

Can You Really Be Liable For a Product You Didn't Make? In New Jersey, the Answer is Yes

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Product Liability Alert

11.17.20

New Jersey has recently expanded liability for product distributors and manufacturers to products that the distributor/manufacturer did not make or sell. This alert discusses this new law and steps that distributors and manufacturers may consider to reduce their potential liability.

In *Whelan v. Armstrong International, Inc.*, the New Jersey Supreme Court held that distributors and manufacturers can be strictly liable for injuries caused by replacement parts added after the point of sale which had not been manufactured or sold by any of the defendants in the case. In *Whelan*, the defendants' products had originally been sold with asbestos-containing parts. Mr. Whelan, the plaintiff, argued that asbestos-containing replacement parts were required to repair and maintain the products. The court found that because the products were designed with asbestos-containing parts, "[d]efendants had a duty to provide warnings given the *foreseeability* that third parties would be the source of asbestos-containing replacement components." (Emphasis added).

This reasoning, based on "foreseeability," should give pause to all product distributors and manufacturers—even those who do not make or sell products that contain asbestos. Certainly distributors and manufacturers of products with asbestos-containing parts must take heed that they may now be liable for replacement parts that they neither manufactured nor sold. This alone is a significant holding that expands potential liability.

However, distributors and manufacturers of non-asbestos-containing products should take note of how this reasoning may open the door for expanded liability. Manufacturers and distributors should consider how their products are used, repaired and maintained. If certain "foreseeable" uses, repairs or maintenance inject a third party's dangerous component into the product or the repair process, consideration should be given to a specific warning against that use, repair or maintenance. Consideration must be given for not only the intended users of products, but also for those who service products and potentially use dangerous or toxic chemicals in the process. Warnings should be carefully designed to meet accepted standards with respect to content, size, color and other factors.

White and Williams LLP has extensive experience litigating product liability cases, as well as counseling clients to avoid liability. Please contact Bob Devine (deviner@whiteandwilliams.com; 856.317.3647) or Jim Burger (burgerj@whiteandwilliams.com; 856.317.3656) to discuss issues of product warning or potential defects.

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