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Macias May Mean More Liability For Wash. Manufacturers

Law360, New York (October 19, 2012, 12:41 PM ET) -- The Washington Supreme Court recently ruled that manufacturers of safety products have a duty to warn of the dangers of asbestos exposure inherent in the use and maintenance of those products. The case, Macias v. Saberhagen Holdings, 282 P.3d 1069 (2012), was decided 5 to 4 and seemingly marks the beginning of the erosion of the Simonetta and Braaten decisions, which limit the liability of manufacturers of nonasbestos-containing products.

The Macias decision involved a shipyard worker whose responsibilities included handling, maintaining and cleaning respirators that workers wore to filter out dangerous contaminants, including asbestos fibers. The plaintiffs sued the respirator manufacturers, alleging that their failure to warn that Leo Macias could be exposed to hazardous asbestos fibers caused his mesothelioma.

The respirator manufacturers moved for summary judgment, asserting that they did not manufacture the asbestos-containing products at issue, and that, pursuant to Simonetta v.Viad Corporation, 197 P. 3d 127 (Wash. 2008), and Braaten v. Saberhagen Holdings, 198 P. 3d 493 (Wash. 2008), they owed no duty to warn of the dangers inherent in a product that they did not manufacture, sell or supply.

The Supreme Court disagreed, finding that the record supported the "plaintiffs' theory that the respirator manufacturers' own products, when used as intended, including cleaning for reuse, were inherently dangerous in the absence of adequate warnings."

The court therefore allowed the plaintiffs to maintain their claim against the respirator manufacturers for failing to warn of dangers associated with other entities' asbestos-containing products.

The Supreme Court went to great lengths to distinguish Macias from Simonetta and Braaten, which established "a general rule to which there are exceptions." That general rule provides that "a manufacturer in the chain of distribution is subject to liability for failure to warn of the hazards associated with the use of its own products."

According to the Macias court, the general rule does not apply to products like respirators, where a danger is presented by the intended use of the product: "the inherent danger arises because of the nature and use of the respirator itself." The court held that "the very purpose of the respirators would, of necessity, lead to high concentrations of asbestos (and/or other contaminants) in them, and in order to reuse them as they were intended to be reused, this asbestos had to be removed," and therefore, "the respirator manufacturers manufactured the very products" that created the risk of asbestos exposure.

The court likened the respirators to kitchen blenders and table saws, noting that neither "poses much of a hazard simply sitting unused. It is only when the product is put to use at some point in the future that the hazards inherent in swiftly turning blades exhibit."

The Macias decision indicates a departure from the limitations on manufacturer liability espoused in Simonetta and Braaten. In fact, the opinion indicates that "failure to warn" liability may be expanding in Washington product liability jurisprudence. The decision troubled the four dissenting justices, noting that Macias could threaten "to substantially expand Washington product liability law."

Indeed, though the Macias decision involved a specific factual scenario in asbestos litigation, it could have significant ramifications in all cases involving allegations of dangerous and defective products.

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