Gallagher Sharp LLP

Newsflash
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Gallagher Sharp Toxic Torts Newsflash: United States Supreme Court Sets Maritime Asbestos Standard

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On March 19, 2019, the Supreme Court of the United States held that in the context of maritime law, a product manufacturer has a duty to warn if: (1) the manufacturer's product requires the incorporation of a component part; (2) the manufacturer knows or has reason to know that the incorporation of the part is likely to be dangerous for its intended use; and (3) the manufacturer has no reason to believe that the product's users will realize that danger.

In *Air & Liquid Systems Corp. et al. v. Devries, et al.*, 586 U. S.___ (2019), the issue before the Court arose from a suit filed by the widows of former U.S. Navy sailors who allegedly developed disease from working with or around equipment manufactured by the defendants aboard Naval vessels. The plaintiffs claimed that the defendants should have warned about the dangers of their products. The defendants claimed that their equipment was sold to the Navy without actually containing any asbestos materials. The trial court dismissed the claims against the manufacturers on summary judgment and the plaintiffs appealed. On appeal, the U.S. Third Circuit Court of Appeals reversed and remanded the case for trial. The manufacturers further appealed to the Supreme Court.

In upholding the appellate court's decision to overturn summary judgment, the Supreme Court further clarified their decision by including situations in which a manufacturer directs a part be incorporated, a manufacturer itself makes its product with a part the manufacturer knows will require replacement with a similar part, or a manufacturer's product would be useless without the part. The Supreme Court expressly limited this decision to cases arising under the maritime law.

This ruling settled a split amongst federal appellate courts. Some courts had adopted a standard favorable to plaintiffs, holding manufacturers liable when it was foreseeable that the manufacturer's product would be used with another product, even if the manufacturer's product did not require the use or incorporation of another product or part. Other courts had adopted a standard favorable to manufacturers, refusing to hold manufacturers liable if the manufacturer did not itself make, sell, or distribute the part or incorporate the part into the product, also known as the "bare metal defense." In those scenarios, the manufacturer was not liable even if the manufacturer knew that the integrated product was likely to be dangerous for its intended uses. The Supreme Court's decision in this case adopts a standard that falls between these two competing approaches.

Justice Brett Kavanaugh authored the Court's opinion, and was joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Stotmayor, and Kagan. Justice Gorsuch, joined by Justices Thomas and Alito, dissented. A copy of the opinion is available at: https://www.supremecourt.gov/opinions/18pdf/17-1104_2co3.pdf.

Application to Ohio Asbestos Suits

For many Great Lakes maritime asbestos suits, this decision will likely undo the current "bright line rule" used by courts in the Sixth Circuit that have held "a defendant cannot be held liable for asbestos-containing products 'attached or connected' to its product which it neither made nor sold." *See Brucker v. CBS Corp.*, No. 3:16-CV-206, 2019 WL 551321 *1 (N.D. Ohio Feb. 12, 2019)).

Outside of maritime law, the Supreme Court of Ohio has not directly resolved the question of whether the bare-metal defense is available in "land-based" asbestos cases. However, the Sixth Circuit, applying state law, held that Ohio law is settled that a component part manufacturer has no duty to warn end-users of the finished product of the potentially dangerous nature of its parts in that product." *Jacobs v. E.I. du Pont de Nemours & Co.*, 67 F.3d 1219, 1236 (6th Cir. 1995). There, the Sixth Circuit relied on the Supreme Court of Ohio's holding that the duty to warn does not extend to the speculative anticipation of how manufactured components, not in and of themselves dangerous or defective, can become potentially dangerous dependent upon the nature of their integration into a unit designed and assembled by another. Under this standard, Ohio trial courts have found that a manufacturer who does not incorporate asbestos directly into their product must "specify" that asbestos be later incorporated in order for that manufacturer to be found negligent in failing to warn.

Whether the ruling from the Supreme Court of the United States will affect non-maritime Ohio cases remains to be seen. However the application will likely involve the argument of whether the Supreme Court's definition of "require" should be similarly applied to the term "specify" as regularly used by Ohio's most active asbestos docket (Cuyahoga County) and whether the ruling should apply at all considering the fact that *Air & Liquid Systems Corp. et al. v. Devries* is an expressly maritime decision.

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