



AIR AND LIQUID SYSTEMS CORP. V. DEVRIES

In *Air and Liquid Systems Corp. v. DeVries*, the U.S. Supreme Court held that, 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 that were later incorporated into the manufacturer's product.

“The Court affirmed the District Court with respect to DeVries and McAfee’s strict liability claims, and remanded for further proceedings on their negligence claims.”

Background

Kenneth McAfee and John DeVries, former members of the U.S. Navy, manned several vessels throughout their combined 23 year service. At that point, many navy vessels were outfitted with pumps, blowers, turbines, and other equipment. These products required asbestos insulation or asbestos parts in order to function as intended. The asbestos fibers, if inhaled or ingested, can cause various illnesses. McAfee and DeVries allege that their exposure caused them to develop cancer.

They sued five businesses – Air and Liquid Systems, CBS, Foster Wheeler, Ingersoll Rand, and General Electric. Many of the manufacturers delivered their equipment to the navy without asbestos. Instead, it was the navy that added the asbestos components at issue. Specifically, the manufacturers asserted the “bare metal defense,” arguing that their products-as-supplied contained only “bare metal” and they should not be liable for injuries caused by third party components installed at a later date.

Conversely, McAfee and DeVries argued that these products were designed for use with asbestos insulation, that the equipment would not have functioned properly without

it, and that the manufacturers knew or should have foreseen that asbestos would be added to the equipment prior to its use. Because the products required the incorporation of asbestos parts to function, plaintiffs maintained that the manufacturer had a duty to warn about the dangers of asbestos exposure from these parts even if the manufacturers did not supply them.

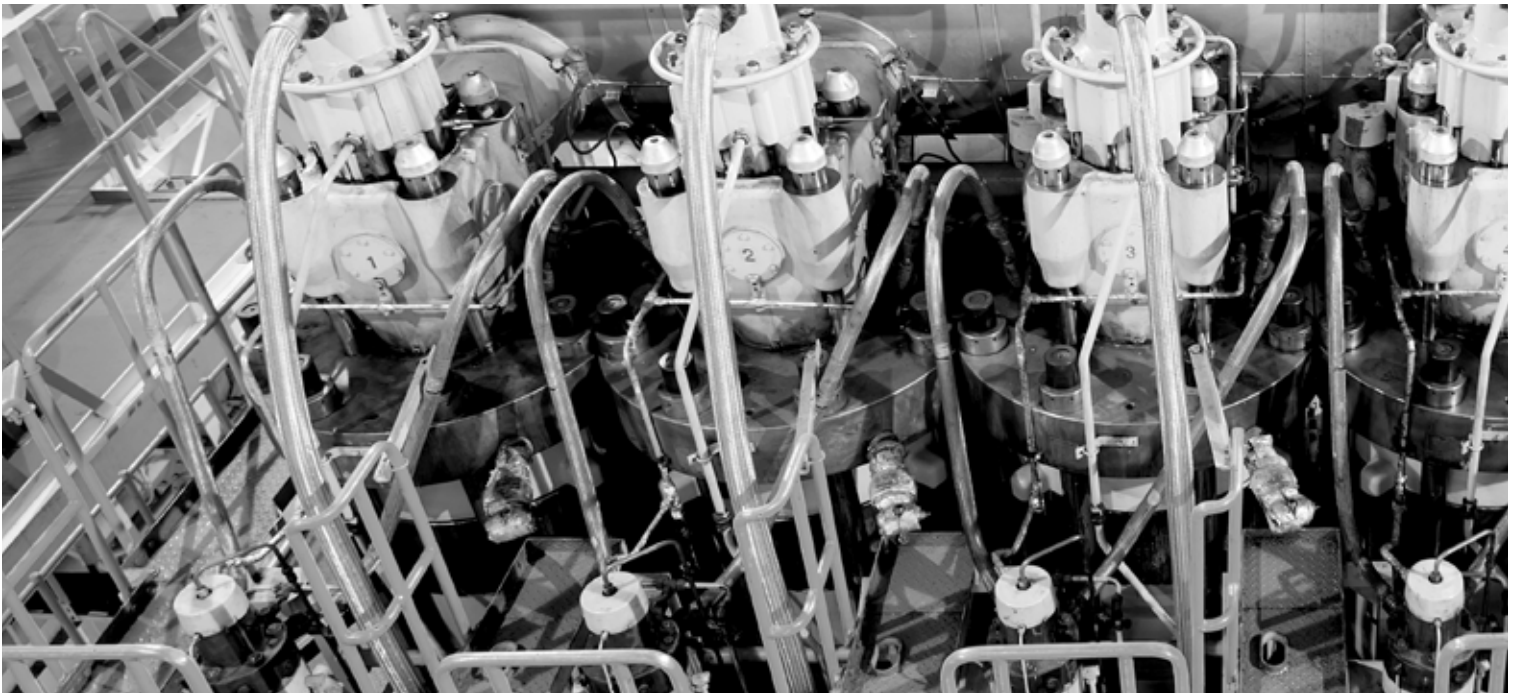
After invoking federal maritime jurisdiction and removing the case to federal court, the manufacturers successfully moved for summary judgment on the ground that they should not be liable for harm caused by later-added asbestos-containing materials. The Third Circuit, by contrast, vacated and remanded, holding that the manufacturers were liable if the harm from application of the asbestos was foreseeable.

