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Supreme Court of Washington Holds that Equipment Manufacturers Had No Duty to Warn of Asbestos-containing Insulation or Replacement Components

In a pair of long-awaited decisions issued today, the Supreme Court of Washington has held that manufacturers of industrial equipment had no duty to warn, under either strict liability or negligence principles, of dangers associated with asbestos-containing external insulation and replacement sealing components that the equipment manufacturers did not manufacture, design, sell, or specify. In *Simonetta v. Viad Corp.*, No. 80076-6 (Wash. Dec. 11, 2008), the court held that “a manufacturer may not be held liable in common law product liability or negligence for failure to warn of the dangers of asbestos exposure resulting from another manufacturer’s insulation applied to its product after sale of product to the navy.” In the companion case of *Braaten v. Saberhagen Holdings*, No. 80251-3 (Wash. Dec. 11, 2008), the court expanded its holding in *Simonetta* to state that “the general rule that there is no duty under common law products liability or negligence principles to warn of the dangers of exposure to asbestos in other manufacturers’ products applies with regard to replacement packing and gaskets.” Because *Braaten* is the more expansive opinion that covers both outside insulation and replacement parts generally, a discussion of that case merits further examination.

Vernon Braaten worked as a pipe fitter aboard Navy ships from 1967 until 2002. In 2003, he was diagnosed with mesothelioma, which he claimed was caused by exposure to asbestos in his work setting. He originally filed an action in Brazoria County, Texas, but he dismissed that action and filed a new action in King County, Washington, after one defendant in the Texas action was granted summary judgment.

In the Washington trial court, four defendant manufacturers of valves and pumps moved for summary judgment because those defendants did not manufacture or supply the external insulation or replacement components to which Mr. Braaten claimed to be exposed while working on or near the defendants’ equipment. In granting summary judgment, the trial court held that the defendants had no duty to warn—whether in strict liability or negligence—of the dangers of asbestos-containing products that the defendants did not manufacture or supply. The Court of Appeals reversed, and vacated the summary judgment ruling.

In an opinion in which six of the nine justices joined, the Supreme Court noted in *Braaten* that none of the equipment-manufacturer defendants manufactured or supplied the actual asbestos-containing products (i.e., the insulation, gaskets, and/or packing material) to which plaintiff was exposed. Thereafter, the court noted that while defendants may have had some information regarding the Navy’s use of asbestos-containing external insulation and replacement packing and gaskets in connection with pumps and valves, the manufacturers had no legal duty to warn of those products, particularly when the evidence showed that numerous types of replacement components were available.

The court grounded its analysis in the Restatement (Second) of Torts. In so doing, the court recognized that, under the Restatement, a manufacturer has the duty to warn of hazards associated with its products. Nevertheless, the court went on to recognize that

“Washington case law does not support extending this duty to warn [of] another manufacturer’s product.” Thus, since the defendants’ equipment did not supply the insulation, gaskets or packing material that allegedly released the asbestos fibers to which Mr. Braaten was exposed, those defendants were not responsible for Mr. Braaten’s injuries.

Washington is the first state supreme court to address this issue specifically in the asbestos context, although it notes that its ruling is “in accord with the majority rule nationwide,” which provides that manufacturers of equipment have no duty to warn of asbestos-containing products that the manufacturer did not manufacture or supply.

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