

Hermes, Netburn, O'Connor & Spearing, P.C. Defends Manufacturer Client to Avoid Ruling for the Plaintiff in Asbestos Claim

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Hermes, Netburn, O'Connor & Spearing, P.C. recently obtained a defense verdict, after a three week jury trial, on behalf of the alleged successor-in-interest to a manufacturer of asbestos-containing products installed aboard U.S. Navy ships. The case represented only the third asbestos case to try to verdict in Massachusetts in over a decade.

The Plaintiff was a 69 year old living mesothelioma patient who alleged exposure to asbestos-containing products in three ways: (1) while serving in the U.S. Navy as a boiler technician aboard the U.S.S. Ault (DD-698), the U.S.S. Sierra (AD-18), the U.S.S. Norfolk (DL-1) and the U.S.S. Pawcatuck (AO-108) from 1957 to 1979; (2) while working as a civilian boiler inspector from 1979 to 1996; and (3) while assisting his father during home renovation projects in the 1950s. With respect to the firm's client, the Plaintiff alleged exposure to distilling plants and fuel oil heaters supplied to the Navy by our client's alleged predecessor.

The gist of the Plaintiff's case was that our client acted negligently and breached a warranty by failing to warn him about the hazards of asbestos because (1) the client's equipment was wrapped in asbestos-containing external insulation and, although the client did not supply the external insulation, it reasonably should have foreseen that the Navy would cover the equipment with asbestos-containing insulation, and (2) the equipment had asbestos-containing gaskets and packing in it when originally supplied and, therefore, the client reasonably should have foreseen that the Navy would use asbestos-containing replacement gaskets and packing in the equipment. In support of their claims, the Plaintiff called a cell biologist, a pathologist, an occupational medicine specialist and a naval expert.

We defended against the Plaintiff's claims on several theories, including (1) our client had no duty to warn about external insulation because it did not recommend or require asbestos-containing external insulation and it had no way of knowing what type of external insulation the Navy might apply to its equipment post-sale, (2) our client had no duty to warn about asbestos-containing gaskets and packing because the state of the art before and during the Plaintiff's work with its equipment was such that an equipment manufacturer had no reason to believe that gaskets and packing could cause disease, and (3) our client was relieved of any alleged duty to warn because of the sophisticated user defense. In support of its defenses, we called two naval experts and a Certified Industrial Hygienist.

The Judge allowed our motion for a directed verdict on the external insulation issue and,

therefore, the only issue before the jury was whether our client acted negligently or breached a warranty with respect to the asbestos-containing gaskets and packing in its equipment. The jury found that the Navy was a sophisticated user of asbestos, such that any warning by our client would have been superfluous and unnecessary. The jury also found that it was reasonable for our client to rely on the Navy's knowledge regarding asbestos. As a result, the jury found that our client neither breached a warranty nor acted negligently.