



## U.S. SUPREME COURT EXPANDS POTENTIAL LIABILITY TO MANUFACTURERS IN RECENT ASBESTOS DECISION

Recently, the U.S. Supreme Court extended potential liability in the manufacturing chain with its *Air & Liquid Systems Corp. v. DeVries* decision. A 6-3 majority, led by Justice Kavanaugh and joined by Chief Justice Roberts, held “in the maritime law context,” a manufacturer of an asbestos-free product can be liable for injuries caused by parts with asbestos created by third-parties and later incorporated into the manufacturer’s product.

The *DeVries* plaintiffs brought claims alleging their husbands got cancer from asbestos exposure while serving in the Navy during the 1950s and 1970s. The defendants are manufactures of certain equipment sold to the U.S. Navy and installed on Navy ships with an asbestos-containing part or asbestos insulation made by different companies. The defendant manufacturers asserted they could not be liable because the alleged injuries could not be attributed to any asbestos the Defendants supplied. Before *DeVries*, claims of this type were dismissed due to the inability to show the particular product contained any asbestos.

Following this prior precedent, the District Court granted summary judgment to the manufacturers, but the Third Circuit vacated the ruling. The U.S. Supreme Court affirmed the Third Circuit’s decision, holding a manufacturer of products that were used, or will be used, on a ship or in a similar maritime context must warn of dangers not only from its own products, but also from products made by others that are required for the proper functioning of the manufacturer’s product. Further, the Court made this duty retroactive, so businesses who sold parts several decades earlier may now become liable for a failure to warn of dangers from those parts. This decision is specific to the maritime setting and, currently, does not apply to product liability law outside of that sphere. The Court also

limited this duty to situations when: (1) the manufacturer’s product requires the incorporation of another part to function; (2) the manufacturer knows or has reason to know the final integrated product is likely to be dangerous when used as intended; and (3) the manufacturer has no reason to believe the product’s users will realize the danger.

Yet, the decision is drawing criticism in light of the Court’s departure from recognized product liability law, and there is a sense of unease about reliance on this ruling to alter the product liability landscape. Specifically, manufacturers are voicing concerns about whether states will use this ruling to allow claimants to cast an even wider net when bringing claims based on asbestos exposure. Additionally, because the Court made the manufacturers’ duty retroactive, there is concern about the revival of claims and lawsuits dismissed under prior precedent.

There is unease about whether this expansion of liability will influence non-maritime product liability, and the decision unquestionably creates issues for manufacturers currently selling products that will be used on ships. Manufacturers who do business with the Navy, shipbuilders, or similar clients should consider whether to revise their warnings about the potential risks of their products. Businesses which have previously sold products in the maritime setting should also be prepared for potential products liability litigation.

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