



OEM Manufacturer Has Liability for Replacement Parts Under A Failure To Warn Theory

The New Jersey Appellate Division, in *Whelan v. Armstrong International, Inc.*, (A – 3520 – 13T 4), a published decision on August 6, 2018, “refined” a manufacturer’s duty in the context of asbestos containing products, holding that an original equipment manufacturer (OEM) “may be held liable for the failure to warn of the dangers associated with the asbestos contained in their product — inclusive of component parts it did not manufacture or supply.” Further, “liability extends to the failure to warn of the dangers from cleaning, repairing, and replacing the asbestos-containing components as none of those activities substantially changed the product or mitigated the danger.” Accordingly, exposure to an asbestos replacement part, rather than an original asbestos part, does not eliminate the OEM defendant’s liability in New Jersey in asbestos matters.

The rationale for this decision was foreseeability. The Appellate Division held that it was foreseeable when a “defendant placed products into the marketplace, that asbestos containing component parts of the product would be replaced with similar asbestos containing the parts” . The court also took note that “replacing an original part with a substantially similar part is a foreseeable alteration” . The replacement of the asbestos/asbestos part therefore “did not essentially alter either the injury producing element or the defect.” The court’s rationalization was that imposition of a duty on the OEM for another manufacturer’s product “does not offend basic principles of fairness and public policy” because a warning given at the time of initial sale would have had little if any effect on the product’s utility. This decision will likely reduce the granting of summary judgment in asbestos cases in New Jersey. Plaintiff , at trial , will however have to prove the OEM product contained an asbestos containing component and that replacement of the OEM asbestos part with an asbestos replacement part was a foreseeable alteration.

The New Jersey Appellate Division in rendering this decision, which changes OEM manufacturer liability, at least in asbestos cases and possibly someday may be extended to other products liability matters in New Jersey, considered out-of-state law and “doctrinal trends” of other appellate courts and then noted that it was guided by “principles that are the bedrock of our jurisprudence” and “a natural progression from the decisions that come before.” The Appellate Division then went on to unequivocally state that “a defect that existed when the product left the manufacturer’s control is neither ameliorated or diminished when it arises from a component that has been replaced with a component that contains the identical injury producing element” and that this principle governs the definition of a product for purposes of determining a manufacturer’s liability for asbestos containing replacement parts. Therefore, the product – defect causation element in an asbestos products liability action now can be met against an OEM under a failure to warn theory when the replacement part is substantially similar to the original part and when the OEM product had no warning.