

ORIGINAL

No. 391-71-6-II

IN THE COURT OF APPEALS,
DIVISION TWO
OF THE STATE OF WASHINGTON

LEO MACIAS and PATRICIA MACIAS, Respondents

v.

SABERHAGEN HOLDINGS, INC., et. al., Appellants.

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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I. INTRODUCTION

Plaintiff Leo Macias worked as a tool keeper at Todd Shipyards in Seattle Washington from 1978-2004, where he claims exposure to asbestos from many asbestos containing products in the shipyard. As a tool keeper, Macias supplied other shipyard workers with thousands of tools and pieces of equipment, including respirator masks. Macias claims that his exposures to asbestos in Todd Shipyards while handling and maintaining tools, including respirators, caused him to develop peritoneal mesothelioma, a cancer of the lining of the stomach.

Defendants North Safety Products, Mine Safety Appliances Company, and American Optical Corporation (“Appellants”) are manufacturers of respiratory equipment. These products do not contain asbestos. Macias does not claim exposure to asbestos from wearing Appellants’ respirators. He claims that while working in the tool room, he was exposed to asbestos from cleaning the respirators, which he alleges carried asbestos dust released from other manufacturers’ products.

Appellants filed motions for summary judgment, based upon the recent Washington State Supreme Court decisions in Simonetta and

Braaten,¹ which held that a manufacturer has no duty to warn of the hazards associated with asbestos from another manufacturer's product. The Court in both cases ruled that the duty to warn under principles of strict product liability and negligence was limited to product sellers that were in the chain of manufacture and sale of the asbestos containing product. Like the case at bar, Simonetta and Braaten involved claims by workers exposed to asbestos while handling and maintaining non-asbestos containing products of the defendants.

On summary judgment, the parties in this case agreed that there were no disputed issues of fact. The issue of duty presented purely an issue of law. Macias failed to present any Washington or other state law imposing a duty to warn of another company's product. Nevertheless, without explanation or citation to legal authority, the trial court denied the motions for summary judgment.

The Appellants moved for discretionary review pursuant to RAP 5.1(b) and 6.2(b). On July 1, 2009, Court Commissioner Eric B. Schmidt issued a Ruling Granting Discretionary Review ("Ruling"), finding that the trial court had committed obvious error that rendered further

¹ Simonetta v. Viad Corp., 165 Wn.2d 341, 197 P.3d 127 (2008), and Braaten v. Saberhagen Holdings, 165 Wn.2d 373, 198 P.3d 493 (2008).

proceedings useless. The Commissioner ruled that the Appellants had no duty to warn under Washington common law or Washington's Product Liability Act, RCW 7.72.010. The Ruling authorized this appeal.

II. ASSIGNMENT OF ERROR

The trial court committed reversible error when it denied the Appellants' motions for summary judgment.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Did the Appellants have a duty to warn Macias of the hazards of asbestos released from other manufacturers' products?

IV. STATEMENT OF THE CASE

The products at issue in this case are half-mask respirators, which cover the user's mouth and nose, and full-faced respirators, which also cover the eyes. CP at 125, 148-149. Todd Shipyard provided these respirators to its employees for use in a variety of settings including painting, welding and carpentry work. CP at 124. There is no evidence that the respirators contained asbestos, required the use of asbestos, or had asbestos-containing components.

From 1978 to 2004, Macias worked in the main tool room at Todd Shipyards, where he was responsible for supplying other workers with tools and equipment. CP at 123-124. Macias issued and checked in thousands of tools and pieces of equipment including hard hats, glasses,

respirators, gloves, paper suits, paper hoods, rubber hoods, rubber capes, electric tools, air tools, wrenches, hammers, tool boxes, tool bags, grinders, drills, saws, blowers, suckers, shop vacs, etc. Id. CP at 137-139, 152-154. When the shipyard workers were finished working with the tools and gear, they returned them to the tool room for storage and cleaning. Id. CP at 125.

Macias contends that when the respirators worn by Todd employees were returned to the tool room, some were covered in dust composed of sand, dirt, and asbestos. Id. CP at 127-128. Shipyard workers set respirators and other equipment on a counter and a tool room employee, such as Macias, checked them into the computer. Id. CP at 126. Next, Macias and his coworkers threw the respirators into large baskets, occasionally bouncing them off a window or other respirators, which he claims caused dust to be released. Id. CP at 127. To clean the respirators, a tool room employee unscrewed the cartridges and threw them in a garbage can. Id. CP at 127, 165-166. Next, he would remove the thin metal frame called a yoke from the respirator, wash the respirator in one sink, rinse it in another, and then place it in an oven for drying. Id. CP at 128.

