IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ERNEST L. BERNHARDT,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 06C-06-307 ASB
	)	
v.	)	
	)	
	)	
FORD MOTOR COMPANY,	)	
	)	
Defendant.	)	

Submitted: April 14, 2010
Decided: July 30, 2010

On Plaintiff Ernest L. Bernhardt's Motion for Reargument of Decision Granting Ford Motor Company's Motion for Summary Judgment

DENIED

MEMORANDUM OPINION

Jordan Ponzo, Esquire, Wilmington, Delaware, Jacobs & Crumplar, P.A., Attorney for Plaintiff Ernest L. Bernhardt

Christian J. Singewald, Esquire, Wilmington, Delaware, White and Williams LLP, Attorney for Defendant Ford Motor Company

JOHNSTON, J.

FACTUAL AND PROCEDURAL HISTORY

On March 30, 2010, this Court granted a motion for summary judgment in favor of defendant Ford Motor Company. Ford, at one time, manufactured vehicles with components containing asbestos. These components – brake linings, brake pads, and clutch facings – required regular replacement and were replaced with parts not manufactured by Ford.

Plaintiff Ernest L. Bernhardt regularly performed non-occupational automotive repairs with his father between 1947 and 1951. Bernhardt also replaced the brakes and clutch on a 1939 Mercury and may have conducted other repairs on a 1953 Ford Fairlane. Bernhardt brought suit claiming injury caused by asbestos exposure from these repairs.

Ford moved for summary judgment and argued, in part, that Bernhardt could not specify the vehicles he worked on with his father nor could he identify the brake or clutch products removed or installed on either the Mercury or Fairlane. As a result, and based on *In re Asbestos Litigation*[1] (*Tisdel*), Ford argued that Bernhardt could not establish a product nexus sufficient to overcome summary judgment.

[1] 2006 WL 3492370 (Del. Super.).

Bernhardt conceded that he could not identify whether the replaced brakes were original to the vehicles, but asserted liability based upon Ford's failure to warn consumers that replacement parts may contain asbestos. Bernhardt argued, based upon *Wilkerson v. American Honda Motor Co., Inc.*[2], that liability may exist where a defendant fails to warn consumers about the foreseeable harm of a component product installed or manufactured by another. Bernhardt argued that because all automobile brake linings at the time period in question contained asbestos, Ford knew or should have known that any brake replacement would result in asbestos exposure.

Ford countered that it was not liable for a failure to warn because Ford neither manufactured nor supplied after-market replacement parts. Ford argued that it had no control over how replacement parts were manufactured and did not authorize any such product. As a result, Ford argued that, unlike *Wilkerson*, the asbestos-containing parts in question were component parts of Ford's final product and were not manufactured by Ford. Ford argued that *Wikerson* was inapplicable to the current case because there can be no duty to warn where replacement parts are manufactured by third parties.

[2] 2008 WL 162522 (Del. Super.).

Ruling Granting Summary Judgment

The Court found that the record did not provide any evidence of asbestos exposure due to an original Ford part or replacement Ford part. As a result, the Court held that, as in *Tisdel*[3], Plaintiff failed to establish a product nexus with regard to Ford.

The Court also found that pursuant to *Wilkerson*[4], the 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. The Court found that the duty to warn is based upon the characteristics of the manufacturer's own product.

Because Ford did not manufacture asbestos-containing brakes or clutches, the Court did not hold Ford to an understanding of another manufacturer's asbestos-containing products. The Court found that foreseeability in this case was too attenuated, particularly when Bernhard failed to demonstrate a product nexus. The Court found that *Wilkerson's* use

[3] 2004 WL 3492370, at *7.
[4] 2008 WL 162522, at *2 ("Plaintiff has made a *prima facie* case, raising genuine issues of material fact: whether the probable use of the [defendant's] gasket involved the removal and replacement of an asbestos-containing gasket; whether [defendant] knew or should have known, based on the understanding of its own product, that the installation of [defendant's] gaskets placed plaintiff at risk of exposure to asbestos; and whether it was reasonably foreseeable that the use of [defendant's] gasket would lead to asbestos-related disease.").

of the term "its products," referred to products manufactured by a defendant, not products supplied by the defendant.

The Court granted summary judgment in favor of defendant Ford Motor Company.

In his Motion for Reargument, Bernhardt argues that an automobile manufacturer should be responsible for the dangers associated with the essential components and parts that comprise a vehicle. Bernhardt argues that Ford sold vehicles that required an asbestos product to properly function and should be responsible for a failure to warn of the injury associated with the removal and replacement of that product. Bernhardt argues that, because these brake components were an essential component of the vehicle, Ford should have foreseen the need for their removal and replacement and, as a result, should be held liable for its failure to warn.

In response, Ford argues that because Bernhardt asserted these arguments in opposition to the original motion for summary judgment, these issues cannot be grounds for a motion for reargument.

DISCUSSION

Standard of Review

On a motion for reargument, "the only issue is whether the court overlooked something that would have changed the outcome of the

underlying decision."[5] The Court will generally deny the motion unless a party demonstrates that the Court has overlooked a controlling precedent or principle of law, or unless the Court has misapprehended the law or facts in a manner that affects the outcome of the decision.[6] A motion for reargument is not intended to rehash the arguments that already have been decided by the Court.[7]

Failure to Warn

Bernhardt argues that Ford should be responsible for the dangers associated with the brakes, an essential component of Ford's product. Bernhard argues that brakes are essential to the safe operation of any vehicle. Although Ford did not manufacture brake linings, Ford knew or should have foreseen the need to replace these asbestos-containing components and the consequential risk of asbestos exposure because all brake linings at that time contained asbestos.

During oral argument, Bernhardt's attorney stated that "it's the plaintiff's position that Ford did have a duty to warn Mr. Bernhardt, and all other plaintiffs, based on foreseeable harm that might have been caused by the use of the product . . . . Ford knew that for all intents and purposes, all

[5] *McElroy v. Shell Petroleum, Inc.*, 618 A.2d 91, 91 (Del. 1992).
[6] *Cummings v. Jimmy's Grille, Inc.*, 2000 WL 1211167, at *2 (Del. Super.).
[7] *McElroy*, 618 A.2d at 91.

automobile brake linings, during the relevant time period contained asbestos . . . and that the removal and installation of the brake linings would expose plaintiff, Mr. Bernhardt, or anyone else, to asbestos."

The Court finds that Bernhardt's arguments in opposition of Ford's Motion for Summary Judgment and Bernhardt's arguments in favor of this Motion for Reargument are identical and have already been decided by this Court.

CONCLUSION

Plaintiff has failed to demonstrate that the Court overlooked a controlling precedent or legal principle, or misapprehended the law or facts in a manner that would affect the outcome of the decision.

THEREFORE, Plaintiff Ernest L. Bernhardt's Motion for Reargument of Decision Granting Ford Motor Company's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston