiff was not exposed to asbestos when the individual was on the premises. But, the plaintiff does have redress against other parties, namely the asbestos manufacturers and/or suppliers. Indeed, this Court recently held, in *Groch v. General Motors Corp.* (2008), 117 Ohio St. 3d 192, that a plaintiff's right to a remedy is not necessarily extinguished when a particular statute might apply to foreclose suits by that plaintiff against certain defendants. *Id.* at 219 (upholding statute of repose: while it "may prevent some suits against product manufacturers, in many situations, an injured party may be able to seek recovery against other parties"). Appellants do not – and cannot – dispute that they have a right of remedy against other parties who manufactured the asbestos located on Goodyear's premises; they simply do not have a cognizable remedy against Goodyear as a premises owner. Ohio Revised Code § 2307.491 is constitutionally sound. The Court should affirm the judgment of the Court of Appeals and the Trial Court.

III. CONCLUSION

The General Assembly enacted a plain and unambiguous statute when it enacted Ohio Revised Code § 2307.941. The Statute, through subdivision (A)(1), clearly provides that, in all tort actions against a premises owner alleging asbestos exposure, there is no liability unless the exposure occurred on the premises. None of Appellants' arguments to the contrary has any merit. Appellants only contort the statutory language into a result that renders the Statute null. Further, Appellants waived their constitutional argument by failing to raise it before the Trial Court. To the extent the argument is considered, it does not have merit. The General Assembly properly determined the extent of a premises owner's liability and Appellants have redress for any injury from other parties. Both the Trial Court and the Court of Appeals correctly concluded that the Statute bars Appellants' claim at issue. Those conclusions should be adopted by this Court, and the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

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APPENDIX

Supreme Court of Georgia.
CSX TRANSPORTATION, INC.
v.
WILLIAMS et al.
CSX Transportation, Inc.
v.
Leverett et al.
Nos. S04Q1573, S04Q1574.

Jan. 24, 2005.

Background: Children of employees sued employer for asbestos-related disease they sustained from exposure to their fathers' work clothing, and husband brought wrongful death action against employer alleging his wife died due to exposure from asbestos on husband's clothing. The federal district court denied employer's summary judgment motion, but granted leave for interlocutory appeal. The United States Court of Appeals for the Eleventh Circuit, 369 F.3d 1269, certified question whether Georgia law imposed any duty on an employer to third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from workplace.

Holding: The Georgia Supreme Court, Benham, J., held that in case of first impression, employer owed no duty to third-party, non-employees, who came into contact with its employees' asbestos-tainted work clothing at locations away from the workplace.

Questions answered.

West Headnotes

[1] Negligence 272 ⚷210

272 Negligence
272II Necessity and Existence of Duty
272k210 k. In General. Most Cited Cases

Negligence 272 ⚷370

272 Negligence
272XIII Proximate Cause
272k370 k. In General. Most Cited Cases
Before negligence can be predicated upon a given act, some duty to the individual complaining must be sought and found, the observance of which duty would have averted or avoided the injury or damage.

[2] Negligence 272 ⚷210

272 Negligence
272II Necessity and Existence of Duty
272k210 k. In General. Most Cited Cases
Employer owed no duty to third-party, non-employees, who came into contact with its employees' asbestos-tainted work clothing at locations away from the workplace.

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***888** BENHAM, Justice.

Three of the four plaintiffs in these cases brought suit in federal court against CSX Transportation (CSXT) under Georgia negligence law based on each plaintiff's claim that he was exposed at home as a child to airborne asbestos emitting from the clothing his father wore while working for CSXT, and that this "clothing exposure" contributed to the plaintiff's asbestos-related disease. The fourth plaintiff brought a wrongful death action in federal court under Georgia negligence law based on his late wife's exposure at home to asbestos on clothes he wore to work at CSXT facilities, contending that exposure contributed to her asbestos-related disease. CSXT filed a ***889** motion for summary judgment in each case, arguing that the "clothing exposure" claims are not viable under Georgia law because CSXT owed no duty to non-employees to protect them from exposure to airborne asbestos emitting from its employees' work clothing away from the CSXT workplace. The federal district court denied each motion, but recognizing the issue of duty raised by CSXT was one of first impression in Georgia, granted CSXT leave to seek interlocutory appeal, staying these and all other "clothing exposure" claims pending resolution of the appeals. The United States Court of Appeals for the Eleventh Circuit granted the interlocutory appeals on the "clothing exposure" issue and, by order filed May 13, 2004, certified the following question to this court:

Whether Georgia negligence law imposes any duty on

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an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace, such as the employee's home?

**209 [1] "Before negligence can be predicated upon a given act, some duty to the individual complaining must be sought and found, the observance of which duty would have averted or avoided the injury or damage. [Cit.]" *(Punctuation Omitted.) City of Douglasville v. Queen*, 270 Ga. 770(1), 514 S.E.2d 195 (1999). "Under Georgia statutory and common law, an employer owes a duty to his employee to furnish a reasonably safe place to work and to exercise ordinary care and diligence to keep it safe. [Cits.]" *Dugger v. Miller Brewing Co.*, 199 Ga.App. 850(1), 406 S.E.2d 484 (1991). However, those to whom CSXT would owe the duty advanced by the plaintiffs were not at the time of the alleged breach of duty employees of CSXT and were not exposed to any danger in the workplace, so that duty was not owed to them.

