

Asbestos

Liability For The Post-Sale Installation Of Asbestos-Containing Replacement Parts Or Insulation

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Commentary

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Introduction

We are now in what might be deemed the “Fourth Wave” of asbestos litigation over an eighty-year ride. After decades of asbestos litigation, the plaintiffs’ bar has begun to run out of possible targets. As such, in an attempt to expand the traditional notions of products liability to reach a broader class of defendants, the plaintiffs’ bar has targeted manufacturers of products into or onto which other entities integrated either asbestos-containing replacement parts or asbestos-containing insulation after the original sale and release of the product. As plaintiffs seek to stretch traditional limits of tort liability to include these manufacturers, the defendants are fighting back. This article will address the growing debate, review the leading decisions, and provide a state-by-state survey of cases on point.

Turning back to where it all began, as reported by Paul Brodeur in a series of articles titled *The Asbestos Industry on Trial*,² the first asbestos cases were filed by employees exposed to massive, intense doses of asbestos in factories that manufactured asbestos products from raw asbestos. Johns-Manville Corporation and other

leading manufacturers using raw asbestos and silica in their manufacturing processes supported the creation of state workers’ compensation commissions to move cases brought by their employees out of the common law tort system.

The second wave started in the 1960s and picked up momentum in the 1970s and early 1980s. It involved primarily asbestos insulators who had been exposed to high levels of asbestos, either as part of their occupation or in the construction and repair of U.S. Navy ships after World War II. These insulators began filing suits under the emerging doctrine of manufacturers’ strict liability in tort to recover for severe, disabling asbestos-related diseases against the leading manufacturers of asbestos insulation materials, including industry titan Johns-Manville.³

By the 1980s, Dr. Irving Selikoff, the pioneering researcher in asbestos and disease, accurately predicted a “third wave” of cases among workers handling in-place asbestos. The pool of plaintiffs expanded dramatically in that decade to include large numbers of construction and industrial factory workers regularly handling friable asbestos products or working near insulators who were installing or removing it.⁴ The tens of thousands of cases filed in the 1980s can be broken down into two groups — a larger group of plaintiffs seeking recovery for non-disabling conditions,

including mild asbestosis, pleural plaques, and fear of cancer, and a second smaller, but still significant group suing to recover for serious asbestosis, lung cancer and mesothelioma.⁵ The pool of defendants in this third wave of cases expanded to include companies that had manufactured, distributed, sold, or applied any asbestos-containing products.⁶ The defense was made more difficult in 1982 when Johns-Manville Corporation, its many affiliated companies, and Unarco, another insulation manufacturer, concluded that their assets were not sufficient to meet their potential tort liabilities and filed for bankruptcy court protection under Chapter 11.⁷

Any Exposure Dose Is Sufficient, Because 'Every Fiber Is A Cause!'

With the current fourth wave, starting in the early 2000s, the pools of plaintiffs and defendants again changed. Few cases involving serious asbestosis or asbestos-related lung cancer remain due to the fact that most heavy occupational exposures ended in the mid-1970s and that the claims of those injured by significant occupational exposures had already been filed and resolved. And claims for non-impairing conditions had been excluded from the court system by the establishment of registries onto which claimants could be placed if their levels of impairment did not reach the threshold required before a plaintiff could file a suit for asbestosis.⁸ However, plaintiffs continue to file significant numbers of mesothelioma cases every year due to the disease's long latency period between first exposure and diagnosis, the lack of an established exposure threshold below which the disease cannot occur, and its close association with asbestos exposure.

The pool of defendants has also changed. Most manufacturers targeted in the first three waves of the litigation have filed for bankruptcy court protection. Those bankrupt entities with continuing business operations have created or are in the process of creating bankruptcy trusts with enormous reserves against which those with asbestos-related disease can make claims.⁹ Rather than limiting their claims to those against bankruptcy trusts established by those traditionally targeted and culpable defendants, however, plaintiffs' attorneys have become too addicted to common law recoveries in their "home courts" to walk away.

Instead, they file suits seeking common law recovery from *any* company that manufactured *any* industrial

product that may have contained *any* asbestos-containing component with which the plaintiff may have had *any* contact. The list of defendants routinely sued today includes manufacturers of boilers, pumps, valves, automobiles, and component parts, as well as owners of industrial facilities that had asbestos-containing products in their manufacturing plants. Exposures to these products generally are to chrysotile asbestos only and at doses that were the tiniest fraction of exposure standards accepted at the time the products were sold and used. No scientifically accepted threshold exists at which experts can determine whether asbestos exposure caused a given case of mesothelioma. All of the studies to date that have made an epidemiological association between asbestos and mesothelioma have involved occupational levels of exposures to amphiboles, and debate remains as to whether a pure chrysotile exposure at high levels can be causative, much less at minute levels. In a clever twist of law and science, plaintiffs use the absence of scientific evidence as their proof of causation. They say: (1) there is no minimum exposure established below which asbestos can be ruled out as a cause, (2) it is not medically determinable which among any number of different exposures was the actual cause of the genetic changes leading to the cause of the particular plaintiff's cancer, (3) although some products create exposures far more hazardous than others, because no exposure can be ruled out as a contributor, regardless of intensity, duration, fiber type, or fiber size, even the tiniest exposure dose contributed at least the tiniest risk and, thus, must be deemed a contributing "cause."

If Not Dose, What About Duty?

Although the arguments made pertaining to replacement parts and insulation have some different elements, both are bounded by the attempt to hold a manufacturer liable for products it did not sell. Thus, this article will address the two groups of arguments together and ask whether the law will impose a duty on a manufacturer with respect to products that it did not make, sell, or recommend.

Replacement Parts

Typically, in these fourth-wave cases, the machinery manufacturing defendants sold a product that may have remained in service for decades in a manufacturing facility at which a plaintiff worked for a substantial period of that time. At the time the product left the machinery manufacturing defendant's control, it may

have contained one or two asbestos-containing gaskets and/or pieces of packing. Likewise, motor vehicles were originally equipped with four factory-installed asbestos-containing brake linings or pads, a clutch facing (collectively "friction materials"), and some small engine gaskets. All of those materials were non-friable, encapsulated in binding materials, and locked inside the product, creating no measurable asbestos exposure unless or until they were changed out during servicing. All of these asbestos-containing parts were manufactured by other companies that specialized in the manufacture of machinery sealing or friction products.

The original gaskets and packing that came inside the product were routinely replaced during maintenance, usually within the first year after installation. Further, brake linings or brake pads would be replaced after 6,000-12,000 miles, while the clutch facings and muffler gaskets might last several years before being replaced. In most cases, replacement parts were supplied by other companies that specialized in the manufacture of machinery sealants and friction materials and had their own systems of distribution to the replacement parts markets.¹⁰ Thus, in the great majority of cases, the plaintiff was not exposed to any asbestos-containing product actually sold by the defendant unless he was involved in the initial servicing of the product when the original gasket, packing, or friction material was removed.