Macias claims that the Appellants had a duty to warn him about the dangers associated with his alleged exposure to asbestos while handling and maintaining their respirators. Macias' claims are not based on wearing a respirator. He has not alleged that the respirators failed to protect him from inhaling asbestos while wearing a respirator or that the respirators malfunctioned in any way. His claims are based solely on the fact that the respirators, like any other tool, piece of equipment, or safety gear used around the shipyard, may have been used around asbestos-containing products and then returned to the tool room dusty.² He brought claims against Appellants for failure to warn based upon principles of strict product liability and negligence.

² Macias and his co-workers handled thousands of other tools and equipment that came into the tool room. CP 140-145, 151. Virtually every tool that was used in the shipyard accumulated dust and was returned in a dirty, dusty and grimy condition to the tool room. Id. CP at 140, 178-179. Macias cleaned many of these tools. For example, he replaced shop vac filters in the shop vacs that had been used on board ships. Id. CP at 140-145, 151. He would wipe down power tools that were covered in dust, and would clean the dust out of the vents on power tools by blowing air through them. Id. He also cleaned hoods and capes and safety glasses that were covered with the various contaminants found throughout the shipyard. Id. CP at 152-154. When the production workers' clothes worn around asbestos containing products become dusty, they often took the clothes to the tool room for washing. Id. CP at 178, 185-186. In addition, a canvas-like fire-retardant material was used to cover electronics and glass in production areas. Id. CP at 180-184. These tarps after being used in areas containing asbestos, were returned regularly to the tool room where Macias and his co-workers would shake them out, generating dust in the ambient air. Id. None of the manufacturers of these other non-asbestos containing products have been made parties to this lawsuit.

V. ARGUMENT

In Simonetta and Braaten, the Washington Supreme Court recently ruled that a manufacturer of a product does not have a duty to warn of the dangers of asbestos from another manufacturer's product, even if use and maintenance of the non-asbestos product would require exposure to the asbestos. Simonetta, 165 Wn.2d 341; Braaten, 165 Wn.2d 373. The Court held that there is simply no duty to warn of the dangers of a product that the manufacturer did not put into the stream of commerce. Id.

It is undisputed that Appellants did not manufacture, distribute or otherwise sell or supply any asbestos-containing product to which Macias was exposed. It is undisputed that Macias' claims against Appellants arise solely out of exposure to asbestos that originated from other manufacturers' products. Because the issue of duty is matter of law³, and because the Washington Supreme Court has already decided that the duty to warn is limited to those in the chain of distribution of the hazardous product, this Court should follow Simonetta and Braaten, reverse the Superior Court, and grant the Appellants' motions for summary judgment.

³ Simonetta, 197 P.3d at 131; Burnett v. Tacoma City Light, 124 Wn. App. 550, 561, 104 P.3d 677 (2004); Restatement (Second) of Torts § 328B, cmt. e.

A. Standard of Review

This court reviews an order on summary judgment de novo. Kent Sch. Dist. No. 415 v. Ladum, 45 Wn. App. 854, 856, 728 P.2d 164 (1986). Summary judgment is appropriate when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” CR 56(c). If the moving party is a defendant and meets this initial showing, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If at this point, the plaintiff ‘fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,’ then the trial court should grant the motion. Young, 112 Wn.2d at 225 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 3548, 91 L. Ed. 2d 265 (1986)).

B. Appellants Do Not Have a Duty to Warn Macias of the Hazards of Asbestos from Other Manufacturers’ Products

The Washington Supreme Court in Simonetta and Braaten held that manufacturers of non-asbestos products that are used in conjunction with asbestos-containing products have no duty to warn of the dangers of

exposure to asbestos. Simonetta, 165 Wn.2d 341; Braaten, 165 Wn.2d 373. The Court ruled that only those parties in the chain of distribution of the asbestos-containing product itself could have a duty to warn about the hazards of exposure to asbestos.⁴ See, e.g., Simonetta, 165 Wn.2d at 354 (“[W]e hold the duty to warn is limited to those in the chain of distribution of the hazardous product.”); Braaten, 165 Wn.2d at 380 (no duty to warn of the dangers of exposure to asbestos in other manufacturers’ products because the defendant did not “sell or supply or otherwise place asbestos-containing product into the stream of commerce . . .”).