In denying summary judgment to CSXT and in its unpublished order in an earlier "clothing exposure" case (*James v. CSX Transp.* No. CV-590-250 (S.D.Ga.2001)), the federal district court relied on *Hitachi Chemical Electro-Products v. Gurley*, 219 Ga.App. 675(1), 466 S.E.2d 867 (1995), as establishing a duty on the part of an employer to protect third parties from exposure to hazardous substances, independent of the location of exposure. However, the federal district court's analysis of *Hitachi* appears to be largely based on a misapprehension of the specific cause of action being discussed by the Court of Appeals of Georgia in that case. The plaintiffs in that case, children of the defendant's employees, were born with birth defects alleged to have been caused by exposure to chemicals at the parents' workplace. The district court noted that the complaint was ambiguous about whether the children were exposed to chemicals on the *890 defendant's premises after their conception or were injured solely by their parents' pre-conception exposure to the chemicals, and therefore discounted the importance of location in determining whether a duty was owed. The Court of Appeals, of Georgia however, pointed out that the parties claimed the exposure to the chemicals occurred "at the Hitachi factory." *Hitachi*, supra at 676, 466 S.E.2d 867. The Court of Appeals also made clear that the cause of action it was discussing involved pre-conception exposure of the parents to the chemicals, not post-conception, prenatal exposure of the children themselves to the chemicals. Thus, *Hitachi* does not support the district court's conclusion that location is not a factor in determining whether a duty is owed and *Hitachi* is not, as the district court held, "almost identical" to the case at bar.

[2] In *James*, supra, the district court relied on foreseeability as a basis for extending the employer's duty beyond the workplace. However, mere foreseeability was rejected by this Court as a basis for extending a duty of care in *City of Douglasville v. Queen*, supra, where the foreseeability of parade attendees walking on railroad tracks adjacent to the parade route did not extend a municipality's duty to exercise ordinary care for their protection to a duty to protect them from being hit by a train, and in *Badische Corp. v. Caylor*, 257 Ga. 131, 133, 356 S.E.2d 198 (1987), where the foreseeability of third parties relying on financial statements was held not sufficient to extend to those third parties the duty of care owed to the client by the accountant who prepared the statements. We recognize, as did the court in *Widera v. Ettco Wire and Cable Corp.*, 204 A.D.2d 306, 307-308, 611 N.Y.S.2d 569 (N.Y.A.D. 2 Dept.,1994),

that "in fixing the bounds of duty, not only logic and science, but policy play an important role." [Cit.].... However, it must also be recognized that there is a responsibility to consider the larger social consequences of the notion of duty and to correspondingly tailor that notion so that the illegal consequences of wrongs are limited to a controllable degree. [Cit.] The recognition of a common-law cause of action under the circumstances of this case would, in our opinion, expand traditional tort concepts beyond manageable bounds and create an almost infinite universe of potential plaintiffs. Accordingly, we decline to promulgate a policy which would extend the common law so as to bring the ... plaintiff[s] within a class of people whose interests are entitled to protection from the defendant's conduct.

**210 As the New York court did in *Widera*, we decline to extend on the basis *891 of foreseeability the employer's duty beyond the workplace to encompass all who might come into contact with an employee or an employee's clothing outside the workplace.

In *James*, and in the present cases by reliance on

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James, the district court examined duties beyond the scope of an employer's duty to provide a safe workplace, citing United States v. Aretz, 248 Ga. 19, 26(B)(S), 280 S.E.2d 345 (1981), which held that "where one by his own act, although without negligence on his part, creates a dangerous situation, he is under a duty to remove the hazard or give warning of the danger so as to prevent others from being injured where it is reasonably forseeable that this will occur." However, these cases do not involve CSXT itself spreading asbestos dust among the general population, thereby creating a dangerous situation in the world beyond the workplace. Thus, United States v. Aretz, supra, and the concept it sets forth have no applicability to the issues presented in this case.

More closely related conceptually and factually to the case at bar is *Widera v. Ettco Wire and Cable Corp.*, supra, where a worker's clothing was contaminated at the workplace by lead dust and chemicals with which his wife came into contact when she washed them, contact that was alleged to have caused birth defects in their child with whom she was pregnant at the time. The court in that case held the common law duty to provide employees with a safe workplace "has not been extended to encompass individuals, such as the infant plaintiff, who are neither 'employees' nor 'employed' at the worksite [cits.]. Nor does our research reveal a reported case from any jurisdiction where an employer's duty has been interpreted to extend to a person, such as the infant plaintiff, who is injured in the manner alleged herein." Id. at 307, 611 N.Y.S.2d 569. We conclude that the holding in *Widera* is consistent with negligence law in Georgia and hold that an employer does not owe a duty of care to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace.

We recognize that New York has recently retreated from the position it took in *Widera*, choosing to distinguish that case from one involving a wife alleging injury from asbestos brought home on her husband's work clothes

> because [*Widera*] involved the unique question of a tortfeasor's liability to an infant for injuries occurring while in utero. This added wrinkle altered the duty analysis in a fundamental way since the Widera Court was required to determine whether a defendant owed a duty of care to a plaintiff who was not even born at the time of its negligent conduct.

In re New York City Asbestos Litigation, 786 N.Y.S.2d 26, 31 (N.Y.A.D. 1 Dept.,2004). Though the New York court chose to distinguish *Widera* on a narrow factual point, the rationale of the case makes clear it has abandoned the policy consideration informing that decision. We believe, however, the policy enunciated in *Widera* remains valid and choose, therefore, to adhere to the position that an employer's duty to provide a safe workplace does not extend to persons outside the workplace.

Having concluded that the employer's duty to provide a safe workplace is not to be extended to persons outside the workplace and that general principles concerning a duty to prevent harm after creating a dangerous situation do not apply in the context of these cases, we answer the question posed by the Eleventh Circuit Court of Appeals in the negative: Georgia negligence law does not impose any duty on an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace.

Question answered.

All the Justices concur.
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