

In Asbestos Case, Court of Appeals Holds Manufacturer's Duty to Warn Extends to Joint Use of Its Product and a Product Manufactured by a Third Party

In *In Re: New York City Asbestos Litigation*, decided June 28, 2016, the Court of Appeals tackled the question of whether a manufacturer must warn against a danger inherent in using its product together with a product designed and produced by another company. Citing its prior decision in *Rastelli v. Goodyear Tire & Rubber Co.*¹, the Court held that the manufacturer of a product does in fact have a duty to warn of the danger arising from “the known and reasonably foreseeable use” of its product in combination with a third-party product that “is necessary to enable the manufacturer’s product to function as intended.”

The facts of the case concern valves and auxiliary materials supplied to the United States Navy for use in the type of high-pressure, high temperature steam pipes used on Navy ships. As manufactured, the valves did not contain asbestos or other hazardous materials; however, in order to operate correctly, the valves required gaskets, insulation and packing material for the valve stems. The valve manufacturer specified that these auxiliary items contain asbestos, which was consistent with US Navy specifications requiring the same. The manufacturer began delivery of the valves to the US Navy in the 1930s, and continued to supply the valves into the 1980s. By the early 1970s, the manufacturer was aware of the dangers of exposure to breathable asbestos, but failed to provide warnings about the hazards of exposure to asbestos that could arise from the combined use of its valves and asbestos-based products. Plaintiff alleged that her late husband contracted mesothelioma during his time in the Navy, where his duties required that he regularly come into contact with the friable asbestos containing materials used with the manufacturer’s valve stems.

Similarly, in a companion case, the manufacturer supplied valves to General Motors’ (GM) factories in the 1930s. The valves specified the use of asbestos-based packing and gaskets. Although the manufacturer sought a substitute for the asbestos-based products in the late 1970s or early 1980s, it had difficulty finding suitable substitutions. It was particularly difficult to find non-asbestos gaskets that were used in the temperature range of GM’s steam pipe system. From 1960 to 1979, the plaintiff’s late husband worked at GM as a pipe fitter. The gaskets, packing and surrounding insulation that he worked with all contained asbestos; however, they were manufactured by a third party. The grinding process, used and recommended by the manufacturer for replacing gaskets, released substantial amounts of friable asbestos and exposed the plaintiff’s husband to carcinogenic asbestos fibers. Plaintiff’s late husband was diagnosed with pleural mesothelioma in 2010.

The Court of Appeals determined that the valve manufacturer had a duty to warn of the dangers associated with the necessary replacement of the auxiliary asbestos material, even though the asbestos material was made by a third party. The Court noted that a manufacturer’s “superior ability to garner information about dangerous uses of its product” extends to combined uses of its product with other manufacturers’ products. The Court acknowledged the need to strike a balanced approach in determining the scope and applicability of the duty: “the manufacturer of a product has a duty to warn of the danger arising from the known and reasonably foreseeable use of its product in combination with a third-party product which, as a matter of design, mechanics or economic necessity, is necessary to enable the manufacturer’s product to function as intended.”

¹ 79 N.Y.2d 289 (1992).

In reaching its holding, The Court applied the five-factor test it previously articulated in *Rastelli v. Goodyear Tire & Rubber Co.*, focusing on whether the defendant: (1) had control over the production of the second product; (2) had a role in placing that product in the stream of commerce; (3) derived a benefit from the sale; (4) contributed to the alleged defect in some way; and (5) created the dangerous condition related to the second product. Unlike in *Rastelli*, the Court found that in light of these five factors, this particular valve manufacturer's failure to warn was unreasonable. Thus, the Court affirmed the lower court finding that the manufacturer breached its duty to warn.

The Court cautioned that foreseeability alone is not the test of liability, and emphasized the fact that the use of the third-party product was a practical necessity to use the manufacturer's product as intended, a fact well-known to the manufacturer. The Court attached significance to the manufacturer's ability to know of and warn of the hazards arising from the joint use of the products. The contours of the condition placed by the Court on the relationship between the third-party product and that of the manufacturer – that the joint use is necessary “as a matter of design, mechanics or economic necessity” – is likely to be the subject of future litigation, as noted in a concurring opinion by Judge Garcia.

For more information, please contact: [Thomas R. Smith](#), [Richard L. Weber](#), any of the [attorneys](#) in our [Toxic Tort and Environmental Litigation Practice](#), or the attorney in the firm with whom you are regularly in contact.



Commitment • Service • Value • Our Bond



Bond, Schoeneck & King PLLC (Bond, we, or us), has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences.

For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2016 Bond, Schoeneck & King, PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM