Strict Products Liability—*Coffman v. Armstrong International, Inc.*: Are the People Powerless Against Prominent Products?

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I. INTRODUCTION

Donald Coffman was employed as an equipment mechanic at Tennessee Eastman Chemical Plant in Kingsport, Tennessee between 1968 and 1997.[1] Mr. Coffman's daily work consisted of repairing and replacing equipment that transported highly corrosive acids for distilling, reclaiming, and refining for over twenty years because the

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1. Coffman v. Armstrong Int'l, Inc., 615 S.W.3d 888, 891 (Tenn. 2021). The facts of the case are recited based on the record on appeal. However, the opinion on appeal omitted some facts that were included in the Court of Appeals opinion. *See id.* at 891 n.3. Therefore, this Comment will include some of the compelling facts as developed by the Court of Appeals. Coffman v. Armstrong Int'l, Inc., No. E2017-01985-COA-R3-CV, 2019 Tenn. App. LEXIS 357, at *4–7 (Tenn. Ct. App. July 22, 2019), *rev'd in part*, 615 S.W.3d 888.

chemical plant required daily maintenance.[2] This equipment was manufactured by several different companies in the business of making pumps, pipes, packing, insulation, valves, and different types of gaskets.[3] Some of the equipment Mr. Coffman worked with required insulation to ensure equilibrium in the chemical's temperature—not too hot, not too cold.[4] In this laborious process, Mr. Coffman breathed in dust created by removing the insulation that was used to ensure the parts functioned properly.[5]

Although Mr. Coffman did not know it during his tenure at Tennessee Eastman Chemical Plant, he was breathing in asbestos. In 2014, Mr. Coffman was diagnosed with lethal malignant pleural mesothelioma; he died three months later.[6] Thus, our interest in the tragedy that befell Mr. Coffman begins with his end.[7] Mr. Coffman's story is not singular; it is representative of thousands of people who have suffered illness and death due to asbestos exposure.[8] All of these stories have the same question: who should be liable?[9]

2. *Coffman*, 615 S.W.3d at 891.

3. *Id.*

4. *Coffman*, 2019 Tenn. Ct. App. LEXIS 357, at *4; *see also* Dwight A. Kern & David S. Kostus, *The Controversial Contradiction Between Traditional Precedent and Recent Failure to Warn Jurisprudence in New York*, 74 ALB. L. REV. 793, 801 (2011).

5. *Id.* at *4–7.

6. *Coffman*, 615 S.W.3d at 900 (Lee, J., dissenting).

7. The author attempted to discern more information regarding the life of Mr. Coffman, but the search was to no avail.

8. *See generally* John P. Burns et al., *Special Project*: *An Analysis of the Legal, Social, and Political Issues Raised by Asbestos Litigation*, 36 VAND. L. REV. 573, 577 (1983) ("The number of American workers who have developed or will develop diseases related to their exposure to asbestos is of unprecedented proportion. These diseased workers, seeking compensation for their occupational disability, have brought thousands of suits . . . .").

9. *See* JAMES E. BEASLEY, PRODUCTS LIABILITY AND THE UNREASONABLY DANGEROUS REQUIREMENT 9 (1981) ("[T]he goal of encouraging the mass production of new products has run head-on into the public policy of protecting the consumer and general public from experiencing risks they cannot guard against effectively and from suffering burdens they are not in a position to absorb."); *see also* RESTATEMENT (SECOND) OF TORTS § 402A cmt. c (AM. L. INST. 1965). *But see* Victor E. Schwartz & Mark A. Behrens, *Asbestos Litigation: The "Endless Search for a Solvent Bystander,"* 23 WIDENER COMMONWEALTH L. REV. 59, 62 (2013) (arguing that "tort law should not impose liability simply because a particular defendant can pay for it.").

In *Coffman v. Armstrong International, Inc.*, the Tennessee Supreme Court ("Supreme Court") declined to hold manufacturers liable for inadequate safety warnings on products with post-sale integrated parts that create an unreasonably dangerous or defective condition.[10] The facts above led to Mr. Coffman filing suit,[11] and his widow continued the suit, seeking redress for Mr. Coffman's workplace exposure to asbestos and his untimely death.[12] The Supreme Court reversed the Court of Appeals' assignment of liability on the manufacturers, reinstated the trial court's judgment that manufacturers have no duty to warn users about integration of dangerous materials that occur post-sale, and remanded the case to the trial court.[13] Moreover, the Supreme Court *held* the manufacturer's duty to warn about potentially dangerous products only extends to existing defects at the time the manufacturer relinquishes control of the product, reasoning that the plain language of the Tennessee Products Liability Act ("TPLA") should not be interpreted to expand the duty to warn of dangerous conditions created after a product leaves the manufacturer's control. *Coffman v. Armstrong Int'l, Inc.*, 615 S.W.3d 888, 896 (Tenn. 2021).

While the *Coffman* decision analyzed the issue based on a plain language interpretation of the TPLA, the Supreme Court abandoned established Tennessee jurisprudence that considered whether a risk of harm was foreseeable when deciding to assign liability.[14] This approach minimizes not only the role that manufacturers have in the supply chain, but also the intended and reasonably foreseeable use of products. The precedent set by the *Coffman* Court will have a lasting impact on the ability of victims harmed by unreasonably dangerous products—through no fault of their own—to seek redress through the judiciary.

Part II of this Comment will provide an overview of the development of duty in strict liability law in Tennessee. Part III will analyze *Coffman* to pinpoint the primary facts the Court used to support its reasoning and holding. Part IV will express concerns about how the

10. *Coffman*, 615 S.W.3d at 900.

11. Coffman v. Armstrong Int'l Inc., No. E2017-01985-COA-R3-CV, 2019 Tenn. App. LEXIS 357, at *7 (Tenn. Ct. App. July 22, 2019).

12. *Coffman*, 615 S.W.3d at 890.

13. *Id.* at 891.

14. *See generally* Satterfield v. Breeding Insulation Co., 266 S.W.3d 347, 359–61 (Tenn. 2008) (discussing the relevant Tennessee case law applying a balancing test after determining whether the risk of harm was foreseeable).

Coffman Court's ruling will affect future litigants, and Part V will conclude by examining the future possibilities of products liability law in Tennessee.

II. THE HISTORY OF RELEVANT CASE LAW

In general, courts tend to treat the assignment of duty with reluctance because imposing a duty to do, or refrain from doing, *something* creates rights and liabilities.[15] Typically, a manufacturer's liability is limited to injuries that result from products that were in a defective condition or unreasonably dangerous,[16] and "reach[ed] the user or consumer without substantial change in the condition in which it is sold."[17] This standard is broadly construed to mean that liability will not attach unless the product reaches the consumer in the same condition as it was in at the time it left the manufacturer. Thus, plaintiffs who are harmed by products that were changed or modified post-sale are generally left without legal redress.[18]

15. See Tod Duncan, Comment, Air and Liquid Systems Corporation v. DeVries: *Barely Afloat*, 97 DENV. L. REV. 621, 626, 652 (2020), for an explanation on why courts seem to be reluctant to impose a duty in third-party integrated parts cases.

16. *Compare* RESTATEMENT (SECOND) OF TORTS § 402A(1) (AM. L. INST. 1965), *with* TENN. CODE ANN. 29-28-105(a). The Tennessee legislature chose to attach liability for products either in a "defective condition *or* unreasonably dangerous," as opposed to the Restatement's requirement of "defective condition unreasonably dangerous" (emphasis added); *see also* Roysdon v. R.J. Reynolds Tobacco Co., 849 F.2d 230, 235 (6th Cir. 1988) (interpreting the TPLA).

17. RESTATEMENT (SECOND) OF TORTS § 402A(1)(b) (AM. L. INST. 1965); *see also* Whitehead v. Toyota Motor Corp., 897 S.W.2d 684, 688 (Tenn. 1995) (adopting the RESTATEMENT (SECOND) OF TORTS § 402A in Tennessee). *See generally* RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 5 (AM. L. INST. 1998).

18. Cf. Air & Liquid Sys. Corp. v. DeVries, 139 S. Ct. 986, 991 (2019), for the United States Supreme Court's discussion of integrated parts in the maritime context. The plaintiff's claimed *inter alia* that the manufacturers negligently failed to warn of dangers of integrated products for Navy ships. *Id.* at 992. The Court held that "a product manufacturer has a duty to warn when (i) the product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's user will realize the danger." *Id.* at 995. However, the Court restricted this test to the maritime context and left a split among lower courts. *Id.* ("We do not purport to define the proper tort rule outside of the maritime context.").

In particular, the type of products liability law this comment is concerned with is a manufacturer's duty to warn of unreasonably dangerous or defective conditions associated with the use of a product.[19] In determining manufacturer liability for failing to warn, courts look to whether the product was unreasonably dangerous or in a defective condition, beyond what an ordinary consumer would expect, at the time the manufacturer released the product from its control.[20] With this in mind, the following analysis will look to the history of Tennessee's products liability law, considering what constitutes an unreasonably dangerous product that requires warning, whether foreseeable and anticipated uses of a product creates a duty to warn, and the scope and extent of liability for failing to warn of unreasonable dangers associated with a product.[21]

In the 1989 Tennessee Supreme Court case *Goode v. Tamko Asphalt Products, Inc.*, the Court rejected the plaintiff's argument that the product was unreasonably dangerous because "no human in medical history" sustained injuries similar to the plaintiff's by handling the manufacturer's product.[22] The Court contemplated whether the asphalt-based roofing shingles were unreasonably dangerous such that a

19. *See* Pemberton v. Am. Distilled Spirits Co., 664 S.W.2d 690, 692 (Tenn. 1984); TENN. CODE ANN. § 29-28-102(2), (8). A product may not be unreasonably dangerous in its own right, but dangerous still by reason of an inadequate or lack of a warning label to alert consumers of potential dangers. The standard to determine whether a product is unreasonably dangerous is examined by what an ordinary consumer would expect; in warning label cases, the standard is whether a prudent manufacturer would provide a warning prior to putting the product on the market.

20. See RESTATEMENT (SECOND) OF TORTS § 402A cmt. g (AM. L. INST. 1965), for an explanation of the prominent consumer expectations test, and the justification behind limiting the liability of manufacturers against products that are modified after they relinquish control. *See also* TENN. CODE ANN. § 29-28-105(a) (stating that liability will not attach "unless the product is . . . in a defective condition or unreasonably dangerous at the time it left the control of the manufacturer.").

21. *See* Satterfield v. Breeding Insulation, Co., 266 S.W.3d 347, 367, 375 (Tenn. 2008) (extending the duty of a manufacturer to an employee's daughter because her exposure to asbestos from her father's work clothes was foreseeable). *But see* Paul J. Riehle et al., *Products Liability for Third Party Replacement or Connected Parts: Changing Tides from the West*, 44 U. S.F. L. REV. 33, 39 (2009) (examining the implications of "impos[ing] liability for asbestos exposure on ever more remote parties").

22. 783 S.W.2d 184, 188 (Tenn. 1989). Here, the Plaintiff alleged that he developed vitiligo due to a chemical reaction from the sunlight and "exposure to defendant's asphalt based products." *Id.* at 185.

manufacturer had a duty to provide a warning label for consumers.[23] Given that "no human in medical history" experienced vitiligo from exposure to the defendant's asphalt-based products, the Court declined to extend liability to the manufacturers.[24] The Court in *Goode* held that the defendant's product was not "unreasonably dangerous, in July 1982, as defined in the statute."[25] Although the *Goode* Court recognized that the evidence may have "established a causal connection between plaintiff's" injury and the defendant's product, the plaintiff failed to establish that the product was unreasonably dangerous prior to the sale.[26] Thus, to establish a manufacturer's duty to warn product, a party must prove not only that the product was unreasonably dangerous or in a defective condition, but also that the product is in the same condition as when it left the manufacturer's control.

While the *Goode* Court did not expressly state the doctrine, the Court's analysis, based on the TPLA, provided that the determination for whether a product is unreasonably dangerous is based on the consumer expectations test.[27] Notably, in 2013, the Sixth Circuit interpreted the TPLA.[28] Important to this Case Comment, the Sixth Circuit found that "[t]he TPLA provides two tests to determine whether a product is unreasonably dangerous: the consumer-expectation test and the prudent-manufacturer test."[29]

In affirming the lower court's ruling that the brand name manufacturers had no duty to warn, the *Strayhorn* Court held that Tennessee liability on manufacturers for harm associated with a product will not attach if the injuries were due to "products made by others."[30] The Sixth Circuit reasoned that the brand name product manufacturers

23. *Id.* at 187.

24. *Id.* at 188.

25. *Id.* (referring to the TPLA).

26. *Id.* at 187–88 (finding the product was not unreasonably dangerous due in part to the lack of expert and consumer data of similar injuries resulting from petroleum-based asphalt exposure).

27. *Id.*; TENN. CODE ANN. § 29-28-102(8).

28. Strayhorn v. Wyeth Pharms., Inc., 737 F.3d 378, 384, 401 (6th Cir. 2013).

29. *Id.* at 392. The prudent-manufacturer test is a seven factor "risk-utility analysis." *Id.* at 397. Although the sixth factor of the prudent-manufacturer's test includes "the user's anticipated awareness of the product's inherent dangers," *id.*, the consumer expectations test is relevant for the purposes of this Case Comment.

30. *Id.* at 405.

should not be liable for the injuries sustained by the plaintiffs from another manufacturer's products because, although the injury may have been foreseeable, foreseeability alone is not dispositive, and manufacturers are only responsible for harm stemming from use of their own products.[31] Therefore, a manufacturer's liability for failure to warn about an unreasonably dangerous product is based in part on whether a consumer in the relevant community would expect warnings from a certain manufacturer on a product.

However, products liability jurisprudence in Tennessee, from the legislature to the judiciary, looks to the "anticipatable handling and consumption" of products in determining whether to assign liability.[32] In *Nye v. Bayer Cropscience, Inc.*, the Supreme Court reviewed the liabilities of participants in the stream of commerce.[33] There, a company that sold asbestos containing products tried to shift liability to the decedent's employer.[34] The Supreme Court rejected the defendant seller's argument that selling to a sophisticated intermediary relieved it from liability because the duty to warn increases with greater risks of harm, comparing asbestos to an abnormally dangerous product.[35] Thus, Tennessee has traditionally looked to whether there was an unreasonable danger that could have been anticipated by the entity that casts a product into the stream of commerce in assigning liability.

Additionally, in *Satterfield v. Breeding Insulation Co.*, the Supreme Court analyzed the scope of a particular manufacturing facility's duty to warn both consumers and people who are unreasonably yet

31. *Id.* at 404.

32. TENN. CODE ANN. § 29-28-102(2); *see* Nye v. Bayer Cropscience, Inc., 347 S.W.3d 686, 702 (Tenn. 2011) (discussing that a manufacturer is relieved from liability if the "intervening act" by another actor is "(1) independent, (2) efficient, (3) conscious and (4) *not reasonably to have been anticipated*") (emphasis added) (citation omitted).

33. Nye v. Bayer Cropscience, Inc., 347 S.W.3d 686, 691 (Tenn. 2011).

34. *Nye*, 347 S.W.3d at 705–06.

35. See *id.* for the Supreme Court's supportive reasoning for why a defendant seller may be liable rather than the employer of the defendant (first citing TENN. CODE ANN. § 29-28-102(3); then quoting RESTATEMENT (SECOND) OF TORTS § 402A cmt. I) (AM. L. INST. 1965)); *see also* Satterfield v. Breeding Insulation, Co., 266 S.W.3d 347, 367 (Tenn. 2008) (condemning the manufacturing facility's misfeasance in operating the facility despite their "extensive and superior knowledge").

foreseeably exposed to asbestos.[36] Although the appellant was aware of health risks associated with trace amounts of asbestos exposure from the facility's use of asbestos, the facility did not "mak[e] an effort to prevent others from being exposed to the asbestos fibers on its employees' clothes."[37] The Supreme Court found that duty should not be premised on the existence of a special relationship in the case of misfeasance; rather, a duty may arise due to operating a facility in "an unsafe manner," and liability may "extend to any person to whom the harm may reasonably be anticipated as a result of the defendant's conduct."[38]

However, the *Satterfield* Court also recognized that most outcomes are foreseeable in hindsight, so a duty should stem from the defendant's conduct that creates a recognizable risk of harm to a particular plaintiff or a class of plaintiffs.[39] The Supreme Court concluded that the risk to the appellee was foreseeable, and applied a balancing test to determine that the appellants did owe a duty to the deceased daughter of an employee who suffered prolonged exposure to asbestos due to the misfeasance of the manufacturing facility.[40] In conclusion,

36. *Satterfield*, 266 S.W.3d at 352–53 (recognizing that the defendant manufacturing facility was actually aware "that the dangers posed by asbestos fibers extended beyond its employees . . . .").

37. *Id.* (detailing how the defendant "opened its own internal hygiene department" in the 1940s and OSHA regulations created in 1972 prohibited workers who were exposed to asbestos from taking their work clothes home); *see also* Nye v. Bayer Cropscience, Inc., 347 S.W.3d 686, 706 (Tenn. 2011) (interpreting "consumer" to mean an employee to whom a duty to warn is owed under the TPLA). In addition to the legal reasoning, the *Satterfield* Court stated that "[d]uring the balancing process, it is permissible for the courts to consider the contemporary values of Tennessee's citizens." *Satterfield*, 266 S.W.3d at 366.

38. *Satterfield*, 266 S.W.3d at 364 (citations omitted). Although the *Satterfield* Court applied a foreseeable risk of harm analysis, the Court limited this in a few ways. First, the "consideration of foreseeability is limited to assessing whether there is some probability or likelihood of harm that is serious enough to induce a reasonable person to take precautions to avoid it." *Id.* at 367. Second, the Supreme Court limited the application of a foreseeability balancing analysis to circumstances "[w]hen the existence of a particular duty is not a given or when the rules of the established precedents are not readily applicable . . . ." *Id.* at 365. The second limitation was an important factor for the *Coffman* Court's disregard for the foreseeability standard announced in *Satterfield*.

39. *Satterfield*, 266 S.W.3d at 366–67(citation omitted).

40. *Id.* at 374–75.

Tennessee jurisprudence extends a duty to warn for anticipated dangers of unreasonably safe products to people who, although they are not consumers, are foreseeably at risk of harm from the defendant's conduct.

III. *COFFMAN V. ARMSTRONG INTERNATIONAL, INC.*

In 2021, the Tennessee Supreme Court considered an issue of first impression in *Coffman v. Armstrong International, Inc.*,: whether equipment manufacturers should be held liable to warn consumers of hazards associated with a product that was altered by another actor post-sale.[41] Donald Coffman ("decedent") worked as an equipment mechanic at Tennessee Eastman Chemical Plant ("Eastman") in Kingsport, Tennessee for twenty-nine years, where he repaired and replaced equipment that "carried highly corrosive steam and acids."[42] The decedent died three months after a 2014 mesothelioma diagnosis; mesothelioma is primarily attributed to asbestos exposure.[43] His wife, Carolyn Coffman ("Appellee"), brought suit for the benefit of the decedent, alleging that her husband's mesothelioma and subsequent death was caused by breathing in asbestos dust created by working with various products during his time at Eastman.[44] The appellant equipment defendants ("Appellants")[45] manufactured equipment for use at Eastman, "such as industrial valves, pumps, and steam traps" as well as insulation and packing.[46]

The Appellees' argued the Appellants were subject to liability because the products the decedent worked with were unreasonably dangerous due to the inadequate warning labels for asbestos component

41. Coffman v. Armstrong Int'l, Inc., 615 S.W.3d 888, 894–95 (Tenn. 2021).

42. *Id.* at 891. See also *id.* at 900 for dissenting Justice Lee's variation of the facts describing the 2014 diagnosis of "lethal malignant pleural mesothelioma" which Mr. Coffman succumbed to three months later.

