



The Voice

And The Defense Wins

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DRI members [Tony Sbarra](#) and [Holly Polglase](#), shareholders at **Hermes, Netburn, O'Connor & Spearing, P.C.** in Boston, recently won a rare summary judgment motion for ArvinMeritor, Inc. in a mesothelioma case involving a decedent, which was pending before Judge Alice Gibney in Providence Superior Court. The case, *Laverne Hostetter v. Air & Liquid Systems Corp., et al.*, involved a mechanic who alleged 10 years of friction exposure to trucks made by two manufacturers. While he identified those manufacturers and claimed to have worked each of their OEM brake parts, he did not identify Rockwell, ArvinMeritor's truck brake brand.

In opposing Rockwell's summary judgment motion, the plaintiffs argued that since Rockwell was a major player in the truck brake market and had been a supplier to each manufacturer, a jury could infer that it was more likely than not that the deceased plaintiff had worked with Rockwell brakes. ArvinMeritor countered that this was, in essence, a market share claim, which is not allowed in Rhode Island. Further, it claimed that for a jury to make any conclusions about Rockwell, it would have to build an impermissible "pyramid of inferences."

After a hearing and several late filed supplemental pleadings from the plaintiffs, Judge Gibney granted the motion. Her ruling was issued five days before trial was to begin and she based her opinion solely on the impermissible inference argument. This is the first contested summary judgment victory for a defendant in a Rhode Island asbestos case in at least 10 years.

To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit www.dri.org.