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## SUPREME COURT NOT EXPANDING MEDICAL COVERAGE TO INFECTED FAMILIES WITH COVID-19

BY: SCOTT A. O'MARA

The California Supreme Court was requested by the 9<sup>th</sup> U. S. Circuit Court of Appeals to make a determination that has impact on not only the federal case, but impact on the workers' compensation laws and interpretation of same.

The question that exists is whether the worker's COVID-19 that was found to be work-related and was transmitted potentially to the workers family does this establish employer liability for the COVID-19 to the employed worker's spouse relative to the exposures allegedly occurred by her husband.

Also, the question is does the exclusivity of workers' compensation bar a negligence claim in the workers' compensation field and does the California employer owe a duty of care to prevent the spread of COVID-19 to the employees' household.

The California Supreme Court reiterated that the workers' compensation program is an exclusive remedy for the worker. That can expand certain benefits under workers' compensation, but the claim of a family member from injuries derived from the employee that sustained the COVID-19 can it be covered? The finding is that the family member's claim for the injury is barred even if injuries of the worker are from the alleged negligent conduct of the employer.

The Court goes into further analysis and determines a finding that the employer does not owe a duty of care to the household members of their employees with COVID-19. The court distinguished another unique case in 2016 in which the California Supreme Court found the employer had a duty to protect the families of the employees from asbestos.

This became the separating point; the exposures to asbestos and COVID-19 they are not similar. The fact that the asbestos cases are of a unique exposure i.e., asbestos is a smaller pool of potential plaintiffs. The household are exposed to the asbestos from the employees clothing and

subsequent development of mesothelioma is distinguishable because the mesothelioma is a very rare cancer and it is a result of exposure to asbestos. The distinguishing factor that the court examined is that the virus that causes the COVID-19 is extremely contagious making infection possible even after a brief exposure. They also examined that mesothelioma comes from a very rare material and exposing very few people. The court found that in allowing the employees' family members to have a remedy in workers' compensation for the COVID-19 illness would be difficult in the early proceedings, and difficult to prove. They spoke to the dramatic expansion of a liability and the potential to destroy businesses that indeed may be essential to public services.

This opinion and the discussion of the unique nature of the mesothelioma and the distinguishing characteristics that is not a public risk, like COVID-19, has some understanding. Yet the courts ignore there are proper facts that could establish that COVID-19 came from the spouse. This appears to be an economic decision and not one that really examines the concept of the employers having an obligation to assist in diluting or minimizing or taking away exposures that the workers have and passing this illness to their family members.

The idea that COVID-19 is more of societal infection than asbestos cases has some justification, but yet the court should still go back again to examine house members and their exposures to COVID-19, other than the family worker that had COVID-19, and compare same.

Ultimately, the interpretation of this opinion is that the employer has no duty to prevent the spread of COVID-19 beyond the employee. The reliance upon the thought that if the employer did not fully control the risk of infection and imposes the courts a tort duty not covered by the workers' compensation could cost some employers to cease their situational exposures or slow the pace of work. The court ultimately states "the businesses regarding as essential and projects that serve the social worker slowed operations or shut downs could be particularly detrimental."

The court also stated imposing on the employers a tort duty to each employees' household members to prevent the spread of this highly transmittable virus would throw open the courthouse doors to many of lawsuits that would be both hard to prove, and difficult to establish. They further stated the dramatic expansion of liability has potential to destroy businesses and curtail if not outright end the provisions of a certain public service.

The California Supreme Court distinguishes between the more harmful disease, such as mesothelioma and COVID-19, finding that mesothelioma is rarer and caused by very unique exposures to asbestos which predominantly has occurred in work situations verses domestic situations. Therefore, the courts see a higher probability that mesothelioma has the work connected status, whereas COVID-19 is commonly found in many situations, both work and non-work. COVID-19 is extremely contagious and because of the commonness of it, it develops after even a brief exposure whereas the mesothelioma takes a longer period of time for manifestation

