

COFFMAN v. ARMSTRONG INTERNATIONAL, INC.:
TENNESSEE ADOPTS THE BARE METAL DEFENSE*

I. INTRODUCTION

When a product manufacturer makes, sells, or distributes a potentially dangerous product, and it fails to warn about that product’s dangers—unsurprisingly—that manufacturer can be held liable for its failure to warn.¹ After all, it was the manufacturer’s *own* product, so imposing liability on that party seems fair. But who should we hold liable when a manufacturer’s nondangerous product requires a potentially dangerous third-party component part to function, and someone is seriously injured by the latter? Does the manufacturer have a duty to warn—and can it be held liable for failing to warn—about the potential dangers arising from the component part that the manufacturer *did not* make, sell, or distribute? This question “remains a fiercely debated and unsettled issue in products liability litigation.”²

The above question frequently arises in asbestos cases.³ In these cases, the third party that actually made the asbestos-containing component or replacement part may be insolvent.⁴ Thus, harmed plaintiffs may seek to impose liability on the manufacturers whose products were linked to that dangerous third-party part, even if those manufacturers had minimal or no involvement with the asbestos-containing part itself.⁵

Warning issues in products liability are treated differently by the Restatement (Second) of Torts and the Restatement (Third) of Torts.⁶ The Second Restatement imposes strict liability.⁷ According to the Second Restatement:

One who sells any product in a *defective* condition . . . is subject to liability for physical harm . . . caused to the ultimate user . . . if (a) the seller is engaged in the business of selling such a product, and (b) [the product] is expected

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1. Eliot M. Harris, *The Need of a Bright-Line Rule: Manufacturers’ Duty to Warn for Replacement Parts*, FOR THE DEF., Apr. 2010, at 18, 18.

2. Paul J. Riehle, Michael L. Fox & Christopher K. Zand, *Products Liability for Third Party Replacement or Connected Parts: Changing Tides from the West*, 44 U.S.F. L. REV. 33, 33 (2009); see also *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 993 (2019) (“In tort cases, the federal and state courts have not reached consensus on how to apply that general tort-law ‘duty to warn’ principle when the manufacturer’s product requires later incorporation of a dangerous part in order for the integrated product to function as intended.”).

3. Harris, *supra* note 1, at 18.

4. Riehle et al., *supra* note 2, at 33.

5. See Harris, *supra* note 1, at 18.

6. Compare RESTATEMENT (SECOND) OF TORTS § 402A (AM. L. INST. 1965), with RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 2 (AM. L. INST. 1998).

7. RESTATEMENT (SECOND) OF TORTS § 402A cmt. a (AM. L. INST. 1965) (“The rule is one of strict liability . . .”).

to . . . reach the user or consumer without substantial change in the condition in which it is sold.⁸

A product is “in a defective condition” when the product, “at the time it leaves the seller’s hands,” is “in a [dangerous] condition not contemplated by the ultimate consumer.”⁹ Under § 402A of the Second Restatement, a product is in a defective condition if that product can be unreasonably dangerous and lacks a warning;¹⁰ in other words, failure to warn is automatically deemed a product defect.

The Third Restatement seems to limit the strict liability approach contemplated under § 402A of the Second Restatement. Under § 2 of the Third Restatement, “[a] product is defective when, at the time of sale or distribution, it . . . is defective because of inadequate instructions or warnings.”¹¹ However, a product is defective because of inadequate warnings only when the “foreseeable risks of harm” posed by the product could have been reduced or avoided by the provision of warnings.¹² More importantly, under the Third Restatement, if a product is not defective when it leaves the manufacturer’s control or possession, then the manufacturer cannot be held liable.¹³

In short, the Second Restatement holds that a product’s absence of a warning when the product leaves the seller’s hands is a product defect. In contrast, the Third Restatement maintains that any subsequent alteration of a product is not the product; thus, a manufacturer cannot be held liable for defects arising after the product leaves the manufacturer’s hands. In adhering to the Third Restatement’s approach and principles, several jurisdictions have adopted the “bare metal defense.”¹⁴

The bare metal defense is an affirmative defense.¹⁵ Under this defense, if a manufacturer makes a “bare metal product,” a product with absolutely no asbestos, then that manufacturer has no duty to warn about later added third-party asbestos-containing parts and cannot be held liable “if a disease-causing part was added to its ‘bare metal’ product.”¹⁶ Once the bare metal defense is asserted by defendant manufacturers, the burden of proof then shifts to the plaintiffs.¹⁷ One justification for the bare metal defense is that it is unwise to impose liability on manufacturers who lack control over what is

8. *Id.* § 402A(1) (emphasis added).

