EFiled: Dec 05 2016 06:28PM EST
Filing ID 59910962
Case Number 389,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE: ASBESTOS LITIGATION DONNA F. WALLS, individually and as the Executrix of the Estate of JOHN W. WALLS, JR., deceased, and COLLIN WALLS, as surviving child, Appellants, Plaintiffs below, v. FORD MOTOR COMPANY, Appellee, Defendant below.	: : : : : : : : : : :	No. 389, 2016 Court Below: Superior Court of the State of Delaware in and for New Castle County C.A. No. 14C-01-157

APPELLANTS' REPLY BRIEF ON APPEAL FROM THE SUPERIOR COURT

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ARGUMENT

I. APPELLANTS HAVE NOT WAIVED THEIR RIGHT TO APPEAL.

A. The Acceptance of the Benefits Doctrine Does Not Apply. The claim that Plaintiffs waived their right to appeal is meritless. Smith v. Smith, 893 A.2d 934, 937 (Del. 2006) is not applicable. There the party appealed the same decision of the Family Court which she had relied upon to seek and receive child support payments from the parent whom she then claimed on appeal was not a parent. Plaintiffs here received no money, property or any benefit from the summary judgment decision as Smith and the parties in other "acceptance of the benefits" cases did.[1]

Plaintiffs are not appealing the Superior Court's jury instructions. They are appealing the grant of summary judgment prior to the start of trial. A decision on summary judgment that disposes of some but not all claims is not final. See Superior Court Rule 54(b). Therefore, Plaintiffs had to pursue their claims to finality before appealing this decision.

Once decided, the Superior Court's summary judgment opinions became the law of the case. This Court has previously stated that it takes "a dim view of a successor judge in a single case overruling a decision of his predecessor."[2] The

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[1] See Smith, 893 A.2d at 937 n.3 (citing cases).
[2] Frank G.W. v. Carol M.W., 457 A.2d 715, 718 (Del. 1983).

doctrine of the law of the case "normally requires that matters previously ruled upon by the same court be put to rest."[3]

> The "law of the case" is established when a specific legal principle is applied to an issue presented by facts that remain constant during the subsequent course of the same litigation. "The 'law of the case' doctrine requires that issues already decided by the same court should be adopted without relitigation, and 'once a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that court unless compelling reason to do so appears.'"[4]

As to what led up to the stipulated instruction, Plaintiffs' counsel objected to evidence that Bendix asbestos brakes were used at Walls Service Center because the Superior Court had granted summary judgment to Bendix, holding as a matter of law there were no Bendix asbestos brakes there. (B12:1-B13:2; see B3:15-19). The Superior Court made rulings on two slides of Ford's opening statement powerpoint regarding Bendix evidence Ford wished to present. (B9:13-14, B13:5). The Superior Court at trial stated it was an issue of fact as to whether the Bendix brakes at Walls Service Center had asbestos (B13:3-4) and Plaintiff's counsel respectfully pointed out that it was a finding of law by the Superior Court. (B13:8-16). The Court instructed the parties to "Put together a stipulation to that effect." (B13:17-18). The Court was instructing the parties to put together a stipulation on the law of the

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[3] Id.

[4] Emmons v. Tri Supply & Equip., Inc., 2013 Del. Super. LEXIS 394, at *10 (Del. Super. July 29, 2013).

case in light of the fact that Bendix evidence was coming in for some purposes but could not be considered to show Bendix asbestos brakes were used by John Walls, per the summary judgment decision. Thus, the stipulated instruction resulted. (A718:18-A719:5).

Plaintiffs below received no benefit from the Superior Court's granting summary judgment to Ford or Bendix. Plaintiffs had to litigate their remaining claims in the context of those decisions. In response to the direction by the Superior Court, Plaintiffs agreed to the stipulation because it was the law of the case.

B. The Walls Have Not Waived Their Right to Appeal.

As to claimed waiver by stipulation or failure to object to this instruction, Superior Court Rule 46 provides:

> Exceptions unnecessary. Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the party's grounds therefor[]

Upon opposing summary judgment, Plaintiffs had made their objection to the Superior Court's ruling clear. Once the decision was made, Plaintiffs litigated the case within the confines of those rulings. To hold that Appellants are now barred from appealing the summary judgment decision because they agreed to an instruction as directed to by the Superior Court that followed its summary judgment

decisions would be to encourage a party to incessantly re-litigate all pre-trial rulings during trial.

