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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,	:	No. 389, 2016 Court Below: Superior Court of the State of Delaware in and for New Castle County
Appellants, Plaintiffs below,	:	C.A. No. 14C-01-157
v.	:	
FORD MOTOR COMPANY,	:	
Appellee, Defendant below.	:	

APPELLEE'S ANSWERING BRIEF

Respectfully submitted,

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Dated: November 18, 2016

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NATURE OF PROCEEDINGS

Decedent John Walls, Jr. ("Mr. Walls") worked in various capacities in his family's automotive repair business from 1976 through 2012.[1] After Mr. Walls passed away from mesothelioma in 2012, his wife and executrix Donna F. Walls and his surviving son Collin Walls (collectively, "the Walls") sued Ford Motor Company ("Ford") and fifteen other companies, alleging that exposure to asbestos from products manufactured or sold by those companies caused Mr. Walls' death.[2] As pertinent here, the Walls alleged that Ford and various other Defendants were negligent for failing to warn Mr. Walls of the dangers of exposure related to performing brake work using friction components (*i.e.*, brake pads) containing asbestos.[3]

Ford moved for summary judgment on the basis that, *inter alia*, it could not be held liable for injuries caused by products that it neither manufactured nor produced because it had no duty to warn of the dangers posed by those products.[4] Following precedent from both Delaware and other states, the Superior Court in and for New Castle County (the "Trial Court") agreed and declined the Walls' invitation to erroneously expand the scope of liability imposed on sellers and

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[1] A193-94. (References to the Appellants' Appendix will be in the format of A___. References to the Appellee's Appendix will be in the format of B__.)
[2] A185-88.
[3] A195-99.
[4] A211.

manufacturers of products under Delaware law and granted Ford partial summary judgment on that issue.[5]

The case proceeded to trial on the Walls' claim that Ford had been negligent in failing to warn Mr. Walls of the alleged dangers related to asbestos exposure from brake pads that it did manufacture or sell. Prior to trial, the Walls agreed to a jury instruction that stated that Ford could only be held liable for Mr. Walls' alleged exposures to Ford asbestos-containing products. After hearing that instruction and ten days of evidence, the jury determined that Ford had not been negligent.[6]

The Walls subsequently appealed only the Trial Court's grant of partial summary judgment for Ford on the issue of whether Ford could be held liable for failing to warn of dangers posed by other companies' products. No other issue is presently before this Court.

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[5] A51 at 29:1-21.
[6] A40-41.

SUMMARY OF ARGUMENT

I. Responses to the Walls' Arguments

Pursuant to Sup. Ct. R. 14(b)(iv), Ford responds to the Walls' Summary of Argument as follows:[7]

1. Ford admits that it manufactured and supplied automobiles from 1950 through 1984 and that many of those automobiles were originally sold with brake fiction components (*i.e.,* brake pads) that were manufactured, in part, from chrysotile asbestos. Ford also admits that during the same period it sold replacement brake pads that were manufactured, in part, from chrysotile asbestos.

Ford denies that its vehicles manufactured during that time period "required" asbestos-containing brakes in order to function properly. The record does not support that contention. Moreover, the simple fact that Ford automobiles manufactured during that time period still operate today without asbestos-containing brake pads belies the Walls' contention.

2. Ford denies that *In re Asbestos Litig. (Colgain)*,[8] and the other cases cited by the Walls stand for the proposition that Ford can be held liable for injuries caused by products that it neither manufactured nor distributed. As recognized by

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[7] In violation of Sup. Ct. R. 14(b)(iv), the Walls did not number the paragraphs in their Summary of Argument. Ford will, therefore, number its response paragraphs by counting the first paragraph under the Walls' Summary of Argument section header as paragraph 1, and continuing from there.

[8] 799 A.2d 1151 (Del. 2002).

the Superior Court in *Bernhardt v. Ford Motor Co.*,[9] and followed consistently thereafter, Delaware law does not impose on a product manufacturer or seller the duty to warn of dangers posed by its competitors' products. The majority of other courts across the country have reached the same conclusion.

3. Ford admits that Mr. Walls worked as an automotive mechanic and may have performed some brake work on Ford-manufactured automobiles during the course of his employment—though, as the record shows, much less than the Walls suggest in their Summary of the Argument. Ford denies that it did or should have foreseen that Mr. Walls would have been exposed to asbestos as a result of his work with brake pads manufactured by other companies.

4. Ford agrees that the Walls had insufficient evidence to support a claim that John Walls worked with, or was exposed to asbestos from, brake pads manufactured or sold by Ford.

II. Ford's Summary of Arguments

Pursuant to Sup. Ct. R. 14(b)(iv), Ford offers the following arguments, which are preliminary to those raised by the Walls but not addressed in the Walls' brief.

1. The Walls waived any challenge to the Trial Court's grant of partial summary judgment to Ford by stipulating at trial to a jury instruction affirming the

[9] C.A. No. 04C–08–268 ASB, Johnston, J. (Del. Super. Mar. 30, 2010).

correctness of that ruling. Prior to opening statements and based on a joint request from Ford and the Walls, the Trial Court instructed the jury as follows:

> I instruct you as a matter of law that you're not to consider Ford responsible for any component parts manufactured by other companies that were identified as being removed or installed on Ford vehicles by Mr. Walls or others around him. Ford is only responsible for original genuine Ford asbestos-containing parts.[10]

The Walls did not object to this instruction. To the contrary, they requested and stipulated to it and received a substantial benefit from the Trial Court's reading of the instruction.[11] Under these circumstances, the Walls waived any challenge that they may have had to the Trial Court's ruling on Ford's motion for summary judgment. Moreover, having agreed to instruct the jury on the legal principle that formed the foundation of the Trial Court's grant of partial summary judgment, the Walls are bound to that principle and cannot now challenge the Trial Court's ruling.

2. Even if the Trial Court's grant of summary judgment for Ford was erroneous, it constituted only harmless error. The jury at trial, after a full look at the facts, determined that Ford was not negligent for failing to warn Mr. Walls of the dangers posed by asbestos-containing automotive products that it manufactured or sold. In light of that fact, even if the jury had been allowed to consider the

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[10] A803-04 at 64:21-65:3.

[11] B14 at 63:14-23; A803 at 64:1-:9.

Walls' theory that Ford should have warned of the dangers posed by other manufacturers' brake pads, the outcome would have been the same—there is no basis in the law or the record that would have supported a jury finding that Ford was negligent for failing to warn of other manufacturers' products but not its own.

3. The Trial Court correctly granted partial summary judgment for Ford on the Walls' claims that Ford was liable for injuries caused by products that it neither manufactured nor sold. This decision was in line with governing Delaware law and the law of the majority of other jurisdictions to have considered the issue.