9. *Id.* § 402A cmt. g.

10. *See id.* § 402A cmt. j.

11. RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 2 (AM. L. INST. 1998).

12. *Id.* § 2(c).

13. *See id.* § 2 cmt. c.

14. *See* Melissa Cochran, *Eastern District Court of Pennsylvania Predicts Applicability of the “Bare Metal” Defense in Pennsylvania Asbestos Litigation*, MARTINDALE (Sept. 12, 2016), https://www.martindale.com/legal-news/article_marshall-dennehey-warner-coleman-goggin-pc_2234580.htm [<https://perma.cc/F3A8-RK7P>]; *infra* Part III.A.

15. Marjorie A. Shields, Annotation, *Application of “Bare Metal” Defense in Asbestos Products Liability Cases*, 9 A.L.R. 7th art. 2, § 1 (2015).

16. *Id.* § 2.

17. *Id.* (“The plaintiff must prove exposure to a specific product made by a specific company during a time period that would merit a finding of causation.”).

added to their nondangerous, bare metal products,¹⁸ which aligns with the Third Restatement's approach to the duty to warn in products liability.

In January 2021, Tennessee adopted the bare metal defense in *Coffman v. Armstrong International, Inc.*¹⁹ The *Coffman* majority held that the case was decided on the interpretation of Tennessee's products liability statute, and did not opine on the public policy implications of its decision.²⁰

This Note argues that the *Coffman* court should have rejected the bare metal defense because adding warning labels on third-party replacement components is a small price for defendant manufacturers to pay compared to the cost borne by mesothelioma plaintiffs alleging asbestos exposure from components caused their cancer diagnosis. It also argues that the bare metal defense is enabling (instead of deterring) harm, which is inconsistent with the aims of tort law.

II. FACTS & PROCEDURAL HISTORY

In *Coffman*, Plaintiff Donald Coffman was an equipment mechanic at a chemical plant—Tennessee Eastman—from 1968 to 1997.²¹ While on the job, Coffman worked around packing and insulation, and, on a daily basis, repaired and replaced equipment, especially since the “piping system at Tennessee Eastman carried highly corrosive steam and acids.”²² Coffman believed many of the parts he worked with every day, including pumps, valves, steam traps, gaskets, and piping, contained asbestos.²³ He was eventually diagnosed with mesothelioma, and accordingly he and his wife filed suit.²⁴ His original complaint named around thirty defendants, including Armstrong International, Inc.—an industrial equipment manufacturer—among several other industrial equipment manufacturers.²⁵

A. Plaintiff Coffman's Claims and Equipment Defendants' Response

Coffman claimed that while repairing and maintaining the defendants' equipment he was required to use asbestos-containing materials,²⁶ and that he had developed cancer due to his workplace exposure to the carcinogen.²⁷ Thus, Coffman and his wife claimed the defendant equipment manufacturers were liable for Coffman's mesothelioma.²⁸

18. *Id.*

19. 615 S.W.3d 888, 891 (Tenn. 2021).

20. *See id.* at 899.

21. *Id.* at 891.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 891–92.

26. *Id.* at 892.

27. *Id.* at 891. In particular, Coffman claimed he was exposed to asbestos at Tennessee Eastman “by breathing in dust created by asbestos-containing insulation[,] by breathing in dust created by the removal of asbestos-containing gaskets[,] and by breathing in dust created by the removal of asbestos-containing packing.” *Id.*

28. *Id.* at 892.

Moreover, the plaintiffs asserted that the defendants were responsible since “their products were unreasonably dangerous” and because the defendants “failed to adequately warn users of potential asbestos exposure resulting from the post-sale integration of asbestos-containing materials manufactured and sold by others.”²⁹

In response to Coffman’s claims, every single equipment defendant filed a motion for summary judgment.³⁰ The defendants argued that their motions should be granted because they themselves had no involvement with or control over the products that gave rise to Plaintiff’s asbestos exposure claims.³¹ In other words, the equipment defendants asserted the bare metal defense.

