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The Supreme Court Adopts a Middle of the Road Approach When Deciding a Manufacturer's Duty to Warn in the Context of Maritime Tort Asbestosis Cases

*On March 19, 2019, the U.S. Supreme Court in *Air & Liquid Systems Corp. v. Devries* held that, under maritime law, a product manufacturer has a duty to warn of asbestos or other hazardous parts when its own product, although not containing such hazardous parts requires its later incorporation, and the manufacturer knows or has reason to know that the integrated part is likely to be dangerous for its intended use. The Supreme Court's decision settles a longstanding conflict between federal and state courts regarding the applicable rule in maritime tort cases. Manufacturers of such products must take this ruling into account when evaluating product warnings.*

BACKGROUND

For years, federal and state courts have struggled to find consensus on the applicable rule regarding a manufacturer's duty to warn of the danger of its products when those products later had dangerous parts added to them. Prior to *Devries*, courts generally applied one of three approaches.

The first approach, viewed as plaintiff-friendly, relied on mere foreseeability. Under this approach, if it was foreseeable that the manufacturer's product would be used with another product or part, even if the manufacturer's product did not require use or incorporation of that other product or part, then the manufacturer could face liability for failure to warn.

The second approach, viewed as defendant-friendly, relieves manufacturers of any liability if they do not make, sell, or distribute the dangerous part or incorporate the dangerous part into the product, even if the product requires incorporation of the part and the manufacturer knows that the integrated product is likely to be dangerous for its intended use (this is also known as the "bare-metal defense").

The third approach is more balanced. Under this approach, a manufacturer has a duty to warn when its product requires incorporation of a dangerous or hazardous part and the manufacturer knows or has reason to know that the integrated product is likely to be

dangerous for its intended use. This is the case even when the manufacturer does not itself incorporate the required part into the product, but knows the part is required for its intended use.

By applying the balanced approach, the Supreme Court in *Devries* specifically rejected the approaches that were considered too friendly to either plaintiffs or defendants. The Court ultimately found that a more balanced approach imposing a duty to warn upon manufacturers of product that require incorporation of dangerous parts is especially appropriate in the maritime context because maritime law has always recognized a “special solicitude for the welfare” of those who undertake to “venture upon hazardous and unpredictable sea voyages.”

CASE HISTORY

The plaintiffs in this case are the widows of two U.S. Navy sailors, whom they alleged developed cancer after they were exposed to asbestos while working on Navy ships and in a Navy shipyard. The ships were outfitted with equipment, such as pumps, blowers, and turbines, that required asbestos insulation or asbestos parts in order to function as intended. Although the equipment required asbestos parts, the manufacturers generally delivered the equipment without these parts, in a condition known as “bare-metal.”

The plaintiffs filed suit in Pennsylvania state court, alleging that the manufacturers of this equipment negligently failed to warn plaintiffs’ sailors of the dangers of asbestos in the integrated products, even though in many cases the Navy added the asbestos parts after the product had been delivered by the equipment manufacturer. The manufacturer defendants removed the case to federal court by invoking admiralty jurisdiction. Once the case was removed, the defendants moved for summary judgement pursuant to the bare-metal defense.

The lower court granted defendants summary judgment and plaintiffs appealed. On appeal, the United States Court of Appeals for the Third Circuit reversed the lower court

decision by holding that a manufacturer of a bare-metal product may be held liable under a negligence theory when use of a third-party asbestos part was reasonably foreseeable.

Defendants sought review by the Supreme Court, and the Court granted *certiorari* to resolve a disagreement among the Courts of Appeals about the validity of the bare-metal defense under maritime law.

THE U.S. SUPREME COURT’S DECISION

While the Court affirmed the Third Circuit decision, it did so by applying a different rule. Justice Brett Kavanaugh, delivering the majority opinion, wrote that “[t]he foreseeability rule would sweep too broadly” and “[r]equiring a product manufacturer to imagine and warn about all of those possible uses—with massive liability looming for failure to correctly predict how its product might be used with other products or parts—would impose a difficult and costly burden on manufacturers, while simultaneously overwarning users.” Likewise, the Court found “[t]he bare-metal defense ultimately goes too far in the other direction.”

Accordingly, the Court followed the more balanced approach where mere “foreseeability that the product may be used with another product or part that is likely to be dangerous is not enough to trigger a duty to warn.” If, however, a manufacturer’s “product requires incorporation of a part and the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended use,” then the manufacturer has a duty to warn of the dangerousness of the latter added part. “Under th[is latter] approach, the manufacturer may be liable even when the manufacturer does not itself incorporate the required part into the product.”

The Court did not agree that a duty to warn in circumstances where the manufacturer does not itself incorporate the required part into the product would impose a significant burden upon the manufacturers. Furthermore, the Court stated that the rule adopted

in this case was “tightly cabined” as it does not impose upon manufacturers a duty to warn in cases of mere foreseeability, but rather only when the manufacturer’s product requires a part in order for the integrated product to function as intended.

On the other hand, Justice Gorsuch, with whom Justice Thomas and Justice Alito joined in dissent, argued that the majority’s rule does not “enjoy[] meaningful roots in the common law.” The dissenting justices would have simply applied the traditional common law rule, which places no duty to warn upon manufacturers “about another manufacturers’ products, though those products might be used in connection with the manufacturer’s own product.” According to Justice Gorsuch, the traditional common law rule makes the most sense (manufacturers of a product are best positioned to warn about their products), better accords with consumer expectations (too many warnings will leave consumers confused and likely to disregard them all), and is the simplest to apply (it “affords manufacturers fair notice of their legal duties, lets injured consumers know whom to sue, and ensures courts will treat like cases alike”).

CONCLUSION

Ultimately, the Supreme Court held that, in the maritime tort context, “a product manufacturer has a duty to warn when (i) its 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 users will realize that danger.” Manufacturers of such products must take this ruling into account on a going forward basis when evaluating product warnings and whether they are required.

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