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## IOWA SUPREME COURT TO CONSIDER BREADTH OF UNIQUE “BARE METAL DEFENSE” LAW

by Robert H. Wright

Although courts across the country have issued conflicting opinions about the “bare metal” defense, the Iowa Court of Appeals has affirmed a judgment under a state statute that encompasses and extends that defense, and the Iowa Supreme Court has granted review to decide the issue.

Under the “bare metal” defense at common law, a product manufacturer is not liable for injuries caused by asbestos-containing products made by others. As my prior posts have noted ([here](#) and [here](#)), courts have split on application of that defense. The United States Supreme Court rejected the defense to products liability claims in maritime cases. *Air & Liquid Systems v. DeVries*, 139 S. Ct. 986, 991 (2019). But the highest courts in some states have embraced the defense. *E.g.*, *Coffman v. Armstrong Int’l, Inc.*, 615 S.W.3d 888, 890 (Tenn. 2021); *O’Neil v. Crane Co.*, 266 P.3d 987, 991 (Cal. 2012); *Simonetta v. Viad Corp.*, 197 P.3d 127, 132-33 (Wash. 2008). Most recently, the Tennessee Supreme Court concluded earlier this year that the manufacturers of equipment could not “be held liable for injuries resulting from products they did not make, distribute, or sell.” *Coffman*, 615 S.W.3d at 900.

In 2017, Iowa enacted the Asbestos and Silica Claims Priorities Act. *See* Iowa Code § 686B. That statute creates something akin to the bare metal defense, but applies it to all defendants, not just product manufacturers. Iowa Code § 686B.7(5) states that a “defendant in an asbestos action or silica action shall not be liable for exposures from a product or component part made or sold by a third party.”

In *Beverage v. Alcoa, Inc.*, No. 19-1852, 2021 WL 1016602 (Iowa Ct. App. Mar. 17, 2021), the Court of Appeals applied the defense. Charles Beverage worked inside an aluminum plant where he was allegedly exposed to asbestos. After Charles’s death, his estate and children filed asbestos-related claims against both the owner of the plant and an installer of insulation. The Court of Appeals held that the statute barred plaintiffs’ claims. *Id.* at \*1.

The *Beverage* plaintiffs argued that the statute applied only to manufacturers. The Court of Appeals disagreed, noting that the statute, by its terms, applies to any “defendant.” *Id.* at \*2. The Court of Appeals held that the term “defendant” should be given its common, ordinary meaning in the context of civil litigation and that all of the parties the plaintiffs had sued were defendants. *Id.* at \*2-3.

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The *Beverage* plaintiffs argued that, “while not directly stated in the statute,” its “meaning and purpose” were “quite clearly the establishment of the ‘bare metal defense.’ ” *Id.* at \*3. The Court of Appeals concluded the statute was not so limited. It recognized that the immunity afforded by the statute “may overlap or even encompass the protections available under a ‘bare metal’ defense,” but nonetheless found no reason to conclude that the provision “was a mere codification of that defense.” *Id.* at \*4. As the Court of Appeals stated, if “ ‘the legislature intended’ to merely codify a common-law ‘bare metal’ defense, the legislature ‘could easily have so stated.’ ” *Id.*

The Court of Appeals held that the “plain purpose” of the Iowa statute was “to narrow asbestos litigation by protecting defendants against liability for exposure to products that were ‘made or sold by a third party.’ ” *Id.* at \*4. That effect “will naturally tend to refocus asbestos litigation on more culpable targets, such as asbestos manufacturers.” *Id.* The Court of Appeals stated there was “nothing absurd about this.” *Id.* The Iowa Supreme Court has granted review in the case and will have the final word.

The Iowa statute seems to be the first of its kind. Although the statute shares the same name and some of the same provisions as a model act by the American Legislative Exchange Council, the provision at issue does not appear in the model act. Moreover, my research did not disclose a similar provision in any other state statute.

The Iowa statute may not remain unique. The Georgia Legislature is considering a bill with similar language, which would provide that a “product liability defendant in an asbestos action shall not be liable for exposures from a product or component part made or sold by a third party.” 2021 Georgia House Bill No. 638, § 3. Now that the Court of Appeals has given effect to the Iowa statute, it could become a model for legislation in Georgia and beyond.