This Court has held that where a legal argument was preserved at summary judgment and later at a motion for directed verdict, failure to object to and submission of jury instructions in conformance to the Superior Court rulings was not a waiver on appeal, even where the appellant was claiming error in those instructions.[5] This Court recognized that after losing on the legal issue the appellant had to continue to litigate the case including by submitting jury instructions that were in line with the Court's rulings.[6]

Here we are even further removed from waiver because Appellants are not claiming error in the jury instructions, but the summary judgment decision. In Lutheran Hosp. v. Doe,[7] the Indiana Court of Appeals held that appellant was not bound by a jury instruction he had failed to object to, which was inconsistent with the premise of his appeal, because he had raised and preserved his objection in a summary judgment motion.

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[5] E.I. DuPont de Nemours & Co. v. Pressman, 679 A.2d 436, 439-40 (Del. 1996).
[6] Id.; Id. at 439 n.4; City of St. Louis v. Praprotnik, 485 U.S. 112, 120 (1988) (failure to object to a jury instruction does not waive appeal where the objection to the legal theory was raised by a previously denied dispositive motion).
[7] 639 N.E.2d 687, 689 n.5 (Ind. Ct. App. 1994).

> A party should not be precluded from raising an issue on appeal simply because he chose to proceed at trial 'within the narrower borders of the case that the judge has laid down for him.'[8]

A stipulation as to evidence that need not be admitted without formal proof is binding on parties, as Appellee points out (Answering Brief (hereinafter "AB"), page 16 n.50), but this was a stipulation as to the law of the case, which Appellant is not trying to disavow. That Ford was only responsible for original brakes was the law of the case. Appellants are appealing the underlying decision which made it so.

The cases Appellee cites involve appeals based on claimed errors in jury instructions or courses of conduct by a court during trial that were not objected to and thus are not applicable.[9]

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[8] Id. (citing Irvin Jacobs & Co. v. Fid. & Deposit Co., 202 F.2d 794, 801 (7th Cir. 1953)).

[9] See EarthGrains Baking Cos. v. Sycamore Family Bakery, Inc., 573 F. App'x 676, 681 (10th Cir. 2014) (Appellant appealed jury instructions it had stipulated to; its opposition to summary judgment was insufficient to make up for its lack of objection pursuant to Federal Rule of Civil Procedure 51); Yellow Pages Photos Inc. v. Ziplocal, LP, 795 F.3d 1255, 1285 (11th Cir. 2015) (Appellant invited the erroneous instruction that it appealed); United States v. Alvarez, 601 F. App'x 16, 19 (2d Cir. 2015) (where Counsel consented to the Court's approach in handling of jury bias party could not appeal based on that approach); Koehler v. Smith, No. 96-1595, 1997 U.S. App. LEXIS 27071, at *8 n.4 (6th Cir. Sep. 25, 1997) (Counsel agreed to Court's proposed course of conduct concerning a limiting instruction and

II. GRANTING SUMMARY JUDGMENT WAS NOT HARMLESS ERROR.

The very nature of Ford's duty to warn was determined by the summary judgment ruling of the Superior Court. Had summary judgment been denied, the jury would have been instructed that Ford had a duty to warn about the dangers of its automobiles' requirement for asbestos brakes, rather than simply the dangers of asbestos in its original brakes. The duty that Plaintiffs argued that Ford had in their summary judgment answering brief was "Thus [] if there is record evidence that Ford knew of the hazards associated with its braking system and the removal and replacement of brakes on its automobiles it had a duty to warn about them." (A146). Plaintiffs specifically argued that the "product" Ford should have a duty to warn about was its automobiles, not brakes. (A147) ("Second, Bernhardt is flawed because "Ford's products" that it has a duty to warn about are automobiles, not brakes, and Ford manufacturers those."). Plaintiffs lost this argument for duty below. (Appellants' Opening Brief ("OB"), Ex. B, p. 29:1-16). Appellants are asking for the right to present this scope of duty, and whether Ford breached it, to the jury for the first time.

The jury repeatedly heard, from both the Superior Court and counsel, instructions that Ford was only liable for if John Walls was exposed to Ford original brakes. The jury was instructed, as a result of the summary judgment decision, that

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thus waived appeal on that course of conduct).

John had to be exposed to Ford's original brakes in order to make Ford liable. (OB, Statement of Facts, E.). In a trial with the correct statement of law and duty, there would be no focus on original versus non-original. Ford's knowledge that asbestos brakes were the only brakes that could be used on its vehicles during the period of time John worked on them[10] would be relevant evidence for the first time.

