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Washington Supreme Court Adopts the "Apparent Manufacturer" Doctrine in Product Liability Actions Arising Before 1981

From the desk of Tom McCurdy: Washington law permits injured plaintiffs to bring product liability actions against product manufacturers when they are injured as the result of a manufacturing defect. What if a company does not manufacture a product, but holds itself out to the public as a manufacturer of the product? Will they be subject to liability as a manufacturer? Read on to find out.

Case Pointer: In this product liability action, the Washington Supreme Court adopted the apparent manufacturer doctrine for common law product liability claims predating the 1981 product liability and tort reform act ("WPLA"). This doctrine already applies to causes of action arising after 1981. It provides that an entity that presents a product to the public as its own—despite not manufacturing the product—will be subject to the same liability as the true manufacturer. This case expands the potential liability of resellers when they hold themselves out to the public as the manufacturers of the product.

Rublee v. Pfizer, Inc., et. al., 428 P.3d 1207 (2018).

In this matter, Margaret Rublee ("Plaintiff"), brought a wrongful death action against Pfizer as the surviving spouse of Vernon Rublee, who succumbed to mesothelioma related to asbestos exposure. Vernon worked as a machinist at the Puget Sound Naval Shipyard from 1966 to 1980. During this time, Vernon was exposed to asbestos products manufactured, sold, and distributed by a manufacturer called Quigley. Unbeknownst to Vernon, Quigley became a fully owned subsidiary of Pfizer when Pfizer purchased the company in 1968. As part of the transition, Quigley redesigned its marketing and packaging materials to include noticeable reference to Pfizer. As Vernon observed, the name "Pfizer" was prominently printed on the bags containing the asbestos products.

Once the dangers of asbestos exposure became widely known, tens of thousands of plaintiffs filed lawsuits against Quigley and Pfizer. However, the United States District Court for the Southern District of New York created a system where claims against Quigley and Pfizer were required to be channeled through Quigley alone. The only claims against Pfizer which could circumvent this system were those based on the "apparent manufacturer doctrine" under the Restatement (Second) § 400. The apparent manufacturer doctrine provides that "[o]ne who puts out as his own product a chattel manufactured by another is subject to the same liability as though he were its manufacturer." Despite the doctrine's widespread adoption by a majority of the states, Washington had not yet formally adopted the doctrine for claims predating the 1981 WPLA when Plaintiff filed her lawsuit naming Pfizer as a defendant.

Plaintiff filed her lawsuit in King County Superior Court against Pfizer and several other companies and sought to impose liability on Pfizer as an apparent manufacturer. After limited discovery, Pfizer moved for summary judgment on the ground that Plaintiff could not establish apparent manufacturer liability. The trial court granted Pfizer's motion and the court of appeals affirmed, finding that Plaintiff's evidence fell short of any theory of apparent manufacturer liability, regardless of whether the Supreme Court of Washington had yet adopted the doctrine. The Supreme Court granted review in order to determine what body of law it should apply in evaluating Plaintiff's claims against Pfizer and whether

Tom McCurdy

tmccurdy@smithfreed.com

Phone: 206.576.7575
Fax: 206.576.7580
www.smithfreed.com

Washington Office
1215 4th Ave, Suite 900
Seattle, WA 98161

an issue of material fact remained as to whether Pfizer was an apparent manufacturer of the asbestos products Vernon was exposed to in his work.

The Court first explicitly adopted the apparent manufacturer doctrine as described in Restatement (Second) § 400. The Court noted that it has generally accepted Restatement principles in similar contexts and in doing so, it would be joining "the clear majority of jurisdictions" to formally adopt § 400. In addition, the Washington legislature had explicitly adopted apparent manufacturer liability for products manufactured after 1981 in passing the WPLA. The legislature reasoned in its passing of the WPLA that "when an entity 'adopts the product as its own, [it] has, in a sense, waived [its] right to immunity and should be subject[ed] to a manufacturer's liability.'" Finding that the adoption of the apparent manufacturer doctrine was supported by its own legislature as well as the majority of US jurisdictions, the Court adopted the doctrine for common law product liability claims arising before 1981.

Next, the Court determined that apparent manufacturer liability must be viewed from the perspective of ordinary, reasonable consumers. The Court noted that the "apparent manufacturer doctrine revolves around the central question of when non-manufacturers should be treated as manufacturers for the purpose of liability." It declared that the majority of courts following § 400 apply the "objective reliance" test, which "asks whether an ordinary, reasonable consumer could infer from the defendant's representations on labels, advertisements, or other relevant materials that the defendant manufactured the harmful product at issue." Within Plaintiff's case, the assertion of apparent manufacturer liability turns on whether an objectively reasonable consumer looking at Quigley's products containing asbestos could reasonably conclude that Pfizer was the manufacturer of those products in question.

Finally, the Court asked whether the "objectively reasonable consumer" in Plaintiff's case should be Vernon's employer, who was the purchaser of Quigley's asbestos products, or Vernon himself, who was an ordinary consumer. Previously, the court of appeals determined that the subject of the objective reliance test should be Vernon's employer; however, the Court found this conclusion to be inconsistent with Washington law. The Court concluded instead that "[t]he nature of the product or purchaser does not change the analysis" and that the analysis should focus instead on "all of the defendant's representations, whether on labels, advertisements, and other materials." The objective reliance test should be applied to the manufacturer's relevant representations based on the perspective of the ordinary, reasonable customer. Accordingly, the analysis should focus on the apparent manufacturer's representations of the product as viewed through the eyes of the reasonable consumer.

Applying the newly adopted doctrine to Plaintiff's case, the Court determined that a genuine issue of fact remained as to whether reasonable consumers could conclude that Pfizer was an apparent manufacturer of the asbestos products Vernon had been exposed to. The Court reversed the decision of the court of appeals and remanded the case for further proceedings consistent with the newly adopted doctrine.

While this case is somewhat limited in its scope because it only applies to causes of action arising before 1981, it serves as an important reminder that the apparent manufacturer doctrine is alive and well in Washington. Although an entity did not manufacture a product, it may be subject to liability as if it were the actual manufacturer, as long as it represents itself as such in ways apparent to the reasonable consumer.

View full opinion at: *https://www.courts.wa.gov/opinions/pdf/947325.pdf*

Tom McCurdy

tmccurdy@smithfreed.com

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Fax: 206.576.7580
www.smithfreed.com

Washington Office
1215 4th Ave, Suite 900
Seattle, WA 98161