B. *Procedural History: How Coffman Landed in the Tennessee Supreme Court*

According to the trial court, the defendant manufacturers had no duty to warn since the asbestos-containing products at issue came from third parties.³² As a result, the court granted summary judgment to the defendants.³³

Upon dismissal of their claims, Coffman and his wife appealed.³⁴ The Court of Appeals disagreed with the trial court and accordingly vacated the lower court’s judgment.³⁵ According to the Court of Appeals, the defendant manufacturers *did* owe a duty, and the court believed it was immaterial that the asbestos-containing products were manufactured and sold by third parties.³⁶

The defendant equipment manufacturers then appealed the Court of Appeals’ holding.³⁷ And as a result, the Tennessee Supreme Court was tasked with addressing whether the defendant manufacturers owed Coffman a duty to warn regarding third-party asbestos-containing component parts.³⁸

III. PRIOR LAW

Does a manufacturer have a legal duty to warn about the dangers or risks associated with third-party replacement or component parts? In attempting to answer this question, courts across the nation have generally settled on one of the following three approaches: (1) the bare metal defense, (2) the foreseeability rule, or (3) a middle ground between the two.³⁹

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* Coffman appealed against only twelve defendants, whereas his original complaint was against almost thirty defendants. *Id.* at 891–92.

35. *Id.* at 893.

36. *Id.*

37. *Id.*

38. *See id.* (“This opinion . . . does not address any liability of the Equipment Defendants for Mr. Coffman’s exposure to asbestos-containing products that *were* included with the Equipment Defendants’ products at the time of sale.” (emphasis added)).

39. *See Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 993 (2019).

A. *The Bare Metal Defense: Manufacturers Never Have a Duty to Warn*

Courts that have adopted the bare metal defense hold that a manufacturer is responsible only for harm caused by its own products.⁴⁰ The defense is straightforward and predictable,⁴¹ and totally shields defendants from liability.⁴² The only relevant inquiry under this rule is whether a manufacturer itself made, sold, or distributed a product containing asbestos.⁴³ If this inquiry is answered in the negative—if the manufacturer’s product was solely bare metal—then the manufacturer has no duty to warn of later added asbestos-containing parts *and* is not responsible for harm caused to plaintiffs.⁴⁴

In *O’Neil v. Crane Co.*,⁴⁵ the California Supreme Court recognized the bare metal defense.⁴⁶ The court concluded that irrespective of a defendant manufacturer’s “position in the chain of distribution,” the manufacturer can only be held strictly liable when *its own* product is defective, and emphasized that the “reach of strict liability is not limitless.”⁴⁷ It also held that, under California law, a manufacturer has never had to warn about “hazards arising exclusively from *other* manufacturers’ products.”⁴⁸ The *O’Neil* court justified its adoption of the bare metal defense by explaining that “[i]t is . . . unfair to require manufacturers of nondefective products to shoulder a burden of liability when they derived no economic benefit from the sale of the products that injured the plaintiff.”⁴⁹ In addition, the court highlighted that expanding a duty to warn to include bare metal manufacturers “could . . . undermine consumer safety by inundating users with excessive warnings.”⁵⁰

Similarly, in *Braaten v. Saberhagen Holdings*,⁵¹ the Supreme Court of Washington upheld the “majority rule nationwide”⁵² that manufacturers are not required to warn about dangers arising from another manufacturer’s products.⁵³ According to the *Braaten* court, a major reason for Washington’s adoption of the bare metal defense is that courts do not expect a manufacturer to “become [an] expert in another manufacturer’s

40. David Judd, *Disentangling DeVries: A Manufacturer’s Duty to Warn Against the Dangers of Third-Party Products*, 81 LA. L. REV. 217, 241 (2020).

41. See *In re Asbestos Prods. Liab. Litig.* (No. VI), 873 F.3d 232, 235 (3d Cir. 2017), *aff’d but criticized sub nom.*, *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986 (2019) (“Some courts apply a bright-line rule, holding that a manufacturer of a bare-metal product is never liable to injuries caused by later-added asbestos-containing materials.”).

42. See *DeVries*, 139 S. Ct. at 993.

43. See Judd, *supra* note 40, at 241.

44. See *id.*; *DeVries*, 139 S. Ct. at 993.

45. 266 P.3d 987 (Cal. 2012).

46. *Id.* at 995, 1004–05.

47. *Id.* at 995.

48. *Id.* at 997.

49. *Id.* at 1006.

50. *Id.* (“To warn of all potential dangers would warn of nothing.” (quoting *Andre v. Union Tank Car Co., Inc.*, 516 A.2d 277, 286 (N.J. Super. Ct. Law Div. 1985))).

51. 198 P.3d 493 (Wash. 2008).

