A Response To Alani Golanski
And Jerry Kristal’s Reply

by
James K. Toohey, Esq.

Johnson & Bell
Chicago, Illinois
Commentary

A Response To Alani Golanski And Jerry Kristal’s Reply

By
James K. Toohey

[Editor’s Note: James K. Toohey is a shareholder and co-chair of the toxic tort defense group at Johnson & Bell in Chicago, Ill. Copyright © 2011 by James K. Toohey. Responses are welcome.]

In our Commentary, Liability For The Post-Sale Installation Of Asbestos-Containing Replacement Parts Or Insulation, we attempted to review objectively an important nationwide trend in the case law relating to the duty of manufacturers of safe products to warn of risks created by products they did not make, specify or sell.

Messrs. Golanski and Kristal (respondents) submitted a seven-page reply, that is an ad hominem attack on the messengers rather than the message — pointedly contentious from a plaintiffs’ attorney’s perspective. Referring to us 26 times by name inside five pages of text, respondents hardly mention the hundred or so cases we cite. Instead, they dismiss the nationwide trend in the case law and related arguments concerning chrysotile and low dose exposures as recycled myths “that have long been hissed off the stage.”

To the contrary, the objective scientific evidence that chrysotile is not comparably hazardous to asbestiform amphibole fibers and that dose matters is so compelling as to be beyond serious scientific dispute. The nationwide trend against liability for products of others is equally real. As the Delaware courts noted recently, “[c]ontrary to Plaintiffs’ position, it appears that the majority of courts to address the issue have refused to impose liability upon manufacturers of non-asbestos-containing products for the dangers associated with asbestos-containing components or replacement parts manufactured, sold, and distributed by other entities.”

Let us look then at these “recycled myths” and see if, in fact, they have been “hissed off the stage.”

Chrysotile. Respondents’ sole cited support for the proposition that there is no difference between the potency of chrysotile and amphibole fibers in causing mesothelioma is a statement made by Dr. Irving Selikoff in 1972. It is now 2010, and “[s]cience deals in provisional truths.” The science involving asbestos and disease has evolved, and earlier provisional truths have been established or rejected. Dr. Selikoff is universally renowned for his efforts in focusing public attention on the hazards of asbestos through his work with asbestos union insulators in the 1960s and 1970s. During that time, he published many seminal studies involving exposure and disease among career insulators. He organized scientific conferences. He established the Mt. Sinai Environmental Sciences Laboratory. He also teamed with scientists, industries, unions, and governments to reduce exposure levels. He, too, dealt with “provisional truths.”

There was concern about mesothelioma and uncertainty as to its cause since the 1960s when it was first associated with exposure to crocidolite in the area of South African mines. By the mid-1960s international conference co-chaired by Selikoff, crocidolite was
established as a cause of mesothelioma; however, Selikoff observed that union insulators were contracting mesothelioma despite having worked only withamosite and chrysotile asbestos. In the publication of papers presented at that conference, the UICC addressed the subject and recommended epidemiologic studies of pure amosite and pure chrysotile.

It was Selikoff himself who subsequently published three papers demonstrating high rates of mesothelioma among workers at a manufacturing plant that used only amosite.

Neither he nor anyone else has published studies establishing high levels of mesothelioma at chrysotile plants, mines, or mills, although there has been controversy over the cause of 33 mesothelioma cases in Quebec among miners and millers.

By the 1980s, Dr. Selikoff’s influence among regulators calling for the abolition of any mining, milling, use or export of any asbestos fiber in any product was evident, and his view on chrysotile and the politicization of the science on that subject had become controversial. Scientific studies were being published during that time offering evidence that different fiber types and fiber sizes posed significantly different risks, particularly relating to mesothelioma. Such studies interfered with abolitionist goals. The percolating divide in the scientific community ruptured into a public controversy when Selikoff organized the “Third Wave” conference in 1990, to which judges hearing asbestos cases around the country were invited and attended, but from which opposing views were excluded or relegated to the sidelines.

The debate has continued. Serious scientists continue to publish studies showing little or no mesothelioma incidence at chrysotile-only plants and mines, but high levels at amphibole-only plants and mines. Studies of some chrysotile-only plants or mines found no cases, some found a few (but with evidence of the presence of amphiboles as well). Based on a meta-analysis of all of the studies worldwide, renowned British epidemiologists with no known involvement in asbestos litigation calculated that chrysotile is 100-500 times less productive of mesothelioma than the commercial amphiboles, amosite and crocidolite. Berman and Crump, who originally conducting a review of the issue for the EPA, concluded that the risk of mesothelioma, stated within a 95% confidence interval, is between zero and 1/200th of the risk posed by amosite or crocidolite.

In fact, even plaintiffs’ most zealous testifying expert witnesses agree that chrysotile creates a lower risk of mesothelioma than do amphibole fiber types. Some dispute only the extent of the difference while others dispute only whether chrysotile can be a co-cause at lower exposures.

Low Dose Chrysotile. Plaintiffs’ testifying experts readily concede that it is the dose that creates the risk. While they correctly note that there is no scientifically established threshold dose below which mesothelioma (or any cancer) will not occur, they concede that there is no epidemiologic evidence that mesothelioma can be caused by an extremely low dose. They rely on the absence of any such scientific evidence one way or another as “the scientific support” for the proposition that every exposure, chrysotile or amphibole, is a cause of every asbestos-related disease. This conclusion is contrary to virtually everything known about human tolerance and defense mechanisms, as well as about fiber retention as related to mesothelioma. Instead of scientific evidence as support for medical causation based on a “no threshold” hypothesis, they cite a 1986 risk assessment dose-disease modeling prepared for the EPA by Dr. William Nicholson, director of Mt. Sinai’s Environmental Sciences Laboratory. Because there is no established lower threshold dose for malignancies, Nicholson built into his model an assumed no threshold — an entirely appropriate assumption for a regulatory purpose, but invalid as proof of medical causation. Using a series of epidemiology studies of groups with high exposure doses and relatively high rates of mesothelioma, he simply drew a straight line on a graph from the cluster of studies of high dose groups showing the relationship of cases to exposure dose to the graph’s zero point for dose and rate with no scientific information justifying this linear model. Aside from the fact that Nicholson’s 1986 EPA Risk Model is for regulatory purposes only, and no proof at all of medical causation, it has been reevaluated as a risk model and found wanting for its failure to account for fiber size and fiber type differences.

In November of 1983, Dr. Nicholson himself addressed the issue of a low dose exposure in a specific circumstance. He reviewed and vouched for the
reliability of a gasket replacement study showing exposure levels of 0.02 f/cc. He noted in his affidavit that such exposures were 100 times lower than the 2.0 f/cc OSHA PEL, which was then in effect. In a letter accompanying the affidavit, he stated that the gasket exposures were 1,000 times lower than the time-weighted exposures he had calculated for insulators who worked only part of the time mixing cements and cutting block and pipe insulation, an exposure group included in his 1986 EPA risk model. Nicholson attested that persons exposed at this 0.02 f/cc had a non-existent risk of non-malignant disease and a risk of asbestos-related cancer that was “miniscule.” He concluded that such work created no discernible disability for those directly or indirectly exposed during such work.27

Exposures during brake repair work are similarly minute, found to average between 0.03-0.04 f/cc per brake change.28 Nicholson and his Mt. Sinai team were funded by NIOSH to study the brake repair workers for evidence that they may be at risk of non-malignant disease. They found no evidence of any impairment caused by such work.29 This study answered the question posed by Lorimer in his published 1976 article in the negative, but its Mt. Sinai authors never published in any scientific journal. Instead, they simply filed it under a government NTIS number.30

Epidemiology. Plaintiffs’ experts agree that epidemiology is necessary to establish causal connection between exposures and disease outcomes.31 Brake repair mechanics represent a large group, estimated by Lorimer at 900,000 men.32 They worked with chrysotile-only friction materials, and their exposure doses were very low.33 This is the ideal group to study for the effect of low dose chrysotile exposure as a possible cause of mesothelioma. Nineteen different epidemiologic studies have been reported from a diverse group of investigators with diverse funding sources from almost every industrialized country. Three meta-analyses have been performed to assemble these studies and to gather data to establish a high degree of confidence in the results. Each and every study, viewed either individually or collectively, has shown that those performing brake repair work are at no increased risk of mesothelioma.34