In Simonetta, the defendant manufactured and sold evaporators that did not contain asbestos, but when installed, required the use and wrapping of other companies’ asbestos-containing insulation to operate safely. Simonetta, 165 Wn.2d at 348. Regular maintenance of the evaporator by the plaintiff and other workers required contact with the asbestos insulation. Id. at 349. Acknowledging that whether a duty is owed is a question of law (Id.), the Court affirmed the trial court’s order

⁴ As the court in Braaten explained, “The harm in this case is a result of exposure to asbestos. The manufactures who did not manufacture, sell, or otherwise distribute the replacement packing and gaskets containing asbestos to which Braaten was exposed, did not market the product causing the harm and could not treat the burden of accidental injury caused by asbestos in the replacement products as a cost of production against which liability insurance could be obtained.” Braaten, 165 Wn.2d at 392.

granting summary judgment in favor of the manufacture of the evaporators because that defendant had no duty to warn about the dangers of asbestos in another company's product. Id. at 345-46.

The plaintiff in Simonetta argued that the evaporator manufacture had a duty because it knew that asbestos insulation would be applied to its product and that workers such as the plaintiff would be exposed to asbestos dust when performing regular and routine maintenance on the evaporator. The Court rejected this argument, concluding that

even if Viad knew its evaporator was being used in conjunction with asbestos insulation, our precedent does not support extending strict liability for failure to warn to those outside the chain of distribution of a product.

Id. at 361.

The plaintiff further asserted that a duty was created because it was foreseeable that users of the evaporator would come into contact with the asbestos during regular maintenance of the evaporator. The Supreme Court rejected this contention, stating “[f]oreseeability does not create a duty but sets limits once a duty is established.” Id., at 349 n. 4. The Court determined that it was the third-party asbestos insulation, and not the evaporator, that was the injury causing product (Id. at 362), and that there is no duty to warn of the dangers inherent in another manufacturer's product. Id. at 358. The defendant thus owed no duty to warn because it

did not manufacture, sell or otherwise distribute the asbestos insulation.

Id. 354 and 363.

In Braaten, plaintiff alleged that he contracted mesothelioma as a result of his contact with asbestos-containing packing and gaskets that had been installed as replacement parts inside pumps and valves manufactured by the defendants. 165 Wn.2d at 381-82. The Supreme Court affirmed the law that there is no duty to warn of the dangers inherent in another manufacturer's product. Id. at 398. The Court ruled that the pump and valve manufactures did not have a duty to warn about the dangers of asbestos-containing replacement products used in their products because they did not manufacture, sell or otherwise supply the replacement packing and gaskets. Id. at 397. This ruling applied even though (1) the manufactures had originally included asbestos-containing packing and gaskets in their pumps and valves, (2) their products required the use of asbestos-containing products, and (3) they knew that their products would be used with asbestos-containing products. The Court stated, "Whether the manufacturers knew replacement parts would or might contain asbestos makes no difference because such knowledge does not matter." Id. at 391.

This case presents an even more compelling circumstance for not expanding a manufacturer's duty to warn. Here, the respirators, unlike the valves and pumps in Braaten, did not originally come with asbestos-containing components. As manufactured, the respirators were complete products that were asbestos-free when sold. And unlike the evaporators in Simonetta or the valves and pumps in Braaten, the respirators did not require the use of any asbestos-containing product to function properly.

Regardless of whether Appellants knew or could foresee that its respirators would be used around asbestos, that the asbestos might adhere to the respirators, and that tool room employees might come into contact with the asbestos when maintaining the respirators, there is no basis for imposing a duty to warn. To do so would lead to the imposition of liability on every tool, equipment, and clothing manufacturer whose products could be used around a hazardous substance. As one court has noted:

The social consequences of a rule imposing a duty in these circumstances would be to widen the scope of potential liability for failure to warn far beyond persons in the distribution chain of the defective product to whole new classes of defendants whose safe products happen to be used in conjunction with a defective product made or sold by others. Manufacturers, distributors, and retailers would incur potential liabilities not only for the products they make and sell, but also for every other product with which their product might be used.

Cullen v. Industrial Holdings Corp., 2002 WL 31630885 (Cal. App. 1 Dist.) at 7 (holding that grinding wheel manufacturer had no duty to warn of dangers of asbestos released when plaintiff sheet metal worker used grinding wheel to cut asbestos-containing transite pipe). The respirators in this case were no different than the hammers, saws, clothing, tarps, and hundreds of other tools and equipment used around the shipyard and returned to the tool room carrying dust. The respirators, like any other tool or piece of equipment, were merely objects upon which the dust fell. The injury-causing products were the products containing asbestos.