52. *Id.* at 498.

53. *Id.* at 501.

product.”⁵⁴ The court explained that “[i]t does not comport with principles of strict liability to impose on manufacturers the responsibility and costs of becoming experts in other manufacturers’ products,” especially since more than sixty other parties’ products were involved in *Braaten*.⁵⁵

B. The Foreseeability Rule: Depending on the Facts, Manufacturers May Have a Duty to Warn

Other courts have rejected the bare metal defense, opting instead for a foreseeability standard that is essentially a fact-intensive analysis.⁵⁶ This rule is considered to be “plaintiff-friendly.”⁵⁷ Under this approach, if a manufacturer could foresee that its bare metal product would later be attached to an asbestos-containing part, that manufacturer may be held liable “even if the manufacturer’s product did not *require* [the] use or incorporation of that other product or part.”⁵⁸ Put differently, if the danger of asbestos is foreseeable, the defendant manufacturer can be held liable for failure to warn.⁵⁹ It is important to note, however, that the foreseeability rule does not endorse “limitless liability” for defendant manufacturers, which is what supporters of the bare metal defense may believe.⁶⁰ Rather, this rule recognizes that in certain circumstances, after analysis of the specific facts of a case, it is possible for plaintiffs to impose liability on a manufacturer for products the manufacturer has not made, placed into the stream of commerce, or otherwise touched.⁶¹

In *May v. Air and Liquid Systems Corp.*,⁶² the Maryland Court of Appeals highlighted that its case law reflected that foreseeability of harm is a factor that “weighs heavily in favor of imposing a duty” to warn on manufacturers.⁶³ However, the court also added that “foreseeability alone is not sufficient to establish a duty.”⁶⁴

The Maryland Court of Appeals considered factors such as foreseeability (“the principal determinant of duty”⁶⁵), the “degree of certainty that the plaintiff suffered the injury” (here, mesothelioma, which was the cause of the plaintiff’s death),⁶⁶ whether or not the asbestos-containing part was necessary for the manufacturer’s bare metal product to function properly,⁶⁷ and how much money the manufacturer would have to spend “to

54. *Id.* at 498.

55. *Id.* at 502.

56. *See In re: Asbestos Prods. Liab. Litig.* (No. VI), 873 F.3d 232, 235 (3d Cir. 2017), *aff’d but criticized sub nom*, *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986 (2019).

57. *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 993 (2019).

58. *Id.* at 993 (emphasis added).

59. *See Quirin v. Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 769 (N.D. Ill. 2014).

60. *Coffman v. Armstrong Int’l, Inc.*, 615 S.W.3d 888, 905 (Tenn. 2021) (Lee, J., dissenting).

61. *See May v. Air & Liquid Sys. Corp.*, 129 A.3d 984, 1000 (Md. 2015).

62. 129 A.3d 984 (Md. 2015).

63. *Id.* at 990.

64. *Id.*

65. *Id.* at 994.

66. *Id.* at 990.

67. *Id.* at 992.

give an adequate warning.”⁶⁸ Ultimately, the Maryland Court of Appeals held that a manufacturer will have a duty to warn of the dangers of a third-party’s asbestos-containing parts *only* when the following elements are met: (1) the manufacturer’s bare metal product “contains asbestos components, and no safer material is available; (2) asbestos is a critical part” of the manufacturer’s product; (3) “periodic maintenance involving handling asbestos” components is required; and (4) “the manufacturer knows or should know the risks from exposure to asbestos.”⁶⁹ The *May* court believed its holding not only allows injured individuals to get the “compensation and justice” they deserve and need, but also ensures that no product manufacturer becomes an “absolute insurer[]”⁷⁰ exposed to “limitless liability for products [it] did not manufacture or sell.”⁷¹

In another case, *In re New York City Asbestos Litigation*,⁷² the New York Court of Appeals held that if a product manufacturer could “reasonably foresee[] use of its product in combination with a third-party” part, *and* that third-party asbestos-containing part was absolutely “necessary to enable the manufacturer’s product to function as intended,” then that manufacturer has a duty to warn of the asbestos-containing part’s dangers.⁷³ Since the law already imposes a duty on manufacturers to warn of their own products (which is a duty with a “relatively low” cost), the court noted that legally obligating those same manufacturers to warn of third-party part dangers would be economically manageable.⁷⁴ Furthermore, the court held “it would be unfair to allow a manufacturer to avoid the minimal cost of including a warning about the perils of the joint use of the products when the manufacturer knows that the combined use is both necessary and dangerous.”⁷⁵