Insulation Added Post-Sale

Manufacturers of industrial boilers, pumps and valves shipped some of their machines to end users for use in very high temperature environments. In those cases, the industrial purchaser and its facilities' engineers would decide if the machinery required high temperature insulation for the application. If so, the plant owner would hire an insulation contractor whose insulation workers would cover the equipment with asbestos insulation manufactured by insulation manufacturers.

Plaintiffs' Argument: Why Duty Should Be Imposed On Non-Manufacturer

Plaintiffs contend that the equipment manufacturing defendant's duty extends to all foreseeable applications and uses to which the product can be put. If the manufacturer itself used asbestos gaskets and packing, it knew that the replacement gaskets and packing would contain asbestos. Likewise, it knew or should have

known that its products intended for high temperature application would require the post-sale addition of asbestos insulation for optimal performance. Thus, each manufacturer had an independent and continuing duty to warn against the use of asbestos or, at a minimum, to warn about how the asbestos could be handled to reduce exposure-related risk.

Under traditional notions of product liability, the manufacturer is liable in strict liability only for defects existing at the time the product leaves its control, and the manufacturer owes a duty of due care in negligence only with respect to products that it originally sells.¹¹ Nonetheless, as the fourth wave commenced with cases filed primarily in plaintiff-friendly jurisdictions, defendants had little success in extricating themselves for one of two reasons: 1) courts in those jurisdictions make it their practice not to rule on motions for summary judgment until the trial date and, in some cases, until the trial, believing that most cases against most defendants will settle if decisions on summary judgment can be deferred; or 2) trial courts summarily deny any motions for summary judgment in which there has been any identification of the defendant's product and any evidence that it contained asbestos at any time regardless of whether such exposure could be deemed to meet the state's own "substantial factor" standard for determining proximate cause.¹² Some appellate courts have dealt with the issue in a similarly summary fashion and denied the manufacturer its requested relief without extended analysis.¹³ Other early decisions were receptive to the traditional limits on liability.¹⁴ Which way the state courts move on this issue will dictate the future of a significant share of the common law asbestos litigation.

Strict Liability

Basic principles of strict products liability have long been settled. Manufacturers are liable for the injuries caused by their products.¹⁵ A product may be found unreasonably dangerous if it has a manufacturing defect or a design defect.¹⁶ In addition, even if the product is designed and manufactured without fault, it may be unreasonably dangerous if the manufacturer does not provide adequate warnings for proper use.¹⁷ However, a manufacturer is not liable for the defective products of another,¹⁸ and a seller is liable only if its product was in the "chain of distribution."¹⁹ Some courts have expanded the manufacturer's liability to include products that become hazardous after completion of the

manufacture and sale, if the product becomes dangerous when combined with another product, but only if the first-phase manufacturer: (a) required the use of asbestos-containing materials in its products;²⁰ (b) received direct financial benefit from the sale of the asbestos-containing materials, (c) was necessary to bring the asbestos-containing replacement product to market; or (d) had control over the manufacture or distribution of the asbestos-containing materials.²¹

Plaintiffs try to use these exceptions to expand the defendant's duty and consequent liability. Defendants focus on the simple maxim that a manufacturer is not liable for the defective products of another²² to argue that liability cannot attach as a matter of law.²³ They look to the basic tenets found in the seminal strict liability cases to support this contention. In *Greenman v. Yuba Power Products, Inc.*, Justice Traynor first articulated the rule of strict liability in tort, stating that "[t]he purpose of such liability is to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market"²⁴

Not only are the allegedly defective products in the fourth-wave cases manufactured by other manufacturers, but they are marketed by them through a completely different chain of distribution of which the machinery manufacturer is not a part.²⁵ Further, the deterrent effect of liability should be placed on the actual manufacturer of the allegedly dangerous article that knows its products, the products' risks, and the ways to reduce the risk through guarding or instruction.²⁶ It is also the manufacturer of the dangerous article that is able to spread the risk of unpreventable injury by using the sales revenues generated from the sale of the product to purchase insurance covering such claims.²⁷

In response, plaintiffs argue that defendants improperly define the term "product."²⁸ Plaintiffs focus on the issue of foreseeable use. It is foreseeable that the product will require insulation or replacement parts for the product to function properly, and, thus, those components are part of the product, regardless of who manufactured them.²⁹ If the product is so defined, the original manufacturer and its product remain in the chain of distribution until the end of the product's useful life.³⁰

Perhaps plaintiffs' most compelling argument is that the duty to warn of hazards associated with the use of the product attaches at the time of sale. The servicing of the product and replacement of asbestos gaskets, packing, or friction components is a hazardous, foreseeable use of its product, and each such change involves the use of the original product. If the product lacked proper warnings concerning that foreseeable use, it was defective at the time it left the manufacturer's control and remained so each time a gasket, packing, or friction product was replaced. If the user was exposed to asbestos when that defective product was serviced, that manufacturer is liable for the injury.

In response to that argument, defendants assert that there is an insufficient nexus between their products and the harm-producing product made and put into the chain of distribution by others. Liability runs with the product. Further, duty is not co-extensive with foreseeability because, in retrospect, everything is foreseeable. Legal foreseeability is that which sound policy dictates the manufacturer should foresee and against which it should guard. In such instances, foreseeability is not relevant.³¹

Negligence

In any negligence case, the first issue is whether the defendant owed a duty of due care to the plaintiff. The issue of duty is one of law for the court to decide. If the court finds that a duty exists, the manufacturer has a duty to exercise due care to manufacture a product that is reasonably safe. The duty is limited to those manufacturers in the chain of distribution.³² If a duty is found to exist, it may include the need to include warnings of potential hazards of which the manufacturer knew or should have known and of which the plaintiff was unaware.³³

Current Trend — Most Courts Resistant To Expanding Liability

The Supreme Court in Washington State was the first court to thoroughly examine the issue of liability for aftermarket or post-sale installation of asbestos products.³⁴ Five California intermediate appellate courts followed closely thereafter with opinions on the topic. Four of the courts agreed with the majority in the Washington Supreme Court cases,³⁵ while one sided with the dissent in those cases.³⁶ The California Supreme Court has granted review in the *Merrill, Hall, Walton*, and *O'Neill* cases to resolve a conflict

between *O'Neill*, in which the court refused to grant summary judgment to the non-manufacturer defendant, and *Taylor*, followed by *Merrill, Hall, and Walton*, in which the California appellate courts held that no such liability can attach.³⁷