Lower Threshold Exposure Below Which Mesothelioma Will Not Be Induced. Rather than simply accepting the need for epidemiological evidence to support causation, plaintiffs’ experts generally look to the Helsinki Protocol, a set of criteria on medical causation created by consensus at a conference that included scientists who regularly testify for plaintiffs in asbestos litigation. That protocol states that exposure to asbestos in the ambient air is insufficient to establish causation of mesothelioma. That represents scientific recognition of a lower threshold dose below which a mesothelioma in a particular case cannot be held to have been caused by asbestos exposure.35 The regulatory threshold based on the current OSHA PEL is 0.1 f/cc for a 40-year work-life, or 4.0 f/cc. In most litigated cases, the alleged exposures to asbestos released from gaskets or friction materials of the individual defendant will be a fraction of the person’s lifetime ambient air dose of asbestos. Even in the most extreme case, if a person’s asbestos exposure was from replacing gaskets every day for 40 years, his total lifetime exposure dose would be only 20% that permitted by OSHA. If he changed a set of brakes every day for 40 years, his lifetime dose would be 30% to 40% of the dose allowed by OSHA.

Public Policy Statements. Respondents cite calls by various organizations for a blanket ban of the use of all types of asbestos fiber, including the export of asbestos cement pipe to underdeveloped countries, in support of their claim that chrysotile causes all asbestos-related diseases. Yet these absolutists have never responded cogently to the statement made to the EPA in 1986 by Dr. Arthur Langer, an original member of the Mt. Sinai Environmental Sciences Laboratory. Langer made two points: 1) it was folly to ban uses of asbestos in low-dose, low-risk products, such as friction products and gaskets, before replacement materials had been proven safe and functionally reliable; and 2) it was poor public health policy to ban the export of low cost chrysotile-based cement water pipe to underdeveloped countries based on a projected risk of one cancer in 100,000 people that might occur 20 to 55 years later when the consequence of the ban would be to deprive large populations the transport of clean water for drinking and sanitation, leaving hundreds of thousands of persons to face imminent disease and death from water-born illnesses.36 Moreover, the United States and its health agencies still permit use of gaskets and friction products that give off levels of asbestos so tiny that they can be used in conformance with the current protective TWA standard of 0.1 f/cc.
The respondents’ sole authority for the proposition that fiber distinction is not an accepted legal defense on causation is an unpublished 2004 Western Pennsylvania trial court ruling. Contrary to their claim, the chrysotile defense is alive and well. Recently, in Smith v. Kelly-Moore,37 the court entered judgment for the defendant as a matter of law based on the plaintiff’s failure to establish that the plaintiff’s chrysotile exposure was sufficient to cause mesothelioma, given that studies relied on by the plaintiff’s causation expert showed that the fiber distinction is not an accepted legal defense on causation.

In addition, not all New York trial courts have found Berkowitz dispositive. In Kosowski v. Crane Co.,51 the court entered summary judgment for the defendant based on the record in that case because, while Crane Co. knew that its pumps could be used with external asbestos insulation, it had no specific knowledge of the type of asbestos that would be used on the cranes located where the plaintiff worked. The Kosowski court did not cite Rastelli, but cited and distinguished Berkowitz in reaching its decision.

