

'Take-Home Toxin' Case Against Ceramics Co. Moves Forward

By [Brian Amaral](#)

Law360, Boston (March 31, 2017, 4:26 PM EDT) -- A federal judge in Pennsylvania said Thursday he will let a “take-home toxin” case against a ceramics company move forward, finding that New Jersey law could create a duty of care for a girlfriend or roommate who is exposed to chemicals brought home by a worker.

U.S. District Judge Jeffrey Schmehl ruled that Pennsylvania resident Brenda Schwartz, who says she suffers from exposure to a dangerous substance called beryllium, could plausibly claim Accuratus Corp. was negligent when it allegedly allowed her then-boyfriend and her then-roommate to return home from work carrying traces of the substance on their clothes.

Judge Schmehl had previously dismissed the case, finding that the state's common law on negligence only created a duty for spouses. The Third Circuit certified a question to the New Jersey Supreme Court, which didn't answer the Schwartz case directly, but said the take-home toxin law wasn't limited to spouses. Instead, the court said it was a fact-intensive question that had to be tackled on a case-by-case basis.

In this case, Judge Schmehl said, the facts were plausible enough to survive dismissal.

“The only reality of living arrangements necessary to the court’s conclusion is the fundamental recognition that nearly all people at all times have close relationships with others, have regular contact with others in their homes, and in most cases live with others who share space and housework,” Judge Schmehl said. “That reality means it may be reasonably foreseeable to a defendant employer working with a particularly insidious toxic substance that material carried home on an employee’s clothes may harm someone at that home who is a frequent overnight guest and romantic partner or a roommate sharing living space and housework.”

Plaintiff Brenda Schwartz said she was exposed to the element and got chronic beryllium disease after she met and started dating Accuratus employee Paul Schwartz in 1978. Paul Schwartz moved in with another Accuratus employee, Gregory Altemose, in 1979.

Brenda Schwartz frequently visited the apartment when her boyfriend and his roommate

were working at Accuratus. All the while, they were allegedly tracking small bits of beryllium home. Brenda later married Paul, and all three lived together for a time.

Beryllium exposure can cause scarring of lungs, cough, fatigue, shortness of breath and other problems.

Beryllium, used in metalworking and the manufacture of ceramics and electronics, can be harmful even in small traces, Judge Schmehl noted. Because of that, the duty of care to make sure employees didn't bring the substance back home on their clothes was all the more obvious. A policy of changing clothes before leaving work would have been simple, Judge Schmehl said, but Accuratus allegedly didn't have such a policy.

Claims against [Materion Brush](#), a company Paul Schwartz worked for while the Schwartzes were married, were settled, according to the decision.

"We're certainly delighted to be able to continue to prosecute this important case," said Ruben Honik of [Golomb & Honik PC](#). "We were hoping and expecting a decision like this given New Jersey Supreme Court shedding light on an important decision on take-home toxins under New Jersey law."

The Schwartzes are represented by Ruben Honik, Kevin William Fay and Tammi Markowitz of [Golomb & Honik PC](#).

Accuratus is represented by A. Wesley Bridges Jr. of [Becker Meisel LLC](#).

The case is *Schwartz et. al. v. Accuratus Corp.et. al.*, case number [5:12-cv-06189](#), in U.S. District Court for the District of Pennsylvania.

--Editing by Orlando Lorenzo.