*Simonetta*³⁸ and *Taylor*³⁹ both address the potential for expansion of liability beyond that reasonably connected to the sale of the product. The equipment manufacturer receives no financial benefit from the post-sale purchase of components sold by others. Instead, that component manufacturer derives the benefit, so it is the one that should bear the obligation to warn. In addition, the equipment manufacturer plays no role in bringing the asbestos products to market or in their manufacture or distribution. Finally, while it is true that liability may lie if the combination of the equipment manufacturer's product with another product creates a hazard in that product, the hazard must come from the functional performance of the manufacturer's product itself.⁴⁰ In the case of post-sale additions of asbestos-containing replacement parts, however, the hazard comes from the added, asbestos-containing component.⁴¹

Plaintiff might argue that the replacement of an asbestos gasket, packing or brake lining with another asbestos gasket, packing or brake lining is merely a continuation of the hazard that existed in the original product.⁴² There are two bases for strict liability: either as a manufacturer that created a defective product or as a seller of a defective product that passed the defective product through the stream of commerce. The defendant that created the defect retains responsibility for injuries arising from the defective design. However, courts adopting the *Simonetta* reasoning have focused on the fact that the equipment manufacturer that uses an asbestos gasket, packing, or brake lining did not create the defect. The manufacturer of the gasket, packing, or brake lining did. The equipment manufacturer is strictly liable for the asbestos in the original product because it passed that defective gasket, packing, or brake lining into the stream of commerce. The courts that refuse to extend such continuing duty or liability for asbestos contained in replacement parts have found that such duty is better placed on the replacement parts maker that actually manufactured the injury-producing product, controlled it, was in a position to warn at the time the product was sold, and actually profited from the sale. Under this stream of commerce analysis, the

equipment manufacturer that incorporated an asbestos-containing gasket or packing or automobile manufacturer that incorporated brake linings is strictly liable only for those asbestos-containing products that it put into the stream of commerce.

To impose upon a manufacturer the costs of designing out or warning against risks allegedly existing in a product that it did not design or sell would be manifestly unfair.⁴³ A manufacturer that did not make the dangerous part is not in a position to evaluate its potential dangers and is not able to incorporate the costs of designing out or insuring against such dangers into the costs of production. If liability were imposed, such manufacturer would be required to perform testing and to provide warnings for many parts and materials manufactured by unknown manufacturers using unknown materials.⁴⁴

Post-Sale Installation Of Asbestos Insulation

In *Taylor*, the court addressed the component parts doctrine as it related to post-sale installation of asbestos insulation on the equipment. Viewing the manufactured piece of equipment as a component of the larger finished product, the court held that a component manufacturer is not liable for injuries caused by the finished product unless the component itself, i.e. the pump or boiler, was defective when it left the manufacturer's control.⁴⁵ Otherwise, the component manufacturer would be required to follow its product to its end user, do extensive studies and hire an expert on the hazards of all its clients' finished products, and attempt to influence all such clients' post-purchase decision-making. Such burden must rest with the finished-product manufacturer, which is in a better position to evaluate the hazards of its own finished product.⁴⁶

Imposition Of Duty

In *Taylor*, the court attempted to use an eight-factor test to determine whether defendants owed plaintiffs a duty: (1) the foreseeability of harm; (2) the degree of certainty that the plaintiff suffered an injury; (3) the closeness of the connection between the defendant's conduct and the injury; (4) the moral blameworthiness of the conduct; (5) the societal interest in the policy of preventing future harm; (6) the burden imposed on the defendant by the duty; (7) the availability of liability insurance; and (8) the social utility of defendant's conduct.⁴⁷

Defendants argue that they easily defeat these criteria. First, they could not have foreseen their products would be a cause-in-fact any harm or injury⁴⁸ because the product created such a low dose of asbestos exposures that it was not even a cause for concern to the scientific community at the time.⁴⁹ Second, they cannot be called to have foreseen that their product would be deemed a legal cause when it was a product added by someone else that was the likely cause of any resulting harm or injury.⁵⁰ Further, the defendant's allegedly negligent conduct in using an asbestos gasket in an original product later replaced by the independent actions of others is too remote from the plaintiff's alleged exposure or injury, eliminating the conduct as a proximate cause.⁵¹ In addition, given the absence of actual knowledge when miniscule exposures created by these products are judged against exposures permitted by law at the time, the defendant's conduct is not blameworthy.⁵² Further, the societal interest in preventing the harm is effectuated by placing the burden on the sophisticated purchaser/owner of the industrial equipment who purchased and installed the replacement parts and is legally responsible for the safety of its own operations for the protection of its own employees, and on the manufacturers of the asbestos-containing replacement parts. Both are in a far superior position to meet the policy concern of preventing future harm. Even further, the equipment manufacturer defendant cannot prevent the harm because it played no role in creating or marketing the product that actually caused the harm.⁵³ Imposing the burden on the equipment manufacturer would burst all prior legal limits on liability by exposing it to liability for products it did not manufacture.⁵⁴

With regard to the issue of insurance, it is true that an equipment manufacturer can obtain liability insurance at levels sufficient to cover potential defects in its own products. However, the equipment manufacturer should be driven to bankruptcy because it has exhausted its insurance protection because it has been held the *de facto* insurer of another manufacturer's products.⁵⁵

Defendants advance a final, compelling policy argument. These remaining targeted defendants constitute largely what remains of industrial equipment manufacturers located in the United States. These companies are already at a competitive disadvantage with foreign manufacturers of similar goods. Imposing expanded

liability merely imposes another cost — one that has driven those more directly involved in the manufacture of asbestos products to bankruptcy and others to manufacturing plants in foreign countries. Those companies that flee for bankruptcy protection from the cost and risks of defending asbestos-related injury claims in common law courts do so with the concomitant loss of jobs, pensions, and 401(k) plans for their employees.⁵⁶ Plaintiffs respond that the fear is unfounded, that such stretched liability is limited to components required in the products.⁵⁷ Plaintiffs' arguments provide little comfort or assurance in light of their attempts to ever expand liability to reach manufacturers so peripherally connected to asbestos use.

Causation

Some courts have held that the question of liability for replacement parts or post-sale insulation is not resolved based on duty, but on causation.⁵⁸ Under either analysis, the courts reason that there is insufficient nexus between the manufacturer's own product liability and the injury to hold the manufacturer culpable.