STATEMENT OF FACTS

I. Response to the Walls' Statement of Facts

Most of the Walls' Statement of Facts is spent characterizing various documents that purportedly show that Ford automobiles required asbestos-containing brakes to function,[12] or that Ford purportedly knew of the dangers posed by asbestos-containing friction products prior to Mr. Walls' exposure to them.[13] As discussed in the Argument section below,[14] those documents are irrelevant to the issues presented by the Walls on appeal. For that reason, Ford will not undertake to specifically address each of those documents and the "facts" that they allegedly establish. However, Ford does not concede and specifically denies the "facts" as the Walls have described them.[15]

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[12] Appellants' Br. at 5-7.
[13] *Id.* at 7-11.
[14] *See* Argument Section III.C.1, *infra.*
[15] Because the Trial Court correctly applied Delaware's rule against holding a manufacturer liable for harms caused by other manufacturers' products, Ford did not introduce evidence related to whether its automobiles "required" asbestos-containing products in order to function. In the event that this Court finds that such facts would be germane to its analysis of the issue raised in the Walls' appeal, Ford requests that the Court remand for further development of the factual record.

II. Counterstatement of Facts

A. The Trial Court's Pertinent Summary Judgment Rulings

After a lengthy period of discovery, Ford moved for summary judgment on July 29, 2015.[16] Ford argued, *inter alia*, that it could not be held liable to the Walls for injuries caused by products that Ford neither manufactured nor sold.[17] The Walls opposed Ford's motion,[18] and Ford subsequently filed a reply in support of the motion on August 21, 2015.[19]

The Trial Court held a hearing on Ford's motion on September 10, 2015.[20] After hearing oral argument from both parties, the Trial Court granted Ford's motion on the issue of whether it could be held liable for injuries caused by other manufacturers' products.[21] In pertinent part, relying on the Superior Court's prior decision in *Bernhardt v. Ford Motor Co.*,[22] the Trial Court held:

> Ford would not be obligated to warn [of] the risk of asbestos exposure from replacement parts that it did not manufacture, even though the plaintiff has argued that Ford vehicles were sold with asbestos components installed and the use of [] asbestos-containing replacement parts might be foreseeable.[23]

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[16] A211.
[17] A216-217.
[18] A222.
[19] A793-801.
[20] A43.
[21] A51 at 29:1-21.
[22] C.A. No. 04C–08–268 ASB, Johnston, J. (Del. Super. Mar. 30, 2010).
[23] A51 at 29:6-13.

During the same hearing, the Trial Court also granted summary judgment to Defendant Honeywell International Inc., the successor-in-interest to Bendix Corporation ("Bendix").[24] During the time period of Mr. Walls' alleged exposure to asbestos while working for his family's garage, Bendix manufactured automobile replacement parts, some of which contained asbestos and some of which did not.[25] The Trial Court found that the Walls had not adduced sufficient evidence to establish that Mr. Walls had worked in the vicinity of asbestos-containing Bendix products, despite evidence that some Bendix products were used at his workplace.[26] This disposition of the Walls' claims against Bendix prior to trial set the stage for the Walls' subsequent waiver of their right to challenge the Trial Court's grant of partial summary judgment to Ford.

The case then proceeded to trial on the Walls' claim that Ford was negligent for failing to warn of the danger of its own asbestos-containing automobile friction products, primarily brake pads.[27]

B. The Stipulated Jury Instruction

Before trial could begin, the Trial Court was called upon to resolve a dispute between the parties regarding the amount and type of evidence related to Bendix

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[24] A56 at 48:4-50:9.
[25] *Id.* at 48:21-49:7.
[26] *Id.* at 49:4-50:2.
[27] B17 at 171:22-172:13 (jury instructions on Plaintiffs' burden).

products that could be introduced at trial.[28] In particular, the Walls objected to Ford referring during opening argument to the fact that Bendix products were commonly used at the service station where Mr. Walls worked, and to several pieces of evidence related to the use of Bendix products.[29] The basis for this objection was that the Trial Court granted Bendix summary judgment on the grounds that there was insufficient evidence as to whether asbestos-containing Bendix products were used at that station.[30]

Ford's position was that the labelling on Bendix's asbestos-containing products was relevant to Ford's state-of-the-art defense and also to show the common practice in the industry.[31] Ford also argued that, because Ford could not be held liable for brake products that it did not manufacture or produce, the jury should be made aware of the presence of non-Ford automotive products at the Walls' shop, in order to prevent the jury from inappropriately inferring that Ford products must have been used.[32]

After a lengthy argument, the Trial Court ruled on the admissibility of several discrete pieces of evidence and topics of argument and further suggested that the parties enter into a stipulation that would define the scope of permissible

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[28] B2-3 at 4:1-5:19 (the Walls' counsel's description of the dispute).
[29] *Id.* at 4:4-5:3.
[30] B3 at 5:4-19.
[31] B5 at 7:8-18.
[32] B5 at 7:22-8:11.

Bendix-related evidence.[33] The parties returned later that day with the following stipulated jury instruction:[34]

> During this case, you will hear mentioned the names of automotive parts manufacturers such as Bendix that are not in this case. You must not speculate as to why these companies are not in the case. I instruct you as a matter of law that you're not to consider Ford responsible for any component parts manufactured by other companies that were identified as being removed or installed on Ford vehicles by Mr. Walls or others around him. Ford is only responsible for original genuine Ford asbestos-containing parts.[35]

This jury instruction benefitted the Walls by making clear that the jury was not to assume that the Walls' claims against Bendix had failed and by showing the jury evidence related to how other companies were warning about the alleged dangers of asbestos in automotive products at the time, at the cost of allowing some evidence related to the use of Bendix products at the Walls' service station into the record and clarifying that Ford was not liable for Mr. Walls' exposure caused by those products. Ford received the converse benefit—it was able to use Bendix-related evidence for its purposes, but could not create an inference for the jury that Bendix, rather than Ford, should be liable for Mr. Walls' injuries.

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[33] B13 at 18:17-18.

[34] B14 at 63:14-23; A803 at 64:1-9 ("[W]e actually came to an agreement.") On appeal, the Walls admit that the instruction was stipulated. (Appellants' Br. at 15.)

[35] A803-04 at 64:18-65:5.

At no point during the trial did the Walls indicate that their agreement to this stipulated instruction was contingent on or without waiver of objection to the Trial Court's grant of partial summary judgment to Ford. To the contrary, the instruction resulted from a bargained exchange between the parties, from which the Walls received a benefit.

C. Trial and the Jury's Verdict

Trial began on June 13 and continued through June 28, 2016. The Walls' main theme at the trial was that Ford allegedly knew of the dangers of asbestos in automotive friction products but nevertheless did not warn end consumers of those dangers.[36]

After hearing the Walls' evidence on the topic, the jury deliberated and returned a verdict finding that Ford was not negligent.[37] The Walls have not challenged the jury's verdict, nor have they challenged any of the Trial Court's rulings or instructions at trial that led to it.