By implication, the Berkowitz court and respondents suggest that imposing a duty to warn on a supplier of non-asbestos products would be effective in protecting workers against harmful exposures to that later-added asbestos insulation. In so arguing, respondents use their best factual case, one brought against manufacturers of large turbines. Such a defendant would have had actual knowledge that its turbines, built for use in large electrical power plants, would be covered with asbestos insulation. Typically, the utility company hires a sophisticated consulting engineering firm that writes specifications for all of the equipment to be installed in the plant, including multi-storied boilers and turbines and the insulation required to cover both. The contract to build the plant with those specifications is subject to bidding by sophisticated general contractors, one of whom will get the job. The winning contractor will purchase the equipment, including insulation, either from the companies designated in the specification or from those that can provide products complying with the specifications. It will hire an insulation subcontractor that will purchase and install insulation that complies with the specifications. The insulation contractor will hire highly skilled and highly paid union insulators to install the insulation. Each of those entities would have known at least as much as, and likely more than, sophisticated turbine manufacturers about the particular hazards of asbestos and the methods through which those dangerous exposures best could have been prevented.52 Each employer of any construction worker involved in the construction of the boiler, and other non-asbestos product manufacturers face this precise circumstance. Given respondents’ emphasis on New York cases, including Berkowitz,49 that ignore the directive of their high court decision in Rastelli, we provide the Rastelli court’s entire discussion of the issue in the footnote below.50

Legal issues raised by respondents. In the second half of their Reply, respondents purport to refute our legal analysis. Our Commentary surveyed cases in jurisdictions across the country, noting the new momentum generated by two Washington Supreme Court cases, Braaten38 and Simonetta,39 and the likely significance of the pending case before the California Supreme Court on review of four California appellate decisions.40 Respondents, showing a “New York State of Mind,”41 devote their attention almost exclusively to discussion of New York law. They take particular umbrage at the Commentary’s critical analysis of the New York Appellate Division cases42 that ignore apposite New York Court of Appeals cases, Rastelli v. Goodyear Tire & Rubber Company43 and Holdampf v. Port Authority.44

Berkowitz and duty to warn. Respondents argue that Berkowitz45 is the correct legal standard - that a defendant “may have a duty to warn” if it knew its non-asbestos product would be used with asbestos-containing products. Berkowitz actually says, however, that the duty “may exist,” because the manufacturer knew that the Navy specified the use of asbestos to insulate its product.46

Respondents attempt to avoid the state’s high court holding in Rastelli by suggesting that it was limited to “the circumstances of the case.”47 In fact, the “circumstances of the case” cited by the Rastelli court were: “when the first manufacturer produces a sound product which is compatible for use with a defective product of the other manufacturer,” that manufacturer has no duty to warn of hazards in the other product.48 Pump, valve,
power plant, including the workers installing the insulation, and the utility company whose employees use the end products, has a legal obligation to provide its own workers with a safe work place and prevent exposures to hazardous materials.

The general rule of product safety is: 1) design the product to eliminate any potential hazard, 2) if that is not feasible, include appropriate guards that will keep persons from contact with the hazards, and 3) if neither (1) nor (2) is feasible, place a warning on the product that, if followed, will protect the user against unreasonable risk of injury. The Restatement of the Law, Torts, Third, Product Liability, § 2 essentially tracks that design philosophy. It defines a product as defective if it has a manufacturing defect, a design defect, or if a reasonable warning “could have reduced or avoided” a foreseeable risk posed by the product, and such warning was not supplied (emphasis added). Of course, the designer could have eliminated the risk with a design that did not call for the use of asbestos, but the turbine manufacturer had no control over that decision process — a critical factor considered by Rastelli and ignored by Berkowitz. With respect to the duty to warn, no foreseeable risk was posed by the turbine itself — another factor considered by Rastelli and ignored by Berkowitz.

Even assuming the turbine manufacturer had a duty to warn of risks in another product, based solely on knowledge of the risk, was it in a position to give one? Where would the turbine manufacturer place a warning, given that it had no control of the facility and merely shipped a product for assembly at the site? It would have to be placed on some major piece of the turbine itself. The turbine, however, would be covered immediately after installation by the insulation. What could the warning say that would be judged sufficient as a matter of law to avoid the case being submitted to the jury? Nothing short of the following:

CANCER WARNING
Based on decisions made by others, including your employers, this product is about to be covered by asbestos insulation. If the insulators employ good housekeeping practices, asbestos fibers will be released and may cause cancer to you or, if carried home on your clothing, even to your family members! If they do not employ good housekeeping practices, the risk of cancer will be greater!