Despite clear authority to the contrary, Macias argues that the Restatement (Second) of Torts § 402A and the case law adopting it support imposing on the respirator manufacturers a duty to warn of the dangers of asbestos released from other companies' products. The Supreme Court rejected the same argument:

Section 402A is intended to apply to "those in the chain of distribution," i.e., a "manufacturer, ... dealer or distributor" of the product.

Braaten, 165 Wn.2d at 384-385. The decision to restrict a manufacturer's duty to warnings based on the characteristics of the manufacturer's own products "is in accord with the majority rule nationwide." *Id.* at 385.

Any attempt to impose a duty otherwise is against established precedent and amounts to an inappropriate extension of the existing law. Even the Court of Appeals in Simonetta, which ruled in Plaintiffs' favor, described Plaintiffs' argument as an extension of the existing law. Simonetta v. Viad Corp., 137 Wn. App. 15, 25, 151 P.3d 1019 (2007). The Supreme Court rejected such extension, finding "little or no support under our case law for extending the duty to warn to another manufacturer's product." Simonetta, 165 Wn.2d at 353.

Appellants did not have a duty to warn about the inherent dangers of products that they did not manufacture, sell, or otherwise supply.

C. The WPLA Does Not Expand the Duty to Warn

Simonetta and Braaten were decided under the common law. Macias has stated that this case might be governed by the Washington Product Liability Act ("WPLA"), RCW 7.72 et al. However, the holdings of Simonetta and Braaten apply regardless of whether WPLA or common law controls, because the WPLA did not expand the scope of the common law duty to warn.

The WPLA states, "The previous existing applicable law of this state on product liability is modified only to the extent set forth in this chapter." RCW 7.72.020(1). There is nothing in WPLA to indicate that it

modified, much less expanded, the list of potentially liable persons.

Macias has cited to no authority whatsoever for their proposition that the duty to warn under the common law as analyzed in Simonetta and Braaten is different under the WPLA.

Instead, the WPLA consolidated numerous theories of law related to product liability. RCW 7.72.010(4); 16 Wash. Prac., Tort Law And Practice § 16.3 (3d ed.). The legislative history reveals that in enacting the WPLA as part of a larger tort reform, legislators intended to narrow, rather than expand, product liability law. For example, the duties of non-manufacturer product sellers were substantially curtailed. RCW 7.72.040. Legislators were driven by businesses and the insurance industries which were concerned with “stifling of technological innovation” and “increasing insurance premiums.” Philip A. Talmadge, Washington’s Product Liability Act, 5 U. Puget Sound L. Rev. 1 (1981-1982). The Preamble to the WPLA at RCW 7.72.010 reads:

...

The purpose of this amendatory act is to enact further reforms in the tort law to create a fairer and more equitable distribution of liability among parties at fault.

Of particular concern is the area of tort law known as product liability law. Sharply rising premiums for product liability insurance have increased the cost of consumer and industrial goods. These increases in premiums have

resulted in disincentives to industrial innovation and the development of new products. **High product liability premiums may encourage product sellers and manufacturers to go without liability insurance or pass the high cost of insurance on to the consuming public in general.**

....

It is further the intent of the legislature that retail businesses located primarily in the state of Washington be protected from the substantially increasing product liability insurance costs and unwarranted exposure to product liability litigation.

(emphasis added).

Furthermore, the “risk utility” and “balancing” tests for determining product liability under the WPLA derived directly from the common law. See Seattle-First National Bank v. Tabert, 86 Wn.2d 145, 154, 542 P.2d 774 (1975). The State Supreme Court in Tabert, supra, “adopted the consumer-expectation test for analyzing whether the manufacturer of products should be held strictly accountable for any damage caused by that product. Washington’s Tort and Product Liability Reform Act *preserves* the consumer expectation test as the touchstone of the analysis of whether or not to impose liability” Talmadge, 5 U. Puget Sound L. Rev. at 7 (emphasis added). Therefore, use of these tests does not present a difference between the common law and WPLA to justify an expanded duty to warn.

Even if there was difference between the common law and WPLA versions of the “risk-utility” and “consumer expectations” tests, the difference could not create a legal duty where none exists. The tests are used by the trier of fact to determine if a recognized legal duty has been breached, not whether a duty exists in the first place.