In June 2020, New Jersey joined Maryland and New York in rejecting the bare metal defense.⁷⁶ In *Whelan v. Armstrong International Inc.*,⁷⁷ the New Jersey Supreme Court emphasized that the consequences of asbestos exposure are serious, deadly, and well known.⁷⁸ According to the *Whelan* court, it is fair to hold product manufacturers responsible for “failing to provide adequate warnings about the danger of incorporating

68. *Id.* at 992–93 (“We have long recognized that the cost imposed on a manufacturer to give an adequate warning ‘is usually so minimal, amounting only to the expense of adding some more printing to a label.’” (quoting *Moran v. Faberge, Inc.*, 332 A.2d 11, 15 (Md. 1975))).

69. *Id.* at 1000.

70. *Id.*

71. *Id.* at 995.

72. 59 N.E.3d 458 (N.Y. 2016).

73. *Id.* at 463.

74. *See id.* at 473.

75. *Id.* at 474.

76. *See Whelan v. Armstrong Int’l Inc.*, 231 A.3d 640, 646 (N.J. 2020) (“Our developing common law jurisprudence . . . dictates that defendants who manufacture or distribute products that, by their design, require the replacement of asbestos-containing components . . . have a duty to give adequate warnings to the ultimate user.”).

77. 231 A.3d 640 (N.J. 2020).

78. *Id.* at 656 (“The . . . risk of exposure to asbestos dust from asbestos-containing products—the contracting of serious and often deadly asbestos-related illnesses, such as asbestosis and mesothelioma—is well known and needs no extended discussion.”).

required” third-party asbestos-containing parts.⁷⁹ The court believed imposing this duty on manufacturers will reduce the occurrence of “serious diseases and even death” caused by asbestos exposure, which the court deemed an “obvious societal benefit.”⁸⁰

Expanding on the concept of fairness, the court highlighted that since bare metal product manufacturers “profit because the replacement components extend the life of their products,” it is not unfair to require those manufacturers to “bear and spread the cost of the harm they caused.”⁸¹ Thus, the *Whelan* court concluded that a manufacturer “can be found strictly liable for failure to warn of the dangers of their products,” and that *their products* may include not only the manufacturer’s own asbestos-containing parts, but also a “third party’s replacement components.”⁸²

C. *The U.S. Supreme Court’s Take on a Manufacturer’s Duty to Warn*

In *Air and Liquid Systems Corp. v. DeVries*,⁸³ equipment manufacturers made and distributed asbestos-free, bare metal products to the Navy.⁸⁴ Later, “the Navy added the asbestos” to the manufacturers’ products.⁸⁵ When two Navy veterans “were exposed to asbestos on the ships[,] developed cancer[,] and later died,” their families sought to hold the equipment manufacturers liable by alleging negligence for failure to warn.⁸⁶ In response, what did the manufacturers argue? The bare metal defense, of course.⁸⁷

During its analysis, the Court first rejected the foreseeability rule because such a rule would “sweep too broadly,” given that “[m]any products can foreseeably be used in numerous ways with numerous other products and parts.”⁸⁸ In addition, the Court criticized the foreseeability approach for “impos[ing] a difficult and costly burden on manufacturers” and “overwarning users.”⁸⁹

The Court also rejected the bare metal defense for “go[ing] too far in the other direction”; according to the Court, it makes sense to impose liability on a product manufacturer given that “the product manufacturer will often be in a better position than the [asbestos] parts manufacturer to warn of the danger from the integrated product.”⁹⁰ Moreover, the Court reasoned that because “[m]anufacturers already have a duty to warn

79. *Id.* at 657.

80. *Id.* at 656.

81. *Id.* at 658–59.

82. *Id.* at 646. The New Jersey Supreme Court held that a plaintiff *must* prove the following in order to recover damages: “(1) the manufacturers . . . incorporated asbestos-containing components in their original products; (2) the asbestos-containing components were integral to the product . . . ; (3) routine maintenance of the product required replacing the original asbestos-containing components with similar asbestos-containing components; and (4) the exposure to the asbestos-containing components . . . was a substantial factor in causing or exacerbating the plaintiff’s disease.” *See id.*

83. 139 S. Ct. 986 (2019).

84. *Id.* at 991.

85. *Id.*

86. *Id.* at 991–93.

87. *Id.* at 992.

88. *Id.* at 994.