Current State Of The Law

California

In *Taylor v. Elliot Turbomachinery*,⁵⁹ the California Appellate Court followed the reasoning of the Washington Supreme court in *Simonetta*⁶⁰ and *Braaten*⁶¹. Three California appellate courts quickly followed: *Merrill v. Leslie Controls, Inc.*,⁶² *Walton v. William Powell Co.*,⁶³ and *Hall v. Warren Pumps LLC*.⁶⁴ However, a fourth court in *O'Neil v. Crane Co.*⁶⁵ disregarded *Taylor* and found that the defendant had a duty to warn as to asbestos in replacement parts. Currently, *O'Neill* is without precedential value, because the California Supreme Court vacated it in granting petitions for review in that case with *Merrill*, *Walton* and *Hall*. The California Supreme Court's decision in that consolidated review should resolve the issue in California and is likely to have considerable influence on courts in other states that lack higher court guidance.

Colorado

No Colorado court has directly addressed the issue of the post-sale installation of replacement parts or asbestos insulation. The Tenth Circuit held that under Colorado law if the product was not defective under standards existing at the time of manufacture, then the manufacturer does not have a post-sale duty to warn.⁶⁶

Applying this standard, the court held that a manufacturer that used asbestos in production, as was the standard of the time, had no duty to warn the plaintiff despite the fact that it later learned that the asbestos in the product was dangerous.⁶⁷

Connecticut

The only relevant case in Connecticut is a trial court decision holding that a defendant can be held liable for exterior insulation manufactured by a third party if the defendant “knew or should have known that external asbestos insulation would have to be fitted to its [products] when it sold said [products].”⁶⁸

Delaware

The Delaware trial court has taken a middle ground, leaving open the possibility that defendants may have a duty to warn based on the proper facts, stating that “[t]he manufacturer’s duty to warn is dependent on whether it had knowledge of the hazards associated with its product. The duty to warn does not require that a manufacturer study and analyze the products of others and warn users of the risks associated with those products.”⁶⁹

Georgia

Georgia courts have not addressed this issue in the context of an asbestos case directly, but their precedent in general products liability strongly supports the defense position of non-liability for parts made by another that it did not sell.⁷⁰

Illinois

Illinois has a long line of non-asbestos product liability cases in which the courts have consistently refused to place a duty on the manufacturer of a product that became defective after it left the defendant’s control. A manufacturer of one product has no duty to anticipate how its non-defective component might potentially become dangerous when integrated into an assembly of components and sub-assemblies designed, assembled, and installed by another.⁷¹ This line of cases predictably would prevent a holding that a manufacturer is liable for the post-sale addition of asbestos insulation. Illinois law specifically related to a manufacturer’s duty with regard to asbestos-containing replacement parts supplied by another is limited to one federal district court decision. In that case, the court held that an aircraft manufacturer had no duty with respect to injuries caused by asbestos brakes that were

replacements for the asbestos brakes in the originally equipped airplane.⁷²

Maine

In a very recent decision, a Maine trial court adopted the component parts doctrine in asbestos litigation when it granted summary judgment for a defendant boiler manufacturer. The court adopted the rationale articulated by the Washington Supreme Court in *Braaten and Simonetta*:

To date, Maine case law has not imposed upon a manufacturer a duty to warn about the dangerous propensities of other manufacturer’s products. Moreover, the Court is not aware that the Law Court has deviated from the majority rule that ‘a manufacturer’s duty to warn is restricted to warnings based on the characteristics of the manufacturer’s own products.’⁷³

Maryland

Under state law, manufacturers are not responsible for replacement parts, including brakes.⁷⁴

Massachusetts

The case law in Massachusetts provides the defendant ample protection against claimed liability for exposure to insulation or other asbestos-containing products added to the product after the sale of the basic piece of machinery. In *Mitchell v. Sky Climber, Inc.*,⁷⁵ the Supreme Judicial Court confirmed that Massachusetts does not impose a duty to warn on a supplier of a component part if that component part contains no latent defect.

We have never held a manufacturer liable . . . for failure to warn of risks created solely in the use or misuse of the product of another manufacturer. . . . The prevailing view is that *a supplier of a component part containing no latent defect has no duty to warn the subsequent assembler or its customers of any danger that may arise after the components are assembled.*⁷⁶

Since *Mitchell*, Massachusetts state and federal courts consistently have granted summary judgment for defendants in negligence and breach of warranty failure-to-warn cases based on the component parts doctrine.,^{77,78}

The Massachusetts trial courts have recently adopted the reasoning of the Washington Supreme Court related to the replacement parts doctrine, granting summary judgment to manufacturers of products on which asbestos-containing replacement parts were installed post-sale⁷⁹ and instructing the jury that as to post-sale insulation it was the plaintiff's burden to prove that the post-sale insulation was "recommended and required" by the machinery-manufacturing defendant.⁸⁰

Michigan

The threshold requirement of any Michigan asbestos-personal injury lawsuit is that the plaintiff must demonstrate that he was exposed to an asbestos-containing product for which the defendant is responsible. On the issue of a defendant's liability for replacement parts manufactured and supplied by others based upon foreseeability of use, the court stated in *Spencer v. Ford Motor Co.* that, although "... a vehicle manufacturer may be held liable for damages caused by defective component parts supplied by another entity, this duty has not yet been extended to component parts added to a vehicle subsequent to distribution. Assuming the existence of a defect [under either a negligence or breach of implied warranty theory], plaintiff must 'trace that defect into the hands' of the defendant. '[The] threshold requirement of any products liability action is identification of the injury-causing product and its manufacturer.' Failure of a component not supplied by the manufacturer does not give rise to liability on the manufacturer's part."⁸¹

Minnesota

In *McGuire v. Honeywell*, the trial court granted summary judgment to a school bus manufacturer, finding that the plaintiff could not have been exposed to the original brakes on the bus and that the subsequent installation and repair of brake materials made or supplied by others did not render the bus defective:

Plaintiff asserts that Blue Bird's 'All-American' bus, designed to require brakes which at the time necessarily contained asbestos and which would have to be repaired and replaced, was unreasonably dangerous. For a defective design claim to be successful, however, a

plaintiff must show that 'the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design.' Restatement (Third) of Torts § 2(b). By the plaintiff's own theory there was no reasonable alternative design [because all brakes at that time contained asbestos], and this claim cannot withstand summary judgment.⁸²

The ruling is consistent with general products liability law in Minnesota and portends well for manufacturers. Minnesota appellate courts have not yet had occasion to address the manufacturer's duty to warn as to the hazards of asbestos-containing replacement parts.

