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Eleventh Circuit Holds Four Defendant Manufacturers of Beryllium-Containing Aircraft Parts Relieved of Failure-to-Warn Liability Under "Learned Intermediary" or "Sophisticated User" Doctrine

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On October 21, the U.S. Court of Appeals for the Eleventh Circuit, applying Georgia law, held that four defendant manufacturers were relieved of liability for failing to warn current and former employees of Lockheed Martin Corporation (Lockheed) about the potential health dangers associated with beryllium in aircraft parts. *Parker v. Schmiede Machine & Tool Corp.*, No. 10-14703 (11th Cir. Oct. 21, 2011). Relying on the "sophisticated user" or "learned intermediary" doctrine, the Eleventh Circuit found that the plaintiffs failed to adduce evidence that the defendant manufacturers[1] possessed information regarding a hazard of beryllium that the plaintiffs' employer did not already possess.

Background

The plaintiffs were current and former employees of Lockheed who worked with and around beryllium-containing products, manufactured by the defendants, in an aircraft manufacturing plant in Marietta, Georgia. The plant produced aircrafts containing beryllium parts for almost 60 years. In their complaint, the plaintiffs claimed that handling beryllium and/or working in areas of the plant where beryllium was handled caused serious health problems, including chronic beryllium disease and beryllium sensitization.

The plaintiffs brought suit in Georgia state court, alleging failure-to-warn claims, among others, against Lockheed and various manufacturers. The defendants removed the action to federal court. At the trial court level, the defendant manufactures moved for summary judgment, and in September 2010, the district court granted the motion, relying on the sophisticated user defense.

Eleventh Circuit's Decision

The Eleventh Circuit noted the well-settled Georgia law that "a product supplier has a duty to warn foreseeable users of a product's danger if (a) the supplier has reason to know that the product is likely to be dangerous for the use for which it is supplied and (b) the supplier has no reason to believe that the user will realize the product's dangerous condition."

1. The four defendant manufacturers on appeal were Alcoa Inc., Schmiede Machine and Tool Corporation, ThyssenKrupp Materials North America, and McCann Aerospace Machining Corporation.

The *Parker* court's analysis, however, focused primarily on whether the district court correctly applied the "sophisticated user" or "learned intermediary" doctrine. Under the doctrine, product manufacturers or suppliers are relieved of their duty to warn ultimate users of their products "where there is an intermediary with knowledge of the hazard."

In affirming the district court's decision, the Eleventh Circuit was persuaded by the "overwhelming evidence" that Lockheed was a "sophisticated user" of beryllium and a "learned intermediary" between the defendant manufacturers and the Lockheed employees. Namely, the *Parker* court emphasized the fact that (1) the Lockheed facility has produced aircrafts containing beryllium parts for approximately 60 years; (2) Lockheed used Department of Defense literature as a standard reference guide regarding the use of beryllium; (3) Lockheed issued its own safety literature in the 1980s, warning that beryllium dust "may ultimately lead to respiratory problems"; (4) Lockheed's manager of Environmental, Safety, and Health testified that Lockheed warned employees about the hazards of beryllium since at least the 1980s; and (5) a Lockheed toxicologist testified that she had spent between 300 and 400 hours researching the health effects of beryllium in the early 1990s and accordingly designed safety programs to achieve lower levels of exposure for Lockheed employees.

The Eleventh Circuit also rejected the plaintiffs' contention that the defendant manufacturers possessed information regarding the risks associated with beryllium that Lockheed did not possess. That is, the *Parker* court found that the plaintiffs had failed to point to any admissible evidence demonstrating knowledge of beryllium hazards that the manufacturing defendants possessed but had failed to disclose to Lockheed. The *Parker* court further found that the plaintiffs failed to demonstrate that Lockheed lacked actual knowledge regarding the hazards of beryllium.

The Eleventh Circuit thus concluded that the defendant manufacturers "established that Lockheed was a sophisticated user of beryllium and a learned intermediary between its employees and the manufacturers of beryllium products."

Implications

Parker is an important reminder that manufacturers or suppliers faced with potential failure-to-warn liabilities should always consider the applicability of the "learned intermediary" or "sophisticated user" doctrine. The Eleventh Circuit's decision reflects the tremendous protections the doctrine may afford manufacturers and suppliers of potentially hazardous materials in jurisdictions that have adopted these doctrines.

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