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**Gallagher Sharp Newsflash: Asbestos Product Supplier Liability**

On October 22, 2008, the Supreme Court of Ohio held that non-manufacturer suppliers of asbestos products in Ohio cannot be found strictly liable for products containing asbestos that were supplied before the 1977 decision in *Temple v. Wean United, Inc.*, which is the case adopting Section 402(A) of the Restatement of the Law of Torts as the law in Ohio. In *Temple*, for the first time, the Supreme Court had defined a rule of law allowing non-manufacturing suppliers to be liable for injuries caused by defective products that they sold. In *DiCenzo v. A-Best Products Co.*, Slip Opinion 2008-Ohio-5327, the Supreme Court held that because the *Temple* decision addressed an issue of first impression in the development of product liability law in Ohio that had not been clearly foreshadowed in any prior cases, *Temple* would only apply prospectively.

The *DiCenzo* decision is significant because it essentially holds that suppliers of asbestos products in Ohio are strictly liable in tort only for products that were supplied after the Supreme Court's *Temple* decision in 1977. This means that, for all sales that took place prior to 1977, non-manufacturing sellers of asbestos products can be found liable only for their own negligent misconduct, such as negligent failure to warn. For actions (i.e., supplying products) in the date range of 1977 forward to 1988, *Temple* would be applicable to those who supplied defective products, so strict liability would apply. But, in 1988, the Ohio Product Liability Act took effect. This act basically revokes strict liability for suppliers, subject to certain limited exceptions. Outside of those exceptions, for products supplied subsequent to the enactment of the Ohio Product Liability Act, a supplier's liability should only be based on negligence.

While the *DiCenzo* case is expressly applicable to suppliers of asbestos products, it remains to be seen whether it will be given broader application to other product liability cases impacted by the *Temple* decision.

The link to the *DiCenzo* opinion is:  
<http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-ohio-5327.pdf>

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