New Jersey

At least one lower court held that an equipment manufacturer is not liable for replacement parts supplied by others.⁸³ In fact, as noted above, in one of the earliest asbestos-related decisions in the country, the court focused on the placement of liability only on the manufacturer that created the risk and was in the best position to design out and the seller who profited from the sale and could spread the risk.⁸⁴

New York

In *Rastelli v. Goodyear Tire & Rubber*,⁸⁵ Plaintiff brought a wrongful death suit after her husband was killed while inflating a truck tire, made by Goodyear, when the multi-piece tire rim, not made by Goodyear, exploded. Goodyear knew that its tires were compatible for use on some, but not all, multi-piece rim assemblies and knew that such rim assemblies had a propensity to explode. Goodyear, however, had neither manufactured nor sold the tire rims at issue or tire rims similar to those at issue.⁸⁶ Goodyear manufactured a sound product. It owed no duty to warn regarding the hazards of a multi-piece rim manufactured by another company despite the fact that it was foreseeable and that, in fact, Goodyear had actual knowledge that its product could be used in conjunction with rim assemblies.⁸⁷

Despite this clear statement of New York law by its highest court, an appellate division of the court published a summary decision several years later in *Berkowitz v. A.C. & S.*⁸⁸ without any reference to *Rastelli*, denying a pump manufacturer's request for

summary judgment against plaintiff's complaint that it had a duty to warn against the use of asbestos insulation by the end user after the pump manufacturer had delivered insulation-free pumps, finding:

Nor does it necessarily appear that Worthington [defendant] had no duty to warn concerning the dangers of asbestos that it neither manufactured nor installed on its pumps. While it may be technically true that its pumps could run without insulation . . . it is at least questionable whether pumps transporting steam and hot liquids on board a ship could be operated safely without insulation, which Worthington *knew would be made out of asbestos*.⁸⁹

In denying defendant's dismissal, the *Berkowitz* court simply evades its own responsibility to make a decision. The *Rastelli* court stated that "[f]oreseeability, alone, does not define duty — it merely determines the scope of the duty once it is determined to exist."⁹⁰ Despite that admonition, *Berkowitz* refuses to perform its judicial function, stating, "Nor does it necessarily appear that [defendant] had no duty." As to whether a defendant has a post-sale responsibility to investigate to determine all post-sale uses of its non-defective pump, the *Berkowitz* court observes: "[I]t is at least questionable whether pumps . . . could operate safely without insulation. . . ." The court knew that, if insulation was used, the defendant knew it would contain asbestos, only because U.S. Navy regulations and specifications required that only asbestos-containing insulation be used in such war ships. *Berkowitz* by its non-decision not only contradicts *Rastelli*, but also employs faulty analysis, using foreseeability to create a duty where none before existed. More recently, the Court of Appeals reiterated that foreseeability alone does not define duty even in the context of an asbestos case. *Holdampf v. Port Authority of New York and New Jersey*,⁹¹ can be read as tacitly undermining any value in *Berkowitz*.

Nonetheless, several New York state trial courts have relied on the suggestion in *Berkowitz* that the manufacturer may have a duty to warn as to replacement parts if its original parts were asbestos-containing.⁹² Those courts have hinged their decisions on the factual issue of whether the manufacturer required the use of asbestos.⁹³

Ohio

In *Lindstrom v. A-C Product Liability Trust*, the Sixth Circuit Court of Appeals held that a defendant cannot be held liable for another manufacturer's asbestos-containing products merely because the other manufacturer's products were attached to the defendant's product.⁹⁴ Based on the plaintiff's testimony that he worked on pumps manufactured by the defendant and used asbestos-containing replacement gaskets that were made by some other manufacturer, the Court held that the pump manufacturer "cannot be held responsible for the asbestos contained in another product."⁹⁵

Pennsylvania

Pennsylvania courts have held that asbestos must come from the product a defendant actually manufactures.⁹⁶ In addition, a defendant is not liable for the replacement parts it does not manufacture.⁹⁷ On a related note, a defendant has no duty to warn of a product made dangerous by the later design and arrangement of another.⁹⁸ However, at least one federal district court has declined to follow this trend and found that a defendant has a duty to warn against the hazards of insulation used with its products.⁹⁹

Rhode Island

A trial court in Rhode Island has ruled that a defendant can be held liable for a third party's asbestos-containing gaskets and/or packing if the defendant knew or should have known that asbestos-containing replacement products would be used in its product.¹⁰⁰

South Carolina

The Fourth Circuit Court of Appeals has held that, under South Carolina law, a manufacturer is not liable for the replacement parts supplied by another manufacturer.¹⁰¹

Texas

No Texas court has addressed the issue of liability of a non-manufacturer for replacement parts or post-sale addition of asbestos in any asbestos case. The Texas courts have, however, consistently refused to extend a manufacturer's liability in non-asbestos cases to products the defendant-manufacturer did not make or sell.¹⁰²

Washington

The two Washington cases, *Simonetta* and *Braaten*,¹⁰³ have been discussed extensively above as the seminal

asbestos cases against liability for aftermarket products and post-sale insulation that paved the way for the later asbestos-related cases in California and elsewhere.

West Virginia

No appellate cases in West Virginia have addressed the issue of post-sale installation of asbestos. Therefore, the only guidance available is in general product liability law. The West Virginia Supreme Court has not recognized post-sale duty to warn strict liability actions. It has stated that a product's safety "is to be tested by what the reasonably prudent manufacturer would accomplish in regard to the safety of the product, having in mind the general state of the art manufacturing process, including design, labels and warnings, as it relates to economic costs, at the time the product was made."¹⁰⁴

The court has held that the strict liability theory regarding a manufacturer's duty to warn "requires the defect be present when the product is manufactured."¹⁰⁵ The *Johnson* court stated that a court properly instructs the jury under a strict liability theory if the court instructs that the duty to warn considers whether the manufacturer had reason to know that a warning was necessary when the product was made.¹⁰⁶

The rationale in the decisions seems to lean toward disallowing liability, especially absent evidence of knowledge of a defect when the product is manufactured. However, it is likely that the trial court would deny summary judgment concluding that a jury question exists as to the knowledge of the defendant. The Supreme Court has explicitly declined to decide whether the duty exists under a negligence theory of liability.¹⁰⁷

Wyoming

Material or substantial alterations of a product after sale constitute a defense to negligence, warranty, and strict liability claims.¹⁰⁸ As such, Wyoming courts would likely favor the defense.

Conclusion

The majority of courts that have engaged in in-depth analyses of the issues seem to favor non-liability for the post-sale installation of asbestos-containing insulation or asbestos-containing replacement parts.¹⁰⁹ All eyes are on California. If the California Supreme Court decides in favor of the defendants in all of the four consolidated cases pending before it, that decision

would be likely to influence courts in other states to move in that same direction.