89. *Id.*

90. *Id.*

of the dangers of their own products,” requiring those manufacturers “to also warn when the manufacturer knows or has reason to know that a required later-added part is likely to make the integrated product dangerous . . . should not meaningfully add to that burden.”⁹¹

The Court ultimately sided with the plaintiffs, holding that, “[i]n the maritime tort context,” a manufacturer “has a duty to warn” when (1) the manufacturer’s product “requires incorporation” of an asbestos-containing component; (2) “the manufacturer knows or has reason to know” that the asbestos-containing part is “likely to be dangerous for its intended uses”; and (3) “the manufacturer has no reason to believe that the product’s users will realize that danger.”⁹² Essentially, the Court established a new, limited foreseeability test in *DeVries*—one that falls somewhere between the “plaintiff-friendly” foreseeability standard and the “defendant-friendly,” rigid bare metal defense.⁹³

The Court explained that the *DeVries* middle-ground approach is “*especially appropriate* in the maritime context,” seeing as how “[m]aritime law has always recognized a ‘special solicitude for the welfare’ of those who undertake to ‘venture upon hazardous and unpredictable sea voyages.’”⁹⁴ However, even outside of the maritime context, courts have cited the *DeVries* decision to support their conclusions.⁹⁵

IV. COURT’S ANALYSIS

In *Coffman*, the Tennessee Supreme Court encountered “an issue of first impression.”⁹⁶ Ultimately, the court held that, based on the Tennessee Products Liability Act (TPLA), bare metal manufacturers have no “duty to warn of the dangers associated with . . . asbestos-containing [parts] manufactured and sold by others.”⁹⁷ Essentially, through *Coffman*, Tennessee adopted the bare metal defense.⁹⁸ The court concluded that the equipment defendants in the case had no duty to warn, and it accordingly reversed

91. *Id.* at 994–95.

92. *Id.* at 995.

93. *See id.* at 993–94.

94. *Id.* at 995 (emphasis added) (quoting *Am. Exp. Lines, Inc. v. Alvez*, 446 U.S. 274, 285 (1980)).

95. *See, e.g., Whelan v. Armstrong Int’l Inc.*, 231 A.3d 640, 657 (N.J. 2020) (“Other jurisdictions have reached the same conclusion in similar scenarios The United States Supreme Court reached a similar conclusion in exercising its authority as a federal ‘common-law court’ in a negligence-based, product-liability maritime tort case.”); *Coffman v. Armstrong Int’l, Inc.*, 615 S.W.3d 888, 906 (Tenn. 2021) (Lee, J., dissenting) (“The majority dismisses *DeVries* . . . because its reasoning rests on ‘[m]aritime law’s longstanding solicitude for sailors.’ But the *DeVries* opinion never states that its decision depends on this distinction—only that this principle makes its rule ‘especially appropriate’ in admiralty. And in both the *DeVries* case and this case, deciding in favor of the plaintiffs is not giving out any special treatment. It is instead a matter of remedial justice under the law.” (citations omitted)).

96. *Coffman*, 615 S.W.3d at 894–95 (“Whether there is a duty to warn of the dangers associated with the post-sale integration of asbestos-containing parts that are manufactured and sold by others is an issue of first impression in Tennessee.”).

97. *Id.* at 890–91.

98. *See id.* at 900.

the judgment of the Tennessee Court of Appeals and remanded the case for further proceedings.⁹⁹

The Tennessee Supreme Court began its analysis by explaining when summary judgment is appropriate.¹⁰⁰ The court also highlighted that the primary “issue presented for review concerns statutory construction, which presents a question of law.”¹⁰¹ It explained that “[t]he most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.”¹⁰² Moreover, the court held that “[w]hen statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use.”¹⁰³

Next, to tackle the central question in the case—whether the *Coffman* defendants had a duty to warn—the court turned to the TPLA.¹⁰⁴ The court noted that when the issue of a failure to warn of the dangers associated with a product arises in Tennessee, the TPLA is the first place to look.¹⁰⁵

A. *The TPLA: Its Language Creates No Duty for Defendant Manufacturers to Warn*

The Tennessee Supreme Court noted that the “key operative provision” of the TPLA is Section 29-28-105(a): “A manufacturer or seller of a product shall not be liable for any injury to a person . . . caused by the product *unless* the product is determined to be in a defective condition or unreasonably dangerous *at the time it left the control of the manufacturer or seller.*”¹⁰⁶ Under Section 29-28-102(2) of the TPLA, a product is in a “defective condition . . . when it is in a condition that renders *it* unsafe for normal or anticipatable handling and consumption.”¹⁰⁷ In short, Plaintiff Coffman’s case depended on him proving the manufacturers’ products were “defective or unreasonably dangerous” when they left the manufacturers’ hands.¹⁰⁸

In Coffman’s eyes, the “[d]efendants’ products were in a defective condition” because (1) those products “were designed to use asbestos-containing materials” (which made them inherently defective) and (2) lacked asbestos warning labels at the time they

99. *Id.* at 891.

