



IN THE CIRCUIT COURT  
FOR THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**FILED**  
JUL 21 2015

CLERK OF CIRCUIT COURT #9  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

No. 13-L-2031

EVELYN HOLMES and JAMES HOLMES, SR. )  
 )  
Plaintiff, )  
 )  
Vs. )  
 )  
AMSTED RAIL COMPANY, INC. )  
As Amsted Rail Company as Successor to )  
American Steel Foundries, )  
 )  
Defendants. )

ORDER

Cause comes before the Court on the Defendant's, Motion for Summary Judgment, the Court having considered same, including, all facts and inferences, and applicable law, hereby finds and orders as follows:

The Defendant's Motion for Summary Judgment is based on the theory that Defendant did not owe a duty to the Plaintiff, as a matter of law, because the Plaintiff was the wife of their employee and her exposure was merely secondary to any alleged exposure to that of her husband. Whether a duty exists is a question of law. The question of whether a duty extends under circumstances present in this case, depends on the whether the Plaintiff has sufficiently alleged and established facts which, taken in light most favorable to the Plaintiff, would prove that Defendant should have reasonably foreseen plaintiff's injury, at the time Defendant engaged in the allegedly negligent action. *Simkins vs. CSX Transportotion Inc.*, 358 Ill.Dec. 613 (Ill. 2012). It is not necessary that a defendant must have foreseen the precise nature of the harm or the exact manner of occurrence; it is sufficient if, at the time of the defendant's action

or inaction, some harm could have been reasonably foreseen. Regions Bank v. Joyce Meyer Ministries, Inc., 383 Ill.Dec.767, (Ill App. Ct. 5th, 2014), *appeal denied*, 21 N.E.3d 718, (Ill. 2014), (citing Marshall v. Burger King Corp., 222 Ill.2d at 442, 305 Ill.Dec. 897, 856 N.E.2d at 1060–61; Hernandez v. Rapid Bus Co., 267 Ill.App.3d 519, 204 Ill.Dec. 456, 641 N.E.2d 886 (1994)).

Further, “what is considered reasonably foreseeable depends on what information about the nature of asbestos was known at the time of plaintiff’s alleged exposure and, therefore, what information defendant could reasonably be held accountable for knowing.” Simpkins, 358 Ill.Dec. 613 at 620.

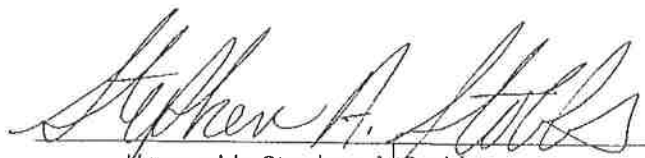
As there are genuine issues of material fact regarding the reasonable foreseeability of the Plaintiff’s injury, in this case, and whether Defendant breached its duty of care to the Plaintiff, summary judgment is not appropriate, at this stage of the proceedings. Accordingly, the Defendant’s motion for Summary Judgment is denied.

Finally, because the resolution of the issues concerning the Defendant’s duty of care, breach thereof and Plaintiff’s alleged damages, are questions of fact to be determined by the jury, certification of the question for appeal under Rule 308 is premature and not appropriate. Therefore, the Defendant’s Motion for Interlocutory Appeal is denied.

Clerk to file and serve express.

ENTERED

7/21/15



Honorable Stephen A. Stobbs  
Associate Judge Presiding