Endnotes

1. ©2010 James K. Toohey & Rebecca L. Matthews, JOHNSON & BELL, LTD., Chicago, IL
2. Paul Brodeur, *The Asbestos Industry on Trial*, THE NEW YORKER, June 10, 1985, June 17, 1985, June 24, 1985, and July 1, 1985.
3. *Id.*
4. *Id.*; see also *The Third Wave of Asbestos Disease: Exposure to Asbestos in Place*, Landrigan & Kazemi, editors, New York Academy of Sciences, 1991.
5. *Id.*
6. *Id.*
7. *Id.*
8. See, e.g., *In Re Asbestos Cases*, 225 Ill. App. 3d 292 (Ill. App. Ct. 1st Dist. 1991); *In re Asbestos Prod. Liab. Litig.* (No. VI), MDL 875, Administrative Order No. 3 (E.D. Pa.) (Sept. 8, 1992) (Weiner, J) available at <http://www.paed.uscourts.gov/mdl875d.asp>.
9. For a list of companies that have pursued bankruptcy protection through June 25, 2010, see *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports of Largest Trusts*, Dixon, McGovern, Coombe, RAND CORPORATION, 2010 (on file with author).
10. Many, but not all, of these gasket, packing, and friction manufacturers are among those that have filed for Chapter 11 bankruptcy reorganization and established or are in the process of establishing trusts to pay claims.
11. *Rastelli v. Goodyear Tire Co.*, 591 N.E.2d 222 (N.Y. 1992); *Rotzoll v. Overhead Door Corp.*, 681 N.E.2d 156 (Ill. App. Ct. 4th Dist. 1997), *Ruegger v. International Harvester Co.*, 576 N.E.2d 288 (Ill. App. Ct. 1st Dist. 1991); *Woods v. Graham Engineering*

- Corp.*, 539 N.E.2d 316 (Ill. App. Ct. 2d Dist. 1989).
12. See, e.g., *Fortier v. A.O. Smith Corp.*, 2009 Conn. Super. LEXIS 262 (Conn. Super. Ct. (trial court) January 13, 2009); *Lindquist v. Buffalo Pumps, Inc.*, C.A. No. PC 06-2416 (R.I. Super. 2006)(on file with author).
 13. *Berkowitz v. A.C. and S., Inc.*, 733 N.Y.S.2d 410 (N.Y. App. Div. 2001). This decision is a particularly troubling one, because in holding that the pump manufacturer is responsible to warn the U.S. Navy not to use asbestos insulation on its pump after the Navy had accepted delivery of the asbestos-free pumps, the court ignored clear contrary law from the State's highest court, *Rastelli v. Goodyear Tire Co.*, 591 N.E.2d 222 (N.Y. 1992), in which the Court of Appeals held that the manufacturer owed no duty to warn about the use of products it did not make even when such use was foreseeable.
 14. *Niemann v. McDonnell Douglas Corp.*, (aircraft manufacturer not liable for asbestos-containing replacement brakes that it did not sell) 721 F. Supp. 1019 (S.D. Ill. 1989); *Eckenrod v. GAF Corp.*, 544 A.2d 50 (Pa. Super. Ct. 1988).
 15. *Simonetta v. Viad Corp.*, 197 P.3d 127, 134 (Wash. 2008); *Taylor v. Elliot Turbomachinery Co., Inc.*, 171 Cal. App. 4th 564, 575 (Cal. Ct. App. 2009).
 16. *Simonetta*, 197 P.3d at 134; *Taylor*, 171 Cal. App. 4th at 577.
 17. *Simonetta*, 197 P.3d at 134 (citing Restatement (Second) of Torts § 402A (1965)); *Merrill v. Leslie Controls, Inc.*, 177 Cal. App 4th 1348, 1359 (Cal. Ct. App. 2009).
 18. *Braaten v. Saberhagen Holdings, et al.*, 198 P.3d 493, 498 (Wash. 2008); *Walton v. William Powell Co.*, 183 Cal. App. 4th 1470, 1477 (Cal. Ct. App. 2010); *Taylor*, 171 Cal. App. 4th at 579-80.
 19. *Simonetta*, 197 P.3d at 134; *Braaten*, 198 P.3d at 497; *Taylor*, 171 Cal. App. 4th at 577-78.
 20. *Simonetta*, 197 P.3d at 136; *Chicano v. General Elec. Co., et al.*, 2004 U.S. Dist. LEXIS 20330, at *9 (E.D. Pa. 2004).
 21. *Taylor*, 171 Cal. App. 4th at 576, 580.
 22. *Braaten*, 198 P.3d at 498; *Walton*, 183 Cal. App. 4th at 1477; *Taylor*, 171 Cal. App. 4th at 579-80.
 23. *Walton*, 183 Cal. App. 4th at 1477; *Taylor*, 171 Cal. App. 4th at 579-80.
 24. *Greenman v. Yuba Power Products, Inc.*, 59 Cal. 2d 57, 63 (1963).
 25. *Taylor v. Elliot Turbomachinery*, 171 Cal. App. 4th at 577-78.
 26. *Simonetta v. Viad Corp.*, 197 P.3d 127, 134 (Wash. 2008).
 27. *Simonetta*, 197 P.3d at 134; *Azzarello v. Black Bros. Co., Inc.*, 480 Pa. 547, 391 A.2d 1020 (1978); Restatement (Torts) Second, § 402A, comment c.
 28. *O'Neil v. Crane Co.*, 177 Cal. App. 4th 1019, 1032 (Cal. Ct. App. 2009).
 29. *Simonetta*, 197 P.3d 127, 142 (Stephens, J., dissenting).
 30. *Simonetta*, 197 P.3d at 142 (Stephens, J., dissenting).
 31. *Braaten v. Saberhagen Holdings*, 198 P.3d 493, 498 (Wash. 2008).
 32. *Simonetta v. Viad Corp.*, 197 P.3d 127, 132 (Wash. 2008); *Braaten*, 198 P.3d at 501.
 33. *Simonett*, 197 P.3d at 131 (citing Restatement (Second) of Torts § 388 (1965)); *Braaten*, 198 P.3d at 500-01.
 34. *Simonetta*, 197 P.3d 127; *Braaten*, 198 P.3d 493.
 35. *Taylor v. Elliot Turbo Machinery Co., Inc.*, 171 Cal. App. 4th 564 (Cal. App. 2009); *Walton v. William Powell Co.*, 183 Cal. App. 4th 1470 (Cal. App. 2010); *Merrill v. Leslie Controls, Inc.*, 177 Cal. App. 4th 1348 (Cal. App. 2009); *Hall v. Warren Pumps LLC*, 2010 Cal. App. unpub. LEXIS 1088 (Cal. App. 2010).