100. *See id.* at 893 (“Under Rule 56.04 of the Tennessee Rules of Civil Procedure, summary judgment is appropriate ‘if 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 a judgment as a matter of law.’”).

101. *Id.*

102. *Id.* at 894 (citing *State v. Howard*, 504 S.W.3d 260, 269 (Tenn. 2016)).

103. *Id.* (quoting *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009)).

104. *See id.* at 895 (“The answer to whether the Equipment Defendants had a duty to warn as alleged is found in the plain language of the Tennessee Products Liability Act.”).

105. *See id.* (“[I]n cases in which a failure to warn is at issue, the language of the TPLA determines whether manufacturers can be liable for failing to warn of dangers associated with products they did not themselves make or sell.”).

106. *Id.* (emphasis added) (quoting *Whitehead v. Toyota Motor Corp.*, 897 S.W.2d 684, 689 (Tenn. 1995)); TENN. CODE ANN. § 29-28-105(a) (West 2022).

107. *Id.* at 896 (emphasis added) (quoting TENN. CODE ANN. § 29-28-102(2) (West 2022)).

108. *Coffman*, 615 S.W.3d at 895–96.

left the defendant manufacturers' control.¹⁰⁹ But the court was not convinced by this argument.¹¹⁰ According to the court, the word "it" in Section 29-28-102(2) clearly "refers to the manufacturer's own product."¹¹¹ Because Section 29-28-102(2) only "link[s] a defendant's liability to the defendant's own product," the court found the defendant manufacturers not liable.¹¹²

Coffman also argued under Section 29-28-108 of the TPLA.¹¹³ The language of Section 29-28-108 states that "[i]f a product is not unreasonably dangerous at the time it leaves the control of the manufacturer or seller but was made unreasonably dangerous by subsequent *unforeseeable* alteration [or] change . . . the manufacturer or seller is not liable."¹¹⁴ Based on this provision, Coffman asserted the TPLA supports that manufacturers, then, must be liable for *foreseeable* alterations or changes; so, Coffman claimed the defendant manufacturers were liable since they foresaw that their product would be integrated with a dangerous asbestos part and fully intended for asbestos to be used with their products.¹¹⁵

Unfortunately, this argument failed, too. The court "decline[d] to read Section 29-28-108 in a vacuum"¹¹⁶ given that Tennessee precedent required the court to construe statutes as a whole.¹¹⁷ "[V]iewing the TPLA as a whole," the Tennessee Supreme Court found it "dispositive that the end-products at issue on this appeal were *neither made nor sold by the [e]quipment [d]efendants*."¹¹⁸ Furthermore, the court strengthened its position by highlighting that "[s]everal provisions of the TPLA state that a manufacturer or seller's duty to warn is limited to products actually made or sold by that defendant."¹¹⁹

109. *Id.* at 896.

110. *See id.* at 897.

111. *Id.*

112. *Id.*

113. *See id.*

114. *Id.* (quoting TENN. CODE ANN. § 29-28-108 (West 2022)).

115. *Coffman*, 615 S.W.3d at 897.

116. *Id.*

117. *Id.* ("In interpreting statutes[] . . . we are required to construe them as a whole, read them in conjunction with their surrounding parts, and view them consistently with the legislative purpose.") (quoting *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 897 (Tenn. 2011)) (omission in original).

