



Significant Decision

No. 23-01

July 12, 2023

KUCIEMBA V. VICTORY WOODWORKS

CALIFORNIA SUPREME COURT DECISION

[S274191]

Filed: July 6, 2023

The derivative injury rule does not bar a non-employee family member's civil tort claim for take-home COVID-19. Employers do not owe a duty of care to prevent the spread of COVID-19 to their employees' household members.

Significance: The derivative injury rule only bars civil tort claims where it is impossible to state a cause of action without alleging a disabling or fatal injury to an employee. Compelling policy considerations require an exception to the duty of care for take-home COVID-19 claims.

Facts: Robert Kuciemba alleged he contracted COVID-19 at work and passed the virus to his wife. Ms. Kuciemba sought damages for the employer's negligence in failing to implement adequate safety measures at the worksite. The Federal District Court granted the employer's motion to dismiss, finding the claim the wife contracted COVID-19 through direct contact with employee was barred by the exclusive remedy under the California Workers' Compensation Act (WCA). The trial court further found an employer's duty to provide a safe workplace to its employees does not extend to non-employees. Plaintiff appealed. The Ninth Circuit Court of Appeals certified two questions to the California Supreme Court: (1) If an employee contracts COVID-19 at the workplace and brings the virus home to a spouse, does the California Workers' Compensation Act bar the spouse's negligence claim against the employer? (2) Does an employer owe a duty of care under California law to prevent the spread of COVID-19 to employees' household members?

Holding: The California Supreme Court granted the request and answered "no" to both questions.

Discussion: This case resolves two questions. First, if an employee contracts COVID-19 at the workplace and then infects their spouse, is the spouse prevented from suing the employer in civil tort by the exclusive remedy provision of the WCA and the derivative injury rule? Second, do employers owe a duty of care to prevent the spread of COVID-19 to the household members of their employees?

The Court noted the exclusivity question was correctly addressed by the Second District Court of Appeal in *See's Candies v. Los Angeles Superior Court* which held that exclusive remedy does not bar spousal claims against employers for take-home COVID-19. In *See's Candies* the court concluded the derivative injury rule only applies when it is "legally impossible to state a cause of action . . . without alleging a disabling or lethal injury to another person." ([See CWCI Significant Decision No. 21-03](#))

Turning to the second question, the Court first noted that no special relationship is required to establish a legal duty of care pursuant to Civil Code section 1714 as argued by the employer. A special relationship between the parties is only required when alleging a duty to control, warn or protect.

The Court concluded the default general duty of care in Civil Code section 1714 applies to COVID-19 where plaintiffs allege the defendant's actions created an unreasonable risk of disease transmission. The Court then completed a *Rowland* analysis to determine whether compelling policy considerations exist for an exception to the general duty of care. *Rowland*'s multi-factor test is used to determine whether to limit a duty derived from other sources, such as Civil Code section 1714. The court concluded that while transmission of COVID-19 to household members is a reasonably foreseeable consequence of an employer's failure to take appropriate precautions against the spread of the virus, policy considerations require an exception to the general duty of care. The Court distinguished their prior decision in *Kesner v. Superior Court of Alameda County*, a take-home asbestos case, noting the only likely source for an asbestos exposure would have been the employer's premises, while the virus causing COVID-19 is highly contagious with multiple potential sources. The Court also noted that unlike asbestos, "a duty to prevent secondary COVID-19 infections would apply to *all* workplaces, making every employer in California a potential defendant."

Justice Corrigan wrote "Although it is foreseeable that an employer's negligence in permitting workplace spread of Covid-19 will cause members of employees' households to contract the disease, recognizing a duty of care to nonemployees in this context would impose an intolerable burden on employers and society in contravention of public policy." She concluded "that employers do not owe a tort-based duty to nonemployees to prevent the spread of Covid-19."

While after extensive analysis the Court found an exception to the duty of care here, they also noted that social conditions surrounding COVID-19 have evolved since the start of the pandemic, and would likely continue to do so, stating "We acknowledge that the calculus might well be different in the future."

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