



Letter to the Editor

A Response to Last Month's Commentary On 'Take-Home' Premises Liability

A Response by David A. Rosen of Rose, Klein & Marias LLP

Dear Ms. Ferriola: I read the commentary in your June edition with interest. I recognize that it was written about six or seven months ago, but while it was in a section of HarrisMartin's *COLUMNS-Asbestos* labeled "Perspectives," the article really should have been headed "Lack of Perspective."

When is a minority view (at most, 12 of the 18 states listed, but only 12 of 50 states; to say nothing of the Federal courts) an "evolving majority" rule? When a few opinions are identified as such by asbestos defense true-believers.

The doctrine of the article's authors was starkly revealed in their Conclusion section. There is no evidence that the number of "[t]ake-home claims against premises owners will likely rise[s] as plaintiff's [sic] counsel look for new...deep pockets...."

In truth, these claims are on the rise because a growing number of family members of workers, workers who themselves had been exposed to asbestos in the workplace, are receiving diagnoses of mesothelioma, despite no personal history of industrial or commercial asbestos exposure. This development was, of course, anticipated by industrial hygienists, public health people and physicians,

who were writing as far back as fifty years ago that premises owners needed to take steps to guard against "take-home" exposure to asbestos on the clothing and effects of workers on their premises.

Further, it's clearly not "fortunate for defense counsel" that liability for this known hazard has been limited or denied in some states, although it may well be

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fortunate for their clients—the negligent premises owners and, especially, their insurance carriers. After all, many carriers wrote premises liability policies forty

and fifty years ago with the risk of "take-home" asbestos exposures in the front of their minds, and some will now not have to pay claims despite collecting premiums for this risk.

It should not be forgotten that asbestos litigation is between people with asbestos-caused disease, or their families, on the one hand, and the business entities whose alleged misconduct caused the exposures and the resulting diseases, on the other. Defense lawyers, like plaintiffs' lawyers, are merely representatives; good faith representatives, in some instances, of either side.

Sincerely,

David A. Rosen
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