[36] *See, e.g.,* B15 at 89:10-19 (the Walls' opening argument).
[37] A40-41.

ARGUMENT

I. The Walls Have Waived Their Sole Assignment of Error.

A. Question Presented

Did the Walls waive their challenge to the Trial Court's grant of partial summary judgment to Ford by later stipulating to the correctness of the legal principal on which that ruling was based?

B. Scope of Review

A party waives its challenge and is estopped from raising that issue on appeal if it (1) accepts the benefits or any substantial part of the benefits of the bargain that formed the basis for a ruling of the trial court,[38] or (2) stipulates to a finding of the trial court.[39]

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[38] *Smith v. Smith*, 893 A.2d 934, 937 (Del. 2006) (quotation omitted).

[39] *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 795 F.3d 1255, 1285 (11th Cir. 2015) ("Having agreed to the proposed instruction in response to the jury's question, indicating that the jury could award zero dollars in statutory damages to one defendant, YPPI has waived its right to challenge that award on appeal."); *Earthgrains Baking Cos. v. Sycamore Family Bakery, Inc.*, 573 F. App'x 676, 681 (10th Cir. 2014) ("We are particularly bound to apply the waiver rule in the case at bar, because by stipulating to the instructions to which he now objects, Sycamore affirmatively assented to their being read to the jury."); *United States v. Koleski*, 33 F. App'x 471, 472 (10th Cir. 2002) ("A defendant's stipulation waives any challenge contrary to the stipulation.") (*citing United States v. Newman*, 148 F.3d 871, 878 (7th Cir.1998)).

C. Merits of Argument

The Trial Court issued its ruling granting partial summary judgment for Ford on September 10, 2015.[40] That ruling was based on the legal proposition that Ford did not have a duty to warn about products that it neither manufactured nor sold.[41]

Nine months later, on June 13, 2016, the Walls stipulated[42] to a pretrial jury instruction that read, in pertinent part:

> I instruct you as a matter of law that you're not to consider Ford responsible for any component parts manufactured by other companies that were identified as being removed or installed on Ford vehicles by Mr. Walls or others around him. Ford is only responsible for original genuine Ford asbestos-containing parts.[43]

Stipulating to this instruction, which endorsed the Trial Court's ruling and the principles on which it was based, waived any argument that the Walls may have had that the Trial Court's grant of partial summary judgment was erroneous and bars this appeal because (1) the Walls accepted the benefit of their bargain in the stipulation and (2) the Walls stipulated to the issue of law they now appeal.

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[40] A51 at 29:1-21.
[41] *Id.*; *see also Bernhardt v. Ford Motor Co.*, C.A. No. 04C–08–268 ASB, Johnston, J. (Del. Super. March 30, 2010).
[42] B14 at 63:14-23; A803 at 64:1-9; *see also* Appellants' Br. at 15 (admitting to stipulation).
[43] A803-04 at 64:21-65:5.

Beyond any mere agreement to the form of an instruction, the stipulated instruction here represented the benefit to the Walls of a bargain made with Ford.[44] Prior to trial, the Trial Court granted summary judgment to Ford's co-Defendant Bendix, who also manufactured asbestos-containing friction products, on the basis that there was no evidence that asbestos-containing Bendix products had been used at Mr. Walls' workplace.[45] After additional argument, the Court suggested that the parties put together a stipulation addressing the Walls' concerns about the introduction of Bendix-related evidence at trial, and the parties agreed to do so without objection.[46] The stipulated instruction above was the product of that agreement.[47]

At no point did the Walls put in the record any indication that this stipulated instruction was entered into with a reservation of their earlier summary judgment argument. The stipulated instruction represented an agreement between the parties and all received benefits: in the case of the Walls, the restriction on certain evidence related to Bendix products; in the case of Ford, the language regarding its lack of liability for other manufacturers' products.

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[44] *See* B7 at 12:20-B13 at 18:23.
[45] *See* A56 at 48:4-50:9.
[46] B13 at 18:17-21.
[47] B14 at 63:14-23; A803 at 64:1-9

Having received that benefit without contemporaneous objection, the Walls cannot now be heard to challenge the instruction or the legal principal underlying it. As this Court said in *Smith v. Smith*:

> No rule is better settled than that a litigant who accepts the benefits or any substantial part of the benefits of a judgment or decree is thereby estopped from reviewing and escaping from its burdens. [He] cannot avail [himself] of its advantages, and then question its disadvantages in a higher court.[48]

Indeed, "the election to pursue one course is deemed an abandonment of the other."[49] In the face of this longstanding rule, the Walls nevertheless seek to challenge a statement of the law that they agreed at the time was correct, and in exchange for which they received a material benefit. Delaware law does not permit them to succeed in such an attempt.

Second, the Walls' stipulation that Ford was not responsible for non-Ford replacement parts waived any appeal on this issue. "[A] stipulation is a judicial admission binding on the parties making it, absent special considerations."[50] By stipulating to the Court's ruling that the Walls now object to, they "affirmatively assented to [the instruction] being read to the jury."[51] Indeed, "[h]aving agreed to

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[48] 893 A.2d 934, 937 (Del. 2006) (quotation omitted).
[49] *Kaiser v. Standard Oil Co. of New Jersey*, 89 F.2d 58, 59 (5th Cir. 1937).
[50] *Vallejos v. C. E. Glass Co.*, 583 F.2d 507, 510 (10th Cir. 1978).
[51] *Earthgrains Baking Companies Inc.*, 573 F. App'x at 681.

the proposed instruction [embodying the Court's ruling] ... [the Walls] ha[ve] waived [their] right to challenge [that ruling] on appeal."[52]

The Walls' opposition to Ford's summary judgment motion at the trial court level does not change the outcome or the Walls' waiver. For example, in *Earthgrains Baking Companies Inc. v. Sycamore Family Bakery, Inc.*, the defendant lost at summary judgment, but then stipulated to a jury instruction different than the defendant's original position on the same topic.[53] The Tenth Circuit Court of Appeals held that the defendant's summary judgment briefing was insufficient to preserve the issue on appeal when the party had stipulated to a jury instruction on the same topic.[54] The same logic applies here; the Walls affirmatively foreclosed any dispute over the trial court's ruling by stipulating to the instruction given.

In short, the Walls' appeal of the Trial Court's summary judgment ruling is barred by their stipulation to the jury instruction discussed. Not only did the Walls

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[52] *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 795 F.3d 1255, 1285 (11th Cir. 2015); *see also United States v. Alvarez*, 601 F. App'x 16, 19 (2d Cir.), cert. denied, 135 S. Ct. 2337, 191 L. Ed. 2d 997 (2015) ("Counsel did not object; when he ultimately agreed to the proposed instruction he added, '[w]ith the consent of the defendant, just to put it on the record.' Alvarez thus waived this challenge below and cannot raise it on appeal.") (citation omitted); *Koehler v. Smith*, 124 F.3d 198 (table), 1997 WL 595085, at *2 n.4 (6th Cir. 1997) ("Because Smith's counsel agreed that the district court should pursue a proposed course of conduct concerning the limiting instruction, he waived any challenge to that course of conduct on appeal.")