36. *O'Neil v. Crane Co.*, 177 Cal. App. 4th (Cal. App. 2009).
37. *Hall v. Warren Pumps LLC; Walton v. William Powell Co.; O'Neil v. Crane Co.*, review granted, unpublished, 2009 Cal. LEXIS 13491 (Cal. 2009).
38. *Simonetta v. Viad Corp.*, 197 P. 2d at 134.
39. *Taylor*, 171 Cal. App. 4th at 575.
40. *Taylor*, 171 Cal. App. 4th at 576.
41. *Id.*
42. *See Sage v. Fairchild-Swearingen Corp.*, 70 N.Y.2d 579 (1987), relating to design, not warnings.
43. *Simonetta v. Viad Corp.*, 197 P.3d at 134.
44. *Baughman v. General Motors Corp.*, 780 F.2d 1131, 1133 (4th Cir. 1986).
45. *Taylor v. Elliot Turbomachinery*, 171 Cal. App. 4th at 584.
46. *Id.*
47. *Id.* at 593.
48. *Id.*
49. *Id.* at 594.
50. *Id.*
51. *Id.* at 594-95.
52. *Id.* at 595.
53. *Id.*
54. *Id.* at 595-96.
55. *Id.* at 596.
56. *Economic Study Reports Asbestos Lawsuits May Cost Economy \$275 Billion*, 17-21 Mealey's Litig. Rep. Asb. 9 (December 6, 2002).
57. *Simonetta*, 197 P.3d at 141 (Stephens, J., dissenting).
58. *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488, 496 (6th Cir. 2005) (plaintiff could not establish a causal link between the defendant manufacturer's product and the plaintiff's injury).
59. *Taylor v. Elliot Turbomachinery*, 171 Cal. App. 4th 564 (Cal. App. 2009).
60. *Simonetta v. Viad Corp.*, 197 P.3d 127(Wash. 2008)
61. *Braaten v. Saberhagen Holdings*, 198 P.3d 493 (Wash. 2008)
62. *Merrill v. Leslie Controls, Inc.*, 177 Cal. App. 4th 1348 (Cal. App. 2009)
63. *Walton v. William Powell Co.*, 183 Cal. App. 4th 1470, 1477 (Cal. Ct. App. 2010)(not liable for replacement gaskets and packing).
64. *Hall v. Warren Pumps LLC*, 2010 Cal. App. unpub. LEXIS 1088 (Cal. App. 2010)(not liable for after-sale components or insulation).
65. *O'Neil v. Crane Co.*, 177 Cal. App. 4th (Cal. App. 2009)(pump and valve manufacturers held to have a duty to warn with respect to replacement packing and insulation).
66. *Perlmutter v. U.S. Gypsum Co.*, 4 F.3d 864, 869 (10th Cir. 1993).
67. *Id.*
68. *Fortier v. A.O. Smith Corp.*, 2009 Conn. Super. LEXIS 262 (Conn. Super. Ct. (trial court) January 13, 2009).
69. *Bernhardt v. Ford Motor Co.*, No.06C-06-307ASB, Johnston presiding (Del. Super. Ct. July 30, 2010)(opinion on file with author).
70. *Hall v. Scott USA, Ltd.*, 400 S.E.2d 700, 703-04 (Ga. Ct. App. 1990)(manufacturer not liable because "there is no evidence that the lens, when sold by appellees, was defective; that the lens was manufactured to be a component part of Roll-Off's; that appellees had a role in the design, fabrication, manufacture and placement of the canisters on the lenses or that appellant's injuries were

- proximately caused by the original design of the lens.”); *Talley v. City Tank Corp.*, 279 S.E.2d 264 (1981)(“manufacturer has the absolute right to have his strict liability for injuries adjudged on the basis of the design of its own marketed product and not that of someone else.”)
71. *Rotzoll v. Overhead Door Corp.*, 681 N.E.2d 156, 159 (Ill. App. Ct. 1st Dist. 1997)(citing *Sparachino v. Andover Controls Corp.*, 592 N.E.2d 431, 435 (Ill. App. Ct. 1st Dist. 1992), and *Depre v. Power Climber Inc.*, 635 N.E.2d 542, 545 (Ill. App. Ct. 1st Dist. 1992)); see also *Preze v. Gordon Chemical Inc.*, 782 N.E.2d 710 (Ill. App. Ct. 1st Dist. 2002); *Davis v. Pak-Mor Manufacturing Co.*, 672 N.E.2d 771 (Ill. App. Ct. 1st Dist. 1996)(manufacturer of truck cab and chassis had no duty to anticipate chassis could become unreasonably dangerous after it left manufacturer’s control. The truck was put into use as a garbage truck, and it was not the chassis manufacturer who decided to use it as a garbage truck); *Ruegger v. International Harvester Co.*, 576 N.E.2d 288 (Ill. App. Ct. 1st Dist. 1991)(cab chassis manufacturer not liable to plaintiff truck driver because final assembler chose the types of optional equipment to be utilized with the cab chassis and assembled that optional equipment into finished truck during the time the dangerous condition, if any, arose); *Woods v. Graham Engineering Corp.*, 539 N.E.2d 316 (Ill. App. Ct. 2d Dist. 1989)(manufacturer of component machine wheel not liable to operator of plastic injection molding machine where operator’s employer designed and assembled the completed machine, and dangerous condition was created during that final assembly); *Augenstine v. Dico Co., Inc.*, 481 N.E.2d 1225 (Ill. App. Ct. 1st Dist. 1985)(component manufactured by third party is added to a product that is itself not unreasonably dangerous and added component causes the injury, the original manufacturer is not liable); *Curry v. Louis Allis Co.*, 427 N.E.2d 254 (Ill. App. Ct. 1st Dist. 1981).
 72. *Niemann v. McDonnell Douglas Corp.*, 721 F. Supp. 1019 (S.D. Ill. 1989)(original manufacturer not responsible for replacement asbestos-containing brakes despite that original brakes had asbestos).
 73. *Rumery v. Garlock Sealing Techs.*, 2009 Me. Super. LEXIS 73, at *15-16 (Me. Super. Ct. (trial court) April 28, 2009)(citing to *Braaten v. Saberhagen Holdings, et al.*, 198 P.3d 493, 498 (Wash. 2008) and *Taylor v. Elliot Turbomachinery*, 171 Cal. App. 4th 564 (Cal. App. Ct. 2009)).
 74. *Ford Motor Co. v. Wood*, 703 A.2d 1315 (Md. Ct. Spec. App. 1998).
 75. *Mitchell v. Sky Climber, Inc.*, 487 N.E.2d 1374 (Mass. 1986).
 76. *Id.* at 1376 (emphasis added).
 77. See, e.g., *Murray v. Goodrich Eng’g. Corp.*, 566 N.E.2d 631 (Mass. App. Ct. 1991)(affirming summary judgment in negligent failure-to-warn case where defendant supplied and installed component oven for larger paper-manufacturing system); *Dusoe v. Union Carbide Corp.*, 2005 Mass. Super. LEXIS 75 (Mass. Super. Ct. (trial court) Jan. 20, 2005)(granting summary judgment in negligent and breach of warranty failure-to-warn case where defendant merely supplied component oxygen regulator, and plaintiff was injured when operating welding torch system he assembled); cf. *Mass. Ave. Laundries v. Cissell Mfg. Co.*, 1996 Mass. Super. LEXIS 613 (Mass. Super. Ct. (trial court) Apr. 10, 1996)(disallowing indemnity in negligent and breach of warranty failure-to-warn case where defendant merely supplied component thermostat for larger steam iron).
 78. *Cipollone v. Yale Indus. Prods., Inc.*, 202 F.3d 376, 379 (1st Cir. 2000)(affirming summary judgment where defendant merely supplied component dock lift for larger material-handling system); *Freitas v. Emhart Corp.*, 715 F. Supp. 1149, 1152-53 (D. Mass. 1989)(granting summary judgment where defendant merely supplied component parts for larger rubber mill).
 79. *Dombrowski v. Alfa Laval*, Middlesex Asbestos Docket CA 08-1938 (Mass. Super. Ct. July 1, 2010)(no duty to warn of asbestos-containing packing and gaskets installed as replacement parts on valves installed approximately twenty years before the plaintiff worked with them)(on file with author).
 80. *Balthazar v. A.W. Chesterton Co.*, Middlesex Asbestos Docket CA 06-3620 (Mass. Super. Ct. June 1,