43. *See* Burns et al., *supra* note 8, at 579–80.

44. *Coffman*, 615 S.W.3d at 891.

45. *Id.* ("The original complaint included claims for negligence, strict liability, gross negligence, and negligence per se, against nearly thirty defendants."); *see also id.* at 910 nn.4–5.

46. *Id.* at 891–92.

parts that were integrated with the Appellants' products post-sale.[47] At the initial trial, the court found that the Appellants "affirmatively negated any duty to warn of asbestos," and granted summary judgment in favor of the equipment defendants.[48] The trial court reasoned that the equipment defendants had no duty to warn Mr. Coffman because another company's component parts were added to the equipment defendants' products post-sale, and this substantial alteration rendered an otherwise safe product unreasonably dangerous.[49]

Mrs. Coffman appealed the trial court's decision, and "the Court of Appeals held that the Equipment Defendants owed a common law 'duty to warn about the post-sale integration of asbestos-containing' products . . . ."[50] The appellate court reasoned that the factor of foreseeability in the applicable balancing approach was an integral part in ascribing duty in Tennessee, relying on *Satterfield*.[51] Therefore, the court of appeals overruled the lower court's grant of summary judgment "on the ground that they negated" the duty to warn because "the degree of foreseeable harm and the gravity of potential harm outweighed the burden that the equipment defendants would have suffered

47. *Id.* at 892 (noting that the Appellees also claimed that the maintenance of the Appellants' products with asbestos-containing materials was not only reasonably foreseeable, but also intended).

48. *Id.*

49. *Id.* The trial court ruled that the Appellants affirmatively negated the existence of a duty to warn because the products were substantially modified by a third party. *Id.* In accordance with the controlling statute, an order for final judgment was entered in favor of the Appellants because the product was not in the same condition as it was when the Appellants relinquished control to Eastman. *Id.*

50. *See id.* at 893 n.7. At the appellate level, the court partially reversed the trial court's entry of summary judgment that found the Equipment Defendants affirmatively negated any duty to warn. This is the issue before the Supreme Court on appeal, and other rulings relating to the statute of repose in the TPLA were left intact. *See also* TENN. CODE ANN. § 29-28-103.

51. *See* Coffman v. Armstrong Int'l, Inc., No. E2017-01985, 2019 Tenn. App. LEXIS 357, at *56 (Tenn. Ct. App. July 22, 2019), *rev'd in part*, 615 S.W.3d 888 (Tenn. 2021) ("[F]oreseeability of harm is central to the *Satterfield* duty analysis . . . ."). Although the court of appeals noted some "enduring criticism" of the *Satterfield* duty analysis, the court of appeals noted that "it is simply not our place to disregard binding precedent set forth by our supreme court." *Id.* at *57 (citation omitted) (quotation omitted).

by warning about the post-sale integration . . .” of component parts with the products.[52]

On appeal, the Supreme Court found the fact that the products manufactured by the Appellants did not contain asbestos at the time they were sold determinative.[53] The products manufactured by the Appellants did not contain asbestos at the time the Appellants relinquished control. Asbestos containing material was manufactured by another entity and incorporated into the Appellants’ bare-metal[54] product during repairs *after* the product was sold to Eastman. The Supreme Court explored the precedent and controlling Tennessee statutes to find that the law in Tennessee does not attach liability to manufacturers of products that only become unreasonably dangerous after some substantial modification.[55] The *Coffman* Court’s majority opinion ruled that the Appellants had no duty to warn because the plain language of the TPLA, taken as a whole, clearly indicated “that a manufacturer or seller’s duty to warn is limited to products actually made or sold by the defendant.”[56]

52. *Id.* at *61–62.

