

[Products Liability Law Daily Wrap Up, TOP STORY—ASBESTOS—U.S.: High Court to consider proper liability standard for ‘bare-metal’ manufacturers under maritime law, \(May 14, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Susan Engstrom and Leah S. Poniatowski, J.D.

The U.S. Supreme Court has granted a request by "bare-metal" manufacturers to review a federal appellate decision holding that the foreseeability test applies when determining whether manufacturers are liable under maritime law "for injuries caused by products they did not make, sell, or distribute." The petitioners, which were named as defendants in asbestos-injury products liability suits but whose bare-metal products did not contain any asbestos, argued that the traditional bright-line test should be applied to relieve them of liability ([Air and Liquid Systems Corp. v. DeVries](#), filed January 31, 2018; cert. granted May 14, 2018).

The widows of two sailors in the U.S. Navy had filed lawsuits based on the alleged asbestos exposure-related deaths of their husbands against many manufacturers of components and insulation used in Navy ship engines. Both filed strict liability and negligence claims against the manufacturers. One subset of manufacturers produced "bare metal" goods—those shipped without asbestos-containing materials—which would later have an asbestos-containing component added. In response to the widow's claims, the manufacturers asserted the a bare-metal defense, arguing that they could not be held liable because their products did not contain asbestos.

Prior decisions. A federal district court in Pennsylvania agreed, and entered summary judgments in favor of the manufacturers. Following remand after an appeal, the trial court determined that the bright-line rule, which holds that a bare-metal product manufacturer can never be liable for asbestos-related injuries when later-added asbestos materials caused those injuries, should apply because it was the view of the majority of circuits and was in line with maritime law's preference for uniformity.

The U.S. Court of Appeals for the Third Circuit heard a second appeal and adopted the foreseeability rule over the bright-line rule with respect to bare-metal manufacturer liability [see *Products Liability Law Daily's* October 4, 2017 [analysis](#)]. The appellate court, noting the circuit split between the bright-line rule and the fact-specific foreseeability rule, reasoned that the foreseeability test was better aligned with the ambits of maritime law, to which the protection of sailors was fundamental. Consequently, the appellate court held that a manufacturer of a bare-metal product could be liable for injuries arising from asbestos exposure if the facts supported the finding that an injury was foreseeable to the manufacturer. The matter was remanded to the lower court to apply the totality-of-the-circumstances approach.

Reasons for granting petition. The manufacturers argued that the Supreme Court should weigh in on the matter in order to resolve the circuit split and restore uniformity to maritime law, and to correct the "wrong" decision of the Third Circuit. The manufacturers expressed concern over the circuit split and the confusion among the state and federal courts as to which liability standard to apply. The manufacturers emphasized the High Court's admiralty jurisdiction and the ambit of uniformity in maritime law. They also asserted that the Third Circuit's decision was incorrect because it was against the weight of maritime and common law, specifically those tenets holding that manufacturers are not responsible for the wrongs of others. The manufacturers contended that the traditional bright-line rule comports better with admiralty law's goals of simplicity, practicality, uniformity, and protection of maritime commerce. The manufacturers acknowledged that the bright-line test does not particularly advance protection of sailors' welfare, but sailors are not hindered by the rule because they can still pursue legal action against those who caused them harm. The manufacturers expressed concern over allowing the Third Circuit's "ad hoc" test to stand, disagreeing that the foreseeability test is simpler and more predictable than the bright-line rule. Because the manufacturers at issue did not make or sell the asbestos that

injured the sailors, they argued that the High Court should correct the appellate court and clarify whether these types of manufacturers "can be held liable for injuries caused by products that they neither made nor sold."

The case is Docket No. [17-1104](#).

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Companies: Air and Liquid Systems Corp.; Foster Wheeler LLC; CBS Corp; Ingersoll Rand, Inc.

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