- 2007)(jury verdict entered for defendants based on Plaintiffs' failure to prove that the defendant recommended and required the asbestos-containing parts)(on file with author).
81. *Spencer v. Ford Motor Co.*, 367 N.W.2d 393, 396 (Mich. Ct. App. 1985)(citations omitted).
 82. *McGuire v. Honeywell Int'l, Inc.*, No. 62-CV-09-10102 (Ramsey Cty. Ct., Minn., order and memorandum filed August 10, 2010)(on file with author).
 83. *Berglund v. Goulds*, No. MSX-L-3292-07, McCormick presiding (N.J. Super. Ct. Law Div., summary judgment decided June 25, 2010)(transcript on file with author).
 84. *Beshada v. Johns-Manville Products Corp.*, 447 A.2d 539 (N.J. 1982).
 85. *Rastelli v. Goodyear Tire Co.*, 591 N.E.2d 222 (N.Y. 1992).
 86. *Id.*
 87. *Id.*
 88. *Berkowitz, et al. v. A.C. and S., Inc.*, 733 N.Y.S.2d 410 (N.Y. App. Div. 2001).
 89. *Id.* (citations omitted)(emphasis added).
 90. *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055 (N.Y. 2001)(citations omitted).
 91. *Holdampf v. Port Authority of New York and New Jersey*, 840 N.E.2d 115 (N.Y. 2005).
 92. *Berkowitz*, 733 N.Y.S.2d 410 (“... defendants' own witness indicated that the government provided certain specifications involving insulation ...”).
 93. *Thaut v. A.O. Smith Water Prods.*, 2010 N.Y. Slip Op. 31891U, 2010 N.Y. Misc. LEXIS 3935 (N.Y. App. Div. July 14, 2010); *In Re Fifth Judicial District Asbestos Litigation: Douglas Pokorney*, Index No. 2006-3087 (N.Y. Sup. Ct. December 4, 2008)(on file with author); *Tuttle, et al. v. A.W. Chesterton Co., et al.*, Index No. 2006-5602 (N.Y. Sup. Ct. November 15, 2007)(on file with author).
 94. *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488 (6th Cir. 2005)(applying Ohio law).
 95. *Id.*
 96. *Eckenrod v. GAF Corp.*, 544 A.2d 50 (Pa. Super. Ct. 1988).
 97. *Schaffner v. Aesys Tech. LLC*, 2010 Pa. Super. LEXIS 3246 (Pa. Super Ct. 2010).
 98. *Wenrick v. Schloemann-Siemag Aktiengesellschaft*, 564 A.2d 1244 (Pa. 1989).
 99. *Chicano v. General Elec. Co., et al.*, 2004 U.S. Dist. LEXIS 20330, at *9 (E.D. Pa. 2004).
 100. *Lindquist v. Buffalo Pumps, Inc.*, C.A. No. PC 06-2416 (R.I. Super. 2006)(on file with author).
 101. *Baughman v. General Motors Corp.*, 780 F.2d 1131 (4th Cir. 1986)(applying South Carolina law)(no duty with respect to replacement parts).
 102. *See Firestone Steel Prods. Co. v. Barajas*, 927 S.W.2d 608, 615-16 (Tex. 1996) (even though Firestone designed the type of wheel that caused the injury, “[a] manufacturer does not have a duty to warn or instruct about another manufacturer’s products, though those products might be used in connection with the manufacturer’s own products.”); *Walton v. Harnischfeger*, 796 S.W.2d 225, 228 (Tex. App. 1990) (crane manufacturer “had no duty to warn or instruct users of its crane about rigging it did not manufacture, incorporate into its crane, or place into the stream of commerce”); *Johnson v. Jones-Blair Paint Co.*, 607 S.W.2d 305, 306 (Tex. Civ. App. 1980)(Jones-Blair not liable for injury resulting “from the use of a product supplied by a seller other than Jones-Blair”); *but see USX Corp. v. Salinas*, 818 S.W.2d 473, 488-89 (Tex. App. 1999)(a supplier may have a duty to warn of dangers resulting from the removal and replacement of a component part during maintenance or servicing of the product).
 103. *Simonetta v. Viad Corp.*, 197 P.3d 127 (Wash. 2008) (manufacturer not liable for insulation added by others); *Braaten v. Saberhagen Holdings*, 198 P.3d 493, 498 (Wash. 2008) (manufacturer not liable for replacement parts supplied by others).

- 104. *Morningstar v. Black and Decker Mfg. Co.*, 253 S.E.2d 666, 682-83 (W. Va. 1979).
- 105. *Johnson by Johnson v. General Motors Corp.*, 438 S.E.2d 28, 37 (W. Va. 1993).
- 106. *Id.* at 38.
- 107. *Id.* at 37, n.5.
- 108. *Ogle v. Caterpillar Tractor Co.*, 716 P.2d 334 (Wyo. 1986).
- 109. *Braaten v. Saberhagen Holdings*, 198 P.3d 493, 498 (Wash. 2008). ■

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