53. *See Coffman*, 615 S.W.3d at 895 (“The products at issue did not contain asbestos when they left the Equipment Defendants’ control, but rather an end user integrated or used asbestos-containing materials with the Equipment Defendants’ products after their final sale . . . . [T]he best reading of the TPLA does not create a duty or liability for defendants for the post-sale incorporation of products containing asbestos because these products were incorporated into that equipment after it left their control.”).

54. *Id.* at 900 n.2 (Lee, J., dissenting) (referencing the bare-metal defense).

55. *Id.* at 895. The Court explains this fact via the plain language interpretation of the TENN. CODE ANN. § 29-28-105(a), finding that precedent recognizes this as “[t]he key operative provision of the Act.” *Id.* (quoting Whitehead v. Toyota Motor Corp., 897 S.W.2d 684, 689 (Tenn. 1995)). However, the authority the *Coffman* Court uses to justify its emphasis on this provision did not *apply* that provision in its decision. There, the Court emphasized “*defective condition* or *unreasonably dangerous*,” not the “at the time it left the control of the manufacturer or seller” provision that the *Coffman* Court considers controlling throughout its decision. *Id.* at 895–96. Moreover, the *Whitehead* Court dealt with an issue of applying comparative fault principles in strict liability, stating “[a]lthough the parties argue otherwise, we believe that the provisions of the Tennessee Products Liability Act of 1978 do not control the issues before us.” *Whitehead*, 897 S.W.2d at 690.

56. *Coffman*, 615 S.W.3d at 897 (declining to read provisions of the TPLA “in a vacuum.”). The *Coffman* Court analyzes various passages of the TPLA, but the Appellee’s argument that several provisions indicate that a duty may exist for

IV. THE APPLICATION OF *COFFMAN* IN ASSIGNING LIABILITY

The *Coffman* Court's narrow opinion only addresses the Appellee's claims regarding the asbestos integrated post-sale by another party, and rejected public policy considerations and the foreseeability analysis that previously typified deliberations for assigning duty in Tennessee.[57] The Supreme Court declined to extend liability to those manufacturers who place a product in the stream of commerce despite the fact that a part may likely be made for a particular or intended purpose.[58] In so holding, the Supreme Court elided several important arguments raised by the Appellee that are supported by Tennessee precedent.[59] The *Coffman* Court missed an opportunity to expound on its policy rationales against this extension of liability, which will likely leave future courts and legislatures questioning the precision of the TPLA as it is currently.[60]

"anticipatable handling and consumption" is largely glazed over. *Id.*at 896–97. The Supreme Court correctly notes that a specific provision will control rather than a general provision, creating sound reasoning for its opinion through literary analysis, statutory interpretation, and legislative intent. *Id.* at 894.

57. *See generally* Satterfield v. Breeding Insulation, Co., 266 S.W.3d 347, 365–67 (Tenn. 2008).

58. *Coffman*, 615 S.W.3d at 895 n.8; *see also* RESTATEMENT (SECOND) OF TORTS § 402A cmt. I (AM. L. INST. 1965) ("Consumption includes all ultimate uses for which the product is intended . . . ."); RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 5(b)(1) (AM. L. INST. 1998). By the logic of the Restatements, a product that is intended to be used in a certain way, or if the manufacturer participates in the use of a product, liability should attach. This is similar to the reasoning implemented by the United States Supreme Court in *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 993–94 (2019), although that, as the *Coffman* Court notes, is in the maritime context. *Coffman*, 615 S.W.3d at 898.

59. *Compare Coffman*, 615 S.W.3d at 899 ("[W]e do not opine on what we perceive to be the optimal outcome of this case in terms of public policy. That determination is for the legislature."), *with* Nye v. Bayer Cropscience, Inc., 347 S.W.3d 686, 705 (Tenn. 2011) ("Proximate or legal cause is a policy decision made by the legislature *or the courts* to deny liability for otherwise actionable conduct based on considerations of logic, common sense, policy, precedent . . . .") (emphasis added) (citations omitted), *and* Satterfield v. Breeding Insulation, Co., 266 S.W.3d 347, 364 ("[T]he concept of duty is largely an expression of public policy considerations . . . .").

