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PRODUCT LIABILITY UPDATE**Supreme Court Limits Strict Liability for Nonmanufacturing Suppliers of Defective Products****OVERVIEW**

On October 22, 2008, the Ohio Supreme Court decided that nonmanufacturing suppliers of defective products cannot be held strictly liable for sales that occurred prior to 1977. In *DiCenzo v. A-Best Prods. Co., Inc.*, Slip Opinion No. 2008-Ohio-5327, the Court upheld the trial court's grant of summary judgment for a defendant in an asbestos suit. This decision came only one week after the Court ruled in *Ackison v. Anchor Packing Co.*, Slip Opinion No. 2008-Ohio-5243, that evidentiary filing requirements set forth in a 2004 Ohio bill are retroactive. While the *DiCenzo* decision will not lead to the dismissal of tens of thousands of cases, as seen after the *Ackison* ruling, it is another ruling that will make it more difficult for asbestos plaintiffs to recover in Ohio, especially from ancillary defendants.

CASE DETAILS

In 1977, the Ohio Supreme Court, in *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, held that strict liability applied also to nonmanufacturing suppliers of defective products. However, the case did not specifically address whether or not the ruling applied retroactively to sales made prior to the decision. In *DiCenzo*, the Court held that the *Temple* ruling only applies prospectively, thereby making it impossible to bring or maintain a strict liability claim against a nonmanufacturing supplier for pre-1977 sales.

In *DiCenzo*, the Court reviewed its prior holdings regarding the retroactive or prospective application of its decisions, and held that Ohio decisions are generally applied retroactively unless doing so would interfere with contract rights or vested rights under the prior law. The Court applied the three-part test set forth by the United States Supreme Court in *Chevron Oil Co. v. Huson* (1971), 404 U.S. 97, to determine whether the *Temple* decision should be limited to prospective applications. The Court determined that nonmanufacturing supplier liability was an issue of first impression at the time of the *Temple* holding, that retroactive application of the *Temple* holding would not promote or hinder the purpose behind products liability law and that applying the *Temple* holding retroactively would lead to inequity because the nonmanufacturing suppliers could not have foreseen that they would be held liable years later for sales made prior to the *Temple* decision.

The Court thus held that the *Temple* decision could only be applied on a prospective basis, and that nonmanufacturing suppliers cannot be held strictly liable for pre-1977 sales of defective products.



The holding in *DiCenzo* is unique. The Court noted that “prospective-only application is justified only under exceptional circumstances, and a prospective-only application of a court decision that is imposed years after its publication is an even rarer occurrence.”

THE LIKELY IMPACT

The significance of this decision is twofold. First, it institutes another barrier to recovery for some asbestos plaintiffs. Even if plaintiffs can satisfy the evidentiary requirements of the *Ackison* decision, they will be barred from recovering from nonmanufacturing suppliers of asbestos-containing products for injuries resulting from asbestos product sales prior to 1977. Asbestos plaintiffs are notorious for suing all manufacturers and suppliers of asbestos-containing products. The decision in *DiCenzo* likely immunizes pre-1977 nonmanufacturing suppliers of asbestos-containing products and, therefore, creates a smaller pool of potential defendants.

In addition, the decision is not limited in application to asbestos cases; it applies to all strict product liability claims that are currently pending against the nonmanufacturing suppliers of any defective product that involve sales prior to 1977. As a result, Ohio may see such nonmanufacturing supplier defendants, likely in other toxic tort suits with disease end points with long latency periods, dismissed in the near future.

FOR MORE INFORMATION

Please contact **Elizabeth B. Wright**, **Timothy J. Coughlin** or **John R. Mitchell**, or any member of our **Product Liability Litigation** practice group for more information.

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