The granting of summary judgment was not harmless because it meant that Plaintiffs were not allowed to proceed with their duty to warn claim at trial, which they had a right to do.[11]

The fact that Plaintiffs were permitted to proceed to trial with a different claim against Ford does not change this.[12]

The cases cited by Ford at AB, pages 22 and 23 involve errors which were mooted by the jury's verdict, which are not applicable. The jury's verdict on a negligent failure to warn about the dangers of asbestos in Ford's original brakes claim does not moot the claim of negligent failure to warn about the dangers of Ford's requirement that only asbestos brakes could be used in its cars.

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[10] OB at 5-7.
[11] McCool v. Gehret, 657 A.2d 269, 282 (Del. 1995) ("[] [T]he right to a jury trial in civil proceedings has always been and remains exclusively protected by provisions in the Delaware Constitution.").
[12] This Court has reversed the Superior Court's improper granting of summary judgment after another trial on another claim against the same Defendant. See Fisher v. Townsends, Inc., 695 A.2d 53, 62 (Del. 1997).

This Court has recognized that separate but similar claims of negligence against one Defendant should be permitted to go to the jury if there is sufficient evidence to create a question of fact on each.[13] In North, Defendant argued that the trial court's refusal to allow instruction on alternative theories of negligence was harmless because the jury's findings on contributory negligence and assumption of the risk of would have negated them.[14] This Court recognized that a jury verdict's determination as to one of the negligence claims does not necessarily predict or mandate the same finding on a different, but similar, negligence claim.[15] This Court should recognize the same here as to Appellants' different, but similar, negligence claim.

[13] North v. Owens-Corning Fiberglas Corp., 704 A.2d 835, 839 (Del. 1997).
[14] Id. at 838.
[15] Id. at 839.

III. THE SUPERIOR COURT ERRED IN GRANTING SUMMARY JUDGMENT TO FORD.

A. Appellants Preserved this Issue on Appeal.

The plain error standard applies when a party raises an issue on appeal that he failed to preserve below.[16] As set forth in Argument I, supra, Appellants preserved their claim by opposition to summary judgment.

B. Ford Had an Opportunity Below to Respond to Plaintiff's Summary Judgment Answering Brief.

Ford had an opportunity below to both move for summary judgment and respond to the facts set forth in Plaintiff's summary judgment answering brief, regarding Ford's requirement of asbestos brakes in its automobiles, in its reply brief below (A708-A716), and failed to do so. Appellants oppose remand for further briefing on the facts.

C. Delaware Law Imposes a Duty on Manufacturers and Suppliers to Warn about the Dangers of Their Products.

The "product nexus" standard Ford cites in AB, p. 27-28 "relates to proximate causes," not duty.[17] The product here is the Ford automobile, which required and

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[16] Smith v. Del. State Univ., 47 A.3d 472, 479 (Del. 2012).
[17] Mergenthaler v. Asbestos Corp. of Am., Inc., 1988 Del. Super. LEXIS 392, at *2 (Del. Super. Sep. 12, 1988).

contained the asbestos Plaintiff was exposed to.[18] Ford's manufacture and supply of its automobile without warning of the dangers of asbestos exposure necessitated by its use was the breach of duty, and that breach was the proximate cause of Plaintiff's exposure to asbestos when removing and replacing brakes on Fords.[19]

The duty to warn claim is based on the asbestos-containing product placed in to the stream of commerce by Ford: its automobiles, which required asbestos brakes but had no warning. Thus Appellants are not trying to change product liability law or make Ford responsible for other manufacturers' products.

A duty to warn should exist in these unique, limited circumstances where a manufacturer or supplier's product contains asbestos, asbestos is critical to its functioning, periodic maintenance exposes the user to asbestos exposure, and the manufacturer/supplier knows of the risks from that exposure. Maryland's highest Court has recently held "Cabining the duty in this way serves the policy of preventing harm without exposing manufacturers to limitless liability for products

[18] See May v. Air & Liquid Sys. Corp.,129 A.3d 984, 999-1000 (Md. 2015) (the product is the pump); McKenzie v. A. W. Chesterson Co., 373 P.3d 150, 155-156 (Or. Ct. App. 2016), rev. denied, 2016 Ore. LEXIS 580 (Or. Sept. 15, 2016) (same). See A630 ("Dust and dirt present on brake assemblies and drums may contain asbestos fibers that can represent a potential health hazard when made airborne by cleaning with compressed air"); A478 (exposure occurs during servicing of the automobile); see OB, Statement of Facts, § C. (John Walls was exposed to brake dust when servicing Ford automobiles).

