

***Quiroz v. Alcoa*, No. 1 CA-CV 15-0083 (September 20, 2016), review granted
February 14, 2017**

Arizona declines to impose a duty on an employer when a child contracts Mesothelioma as result of “take-home exposure” arising from a parent’s exposure to asbestos at the workplace.

The Arizona Court of Appeals, Division One was asked to decide as a matter of first impression whether an employer owes a duty of care to the child of an employee who contracts mesothelioma from asbestos brought home on the employee’s work clothes. These cases are commonly known as “take-home exposure” cases. See, e.g., Mark A. Behrens, *What's New in Asbestos Litigation?*, 28 Rev. Litig. 501, 546 (2009). Arizona declined. An Employer owes NO Duty to its employees’ family members.

Appellants asked the Court to apply either the Restatement (Second) of Torts §371 or the Restatement (Third) of Torts §54 to impose a duty on the employer. Arizona Courts declined to adopt these sections of the Restatement and cited to Pennsylvania and Maryland jurisdictions which held that an employer and an employee’s spouse who contracted mesothelioma due to take-home exposure were “legal strangers” under the law of negligence.

Appellants also asked the Court to impose a duty for public policy reasons, such as reasonable expectations. The Court declined. The Court held that the states that have recognized a duty of care in “Take-Home Exposure Cases” did so based on foreseeability of harm. However, foreseeability is explicitly rejected as an element of Duty in the Arizona law of negligence.

The Arizona Supreme Court has recently accepted this case for review.