There is no language in the WPLA, its legislative history, or court decisions that provides for a broader duty to warn than was recognized under prior common law. The legal analyses and holdings in Simonetta and Braaten apply with equal force in this case because the WPLA adopted the same duty to warn that existed under the prior common law applied in those cases.

Even if a broader duty to warn existed, Macias can not establish liability under the WPLA. As Commissioner Schmidt ruled:

First, the risk-utility test determines if a party breached its duty to warn, not the existence of a duty. See RCW 7.72.030(1)(b). Macias did not produce any case law showing that under WPLA, a manufacturer must warn of dangers associated with products outside its chain of distribution. Second, even assuming a duty, Macias could not show a breach. Macias had to show that (1) at the time North Safety manufactured its product (2) the likelihood that it would cause mesothelioma (3) rendered any warnings or instructions inadequate, and (4) North Safety could have provided these warnings or instructions. RCW 7.72.030(1)(b). Macias cannot meet the first three elements. Macias does not claim that the product North Safety manufactured caused him harm. See

RCW 7.72.010(3). He does not allege that the respirator caused his mesothelioma, but rather that asbestos did so. There is no indication that North Safety manufactured the asbestos that gave rise to Macias's claim. Macias therefore cannot demonstrate that North Safety manufactured a product that was likely to cause his harm and failed to provide adequate warnings. Accordingly, this court cannot say that North Safety is liable under the WPLA for a harm caused by a product it did not manufacture.

Ruling at 12-13.

Therefore, not only is there no duty under the WPLA for manufactures to warn of the dangers of another manufacturer's product, but plaintiffs also can not establish such a claim if a duty existed.

D. Simonetta and Braaten are not distinguishable

The claims here are the same claims that plaintiffs made in Simonetta and Braaten: the hazard was asbestos, the plaintiff came into contact with the asbestos while maintaining the defendants' products, the defendants' products did not contain asbestos and were otherwise not defective, the defendants' products were allegedly designed for or required the use of an asbestos-containing product, and the defendants knew that their products would be used with the asbestos-containing product.

Simonetta, 197 P.3d at 131 and 133; Braaten, 165 at 381-2, 388-91.

Simonetta and Braaten are directly on point. The Washington Supreme Court has decided that a manufacturer does not have a duty to warn of the hazards of asbestos contained in a product it did not

manufacture, supply, or sell, even if its product is designed to be used with an asbestos-containing product, and even if knew users of its product would come into contact with asbestos from another product.

Macias attempts to distinguish Simonetta and Braaten by alleging that the intended use of the respirators included maintaining them and that purpose of respirators was to protect users from inhaling hazardous substances. This “purpose” argument fails for several reasons.

First, Macias presents no law to distinguish Simonetta and Braaten on the basis of the “purpose,” “intent” or “expectation” regarding the use of the product. As Court Commissioner found, “there is no evidence that the Court [in Simonetta and Braaten] intended to limit the holding in the manner Macias argues....” Ruling at 8.

To the contrary, Simonetta and Braaten rejected similar arguments that there is a duty to warn when the defendant knows, intends or expects its product to be used with an asbestos containing product. In Simonetta and Braaten, the plaintiffs alleged that the evaporator, pump and valve defendants breached their duty to warn plaintiffs of the hazards of asbestos because regular maintenance, an intended use of the products, would expose plaintiffs to asbestos from other manufacturers’ insulation, packing and gaskets.

Simonetta claims that Viad breached its duty to warn him of the risks from the intended use of the evaporator, which included routine and necessary maintenance and which caused his physical condition. ...In support, he emphasize ... that the physical harm must be caused by the use of the chattel in the manner for which it is intended ... Thus, Simonetta argues that the relevant inquiry is whether the manufacturer of a potentially dangerous product must warn of the hazards associated with the product's use - the hazard here being the risks arising from the expected use of the evaporator in conjunction with asbestos insulation.

Simonetta, at 349 (emphasis added); see also Braaten, at 379 and 381.

(Plaintiff alleged defendants “failed to warn of the danger of exposure to asbestos in the packing and gaskets that Braaten removed and replaced during routine maintenance of the defendants' pumps and valves.”

(emphasis added)). The Court ruled that the manufacturers did not have a duty to warn of the hazards of asbestos even though cleaning and maintaining their products required exposure to asbestos-containing products of other manufacturers. Simonetta, 165 Wn.2d at 361 ; Braaten, 165 Wn.2d at 385.