Would that warning be reasonable in this commercial context? There is no real possibility that the turbine manufacturer would have been permitted by the contractor to place any such warning at any location on the product where it would be conspicuous enough to be seen by all possibly affected persons. That is precisely why foreseeability alone is not the determinant of whether a duty to warn exists.53

What about manufacturers of smaller pumps, valves, or even automobiles, whose products created no risk at all at the time of sale?54 Fiber dose exposures even by repair personnel were at levels: 1) 750-1,500 times lower than permitted by the pre-1968 TLVs, adopted as regulations by most states and several federal agencies including the U.S. Navy; 2) 125-250 times lower than OSHA’s 1972 standard, and 3) 50-100 times lower than the 1976-1986 standard — by which time asbestos was being removed from most friction materials and sealants used in those products. Further, chrysotile-only products posed a fiber-by-fiber risk 100-500 times less than amphiboles. As Nicholson himself noted in 1983, no regulatory agency had sought to control such tiny exposures. OSHA itself required a specific asbestos warning — but only on products that might create exposures above the PELs and STELs.

This fourth wave of asbestos litigation is without solid legal basis. Moreover, it is bad public policy. Those suffering from asbestos-caused diseases have remedies. There are now $25-30 billion in the bankruptcy trusts established by bankrupt manufacturers of asbestos products, with more trusts predicted to come on line in the near future. Those trusts are organized and controlled by plaintiffs’ asbestos lawyers, and the cumulative totals awarded to claimants are substantial.55 Why, then, should the courts stretch liability to allow potential double recoveries from companies that did not cause the problem? Should they do so merely because those companies have survived since the 1950s as the last remnants of the U.S. manufacturing industry? Must they, too, run for bankruptcy cover, thereby jeopardizing more jobs, pensions, and 401(k) savings of their employees?56 Fortunately, the trend is away from such liability.
Endnotes


3. Messrs. Kristal and Golanski practice at Weitz and Luxenburg, a New York firm that since 1986 has specialized in asbestos and other toxic tort litigation and is well known both for its successes and its ubiquitous advertising. Mr. Toohey and Ms. Matthews, co-authors of the original Commentary, practice at Johnson & Bell, Ltd., Chicago, representing defendants in asbestos and other toxic tort litigation. A number of their clients sold machinery that required sealants and/or automobiles that required friction materials during periods in the past when chrysotile asbestos was a material of choice in most friction materials and some sealants.

4. Kristal and Golanski, supra note 2, at 18. Ad hominem attack and “hissing” are the standard responses to any study that provides evidence undermining plaintiffs’ position that every exposure to any fiber dose, type or size is a cause of this plaintiff’s disease. See, e.g., R. Stone, News and Comment, *No Meeting of the Minds on Asbestos*, 254 SCIENCE 928-931 (1991); Joseph Hooper, *The Trouble with Medical Journals*, 61 (Royal Society of Medicine Press 2006).


7. In November of 1968, The International Union of Heat and Frost Insulators and Asbestos Workers’ Union announced in its monthly magazine, ASPES-TOS WORKER, that the Union and Johns-Manville had formed a joint venture to conduct environmental studies regarding insulation work. The April issue of that magazine included the first insert, Spring 1969, called *Mt. Sinai Environmental Sciences Laboratory Insulation Hygiene Progress Reports From the Insulation Industry Hygiene Research Program*, commonly called the Green Sheets, in which Dr. Selikoff that announced the program under funding provided by the Asbestos Workers Union, Johns-Manville, and The Sprayed Mineral Fibers Manufacturers Association. Starting in 1969, his Green Sheets were directed to reducing exposure levels by informing asbestos insulators of: a) the best methods of detecting and minimizing injury-causing exposures; and b) efforts to pressure OSHA for the reduction of permitted exposure levels and to rid the U.S. Navy and commerce of insulation and other asbestos products producing high dust counts. See, e.g., *Asbestos Worker Magazine*, Vol. XVIII, February 1969, in which Selikoff addresses asbestos workers’ obligation to protect themselves and members of allied trades from exposure by adopting safer work practices.