[53] 573 F. App'x 676, 681 (10th Cir. 2014).

[54] *Id.*

receive the benefit of the bargain made with Ford on the instruction, but also the Walls' stipulation waived their legal argument. The stipulation was a judicial admission and binding on the Walls regardless of their summary judgment position.

II. Even if the Trial Court's Grant of Partial Summary Judgment to Ford Was Erroneous, Any Error Was Harmless.

A. Question Presented

Does the jury's verdict finding that Ford was not negligent for failing to warn of the alleged dangers of working with asbestos-containing automotive products render any error in the Trial Court's grant of partial summary judgment harmless?

B. Scope of Review

Error is harmless if it did not substantively affect the outcome of the proceedings or a party's substantive rights.[55]

C. Merits of Argument

As discussed in detail below, the Trial Court was correct in following existing Delaware law by holding that Ford could not be held liable for injuries caused by products that it neither manufactured nor produced.[56] Nevertheless, this Court need not reach the merits of the Trial Court's decision, because even if the Trial Court's grant of partial summary judgment to Ford had been erroneous, any error was harmless.

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[55] *See Edmisten v. Greyhound Lines, Inc.*, 49 A.3d 1192 (table) (Del. 2012) (unpublished) (finding harmless error in grant of summary judgment); *Whittaker v. Houston*, 888 A.2d 219, 223–24 (Del. 2005) (finding harmless error when jury's verdict mooted erroneous preclusion of evidence); *see also* Del. Super. Ct. R. 61 ("The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

[56] *See* Section III.C, *infra.*

Even error related to dispositive issues is harmless if it does not affect the final outcome of the proceedings or a party's substantive rights.[57] The jury in this case determined that Ford was not negligent in failing to warn of any dangers posed by asbestos contained in its automotive friction products, and the Walls have not challenged that verdict on appeal.[58]

In order to have reached this determination, the jury must have found that (1) Ford did not have a duty to warn Mr. Walls of any dangers posed by asbestos in automotive friction products that it manufactured or sold, or (2) Ford did not breach its duty by failing to provide such a warning, or (3) both.[59] The jury never reached the question of whether Ford's breach of a duty caused the Walls' injuries, because it determined that there had been no breach of a duty.[60]

No basis can be found in the record, and the Walls have not supplied one, to support the assumption that if the Walls had been permitted to put on evidence and

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[57] *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1255–56 (Del. 2011) (erroneous special verdict form harmless); *Edmisten*, 49 A.3d 1192 (table) (Del. 2012) (unpublished) (finding harmless error in grant of summary judgment); *Kane v. Burnett*, 817 A.2d 804 (table) (Del. 2003) (trial court's failure to consider opposition to fee award harmless error).

[58] A40-41.

[59] *Culver v. Bennett*, 588 A.2d 1094, 1096–97 (Del. 1991) ("In an action based upon negligence, for a plaintiff to recover, it must be shown by a preponderance of the evidence that the defendant's negligent act or omission violated a duty which was owed to the plaintiff. The plaintiff must also prove, *inter alia*, that there is a reasonable connection between the negligent act or omission of the defendant and the injury which the plaintiff has suffered.") (citation omitted).

[60] A40-41.

argument that Ford was responsible for other manufacturers' brake products used with its vehicles, the jury's verdict would have changed. Put differently, if Ford was not negligent due to a failure to warn of dangers posed by its own products, it could not have been negligent due to a failure to warn of dangers posed by other manufacturers' products. The nature of the breach would have been identical—a failure to provide an adequate warning—and the scope of the duty would have been the same, just applied to different products. Arguments made by the Walls in closing make this clear:

> [Ford] had all this technical information about brakes and all, but absolutely nothing in terms of the dangers. Dangers of what they full well knew what they were dealing with their own employees. It could have been a very simple thing for them to do, to place a warning on the actual brake in the chassis, so that when mechanics pulled it out, it would say "cancer hazard, do not blow out."
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> ***
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> You did hear one warning expert, the only one to testify, and he said Ford never placed a warning where John Walls would have seen it on the brake.[61,62]

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[61] B19 at 204:19-205:4; B20 at 207:11-14.

[62] These same arguments demonstrate that the Walls' contention that Ford automobiles were the products that they alleged to be defective, rather than asbestos-containing parts used with those automobiles, is a post-trial invention designed to skirt Delaware products liability law and does not reflect the Walls' theory during the trial of the case. (*See* Appellants' Br. 19.)

The Walls have not suggested and cannot reasonably explain how these arguments or the relevant evidence would have changed if Ford's purported liability for third-party replacement parts had been permitted to go to the jury.

Moreover, the mere fact that the Trial Court's alleged error concerned a summary judgment ruling does not mean that the error was necessarily prejudicial. Even erroneous violations of constitutional rights can be harmless.[63] Regardless of the procedural stage where it occurs, if a jury's verdict renders an earlier error of a trial court moot, the error is harmless.[64]

The Third Circuit has recognized this principle in similar situations,[65] perhaps most similarly in its decision in *Alberts v. Ford Motor Company*.[66] In

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[63] *Hughes v. Div. of Family Servs.*, 836 A.2d 498, 512 (Del. 2003) ("We hold that to the extent that the Mother's right to due process was violated by the absence of appointed counsel for the Mother during the dependency and neglect proceedings, the error was harmless.") (citations omitted).

[64] *See Koutoufaris v. Dick*, 604 A.2d 390, 399 (Del. 1992) ("While we recognize some inconsistency between the trial judge's pretrial disallowance of punitive damages as a matter of law because the factual record did not support such a claim and permitting the jury to find the same factual predicate at trial, any error was clearly harmless since the jury specifically determined that *no* contributory negligence existed. Thus the jury was not called upon to determine if reckless conduct existed or to apply the instruction which would have permitted recovery in the face of such conduct.") (emphasis in original).