Second, the alleged safety purpose of the respirators in this case is irrelevant because Macias' claims are ***not based on wearing the respirator manufacturers' equipment***. Macias does not claim that the respirators failed to protect him from the dangers that they were allegedly designed to prevent. Macias does not claim that he contracted mesothelioma as a

result of wearing a respirator which had a defect, such as a leak or inadequate filtering. While the purpose of a respirator is to provide protection *while the user is wearing the respirator*, it is physically impossible for the filters in the respirator to protect someone, like Macias, when he is *not wearing that respirator*.

Third, Macias' "purpose" argument is nothing more than a "foreseeability" argument. The asserted purpose of the respirators only shows that the Appellants could foresee that their respirators would be used around hazardous products. Thus, it may have been foreseeable that dust would fall onto them and be carried into the tool room where Macias would be exposed. Applying Macias' logic, the respirators are no different than any other tool or piece of equipment that could foreseeably be used around asbestos-containing products and be returned to the tool room contaminated. As Macias concedes, the Supreme Court has held that foreseeability does not create a duty. Simonetta, 165 Wn.2d at 349 n.4. Therefore, the alleged purpose of the respirators is irrelevant in this case.

Macias also argues that under Simonetta and Braaten the respirator manufacturers were in the best position to warn against the dangers of asbestos. Simonetta and Braaten made no such findings. In both cases, the Supreme Court found that as a matter of policy, it is the party in the

chain of distribution of the injury-causing product who, “by manufacturing, selling, or marketing a product, is in the best position to know of the dangerous aspects of the product and to translate that knowledge into a cost of production against which liability insurance can be obtained.” Simonetta, 165 Wn.2d at 355; Braaten, 165 Wn.2d at 392. Here, as in Simonetta and Braaten, the manufacturers of the asbestos-containing products, which caused Macias’ alleged harm, are in the best position to know of and warn against the dangers of asbestos. The Appellants are not in that position. Ruling at 9-10.

Macias made several of the same arguments to the trial court that were made in Simonetta and Braaten. The Supreme Court has already rejected these attempts to extend the law:

Washington cases discussing an analyzing §388 liability generally limit the analysis of the duty to warn of the hazards of a product to those in the chain of distribution of the product, such as manufacturers, suppliers, or sellers. Therefore, we find little to no support under our case law for extending the duty to warn to another manufacturer’s product.

Id at 353 (emphasis added). Appellants are in the same position as the defendants in *Simonetta* and *Braaten*. The Washington Supreme Court has already decided as a matter of law that no duty should be imposed in these circumstances.

VI. CONCLUSION

In broad clear rulings, Simonetta and Braaten hold that: (1) there is no duty to warn of the dangers inherent in another manufacturer's product in general; (2) manufacturers of non-asbestos containing products used with asbestos-containing products have no duty to warn of the dangers of exposure to asbestos; and (3) only those parties in the chain of distribution of the asbestos-containing product itself have a duty to warn about the hazards of exposure to asbestos.

Macias' claims here are the same those made in Simonetta and Braaten: the hazard was asbestos, the plaintiff came into contact with the asbestos while maintaining the defendant's product, the defendant's product itself did not contain asbestos and was otherwise not defective, the defendant's product was allegedly designed for or required the use of an asbestos-containing product, and the defendant allegedly knew that its product would be used with the asbestos-containing product.

Simonetta and Braaten are directly on point and controlling. This Court should reverse the trial court's denial of Appellants' motions for summary judgment, and grant those motions.

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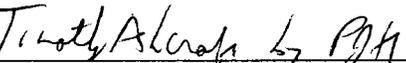
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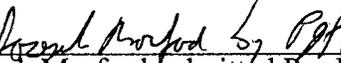
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WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MINE SAFETY APPLIANCES
COMPANY,

Petitioner,

v.

LEO MACIAS and PATRICIA MACIAS,

Respondents.

NO. 39171-6-II

(Pierce County Superior Court
Case No. 08-2-09564-4)

**PROOF OF SERVICE OF FILING
BRIEF OF APPELLANTS**

I, Lisa Werner, certify that I am over 18 years of age and a U.S. citizen. I am employed as an executive assistant by the law firm of Riddell Williams P.S. On November 10, 2009, I caused to be served a true and correct copy of BRIEF OF APPELLANTS to counsel of record as indicated below:

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EXECUTED this 10th day of November, 2009 at Seattle,
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Lisa Werner
Executive Assistant