10. *Carcinogenicity of Amosite Asbestos*, 25 ARCHIVES ENVTL. HEALTH 183-186 (1972); Short-Term
13. This author was engaged in a trial in Madison County at the time. Returning to the trial on a Sunday evening flight to St. Louis, he spoke to a fellow passenger, the Madison County judge trying the asbestos case that he was defending. The trial judge advised that he was returning from a medical conference about asbestos held in the preceding days in New York, later identified as the Third Wave Conference.

14. Stone, supra note 4; Hooper, supra note 4.

15. See, e.g., L. Sichletidis, et al., Mortality from Occupational Exposure to Reliably Pure Chrysotile: A 39-Year Study, 78 Respiration Int’l J. Thoracic Med. 63-68 (2009)(DPMY cases in relatively pure Greek chrysotile mine); E. Pira, et al., Mortality from Cancer and Other Causes in the Balangero Cohort of Chrysotile Asbestos Miners, 66 OCCUPATIONAL ENVTL. MED. 805-09 (2009)(two mesotheliomas in an Italian mine contaminated with Balangerite); Yang 2009 (review); Camus, et al., Risk of Mesothelioma Among Women Living Near Chrysotile Mines Versus US EPA Asbestos Risk Model: Preliminary Findings, 46 ANNALS OCCUPATIONAL HYGIENE 95-98 (2002)(finding the 1986 EPA Risk Model grossly overstates the risk of mesothelioma among residents of a Quebec mining area); Case, et al., Preliminary Findings for Pleural Mesothelioma Among Women in the Quebec Chrysotile Mining Regions, 46 ANNALS OCCUPATIONAL HYGIENE 128-31 (2002)(following up on reports of mesothelioma cases in Camus and confirming that six of ten possible or probable cases worked in an asbestos industry, that all ten were in the highest tremolite (amphibole-exposed) region of Thetford Mines, that, in three studied by lung fiber analysis, all had every fiber type available in lung analyses, and that no cases were found in the lower-tremolite area around the Jeffrey Mine); David Rees, et al., Asbestos Lung Fibre Concentrations in South African Chrysotile Mine Workers, 45 ANNALS OCCUPATIONAL HYGIENE 473-77 (2001)(no DMM in South African chrysotile mine); Newhouse & Sullivan, A Mortality Study of Workers Manufacturing Friction Materials, 1941-86, 46 BRITISH J. INDUS. MED. 176-179 (1989)(at a chrysotile friction plant, all cases had amphibole exposures, except two with uncertain histories); James A. Talcott, et al., Asbestos-associated Diseases in a Cohort of Cigarette-Filter Workers, 321 NEW ENG. J. MED. 1220 (1989)(workers using crocidolite to make cigarette filters had 5 deaths out of 33 from mesothelioma); Acheson, et al., Mortality of Two Groups of Women who Manufactured Gas Masks from Chrysotile and Crocidolite Asbestos: a 40-Year Follow-Up, 39 BRITISH J. INDUS. MED. 344-48 (1982)(women making civilian gas masks in the UK using only chrysotile had no DMM cases, while women making military gas masks using crocidolite had a very high incidence of DMM, 28% of which were peritoneal cases);

16. *Id.*


24. Defense experts generally cite Paracelsus, the father of toxicology, who stated heretofore what has been the uncontroverted truism, “[a]ll substances are poisons; there is none which is not a poison. The right dose differentiates a poison . . . .”


26. Those scientists found that short fibers create no mesothelioma risk and that the risk of mesothelioma from exposure to chrysotile is between zero and 1/200th of the amphibole risk. Camus, *supra* note 15; Case, *supra* note 15; Berman and Crump, *supra* note 18.


