



Alerts

Florida Trial Court Erred in Applying Second Restatement of Torts Instead of Third Restatement of Torts in Asbestos Case

June 25, 2012

Toxic Tort Alert

On June 20, 2012, the Florida Third District Court of Appeals in Miami-Dade County threw out a \$6.62 million asbestos judgment entered against defendant, a chemical manufacturer, in March 2010. *Union Carbide Corp. vs. Aubin, No. 3D10-1982 (FL 3d Dist. Ct. of Appeals) (June 20, 2012)*. Plaintiff, a former construction worker, had alleged that he contracted peritoneal mesothelioma from exposure to Calidria asbestos, produced and sold by the manufacturer and used in construction materials. The appellate court overturned the award, citing the trial court's failure to apply the American Law Institute's Third Restatement of Torts in the jury instructions and the construction worker's failure to prove that the defective design of the Calidria asbestos caused his disease.

With respect to the applicable law, the appellate court found that the trial court erred in determining that the construction worker's claims were governed by the Second Restatement of Torts. The appellate court found that the trial court should have applied the Third Restatement of Torts which, at Restatement (Third) of Torts: Products Liability § 5, states:

One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is subject to liability for harm to persons or property caused by a product into which the component is integrated if:

- (a) The component is defective in itself, under §§ 1-4, and the defect causes the harm; or
- (b)(1) The seller or distributor of the component substantially participates in the integration of the component into the design of the product; and
- (2) The integration of the component causes the product to be defective as defined under §§ 1-4; and
- (3) The defect in the product causes the harm.

As a result, the jury instructions did not apprise jurors that the manufacturer could discharge its duty to warn end-users by adequately warning the intermediary manufacturers and reasonable relying on them to warn end-users.

Additionally, the construction worker had to prove that the Calidria asbestos was defective and that the defect caused his disease. Although the appellate court found substantial evidence that the product had design defects, it found

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that the construction worker offered no evidence suggesting that the Calidria asbestos caused his disease.

Because the jury instructions given at trial were inconsistent with the law of the Third District and in effect resulted in a verdict in favor of the construction worker, the jury never considered whether the manufacturer had adequately warned about its product. Thus, the appellate court ordered a new trial to consider whether the manufacturer's warnings about the product were defective.

For more information, please contact [Craig T. Liljestrand](#), or your regular [Hinshaw attorney](#).

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