[65] *See, e.g.*, *Calhoun v. Yamaha Motor Corp., U.S.A.*, 350 F.3d 316, 325 (3d Cir. 2003) (instructional error "was harmless because the court's instruction could not have affected the jury's verdict on the strict liability claim, in that the jury decided as a threshold matter, that the jet ski was not defective"); *Grazier ex rel. White v. City of Philadelphia*, 328 F.3d 120, 124 (3d Cir. 2003) ("The District Court correctly determined that any error in granting judgment for the City at the close of the plaintiffs' case would have been rendered harmless by the jury's verdict of no

Alberts, the trial court instructed on the plaintiff's theory of liability stemming from an implied warranty, but not on his express warranty claim.[67] The jury subsequently determined that automobile was fit for its ordinary purpose.[68] On appeal, the Third Circuit found that any error in the trial court's failure to instruct on the express warranty claim was therefore rendered harmless, because the jury would necessarily have reached the same result on that claim.[69] The same situation occurs in this case. Any claim based on Ford's alleged negligence with respect to warning of other manufacturers' products would have failed for the same reason that the claim regarding Ford's own products failed.[70]

The Walls' argument for prejudice caused by the Trial Court's ruling only reinforces this point. The Walls state that:

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liability []."); *Dillinger v. Caterpillar, Inc.*, 959 F.2d 430, 440 (3d Cir. 1992) ("[W]e are satisfied that the district court in this case erred in admitting evidence of Dillinger's non-use of the seat belt .... However, as we have already indicated, because the jury determined that Caterpillar's product was either not defective or that the defect was not a substantial factor in causing the accident, this error was harmless.").

[66] 292 F.2d 494 (3d Cir. 1961) (*per curiam*).

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *N. v. Owens-Corning Fiberglas Corp.*, 704 A.2d 835 (Del. 1997), is not to the contrary. In that case, the trial court failed to instruct on alternative theories of liability that had been presented at trial and for which there was substantial evidence. *See id.* at 838-40. By contrast, here the practical effect of the Trial Court's grant of partial summary judgment was to restrict the quantum of evidence available to the Walls at trial on their single theory of liability (negligent failure to warn).

> It was clear [Mr. Walls] had removed brakes from Ford vehicles, but witnesses could not swear that they knew he did the first brake replacement or used Ford replacement brakes. The limitations placed on the case by the summary judgment ruling led to a verdict in Ford's favor.[71]

As noted above, the jury determined that Ford had not been negligent in failing to warn of the alleged dangers of asbestos exposure related to its products.[72] Because of that ruling, the jury never reached the subsequent question of whether Ford's negligence caused John Walls death.[73]

It was in that subsequent inquiry in which the amount of Mr. Walls' exposure to asbestos would have been relevant, not the preliminary inquiry into whether Ford had a duty to warn and breached it.[74] Therefore, the amount of exposure evidence that the Walls were able to present would have had no bearing on the jury's determination of whether Ford had a duty to warn or breached that duty, *i.e.*, whether Ford was negligent.[75] Presuming that the jury would have

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[71] Appellants' Br. 4.
[72] A40-41.
[73] *Id.*
[74] *See Threadgill v. Manville Corp. Asbestos Disease Comp. Fund*, No. CIV.A. 88-161-JRR, 1990 WL 294271, at *1 (D. Del. July 27, 1990) (identifying product exposure as part of the proximate cause analysis), *rev'd on other grounds sub nom. Threadgill v. Armstrong World Indus., Inc.*, 928 F.2d 1366 (3d Cir. 1991), *relied on by In re Asbestos Litig. (Colgain)*, 799 A.2d 1151, 1152 n.2 (Del. 2002).
[75] *See* B17-18 at 171:22-172:11, 175:14-176:1, 176:23-178:2 (jury instructions on duty to warn and causation).

correctly followed the law and the Trial Court's instructions, the Walls' theory of prejudice simply does not hold up.[76]

The jury below determined that Ford was not negligent with respect to its warnings (or lack thereof) about the dangers of asbestos used in automobile friction products. The Walls have not challenged that finding. Therefore, the Trial Court's grant of partial summary judgment to Ford on a portion of the Walls' claims did not substantially affect any of the Walls' rights, because that portion of the claim would have been disposed of by the same ruling.

[76] *See Reinco, Inc. v. Thompson*, 906 A.2d 103, 112 n.20 (Del. 2006) ("It is worth remembering that Delaware law presumes that the jury followed the trial judge's instructions.") (citation omitted).

III. The Trial Court Correctly Granted Partial Summary Judgment to Ford.

A. Question Presented

Did the Trial Court correctly find that there was no issue of material fact with respect to, and that judgment as a matter of law was therefore appropriate on, the Walls' claim that Ford could be held liable for failing to warn of dangers posed by products that it neither manufactured nor sold?

B. Scope of Review

Assuming that this Court finds that despite the Walls' waiver of their sole assignment of error, it should nevertheless be reviewed, this Court's review of the Trial Court's decision on summary judgment should only be reviewed for plain error.[77] Under the plain error standard, in order for reversal to be warranted, "the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.[78]" Moreover, this Court's review should be "limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[79]

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[77] *Grace v. State*, 658 A.2d 1011, 1014 (Del. 1995).
[78] *Id.*
[79] *Id.*

To the extent that this Court finds that the Walls did not waive their assignment of error, the standard of review of the Trial Court's grant of partial summary judgment is *de novo* with respect to the legal issue of whether Ford can be held liable for other manufacturers' products.[80]

C. Merits of Argument

1. Delaware law does not impose a duty on product manufactures or sellers to warn of dangers posed by other companies' products.

The core requirement of a products liability claim under Delaware law is that the injured party's harms were caused by a defect in a product placed into the stream of commerce by the defendant.[81] In the asbestos context, in order to succeed on a product liability claim, the plaintiff must show that he or she was exposed to asbestos that originated from an asbestos-containing product placed into the stream of commerce by the defendant.[82] Delaware courts have stated this requirement as follows:

> [A] plaintiff must show that a particular defendant's asbestos-containing product was used at the job site and

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[80] *Lank v. Moyed*, 909 A.2d 106, 108 (Del. 2006).

[81] *See Edmisten*, 49 A.3d at 1192 (upholding Superior Court's grant of summary judgment when plaintiff could not adduce facts establishing exposure to defendant's product).

[82] *See In re Asbestos Litig. ("Nutt")*, 509 A.2d 1116, 1117 (Del. Super. Ct. 1986), *aff'd sub nom. Nicolet, Inc. v. Nutt*, 525 A.2d 146 (Del. 1987); *see also Cain v. Green Tweed & Co.*, 832 A.2d 737, 741 (Del. 2003) (adopting Nutt test).