29. Armed with articles published by Mt. Sinai’s Rohl in 1975 and 1976 and Lorimer in 1976 (see, note 32) expressing concern about the potential for disease among brake mechanics, Dr. Selikoff conducted meetings on the subject at NIOSH in 1975 and 1976 demanding further study. Thereafter, NIOSH funded the Mt. Sinai team, including Nicholson, Lorimer and Selikoff, to conduct a comprehensive study of a cohort of New York City mechanics to determine if mechanics showed any symptoms of asbestos-related disease. The results of pulmonary function tests of those in the brake repair group were normal or better than expected. Those doing automobile brake

30. Ibid.

31. Frank, Transcript of proceedings, 2/13/08, In Re: Asbestos Cases, Court of Common Please, PA, (October 2008) (Epidemiology is the top scientific tool to establish cause); Brody, Abernethy v. ABB Lumus, Madison County, IL, deposition taken on October 4, 2004, at 47:22-25, 48:6-16 (Epidemiology is most important for cause ... [y]ou must have epidemiology).


33. Supra note 28.


35. The EPA published results of air surveys conducted by members of the Mt. Sinai asbestos team, led by Dr. William Nicholson, who found that ambient air measurements ranged from 0.01 f/cc-0.00007 f/cc breathed air 24-hr/day, 365 days/yr for every year of life. Many plaintiffs’ testifying experts have signed the Helsinki Protocol as a consensus by which they believe a disease can be attributed to asbestos exposure.


41. Billy Joel, New York State of Mind; see also Steinberg, View of the World from 9th Avenue, THE NEW YORKER, cover, March 29, 1976.


46. In stating that the defendant “may have a duty to warn,” the court abandons its own obligation to decide the question of duty, which is one of law and not one to relegate to the jury to decide. Rastelli, supra, note 41.

47. Kristal and Polanski, supra note 2, at 21.

48. Rastelli, 591 N.E.2d at 225.


50. “The issue [is] whether... Goodyear has a duty to warn against its non-defective tire being used with an allegedly defective tire rim manufactured by others...”

“Plaintiff’s alternative theory of recovery sounds in negligence and strict products liability. She alleges that the subject Goodyear tire was made for installation on a multipiece rim, that Goodyear was aware of the inherent dangers of using its tires in conjunction with such rims and, thus, that Goodyear had a duty to warn of the dangers resulting from such an intended use of its tires. Plaintiff does not claim that the subject tire was defective. Her claim is based only on the fact that the particular Goodyear tire could be used with multipiece rims which had
their own alleged inherent defects. (Footnote omitted.)"

"We have held that a plaintiff may recover in strict products liability or negligence when a manufacturer fails to provide adequate warnings regarding the use of its product [citations omitted.]"

"Under the circumstances of this case, we decline to hold that one manufacturer has a duty to warn about another manufacturer’s product when the first manufacturer produces a sound product which is compatible for use with a defective product of the other manufacturer. Goodyear had no control over the production of the subject multipiece rim, had no role in placing that rim in the stream of commerce, and derived no benefit from its sale. Goodyear’s tire did not create the alleged defect in the rim that caused the rim to explode. Plaintiff does not dispute that if Goodyear’s tire had been used with a sound rim, no accident would have occurred. See Lytell v. Goodyear Tire & Rubber Co., 439 So. 2d 542 (La. Ct. App. 1983)."

"This is not a case where the combination of one sound product with another sound product creates a dangerous condition about which the manufacturer of each product has a duty to warn. See Ilosky v. Michelin Tire Corp., 307 S.E.2d 603 (W. Va. 1983). Nothing in the record suggests that Goodyear created the dangerous condition in this case. Thus, we conclude that Goodyear had no duty to warn about the use of its tire with potentially dangerous multipiece rims produced by another where Good- year did not contribute to the alleged defect in a product, had no control over it, and did not produce it (citations omitted)."


52. Selikoff himself admonished union insulators that it was of paramount importance that they use safe work practices to eliminate dust in order to protect the health of workers in other trades. See, e.g., Asbestos Worker Magazine, Vol. XVIII, No. 6 (Feb. 1969).

53. Rastelli, supra note 41; Holdampf, supra note 42.

54. See, e.g., notes 13, 15, 16, 18, 19, 21, 23-26, 29, and 31.


56. Id. ■