

Mesothelioma claim against manufacturer can proceed

By: Eric T. Berkman March 25, 2021



An insulated turbo generator like the ones the plaintiff worked on when he was in the Navy.

A former Navy seaman who allegedly developed mesothelioma from exposure aboard a ship to asbestos-insulated turbine generators could bring a product liability suit against the generators' manufacturer, a U.S. District Court judge has decided.

The defendant, General Electric, manufactured and delivered the generators without thermal insulation. The generators allegedly required insulation to function properly, and the Navy apparently applied asbestos insulation pads to the generators' turbines after receiving them.

GE argued that because it provided the generators in "bare metal" form without added parts, it had no duty to warn the plaintiff of the hazards of any subsequent integration of asbestos materials.

Plaintiff Glenn Sebright countered that under the U.S. Supreme Court's 2019 [Air and Liquid Systems Corp. v. DeVries](#) decision, there was a genuine issue of material fact as to GE's duty. DeVries states that in a maritime tort context, a manufacturer has such a duty if its product requires the incorporation of a part; it knows or should know that the integrated product is likely to be dangerous; and it has no reason to believe the user will realize the danger.

Young agreed with Sebright.

“[I]f an integrated product creates a significant and non-obvious risk to a user’s life or physical wellbeing, and if the manufacturer’s burden of warning the user of that risk directly is slight, the user is to be presumed ignorant of the danger posed by the integrated product under [*DeVries*],” Young wrote, denying GE’s summary judgment motion. “It will be for the jury to decide whether the balancing of risks and burdens in the case before this Court will give rise to such presumption.”

The 78-page decision is [*Sebright, et al. v. General Electric Co., et al.*, Lawyers Weekly No. 02-075-21.](#)

Surviving summary judgment

One of Sebright’s attorneys, Mark A. Alonzo of Tampa, Florida, said Young’s decision shows that plaintiffs in cases like Sebright have a chance at surviving summary judgment.

“This really goes to show that there’s an ability for plaintiffs to have some kind of remedy and recourse in the context of being Navy veterans going against companies that before would have asserted the ‘bare metal’ defense,” Alonzo said, referring to the argument manufacturers commonly make in such cases that they are not responsible for harm from parts subsequently added to products delivered in bare metal form.

Salem attorney Christopher P. Duffy, who also represented the plaintiffs, was pleased to see such a thorough analysis of a decision as critical as *DeVries*.

“[Young] really dug into it,” he said. “It will be very helpful going forward in any Navy case.”

Andrew S. Wainwright, a Boston attorney who represents plaintiffs in toxic tort cases, said there is a huge number of cases in Massachusetts state and federal courts involving seamen and shipyard workers who have developed asbestos-related disease resulting from work or service aboard ships.



“This decision will apply to both Navy personnel and personnel at certain shipyards across New England,” he said.

Wainwright added that it is particularly important to be able to hold companies like GE accountable because all the manufacturers of asbestos insulation materials have reorganized under Chapter 11, creating “asbestos trusts” that pay future claims while enjoining further tort suits.

Those trusts have allowed the companies to continue operating while paying “pennies on the dollar” compared to what their liabilities would be in court, Wainwright said.

Michael C. Shepard of Boston, who serves as plaintiffs’ liaison counsel for the state court Massachusetts Asbestos Litigation Docket, also applauded the decision, particularly Young’s finding that the individual plaintiff’s awareness of the hazard could be the operative factor under *DeVries*, not just the Navy’s awareness as GE had argued.

“The reality is that the men and women turning the wrenches on the equipment on board Navy vessels are not blessed with the same information that the top Navy brass might have,” Shepard said. “Judge Young

correctly held that the user, for the purposes of determining whether that person has knowledge of the hazard, is ‘any and all potential and actual operators of specific products.’ This is an important factor of the DeVries test that had not been addressed and interpreted until this decision.”

Boston attorney Nancy Kelly, who defends asbestos cases, said the case was interesting in that it was a federal court applying both maritime law and a recently decided Supreme Court decision.



The plaintiff Navy seaman allegedly worked with asbestos-insulated generators on board the USS Boston (above) and USS Little Rock

“To me, that gives it potentially broader implications than a state court decision on the issue,” she said. “This is part of what we would call federal common law.”

GE’s attorneys, John A. Heller and Timothy E. Kapshandy, of Chicago, and Catherine A. Mohan of Boston, did not respond to requests for comment.

Shipboard exposure

Sebright, a former machinist mate in the Navy, served on the USS Boston from 1968 to 1971 and, after re-enlisting in the Navy, the USS Little Rock from 1974 to 1976.

His job on the Boston was tending to a particular steam turbine generator in one of the ship’s fire rooms, including conducting scheduled maintenance on associated valves and pumps. The generator sets, manufactured by GE, were apparently padded with asbestos insulation, and, according to crew members, the air in the fire room was often thick with dust they believed to be asbestos.

Sebright also oversaw a fire room generator in the Little Rock and had similar maintenance duties, which required the periodic cutting away of insulation material that a shipmate who later worked in the asbestos abatement industry described as being asbestos.

In April 2016, Sebright was diagnosed with malignant mesothelioma, a fatal lung disease associated with asbestos exposure.



The actual General Electric logo that plaintiff Glenn Sebright pried from the turbo generator on the USS Boston during decommissioning.

He ultimately sued GE for failure to warn of the dangers of asbestos exposure and breach of express and implied warranties. His wife and daughter brought, respectively, claims for loss of consortium and loss of parental society.

GE moved for summary judgment, arguing that because it did not manufacture the generators with the insulation in question, there was no factual dispute as to whether it bore responsibility for the harm.

Factual dispute

Applying the three-prong analysis from DeVries, Young determined that the plaintiffs' duty-to-warn claim could proceed.

With respect to the first prong — whether the product required the incorporation of a part — Young rejected GE's argument that Sebright had to prove the turbines would be useless without asbestos insulation.

"The proper inquiry is whether the turbines 'required' heat insulation at all in order to function properly for their intended uses," the judge said, adding that testimony from Sebright, shipmates and experts suggested that without heat insulation, the fire rooms on both ships would be intolerably hot and the generators would pose a risk of burn injuries while potentially overheating.

As to the second prong, Young said the central question was whether GE knew its products would be combined with asbestos heat insulation.

While GE argued that because of the availability of alternatives to asbestos products, it could not have known it would be dangerous to work with or near its generator sets, Sebright countered that any substitute for asbestos-containing heat insulation material permitted in Navy specifications required some asbestos component.

And while GE claimed its generators were built to require little maintenance and therefore little contact with insulation materials, Sebright provided evidence that the generators demanded periodic maintenance and repairs, the judge noted.

“Sebright has raised a genuine issue of material fact in relation to the second prong,” the judge said.

Finally, addressing the third prong, Young rejected GE’s argument that the Navy itself was the “user” that it would have a duty to warn, not the plaintiff. “This Court holds that the ‘users’ under the third prong of the DeVries test are any and all potential and actual operators of specific products,” Young wrote.

Sebright, et al. v. General Electric Co., et al.

THE ISSUE: Could a onetime Navy seaman who claimed he developed mesothelioma from shipboard exposure to turbine generators insulated with asbestos bring a product liability suit against the generators’ manufacturer?

DECISION: Yes (U.S. District Court)

LAWYERS: Mark A. Alonzo and Ben A. Vinson Jr., of Tampa, Florida; Christopher P. Duffy of Salem; Edward P. Coady of Woburn (plaintiffs)
John A. Heller and Timothy E. Kapshandy, of Sidley Austin, Chicago; Catherine A. Mohan of McCarter & English, Boston (defense)