United States Supreme Court

In a 6-3 decision, the Supreme Court held that under the general maritime law a product manufacturer has a duty to warn “when its product requires incorporation of a part, the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and the manufacturer has no reason to believe that the product’s users will realize that danger.”

The Court began its analysis by reciting the three common approaches used to determine a manufacturer’s duty to warn:

- The First approach – dubbed the foreseeability rule – provides that a manufacturer may be liable when it was foreseeable that its product would be used with another product or part, even if the manufacturer’s product did not require use or incorporation of the other product or part.
- Second, under the bare-metal approach, a manufacturer is not liable for harm caused by the integrated product – even if the product required incorporation of the part and the manufacturer knew that the integrated product was likely to be dangerous for its intended use – unless the manufacturer itself made, sold, distributed, or incorporated the part into the product.
- The third and final approach imposes on the manufacturer a duty to warn when its product requires the incorporation of a part that the manufacturer knows or has reason to know will likely render the integrated product dangerous for its intended use.



The Court dismissed the first and second approaches as being ill-suited to the admiralty context. In its view, the foreseeability rule “swe[pt] too broadly” and would create “uncertainty and unfairness to manufacturers.” On the other hand, the bare metal approach goes too far in the other direction, the Court opined. Specifically, the Court likened a manufacturer with constructive knowledge that a product requires incorporation of a part that the manufacturer knows or has reason to know is likely to make the integrated product dangerous for its intended use to a manufacturer whose product is dangerous in and of itself.

The Court rejected the manufacturers’ argument that warning by manufacturers will be counterproductive and impractical, first by referring to economic literature suggesting that “the product manufacturer will often be in a better position [to warn] than the parts manufacturer,” and second by scoffing at the suggestion that the warning requirement will “meaningfully add” to existing disclosure obligations.

Ultimately, the Court held that the third approach – requiring the product manufacturer to warn when

its product requires incorporation of a part that makes the integrated product dangerous for its intended uses – is especially appropriate in the maritime context because the maritime law has always recognized a “special solicitude for the welfare” of mariners. The Court noted that this approach strikes a balance between the foreseeability rule and the “bare metal defense” by only requiring a warning from a manufacturer “when its product requires” a part in order for the integrated part to function as intended.”

The Court affirmed the District Court with respect to DeVries and McAfee’s strict liability claims, and remanded for further proceedings on their negligence claims.

Justices Thomas and Alito joined in a dissent penned by Justice Gorsuch, which stated that the Court should have applied the traditional common law rule that places on manufacturers a duty to warn only with regard to products they actually manufactured. The dissent found this rule would be both simpler to apply and would properly incentivize manufacturers to warn of the dangers of their own products.

Conclusion/Recommendation

DeVries enumerates a three-part standard imposing a duty to warn when (1) the manufacturer’s product requires incorporation of a part; (2) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses; and (3) the manufacturer has no reason to believe the product’s users will realize that danger.

For further information, please contact the author of this briefing:



THOMAS NORK

Partner and Master Mariner
Houston

T +1 (713) 980 8954

E thomas.nork@hfw.com

HFW has over 600 lawyers working in offices across the Americas, Europe, the Middle East and Asia Pacific. For further information about our shipping capabilities, please visit www.hfw.com/shipping

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