> that the plaintiff was in proximity to that product at the time it was being used.[83]

The Walls seek to escape this fundamental requirement of products liability law. They ask this Court to create from whole cloth a regime that would make defendants liable for products that were similar in purpose to those that they produced, but were in fact produced by competitors. Their primary basis for this proposed expansion of liability comes through the guise of the foreseeability analysis discussed by this Court in *In re Asbestos Litig. (Colgain)*.[84] *Colgain*, however, is entirely inapposite. In that case, the Court only determined that the question of whether a manufacturer has a duty to warn of dangers posed by *its products* is determined, at least in part, by the foreseeability of those dangers.[85] Contrary to the Walls' contention, nothing in the *Colgain* opinion supports, or even discusses, the imposition of liability on one manufacturer for harms caused by the products of another.[86,87]

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[83] *Nutt*, 509 A.2d at 1117 (quotations omitted).
[84] 799 A.2d 1151 (Del. 2002); (*see also* Appellants' Br. at 19-20).
[85] *See id.* at 1153.
[86] *See generally id.*
[87] *Graham v. Pittsburgh Corning Corp.*, 593 A.2d 567, 569–71 (Del. Super. Ct. 1990), and Restatement (Second) of Torts § 388, on which the Walls also rely, are inapposite for the same reason. Neither establishes that a manufacture has any duties with respect to other manufacturers' products. (*See* Appellants' Br. at 20.) Comment E to § 388 actually implies the contrary: "the one who supplies a chattel for another's use is not subject to liability for bodily harm caused by its use by a third person without the consent of him for whose use it is supplied." In the same way that § 388 would not make Ford liable for unauthorized use of its products by

In fact, the Court's decision in *Colgain* reaffirms the basic principle that a manufacturer can only be held liable for harms caused by its own products:

> Among the essential elements that a plaintiff must prove in a negligence-based products liability case is that the defendant had a duty to warn of dangers associated with *its product*. ... The manufacturer's duty to warn is dependant [sic] on whether it had knowledge of the hazards associated with *its product*.[88]

Indeed, the Court's holding in *Colgain* was premised on the defendant's lack of knowledge about the dangers posed by the specific product that it marketed, not its knowledge about the dangers of asbestos products generally.[89]

The Walls' proposed expansion of the duty of manufacturers also conflicts with sound jurisprudential policy regarding the purposes and limits of the product liability system. The Massachusetts Court of Appeals aptly summed up those policy considerations:

> Considerations against the imposition of a duty to warn about replacement parts include (1) the original manufacturer's lack of preventive control over the design and marketing of the later component; (2) its lack of any economic benefit from the sale of the replacement component; (3) the perishability of warnings in manuals during the span between the original sale and the later or remote owner's acquisition of the product; and (4) the greater suitability in these circumstances of a duty to

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third parties, it cannot make Ford liable for unauthorized use of its products with third-party-manufactured parts.

[88] *Colgain*, 799 A.2d at 1152-53 (emphasis added).

[89] *Id.*

> warn by the component manufacturer by reason of its control, benefit, and clear accountability.[90]

These policy rationales apply with particular force here, where the asbestos-containing replacement parts at issue were manufactured by Ford's competitors. It cannot fairly be said that Ford gained any economic benefit from or had any direct control over the products that its competitors produced.

Indeed, in *Dalton v. 3M Co.* the District of Delaware reasoned that "the purpose of imposing liability for defective products is to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market[,]" and held that "a manufacturer is not subject to a duty to warn or protect against hazards arising from a product it did not manufacture, supply, or sell."[91] It is for these reasons that the national consensus weighs against imposing the type of liability suggested by the Walls.[92]

This simple, bright-line approach means that factual questions like foreseeability and whether the use of asbestos-containing replacement parts was

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[90] *Morin v. Autozone Northeast, Inc.*, 79 Mass. App. Ct. 39, 53 n.10 (2011) (citations omitted).

[91] No. CV 10-113-SLR-SRF, 2013 WL 4886658, at *10 (D. Del. Sept. 12, 2013) (Mississippi law), *report and recommendation adopted*, No. CV 10-113-SLR/SRF, 2013 WL 5486813 (D. Del. Oct. 1, 2013).

[92] *See Conner v. Alfa Laval, Inc.*, 842 F. Supp. 2d 791, 801 (E.D. Pa. 2012); *accord Devries v. Gen. Elec. Co.*, No. CV 5:13-00474-ER, ---F. Supp. 3d---, 2016 WL 2910099, at *6 (E.D. Pa. May 19, 2016) (reaffirming *Conner*).

"required" do not control the duty analysis here.[93] As discussed above, foreseeability is, in this respect, a second-level question. Under both Delaware law and the national consensus, the first question to be asked is whether the injured party was exposed to harm because of a defect in the defendant's product.[94]

To the extent that Mr. Walls was exposed to harm because of products placed into the stream of commerce by Ford, the Walls had the opportunity to try claims based on that exposure to a jury. The only claims that the Walls were not permitted to try were those that were founded on harms caused by the products of Ford's competitors.

2. Delaware trial courts have consistently ruled against the Walls' interpretation of Delaware law.

The Trial Court's ruling did nothing more than recognize the longstanding and commonsense principle that a product manufacturer or seller is not liable for harms caused by products that it did not manufacture or sell.[95] In support of its finding, the Trial Court primarily relied on the Superior Court's earlier decision in a nearly identical case, *Bernhardt v. Ford Motor Co.*[96] In that case, the Superior Court stated the applicable Delaware law as follows:

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[93] *See Conner*, 842 F. Supp. 2d at 802.
[94] *See id.* at 800-01; *see also Edmisten,* 49 A.3d at 1192.
[95] A51 at 29:1-21.
[96] C.A. No. 04C–08–268 ASB, Johnston, J. (Del. Super. Mar. 30, 2010).

> The duty to warn does not require a manufacturer to study and analyze the products of others and to warn users of the risk of those products. Any duty is restricted to warnings based on the characteristics of the manufacturer's own product.[97]

Other Superior Court cases both pre- and post-dating *Bernhardt* have also followed this bright-line rule.[98] In *Tisdel*, for example, the Superior Court granted summary judgment for Chrysler when the plaintiff could not establish any facts indicating that he had been exposed to asbestos from a product that Chrysler manufactured or sold.[99] The Superior Court's decision in *Farrall* provides an even closer cousin to this case, where the court relied directly on *Bernhardt* in granting summary judgment for Ford in a case materially identical to this one.[100]

The Superior Court in *Truitt* did not mention *Bernhardt*, but nevertheless came to the same conclusion that Delaware law did not permit the imposition of liability on a product manufacturer for damages caused by asbestos in replacement

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[97] Appellants' Ex. C at 33:18-23. The Superior Court later confirmed this ruling in a written opinion denying plaintiffs' motion to reconsider it. *See Bernhardt v. Ford Motor Co.*, 2010 WL 3005580, at *2–3 (Del. Super. Ct. July 30, 2010).
[98] *See, e.g., In re Asbestos Litig. (Farrall),* 2013 WL 4493568, at *1 (Del. Super. Ct. Aug. 19, 2013); *In re Asbestos Litig. (Truitt)*, 2011 WL 5340597, at *3 (Del. Super. Ct. Oct. 5, 2011); *In re Asbestos Litig. (Tisdel),* 2006 WL 3492370, at *7 (Del. Super. Ct. Nov. 28, 2006).
[99] *See* 2006 WL 3492370, at *7
[100] *See* 2013 WL 4493568, at *1-2.

parts manufactured by a different company.[101] Moreover, the *Truitt* court noted that it had followed this rule in at least two previous cases on the same topic.[102]

This Court is, of course, not bound by prior decisions of the Superior Court. However, these cases make clear that Plaintiffs are seeking an expansion of Delaware law as it is understood by the Superior Court.

