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No injury liability from items not made, distributed or sold: Court

The Tennessee Supreme Court recently addressed whether a manufacturer has a duty to warn of the dangers associated with the post-sale integration of asbestos-containing materials manufactured and sold by others, an issue of first impression in Tennessee.

In *Coffman v. Armstrong Int'l, Inc., et al.*, No. E2017-01985-SC-R11-CV (Tenn. Jan. 4, 2021), the court held that no such duty to warn exists under the Tennessee Products Liability Act (TPLA).

After Donald Coffman developed mesothelioma from alleged workplace exposure to asbestos, Coffman and his wife, Carolyn, (“Appellees”) asserted claims under the TPLA against, among other parties, industrial equipment manufacturers (“Equipment Defendants”). While the products at issue did not contain asbestos when they left the Equipment Defendants’ control, Appellees claimed the materials necessary to repair and maintain the products manufactured by the Equipment Defendants contained asbestos. The materials necessary to repair and maintain the Equipment Defendants’ products were manufactured and sold by separate entities. Appellees asserted that the Equipment Defendants’ products were unreasonably dangerous, and the Equipment Defendants failed to

adequately warn users of potential asbestos exposure from the post-sale integration of asbestos-containing materials that were manufactured and sold by others.

The trial court granted summary judgment in favor of the Equipment Defendants with respect to failure-to-warn claims. The court of appeals disagreed and held that the Equipment Defendants owed a common law duty to warn about the post-sale integration of asbestos-containing products manufactured and sold by others, and therefore were subject to liability under the TPLA.

The Tennessee Supreme Court addressed the narrow question of whether the Equipment Defendants had a duty to warn of the dangers associated with the post-sale integration of asbestos-containing materials manufactured and sold by others. In answering this question, the court relied upon the TPLA.

First, the court noted that the TPLA specifically provides that a defendant is not liable under the TPLA unless the product is defective or unreasonably dangerous at the time it left the defendant’s control. This provision of the TPLA, along with relevant Tennessee case law, lead the court to conclude that Tennessee law places a duty to warn on a manufacturer or a seller about the



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condition of a product only if it was defective or unreasonably dangerous at the time the manufacturer transferred control of the product.

Appellees asserted that the Equipment Defendants’ products were in a defective condition at the time they left the Equipment Defendants’ control because they were designed to use asbestos-containing materials and provided no warnings as to the dangers of asbestos. In support, Appellees argued that the definition of “defective condition” under the TPLA includes “anticipatable handling.” The court rejected this argument, noting that this provision still links a defendant’s liability to their own product, not the product of another manufacturer.

Appellees second argument pointed to language of the TPLA that states “if a product is not unreasonably dangerous at the time it leaves the control of the manufacturer or seller but was made unreasonably dangerous by subsequent unforeseeable alteration, change, improper maintenance or abnormal use, the manufacturer or seller is not liable.” Based on this provision, Appellees asserted the contrapositive – that manufacturers are liable for foreseeable alterations, changes, improper maintenance, or abnormal use – and the Equipment Defendants both foresaw and intended that asbestos material be used to repair and maintain their products. The court rejected

this argument as well, noting that several provisions of the TPLA state that a manufacturer's duty to warn is limited to products actually made or sold by defendant. Thus, in this instance, the court found it to be dispositive that the asbestos-containing products at hand were neither made nor sold by the

Equipment Defendants.

The court also rejected the Court of Appeals' determination that the Equipment Defendants owed a duty of care based on the application of a balancing test developed in *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347 (Tenn. 2008). The *Satterfield* test led the Court of Appeals to deter-

mine that the degree of foreseeable harm outweighed the burden the Equipment Defendants would have suffered by warning about the potential risks of post-sale integration of asbestos products. The court rejected this finding, reiterating that the language of the TPLA controlled the instant matter – thus, the *Satterfield* test was

inapplicable.

As a result, the court held that, under the TPLA, manufacturers have no duty to warn with respect to products manufactured and sold by others. Therefore, Equipment Defendants could not be held liable for injuries resulting from products they did not make, distribute, or sell.