[19] See New Haverford P'ship v. Stroot, 772 A.2d 792, 798 (Del. 2001) ("To state a claim for negligence one must allege that .... defendant's breach was the proximate

they did not manufacture or sell."[20] The unique facts in this case support imposition of a duty. If there was no evidence that Ford knew asbestos brakes had to be used in their cars there would be no claim.

As to the policy rationales for not imposing a duty to warn set forth in the Massachusetts decision[21] and Dalton v. 3M Co., 2013 U.S. Dist. LEXIS 130407, at *34 (D. Del. Sep. 12, 2013) (AB, p.29-30), they are not contrary to imposition of a duty here. Ford designed its vehicles to use asbestos brakes, thus it had control over whether its automobiles required asbestos brakes. Ford refused to adopt a non-asbestos policy and to encourage suppliers to drop it from the marketplace because it was in its economic best interest. (A677). In 1985 it admitted that its cars currently in production and no longer in production needed asbestos brakes to continue to function. Thus, Ford did receive economic benefit from the sale of asbestos replacement brakes, even those it did not sell itself, because its cars made between 1957 and 1985 could continue to function for the remainder of their useful life and customers were not disappointed with the quality or durability of those Ford vehicles. (A693-694, A777-778). If Ford had placed a warning on the automobile it would not have remained with the car and warned anyone who worked on the car

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cause of plaintiff's injury.").

[20] May, 129 A.3d at 995.

[21] Massachusetts has not decided whether there is a duty to warn for foreseeable risks of harm associated with replacement brakes on automobiles. Morin v.

of the dangers of asbestos in the brakes the car required. The problem with a simple bright line approach is that it does not comport with Delaware law on duty. It immunizes a company who foresees its product will cause harm and fails to warn those who come into contact with it.

D. The Delaware Superior Court has merely followed Bernhardt.

Ford claims that the Delaware Superior Court has found no duty to warn independent of Bernhardt v. Ford, C.A. 063-06-307-ABS (Del. Super. March 30, 2010) (TRANSCRIPT) (OB, Ex. C), which is not accurate. Farrall v. Ford relied upon Bernhardt and found no evidence in that record that Ford required asbestos brakes.[22] In re Asbestos Litig.(Truitt) provides no analysis.[23] The decisions it refers to rely on Bernhardt.[24] Further the Superior Court found that there was no evidence the Defendants knew asbestos-containing replacement parts would contain asbestos, unlike here.[25] In In re Asbestos Litig. (Tisdel), 2006 Del. Super. LEXIS 483, at *27 (Del. Super. Nov. 28, 2006), there was neither argument by the parties nor analysis

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Autozone Ne., Inc., 943 N.E.2d 495, 505 (Mass. App. Ct. 2011).

[22] In re Asbestos Litig.(Farrall), 2013 Del. Super. LEXIS 352, at *3-4 (Del. Super. Aug. 19, 2013).

[23] In re Asbestos Litig. (Truitt), 2011 Del. Super. LEXIS 480, at *7-8 (Del. Super. Oct. 5, 2011); Id. at *6 n. 29.

[24] In re Asbestos Litig. (Turchen), C.A. 09C-11-059 ASB, p. 7 (Del. Super. July 12, 2011) (Ex. A); In re Asbestos Litig. (Johnston), C.A. No. 09C-07-128 ASB, p. 3 (Del. Super. July 12, 2011) (Ex. B).

[25] In re Asbestos Litig. (Turchen), C.A. 09C-11-059 ASB, p. 6-7.

by the Court on the issue of whether Defendant had a duty to warn about the hazards of its automobile requiring asbestos brakes.

E. A Duty to Warn in this case is supported by the law of other States.

In its opening brief, Appellants cited several recent decisions from the highest state courts of Maryland, New York and an intermediate appellate Court in Oregon which the highest Court declined to review, as well as decisions they were aware of holding Ford in particular could be liable where the plaintiff was only exposed non-original asbestos. (OB, Arg. I.C. 3 and 4). Appellants aver these are the most relevant to the facts of this case and Delaware law on negligent duty to warn.

Ford claims the "majority of other jurisdictions and courts" hold that a "manufacturer can only be held liable for harms caused by its own products." (AB, p. 35). However, plaintiffs are only seeking to do that- hold Ford responsible for the harms caused by its product, its automobiles.