For the contrary proposition, the Walls rely on two Superior Court decisions, neither of which overcomes the overwhelming weight of Delaware decisions establishing that a product manufacturer or seller can be liable only for products that it placed in the stream of commerce. First, the Walls cite to *Dawson, et. al v. Well-McLain, et al.*[103] The Superior Court's decision in that case was formulated during a ten-minute break during trial, and the judge himself admitted on the record that he did not have the opportunity to issue a "thoughtful" decision.[104] Furthermore, the Superior Court did not have the benefit of case law on the topic and formulated its decision based solely on the language and comments of two sections of the Second Restatement of Torts.[105] While the Superior Court judge in *Dawson* made a commendable effort at confronting an important legal issue, a

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[101] 2011 WL 5340597, at *3.
[102] *See id.*
[103] Appellants' Br. at 20-21.
[104] Appellants' Br. Ex. D. at 133:2-8, 136:7-10.
[105] *Id.* at 136:4-138:8.

decision made in the heat of the moment by a judge without adequate legal briefing or argument cannot be read to supplant a decade of well-established law.

That leaves the Walls with only the Superior Court decision in *Wilkerson v. Am. Honda Motor Co.*[106] The court in *Wilkerson* relied primarily upon the Superior Court's admittedly unthoughtful decision in *Dawson.*[107] The court in *Bernhardt* considered *Wilkerson* and found it inapposite to the analysis in that case, which presented the same issue with the same defendant as this case, because the defendant in *Wilkerson* was the manufacturer of the asbestos-containing replacement part, not the manufacturer of the product with which that replacement part was used.[108] *Wilkerson* is inapposite here for the same reasons; Ford did not manufacture the replacement brake pads that Mr. Walls would have used on Ford automobiles, it manufactured the automobiles themselves. Moreover, even if *Wilkerson* is on point, it represents only a single outlier against the tide of Delaware decisions moving in the opposite direction.

3. The law of the majority of other states comports with Delaware law in holding that a manufacturer or seller is not liable for products that it did not manufacture or sell.

In their Opening Brief, the Walls point to a handful of decisions from other

[106] 2008 WL 162522 (Del. Super. Ct. Jan. 17, 2008); (*see* Appellants' Br. at 21-23).
[107] 2008 WL 162522, at *2.
[108] *See id.* at *1.

courts holding that, under certain circumstances, a manufacturer can be held liable for harms caused by other companies' products.[109] However, the Walls conveniently ignore decisions in the majority of other jurisdictions and courts, which comport with the commonsense proposition that a manufacturer can only be held liable for harms caused by its own products.

These jurisdictions and courts include:

- Georgia,[110]
- Massachusetts,[111]
- New Jersey[112]
- Connecticut,[113]

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[109] Appellants' Br. at 25-33.

[110] *See Toole v. Georgia-Pacific, LLC,* No. A10A2179, 2011 WL 7938847, at *7 (Ga. App. 2011); *see also Reed v. Am. Steel and Wire Co.,* No. CV10-1540-KA, 2014 WL 3674678, at *2 (Ga. Super. Ct. Chatham Cnty. July 21, 2014).

[111] *See Whiting v. CBS Corp.*, No. 12-P-329, 2013 WL 530860, at *1, 982 N.E.2d 1224 (Table) (Mass. Ct. App. 2013); *Dombrowski v. Alfa Laval, Inc.*, No. CA 08-1938, 2010 WL 4168848, at *1 (Mass. Super. Middlesex Cnty. July 1, 2010) (quoting *Mitchell v. Sky Climber, Inc.*, 487 N.E.2d 1374, 1376 (Mass. 1986)); *see also In re Asbestos Litig. (Anita Cosner),* No. N10C-12-100 ASB, 2012 WL 1694442, at *1 (Del. Super. Ct. New Castle Cnty. May 14, 2012) (applying Mass. law) (citing *Dombrowski*).

[112] *See Hughes v. A.W. Chesterton Co.*, 89 A.3d 179, 190 (N.J. Super. A.D. 2014); *see also Robinson v. Air & Liquid Sys. Corp.*, No. 11-4078 (FSH), 2014 WL 3673030, at *1 (D.N.J. July 23, 2014).

[113] *See Abate v. AAF-McQuay, Inc.*, No. CV106006228S, 2013 WL 812066, at *5 (Conn. Super. Ct. Fairfield Cnty. Jan. 29, 2013), *reconsideration denied*, 2013 WL 5663462, at *5 (Conn. Super. Ct. Sept. 24, 2013); *see also In re Asbestos Litig. (Irene Taska)*, No. 09C-03-197 ASB, 2011 WL 379327, at *1 (Del. Super. Ct. New Castle Cnty. Jan. 19, 2011) (applying Conn. law).

- Delaware (applying the law of Delaware and numerous other states),[114]
- Maine,[115]
- Ohio,[116]

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[114] *See Farrall v. Ford Motor Co.*, No. N11C-05-257 ASB, 2013 WL 4493568, at *1 n.5 (Del. Super. Ct. New Castle Cnty. Aug. 19, 2013); *In re Asbestos Litig.*, No. 10C-06-072, 2011 WL 5340597, at *3 (Del. Super. Ct. New Castle Cnty. Oct. 5, 2011); *Bernhardt v. Ford Motor Co.*, No. 06C-06-307 ASB, 2010 WL 3005580, at *2 (Del. Super. Ct. New Castle Cnty. July 30, 2010); *In re Asbestos Litig. (Irene Taska)*, No. 09C-03-197 ASB, 2011 WL 379327, at *1 (Del. Super. Ct. New Castle Cnty. Jan. 19, 2011) (applying Conn. law); *In re Asbestos Litig. (Frederick and Patricia Parente)*, No. N10C-11-140 ASB, 2012 WL 1415709, at *2 (Del. Super. Ct. New Castle Cnty. Mar. 2, 2012) (applying Conn. law); *In re Asbestos Litig. (Arland Olson),* No. 09C-12-287 ASB, 2011 WL 322674, at *2 (Del. Super. Ct. New Castle Cnty. Jan. 18, 2011) (applying Idaho law); *In re Asbestos Litig. (Thomas Milstead),* No. N10C-09-211 ASB, 2012 WL 1996533, at *2 (Del. Super. Ct. New Castle Cnty. June 1, 2012) (applying Md. law); *In re Asbestos Litig. (Anita Cosner),* No. N10C-12-100 ASB, 2012 WL 1694442, at *1 (Del. Super. Ct. New Castle Cnty. May 14, 2012) (applying Mass. law); *In re Asbestos Litig. (Ralph Curtis and Janice Wolfe)*, No. N10C-08-258 ASB, 2012 WL 1415706, at *5 (Del. Super. Ct. New Castle Cnty. Feb. 28, 2012) (applying Or. law); *In re Asbestos Litig. (Reed Grgich),* No. N10C-12-011 ASB, 2012 WL 1408982, at *4 (Del. Super. Ct. New Castle Cnty. Apr. 2, 2012) (applying Utah law), *reargument denied*, 2012 WL 1593123 (Del. Super. Ct. New Castle Cnty. Apr. 11, 2012), *appeal refused sub nom. Crane Co. v. Grgich,* 44 A.3d 921 (Del. Super. Ct. New Castle Cnty. 2012). *But see In re Asbestos Litig. (Kenneth Carlton)*, No. N10C-08-216 ASB, 2012 WL 2007291, *3-4 (Del. Super. Ct. New Castle Cnty. June 1, 2012) (applying Ark. law); *In re Asbestos Litig. (Dorothy Phillips) (Limited to Hoffman/New Yorker Inc.)*, No. N12C-03-057 ASB, 2013 WL 4715263, at *2 (Del. Super. Ct. New Castle Cnty. Aug. 30, 2013) (applying Va. law); *In re Asbestos Litig. (Darlene K. Merritt & James Kilby Story)*, No. N10C-11-200 ASB, 2012 WL 1409225, at *3 (Del. Super. Ct. New Castle Cnty. Apr. 5, 2012) (applying Va. law).

