

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

IN RE: ASBESTOS LITIGATION)	
)	
JAMES FARRALL, and his wife,)	
LEOTA FARRALL,)	C.A. No. N11C-05-257 ASB
)	
Plaintiffs,)	
)	
v.)	
)	
FORD MOTOR COMPANY, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff filed suit against various defendants alleging Mr. Farrall’s exposure to asbestos from their products caused him to develop mesothelioma, from which he died on October 13, 2012. Defendant Ford filed a Motion for Summary Judgment on March 13, 2013, which Plaintiff partially opposes. At oral argument on June 27, 2013, the Court granted Ford’s Motion for Summary Judgment on Plaintiff’s claims for strict liability, negligent design, punitive damages and failure to warn of asbestos-containing replacement parts. Presently before the court is Plaintiff’s Motion for Reargument or Reconsideration of the court’s ruling as to Plaintiff’s failure to warn claim. For the following reasons, Plaintiff’s Motion is **DENIED**.

Mr. Farrall was deposed before he passed away. At his deposition, he testified that he worked as a non-occupational mechanic on his own and friends’ Ford vehicles. He also testified that he replaced brakes on Ford trucks while employed as a mechanic at multiple locations.

At oral argument, the court granted Ford’s Motion for Summary Judgment on Plaintiff’s claim for failure to warn of asbestos-containing parts. The court held that

under Delaware law, Ford did not have a duty to warn for an injury resulting from replacement parts manufactured by others. The court decided that *Bernhardt v. Ford Motor Company*¹ controlled and foreclosed placing such a duty on manufacturers.

A motion for reargument will be denied absent a showing that, “[T]he Court ‘overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision.’”² Motions for reargument “should not be used merely to rehash the arguments already decided by the court.”³

At oral argument, Plaintiff argued that under Sections 388 and 389 of the Restatement (Second) of Torts and *Dawson v. Weil-McLain, et al.*,⁴ this court should depart from the court’s ruling in *Bernhardt* and find liability on behalf of Ford. In *Bernhardt*, this court held that a manufacturer does not have a duty to warn of replacement parts it did not itself manufacture or distribute.⁵ Plaintiff argued that under the Restatement, a manufacturer or supplier has a duty to warn of dangers associated with the use or intended use of its product if it has reason to know of those dangers. In support of this argument, Plaintiff claimed Ford required asbestos brakes, knew of the dangers of asbestos, and therefore, Ford should be

¹ *Bernhardt v. Ford Motor Co.*, 2010 WL 3005580, at *2 (Del. Super.).

² *Norfleet v. Mid-Atlantic Realty Co., Inc.*, 2001 WL 989085, at *1 (Del. Super Ct.) (internal citations omitted).

³ *Id.*

⁴ C.A. No. 00C-32-117 ASB, Slights, J. (Del. Super. July 20, 2005) (TRANSCRIPT).

⁵ *Bernhardt v. Ford Motor Co.*, C.A. No. 04C-08-268 ASB, Johnston, J. (Del. Super. March 30, 2010) (TRANSCRIPT). At oral argument on Defendant’s Motion for Summary Judgment, the court stated,

The Wilkerson case provides that the manufacturer’s duty to warn is dependent on whether it had knowledge of the hazards associated with its product. 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.

responsible for injuries that result from asbestos exposure during replacement of its brakes, even after the original asbestos-containing brakes are removed.

Upon reviewing the evidence, the court found that even if Ford knew of the dangers of asbestos, it did not require asbestos-containing brakes in its products and therefore, Ford did not have a duty to warn users of its products of the dangers associated with asbestos-containing replacement parts. The court subsequently ruled, “I’m sorry. I don’t see any reason to retrench from this Court’s previous holding in *Bernhardt* and I’m not going to.” The court later clarified its ruling: “This does not absolve Ford from liability for the removal of it[]s brakes. But what I am [absolving] Ford from is the removal of other peoples brakes, the after-market brakes, essentially.”

In its Motion for Reargument, Plaintiff makes the same arguments it submitted at oral argument. Plaintiff argues that Sections 388 and 389 of the Restatement (Second) of Torts require a finding of liability on behalf of Ford to warn of dangers associated with asbestos-containing replacement brakes, notwithstanding the court’s ruling in *Bernhardt*. Thus, the court finds Plaintiff is merely rehashing the argument previously heard by the court. The court has already decided this issue and Plaintiff fails to point to any area where the court misapprehended the law or overlooked controlling precedent. Therefore, Plaintiff’s Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

Date: August 19, 2013

JOHN A. PARKINS, JR.
Judge

oc: Prothonotary
cc: All counsel via e-file