

[Products Liability Law Daily Wrap Up, TOP STORY—ASBESTOS—N.J. Super. App. Div.: Makers' duty to warn extends to asbestos-related dangers created by replacement parts, \(Aug. 7, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Miriam A. Friedman, J.D.

A manufacturer's product includes any replacement parts necessary to its function, and the duty to warn extends to any danger created by those replacement parts, a New Jersey appellate court held, finding that an individual diagnosed with malignant mesothelioma had presented sufficient evidence of his exposure to asbestos, either from original parts supplied by several named manufacturers or replacement parts required for the function of their products, to create issues of fact as to the "frequency, regularity, and proximity" of his exposure. Therefore, the court reversed the lower court's summary judgment orders with respect to all named manufacturers and remanded for trial (*Whelan v. Armstrong International Inc.*, August 6, 2018, Currier, H.).

Over the course of many years of employment, a plumber and auto mechanic was exposed to asbestos in various products, including boilers, valves, steam traps, and brake drums. Although he installed and worked with some original products, the worker primarily encountered asbestos in cleaning, repair, and replacement of components. He was diagnosed with asbestosis and, ultimately, with malignant mesothelioma. The worker sued a long list of manufacturers, several of which—Armstrong International Inc., Burnham LLC, Carrier Corp., Cleaver-Brooks Inc., Crown Boiler Co., Ford Motor Co., Johnson Controls Inc., NIBCO Inc., and Oakfabco Inc.—filed summary judgment motions. The trial judge found that these defendants were not liable for asbestos-containing replacement parts they did not manufacture or place into the stream of commerce and granted summary judgment to each of them.

Product-defect causation element. The court cited two prior decisions in which it had determined that: (1) a manufacturer could be held strictly liable for injuries caused by a component part it did not manufacture if the two products were designed to be used as a unit; and (2) a manufacturer had a duty to warn of the dangers from asbestos in replacement parts when its product required the use of asbestos component parts. Building upon the principle that "a manufacturer may be held liable for a failure to warn of the dangers of its product, even if the product has undergone substantial alteration, as long as the alteration did not affect the defect at issue," the court held that the "product" was "the complete manufactured item as delivered by the manufacturer to the consumer, not just the asbestos contained in one of the product's components." That is, in the case at bar, it was "the boiler, valve, steam trap, brake systems, and the component parts integral to their function" that constituted the "product." The court concluded that because "it was foreseeable, at the time defendants placed their products into the marketplace, that asbestos-containing component parts of the product would be replaced with similar asbestos-containing parts," such replacement "did not substantially alter either the injury-producing element or the defect." That is, liability extended to the failure to warn of dangers from cleaning, repairing, and replacing the asbestos-containing components because none of those activities substantially changed the product or mitigated the danger.

The court also discussed the fact that how a manufacturer's product is defined "appear[ed] to be determinant in other states' consideration of this issue as well," noting that although there was "no clear majority rule" as to a manufacturer's duty to warn for exposure to asbestos-containing replacement component parts required for the function of its product, recent trends were "skewed towards the imposition of liability" in such cases.

Frequency, regularity, and proximity test. The court concluded that the worker had presented sufficient evidence detailing his exposure to asbestos, either from original parts supplied by the defendants or replacement parts required for the function of the products to create issues of fact as to each manufacturer. With regard to

the boiler defendants, the court considered the worker's description of cleaning all of the involved boilers to allow for an inference of exposure to these products on a frequent and regular basis. Similarly, there was sufficient evidence to raise a jury question as to whether the worker met the "frequency, regularity, and proximity" test regarding the valve manufacturers. The worker's estimate that he cleaned 20 steam traps was also deemed by the court to be sufficient to withstand a grant of summary judgment. Finally, the court concluded that the worker had demonstrated an exposure to asbestos products manufactured by an auto maker that was "sufficient to raise a factual issue for the jury," noting that it was undisputed that the worker was exposed to asbestos during his work with cars and their brake systems, and finding that the trial court had erred in concluding that the plaintiff had not established the identity of the manufacturer of the lining on the vehicles on which he worked.

The case is No. [A-3520-13T4](#).

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Companies: Armstrong International, Inc.; Burnham LLC; Carrier Corp.; Cleaver-Brooks Inc.; Crown Boiler Co.; Ford Motor Co.; Johnson Controls Inc.; NIBCO Inc.; Oakfabco Inc.

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