[115] *See Rumery v. Garlock Sealing Tech., Inc.*, No. 05-CV-599, 2009 WL 1747857, at *1 (Me. Super. Ct. Cumberland Cnty. Apr. 24, 2009); *Richards v. Armstrong Int'l, Inc.,* No. BCD-CV-10-19, 2013 WL 1845826, at *21, 25-26 (Me. B.C.D. Cumberland Cnty. Jan. 25, 2013).

- and Texas.[117]

Also, federal courts applying

- Alabama,[118]
- Georgia,[119]
- California,[120]
- Illinois,[121]
- Mississippi,[122] and
- North Carolina[123] law.

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[116] *See Alexander v. A.W. Chesterton Co.*, No. 12-776463, slip op. at 4 (Ohio Ct. Com. Pl. Cuyahoga Cnty. Mar. 7, 2014).
[117] *See Nolen v. A.W. Chesterton Co.*, No. 153-200843-03, 2004 WL 5047437, at *1 (Tex. Dist. Ct. 153d Jud. Dist. Tarrant Cnty. July 26, 2004); *Nolen v. A.W. Chesterton Co.*, No. 153-200843-03, 2004 WL 5047438, at *1 (Tex. Dist. Ct. 153d Jud. Dist. Tarrant Cnty. Aug. 11, 2004).
[118] *See Morgan v. Bill Vann Co., Inc.,* 969 F. Supp. 2d 1358, 1366-67 (S.D. Ala. 2013).
[119] *See Thurmon, v. Georgia Pac.*, LLC, No. 14-15703, ---Fed App'x---, 2016 WL 3033147, at *4 (11th Cir. May 27, 2016).
[120] *See Olds v. 3M Co.*, No. CV-12-08539, 2013 WL 5675509, at *1 (C.D. Cal. Oct. 16, 2013) *appeal docketed*, No. 13-56921 (9th Cir. Nov. 12, 2013); *McNaughton v. Gen. Elec. Co.*, No. 2:11-63943, 2012 WL 5395008, at *1 (E.D. Pa. Aug. 9, 2012) (applying California law); *Floyd v. Air & Liquid Sys. Corp.*, No. 2:10-cv-69379, 2012 WL 975359 (E.D. Pa. Feb. 8, 2012) (applying California law).
[121] *See Niemann v McDonnell Douglas Corp.,* 721 F. Supp. 1019, 1030 (S.D. Ill. 1989).
[122] *See Dalton v. 3M Co.*, No. CV 10-113-SLR-SRF, 2013 WL 4886658, at *10 (D. Del. Sept. 12, 2013), *report and recommendation adopted*, No. CV 10-113-SLR/SRF, 2013 WL 5486813 (D. Del. Oct. 1, 2013).

Courts applying maritime law, including the Sixth Circuit Court of Appeals, have also rejected liability for exposure to other companies' replacement parts in similar contexts.[124]

While some jurisdictions have come to the contrary conclusion, the weight of authority nationwide demonstrates that the Walls' proposed expansion of Delaware products liability law finds relatively little support from other jurisdictions.

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[123] *See Harris v. Ajax Boiler, Inc.*, No. 1:12-cv-00311, 2014 WL 3101941, at *5-6 (W.D.N.C. July 7, 2014).

[124] *See Lindstrom v. A-C Prods. Liab. Trust*, 424 F.3d 488, 496, 497 (6th Cir. 2005); *Vedros v. Northrop Grumman Shipbuilding, Inc.*, No. CIV.A. 11-1198, 2014 WL 1093678, at *3 (E.D. La. Mar. 14, 2014); *Conner v. Alfa Laval, Inc.*, 842 F. Supp. 2d 791, 801 (E.D. Pa. 2012); *Serini v. A.W. Chesterton Co.*, No. 05-4038, 2012 WL 2914188, at *1 (E.D. Pa. May 14, 2012); *Abbay v. Armstrong Int'l, Inc.*, No. 10-01585, 2012 WL 975837, at *1 (E.D. Pa. Feb. 29, 2012); *In re Asbestos Prods. Liab. Litig (No. VI)* (*Sweeney v. Saberhagen Holdings, Inc.*), No. 09-64399, 2011 WL 346822, at *7 (E.D. Pa. Jan. 13, 2011), *report and recommendation adopted*, 2011 WL 359696 (E.D. Pa. Feb. 3, 2011); *see also Stark v. Armstrong World Indus., Inc.*, 21 F. App'x 371, 381 (6th Cir. 2001).

CONCLUSION

By agreeing and stipulating to a jury instruction containing exactly the finding that the Walls now challenge on appeal—a jury instruction read primarily for the Walls' benefit—the Walls have waived any challenge to the Trial Court's ruling on summary judgment. Moreover, the jury's decision in this case that Ford was not negligent for any failure to warn of the purported dangers posed by the use of asbestos in automotive friction products is unchallenged. To the extent that there was any error in the Trial Court's grant of partial summary judgment to Ford, it was rendered harmless by that determination. Finally, the Trial Court correctly determined that Delaware law does not impose upon product manufacturers the duty to warn of other companies' products. The Walls' attempt to expand Delaware law to impose such a duty contradicts both sound judicial principles and the law as it currently exists in Delaware and in a majority of other jurisdictions. Accordingly, the Walls' claim was properly dismissed by the Superior Court and this Court should affirm.

Respectfully submitted,

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