Maritime law acknowledges this difference: there is no duty to warn about other manufacturers or suppliers' products generally, but there is a duty to warn about one's own product where a manufacturer/supplier foresees that the intended use of its own product would require the user to encounter dangerous asbestos products.[26] These cases determined the question of negligent duty to warn as

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[26] Quirin v. Lorillard Tobacco Co., 17 F. Supp. 3d 760, 769-70 (N.D. Ill. 2014); Osterhout v. Crane Co., 2016 U.S. Dist. LEXIS 39890, at *34 (N.D.N.Y. Mar. 21,

opposed to strict liability. They distinguish maritime cases refusing to impose liability because they did not discuss a negligent duty to warn claim.[27]

In Devries v. GE, 2016 U.S. Dist. LEXIS 67634, at *208-09 (E.D. Pa. May 18, 2016), the Eastern District Court of Pennsylvania, in response to a February 5, 2016 Order from the Third Circuit (AR 1-4), explained its view that maritime law "has established a bright-line rule regarding the "product(s)" for which a product manufacturer can be liable." This case is currently on appeal. (AR 5-33).

There are many other states and courts which have recognized a duty to warn where the plaintiff was not exposed to the original asbestos supplied or manufactured by the Defendant. These include The Supreme Court of Washington,[28] trial courts in Virginia,[29] Rhode Island,[30] Missouri,[31] and a federal court applying South Carolina law.[32] The Delaware Superior Court has predicted

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2016).

[27] Quirin, 17 F. Supp. 3d at 768; Osterhout, 2016 U.S. Dist. LEXIS 39890, at *31.

[28] Macias v. Saberhagen Holdings, Inc., 282 P.3d 1069, 1079 (Wash. 2012).

[29] Little v. Garlock Sealing Technologies, Inc. No. 3702V-04, p. 4 (Va. Cir. Ct. Oct. 13, 2004) (Ex. C).

[30] Sweredoski v. Alfa Laval, Inc., 2013 R.I. Super. LEXIS 42, at *15 (R.I. Super. Ct. Mar. 7, 2013).

[31] Foreman v. A.O. Smith Corp., 2014 WL 1321057, *3-4 (Mo. Cir. Ct. St. Louis City Jan. 16, 2014) (Dowd, J.).

[32] Sparkman v. Goulds Pumps, Inc., 2015 U.S. Dist. LEXIS 19579, * 9-10 (D.S.C. Feb. 19, 2015).

Arkansas would find a duty to warn about asbestos-containing products added after sale.[33]

For some states cited by Ford for no duty, the state's trial courts have recognized a duty to warn where the product was designed to use and required asbestos to function. This is true for Ohio,[34] Connecticut,[35] and Illinois.[36] A Maine trial court has recognized the potential for such liability.[37] Massachusetts law is unsettled on this question.[38]

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[33] In re Asbestos Litig. (Carlton), 2012 Del. Super. LEXIS 255, at *10-11 (Del. Super. June 1, 2012).

[34] Brawley v. Ford, Case No. 759955 (Ohio Ct. Com. Pl. Jan. 17, 2013) (Appellants'OB, Ex. E).

[35] Abate v. Aaf-Mcquay, Inc., 2013 Conn. Super. LEXIS 219,*13 (Conn. Super. Ct. Jan. 29, 2013) merely held that there was no evidence that defendants manufactured products designed to be used with asbestos. The same Court has also held there is a duty to warn by a seller of a product intended solely for use with asbestos-containing products, Reed v. 3M Co., 2015 Conn. Super. LEXIS 1478, at *14 (Conn. Super. Ct. May 27, 2015), and denied summary judgment where it was foreseeable to a compressor manufacturer its products would be used with asbestos. Fortier v. A.O. Smith Corp., 2009 Conn. Super. LEXIS 262, *4, 7 (Conn. Super. Ct. Jan. 8, 2009).

[36] Reidy v. Crane Co., 13-L-944 (Madison Cty. Cir. Ct., Feb. 4, 2014) (Stobbs, J.) (denying summary judgment to Crane on duty to warn issue) (Ex.D); see Sether v. AGCO Corp., 2008 U.S. Dist. LEXIS 111785, at *13 (S.D. Ill. Mar. 28, 2008) ("To the extent GE seems to argue that it owed no duty to warn, the Court does not agree.").