60. Schwartz & Behrens, *supra* note 9, at 93–94 (highlighting that liability based solely on foreseeability may have negative ramifications "if suppliers had a duty to warn of the foreseeable dangers of other manufacturers' products").

The Supreme Court extended a right to recover to anyone who may suffer foreseeable harm based on a manufacturing facility's misconduct in *Satterfield v. Breeding Insulation Co.*[61] The Supreme Court allowed sellers of a product who did not participate in the manufacturing of the product to be liable for injury for a failure to warn in *Nye v. Bayer Cropscience, Inc.*[62] Although these entities have superior knowledge compared to those whom these products hurt, the Supreme Court declined to extend liability to those manufacturers who place their products in the stream of commerce for profit.[63]

V. CONSUMER CARE IN *COFFMAN*

The rationales the *Coffman* Court utilized presents a unique opportunity for the Tennessee legislature to extend protections for its constituency because the Supreme Court only interpreted the TPLA; purportedly based on the plain language understanding.[64] A significant

61. *Satterfield*, 266 S.W.3d at 374 ("There is no magic talisman that protects persons from the harmful effects of exposure to asbestos simply because they do not live under the same roof or are not a member of the employee's family by blood or marriage. It is foreseeable that the adverse effects of repeated, regular, and extended exposure to asbestos on an employee's work clothes could injure these persons. Public policy does not warrant finding that there is no duty owed to such persons. Accordingly, the duty we recognize today extends to those who regularly and repeatedly come into close contact with an employee's contaminated work clothes over an extended period of time, regardless of whether they live in the employee's home or are a family member.").

62. *Nye*, 347 S.W.3d at 692–693 ("A commercial seller, such as North Brothers, may be liable in strict liability for physical harm caused to a consumer by a defective product. RESTATEMENT (SECOND) OF TORTS § 402A (1965). Further, a product liability action may be brought against a manufacturer or seller on strict liability grounds, with no proof of negligence, if the product causing injury to person or property 'is determined to be in a defective condition or unreasonably dangerous at the time it left the control of the manufacturer or seller.' TENN. CODE ANN. § 29-28-105(a) . . . .").

63. *Cf.* Riehle et al., *supra* note 21, at 54–55 (finding that inconsistencies in attaching liability to manufacturers demand a bright line rule).

64. *Compare Coffman*, 615 S.W.3d at 899, *with id.* at 903 (Lee, J., dissenting). The dissenting opinion discusses two canons of interpretation and finds that the majority opinion rendered Tenn. Code Ann. § 29-28-108 superfluous in failing to make a reasonable inference, as supported by canons of statutory interpretation. If a manufacturer is not liable for *unforeseeable* alterations, then it follows that the manufacturer should be liable for *foreseeable* alterations made post-sale.

role of the judiciary is to act as an objective body in interpreting the law, avoiding the risks of judicial advocacy and judicial abrogation alike. In upholding their duty of impartiality, the Supreme Court has taken a step away from judge made law with the *Coffman* decision, and properly deferred to the legislature. While the *Coffman* Court declined to proffer public policy rationales in this case, sticking to the plain language interpretation of a statute, the statute does not have to be permanent.

Products liability law is meant to allow plaintiffs to recover for injuries caused by products, although they are unable to pin down what was responsible;[65] it is noted that this field of law was made to serve people "*who are powerless to protect themselves*."[66] The Supreme Court has discreetly encouraged consumers, as the group products liability law was created to protect, to exercise their voice in lobbying the Tennessee legislature for change or electing new representatives. In supporting its opinion with nothing more than a plain language approach to statutory construction, the Supreme Court has signaled to the legislature the need to change this law.

65. *See* Burns et al., *supra* note 8, at 586 ("Most plaintiffs in products liability actions seek recovery under strict liability in tort because strict liability eliminates the burden of proving that the defendant acted negligently.").

66. Whitehead v. Toyota Motor Corp., 897 S.W.2d 684, 691 (Tenn. 1995) (internal quotation marks and citation omitted).