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

BARRY URIAN,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 06C-09-246 ASB
	)	
v.	)	
	)	
	)	
FORD MOTOR COMPANY, et al.,	)	
	)	
Defendants.	)	

Submitted: April 23, 2010
Decided: July 30, 2010

On Defendant Ford Motor Company's Motion for Reargument of Decision Denying Ford Motor Company's Motion for Summary Judgment

DENIED

MEMORANDUM OPINION

Thomas C. Crumplar, Esquire, Wilmington, Delaware, Jacobs & Crumplar, P.A., Attorney for Plaintiff Barry Urian

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

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

Plaintiff Barry Urian worked as a gas station attendant at the Crist Texaco Service Station in Pennsylvania from 1952 to 1962. From 1962 to 1963, he worked at the Ennis Service Station in Pennsylvania. Urian brought suit claiming injury as a result of asbestos exposure due to maintenance he performed on vehicles manufactured by defendant Ford Motor Company in the course of his employment at both service stations, and as a result of his non-occupational maintenance of a Ford Coupe. He also claimed that his injury was due to Ford's failure to warn consumers that removal and replacement of its vehicles' brakes may result in asbestos exposure.

Urian testified that at both the Crist and Ennis Services Stations, he assisted with brake repairs on a variety of vehicles, some of which included vehicles manufactured by Ford. In his testimony, Urian admitted that he did not know the maintenance history of any of these vehicles or if he handled any original manufactured products. Urian could not recall the brand names or manufacturers of the brake parts he removed from any of these vehicles, but he did testify that he installed brake products manufactured by companies other than Ford.

Regarding his non-occupational maintenance of the Ford Coupe, Urian testified that he did not know the maintenance history of the vehicle, whether he removed any original manufactured parts, or the brand names of the components he removed or installed.

Ford filed a motion for summary judgment arguing that it was not a manufacturer of any after-market brake products. Ford argued that Urian could not establish a product nexus that could demonstrate a causal relationship between his injuries and any of Ford's products. Ford also claimed that, because of the absence of a product nexus, it was under no obligation to warn consumers of the health risks associated with another manufacturer's products. The Court granted Ford's motion with regard to the lack of product nexus, but found a genuine issue of material fact regarding Ford's duty to warn.

To show a duty to warn under Pennsylvania law, Ford argued, a plaintiff must demonstrate that the manufacturer did not provide a warning, and that failure to warn was a proximate cause of the plaintiff's injuries. Ford argued that because there was no product nexus, there was no causation.

Urian argued that under *Chicano v. General Electric Co.*[1], a manufacturer is liable for a failure to warn where the manufacturer knows or should know that an another product, essential for the safe operation of manufacturer's product, contains asbestos. Ford countered that, in *Chicano*, the Court found the defendant liable because the defendant had knowledge that the component product contained asbestos, whereas Urian could not identify any replacement parts or demonstrate that Ford knew the replacement parts contained asbestos.

This Court found that, in contrast to Delaware law, *Chicano* demonstrated that a manufacturer could be held liable for a failure to warn consumers of the danger related to a component piece that is essential to the safe operation of the manufacturer's product. As a result, the Court denied Ford's motion with regards to Ford's duty to warn and found a genuine issue of material fact as to whether Ford knew of the dangers of asbestos, whether Ford knew that an asbestos product was necessary to operate its vehicle safely, and whether Ford knew that an asbestos product would have been used for the replacement or repair of its brake linings.

In its Motion for Reargument, Ford argues that Pennsylvania does not impose liability on manufacturers for products they neither supply nor

[1] 2004 WL 2250990 (E.D. Pa.).

manufacture. Ford argues that the Court erroneously applied a limited holding in *Chicano* to this case, and that Urian failed to establish that his asbestos exposure was more than *de minimus* – failing Pennsylvania's "regularity, frequency and proximity test." In response, Urian argues that the Court properly applied Pennsylvania law to the facts in this case.

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."[2] The Court generally will 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.[3] A motion for reargument is not intended to rehash the arguments that already have been decided by the Court.[4]

Misapprehension of Pennsylvania Law

Ford first argues that the Court misapplied the limited holding in *Chicano* to the facts of this case. The plaintiff in *Chicano*, a former sheet

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

metal mechanic, brought suit against a turbine manufacturer.[5] The plaintiff claimed injury from exposure to asbestos-containing turbine insulation.[6] The plaintiff argued that although the turbine manufacturer did not also manufacture or supply the insulation, the turbine manufacturer had a duty to warn users of the asbestos-containing thermal insulation because it knew that the insulation was required for the turbines' safe and proper use.[7] The District Court found that the manufacturer knew of both the necessity of the asbestos-containing insulation and the health risks associated with asbestos.[8] The District Court also found a genuine issue of material fact as to whether the plaintiff was exposed to asbestos from the insulation manufacturer's product or from the integrated turbine.[9]

Further, the *Chicano* court found a genuine issue of material fact as to whether the turbine manufacturer had a duty to warn users of health risks due to the thermal insulation.[10] The court stated that, although Pennsylvania law generally imposes a duty to warn only upon the supplier of a dangerous component, if a manufacturer specifically designs a product to function with asbestos-containing components, there is a genuine issue of material fact as to whether the manufacturer could have foreseen that asbestos-containing

[5] 2004 WL 2250990, at *1.
[6] *Id*.
[7] 2004 WL 2250990, at * 3.
[8] *Id*.
[9] *Id*.
[10] 2004 WL 2250990, at * 6.

components would be used in the safe and effective use of the final product.[11]

At the original oral argument, this Court found a genuine issue of material fact as to whether Ford knew of the dangers of asbestos, whether Ford knew that an asbestos product was necessary to operate its vehicle safely, and whether Ford knew that an asbestos-containing product would have to be used in the repair and replacement of its brake linings. The Court now finds that its original holding did not misapprehend Pennsylvania law.

De Minimus Exposure to Due to Ford's Product

Ford next argues that, under Pennsylvania law, a plaintiff must demonstrate that the hazardous condition of a product was a cause in fact of his or her injury. Specifically, Ford argues that Urian must provide first, that he was exposed to Ford asbestos-containing brake products and, second, that the exposure was sufficient to meet Pennsylvania's "regularity, frequency and proximity test."

The "regularity, frequency, and proximity test" states that "[w]hether a plaintiff [can] defeat a motion for summary judgment by showing circumstantial evidence depends upon the frequency of the use of the

[11] 2004 WL 2250990, at * 8.

product and the regularity of plaintiff's employment in proximity thereto."[12] During deposition, Urian testified that he trained and was employed at a number of different automobile repair facilities and, while there, he conducted brake work on Ford automobiles. He testified that he regularly worked in close proximity to asbestos-containing products which were removed from and installed upon a number of different manufacturers' vehicles, including Ford's.

As a result, the Court finds that it did not overlook a controlling precedent or principle of law, or misapprehend the law or facts in a manner that affected the outcome of the decision with regards to plaintiff's asbestos exposure while working on or near Ford manufactured vehicles.

CONCLUSION

Defendant 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.

[12] *Eckenrod v. GAF Corp.*, 544 A.2d 50, 52 (Pa. Super. 1988).

THEREFORE, Defendant Ford Motor Company's Motion for Reargument of Decision Denying Ford Motor Company's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

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