[37] See Richards v. Armstrong Int'l, Inc., Docket No.: BCD-CV-10-19, p. 11-12, 2013 WL 1845826 (Me. B.C.D. Jan. 25, 2013) (Ex. E)(denying summary judgment to Goulds pumps and recommending further briefing on the issue of liability where Defendant where product must incorporate asbestos product to function correctly).

[38] Massachusetts has not decided whether there is a duty to warn for foreseeable risks of harm where plaintiff was only exposed to replacement brakes on automobiles. Morin, 943 N.E.2d at 505. Whiting v. CBS Corp., 982 N.E.2d 1224

The cases cited for Texas,[39] Alabama,[40] North Carolina,[41] and Mississippi,[42] are distinguishable or there is not enough information to analyze their holding.

Under the Delaware bullet point, Ford cites to some cases for "no duty" where the Delaware Superior Court applied the law of states which recognize the duty Appellants are asking this Court to recognize. In In re Asbestos Litig. (Milstead), 2012 Del. Super. LEXIS 258, at *5 (Del. Super. June 1, 2012), the Delaware Superior Court, applying Maryland law, held that there was no liability where plaintiff was only exposed to replacement asbestos components on Defendant's products. However, the Maryland Court of Appeals has held there is liability where a manufacturer or supplier's product contains asbestos, asbestos is critical to its functioning, periodic maintenance exposes the user to asbestos exposure, and the

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(Mass. Ct. App. 2013), contains no analysis of duty to warn. Dombrowski v. Alfa Laval, Inc., 2010 WL 4168848 (Mass. Super. Middlesex Cnty. July 1, 2010) is a decision of a trial court, and In re Asbestos Litig. (Cosner), 2010 WL 1694442 (Del. Super. May 14, 2012) relies upon it.

[39] The Texas rulings cited provide no analysis of the reasoning of the Court.

[40] Morgan v. Bill Vann Co., 969 F. Supp. 2d 1358, 1368 (S.D. Ala. 2013) ("The record is devoid of evidence from which a reasonable fact finder could conclude that the Durco pumps in use at Alabama River Pulp were designed to require asbestos packing, to the exclusion of other kinds of packing materials.")

[41] The case cited in support of North Carolina law, Harris v. Ajax Boiler, Inc., 2014 U.S. Dist. LEXIS 91826 (W.D.N.C. July 3, 2014), found no duty to warn regarding asbestos cement applied to a boiler where "Plaintiff has no evidence to show that defendants' boilers required the use of an asbestos-containing cement, in general, or Narcolite in particular, to affect a proper repair." Id. at *18.

manufacturer/supplier knows of the risks from that exposure.[43] Ford cites to In re Asbestos Litig. (Wolfe), 2012 Del. Super. LEXIS 86, at *15 (Del. Super. Feb. 28, 2012), where the Delaware Superior Court, applying Oregon law, held there was no duty to warn where the plaintiff was only exposed to replacement asbestos parts where there was no evidence Defendant's products required asbestos. However, Oregon recognizes such a claim in circumstances where such evidence exists, as it does here.[44] Ford cites Delaware Superior Court cases applying Connecticut law when Connecticut courts have recognized a duty to warn where a seller's product was designed to be used with asbestos, discussed supra. Ford cites In re Asbestos Litig. (Olson), 2011 Del. Super. LEXIS 27, at *3 (Del. Super. Jan. 18, 2011), where the Delaware Superior Court, applying Idaho law, acknowledged Idaho had not addressed this issue and it could be a "close one." Ford also cites to a Delaware Superior Court case applying the laws of Utah, which is distinguishable because, "Plaintiff has not provided evidence in the record that Defendant specified, required, or recommended asbestos-containing products be added to its products on which Plaintiff actually worked."[45]

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[42] Plaintiff's claims that Defendants' products required external insulation that the Plaintiff was exposed to did not bear out by the evidence. Dalton, 2013 U.S. Dist. LEXIS 130407, at *39, *42-43.
[43] May, 129 A.3d at 995.
[44] McKenzie, 373 P.3d at 162.
[45] In re Asbestos Litig. (Grgich), 2012 Del. Super. LEXIS 144, at *11 (Del. Super.

Thus, in numerous states and under maritime law, a manufacturer/supplier has a duty to warn where the Plaintiff is not exposed to the original asbestos-containing component part manufactured or supplied with the product in those circumstances where the manufacturer/supplier, as here, knows that these asbestos-containing components are required for its product to function, under a negligent duty to warn claim.

Respectfully submitted,

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Apr. 2, 2012).