

Federal Court Upholds "Bare-Metal" Defense

February 8, 2012 by [Sean Wajert](#)

A federal court last week became the latest to refuse to hold a defendant liable for injuries allegedly caused by asbestos-containing parts manufactured by others but used with the defendant's products. See [Conner v. Alfa Laval Inc.](#), No. MDL-875 (E.D. Pa. 2/1/12).

The issue arose in the consolidated asbestos products liability multidistrict litigation pending in the U.S. District Court for the Eastern District of Pennsylvania. Defendants moved for summary judgment on the ground that they were not liable for injuries caused by asbestos products, such as insulation, gaskets, and packing, that were incorporated into their products or used as replacement parts, but which they did not manufacture or distribute.

As the asbestos litigation has evolved, and the major manufacturing defendants have declared bankruptcy, the litigation has moved away from the manufacturers of asbestos to new types of defendants, including premises owners, and even those that manufactured so-called "bare-metal" products that contained or were later encapsulated in asbestos made by others. Litigants often refer to the defense raised in this case as the "bare-metal defense," but it is more properly understood, as the court explained, as a challenge to a plaintiff's prima facie case to prove duty or causation.

Here, the court considered the availability and scope of the so-called "bare-metal" defense under maritime law.

Plaintiffs alleged they developed mesothelioma as a result of exposure to defendants products while working on vessels operated by the U.S. Navy. One alleged he was exposed to asbestos products used with turbines while he served in the U.S. Navy from 1962 to 1971 aboard the *U.S.S. Yorktown*. (This was the 2d *Yorktown*; under construction as *Bon Homme Richard*, this new Essex-class carrier was renamed *Yorktown* in honor of the carrier sunk at the epic Battle of Midway in June, 1942. Much of the Academy Award-winning documentary "[The Fighting Lady](#)" was filmed aboard the *Yorktown*.)

Another alleged he was exposed to asbestos aboard the [U.S.S. Pollux](#) and [U.S.S. Delta](#), through products like turbines, pumps, boilers, and valves that used and, in some cases, were originally distributed with, asbestos-containing insulation, packing, gaskets, and other products. The third alleged he was exposed to asbestos used with products while serving as a boiler tender in the U.S. Navy from 1959 to 1976 aboard various naval vessels.

Plaintiffs did not, however, proffer evidence that defendants manufactured or distributed the particular asbestos components or replacement parts to which they were allegedly exposed. Instead, they argued that defendants were liable for all the intended and foreseeable uses of asbestos parts in connection with their original products.

In determining whether defendant manufacturers were liable under maritime law for injuries caused by asbestos parts used with their products, whether in strict liability or negligence, a plaintiff must establish causation with respect to each defendant manufacturer. See *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488, 492 (6th Cir. 2005). A plaintiff generally establishes causation under maritime law by showing (1) that the plaintiff was exposed to the defendant's product and (2) that the product was a substantial factor in causing the plaintiff's injury, said the court.

Plaintiffs raised two arguments to hold manufacturers liable for harm caused by asbestos products they did not manufacture or distribute. First, plaintiffs argued that under the integrated-products doctrine the "products" at issue were really defendants' products together with the asbestos-containing components and replacement parts supplied by third parties. Second, plaintiffs argued that defendants had a duty to warn of the hazards posed by the foreseeable uses of their products.

The court rejected both arguments. The first was not consistent with the law under the component parts doctrine. Even if the court were to accept that defendants were component-part manufacturers, a component-part manufacturer is not liable for injuries caused by the finished product into which the component is incorporated unless the component itself was defective at the time it left the manufacturer. The defective product here was the asbestos insulation, not the pumps and valves to which it was applied after defendants' manufacture and delivery. Also, as a matter of law, defendants did not owe a duty to warn under maritime law of the hazards posed by products they did not manufacture or distribute.

The court cited with approval the view of other courts that the overwhelming case law does not support extending strict liability for failure to warn to those outside the chain of distribution of a product. Products liability has always been premised on harm caused by deficiencies in the defendant's own product. Moreover, a manufacturer does not have an obligation to warn of the dangers of another manufacturer's product. The law does not impose a duty to warn about dangers arising entirely from another manufacturer's product, even if it is foreseeable that the products will be used together. Any expansion of the duty of care as urged here would impose an obligation to compensate on those whose products caused the plaintiffs no harm. To do so would exceed the boundaries established over decades of product liability law. And it would also be unfair to require manufacturers of non-defective products to shoulder a burden of liability when they derived no economic benefit from the sale of the products that injured the plaintiff.

Having held as a matter of law that a manufacturer is not liable for harm caused by the asbestos products that it did not manufacture or distribute, the court concluded that plaintiffs failed to raise a genuine issue of material fact as to whether any of the defendants manufactured or distributed the asbestos products that caused the alleged injuries.

The decision puts the court in the company of others, like [O'Neil v. Crane Co.](#), Cal., No. S177401 (Cal. 1/12/12), which have declined to extend liability for asbestos-related injury to makers of products used with asbestos insulation, gaskets, and packing.