118. *Id.*

119. *Id.*; *see also* TENN. CODE ANN. § 29-28-103(a) (West 2022) ("Any action against a *manufacturer or seller of a product* for injury to person . . . caused by *its* defective or unreasonably dangerous condition must be brought within the [statutory time] period" (emphasis added)); TENN. CODE ANN. § 29-28-104(a) (West 2022) ("*Compliance by a manufacturer or seller* with any . . . regulation *existing at the time a product was manufactured* . . . shall raise a rebuttable presumption that the product is not in an unreasonably dangerous condition" (emphasis added)); TENN. CODE ANN. § 29-28-106 (West 2022) ("No product liability action . . . shall be commenced or maintained against any seller, other than the manufacturer, unless (1) The seller exercised substantial control over that aspect . . . of the product that caused the alleged harm . . . ; [or] (4) The *manufacturer or distributor of the product or part in question* is not subject to service of process . . ." (emphasis added)); TENN. CODE ANN. § 29-28-108 (West 2022) ("If a product is not unreasonably dangerous at the time it leaves the control of the *manufacturer or seller* but was made unreasonably dangerous by subsequent unforeseeable alteration . . . *the manufacturer or seller is not liable.*" (emphasis added)).

B. *The Tennessee Supreme Court Refuses to Apply DeVries to Coffman's Facts*

Following the statutory interpretation and analysis of the TPLA, the Tennessee Supreme Court then turned to the U.S. Supreme Court's holding in *DeVries*.¹²⁰ The court staunchly held, however, that "[t]he *Devries* case . . . is in no way determinative of the outcome in [*Coffman*] because we are bound by the specific language of the TPLA."¹²¹ The court distinguished *Coffman* from *DeVries* by explaining that the TPLA directly supplied the test to determine whether a duty existed in *Coffman*, whereas no legislative enactment or guidance was available for the U.S. Supreme Court during its duty analysis in *DeVries*.¹²² Thus, in *DeVries*, the Court was justified in creating its own test.¹²³

In addition, the Tennessee Supreme Court alluded to the fact that *DeVries* is otherwise inapplicable to *Coffman* because they deal with completely separate issues: the former deals with whether a manufacturer has a duty to warn of third-party asbestos-containing parts in the maritime context, while the latter deals exclusively with the issue of interpreting the TPLA.¹²⁴

C. *The Tennessee Supreme Court Rejects the Foreseeability Approach*

Coffman argued that Tennessee should reject the bare metal defense because many other jurisdictions have done so.¹²⁵ In support of this argument, *Coffman* cited other cases in which the bare metal defense was rejected.¹²⁶

The *Coffman* majority, however, was not persuaded by the above argument since most of the court decisions provided by *Coffman* were from lower courts, and "none of the cases cited . . . interpret[ed] the language of the TPLA," meaning they failed to "adequately address how [they would] square with the language of [Tennessee's products liability] statute."¹²⁷

The majority did note, though, that Georgia has a state statute similar to the TPLA, and that Georgia has interpreted its statute similarly to how the majority interpreted the TPLA in *Coffman*.¹²⁸

120. See *Coffman*, 615 S.W.3d at 898.

121. *Id.*

122. See *id.*

123. See *id.*

124. See *id.* ("[T]he U.S. Supreme Court explicitly relied on the fact that the [*DeVries*] case arose from facts within the maritime context . . . which of course does not apply to the facts of this case."); see also *id.* at 899 ("The *DeVries* case . . . relates to federal maritime tort common law and has nothing to do with the issue before us, the interpretation of the TPLA. As a result, the *DeVries* case has no bearing on our decision here.").

125. See *id.* at 899.

126. See *id.*

127. *Id.*

128. See *id.* at 899–900 (highlighting a case, *Davis v. John Crane, Inc.*, 836 S.E.2d 577, 583–84 (Ga. Ct. App. 2019), where the Georgia products liability act was interpreted and the state refused to impose a duty to warn on a manufacturer because the product was manufactured by another party).

D. *The Court's Acknowledgement of Fairness and Public Policy*

Finally, the *Coffman* majority emphasized that “the language of the TPLA dictates our decision here,” and did not opine on whether its decision was “the optimal outcome . . . in terms of public policy.”¹²⁹ The majority also explained that the optimal public policy outcome is in the legislature’s hands, not the court’s,¹³⁰ and that the court was simply bound by its duty to interpret the legislature’s statute.¹³¹ For example, the court stated: “It is within the purview of the legislature to change common law and to set public policy, and the judiciary is bound by the constitutional acts of the Legislature.”¹³²

Ultimately, the Tennessee Supreme Court concluded that under the TPLA, manufacturers have no duty to warn of asbestos-containing parts manufactured and sold by third parties.¹³³

E. *The Dissent*

Justice Sharon Lee dissented in *Coffman*.¹³⁴ Justice Lee believed the majority’s no-duty-to-warn rule “undercuts” Tennessee products liability law.¹³⁵ Specifically, she argued that the TPLA’s language does place a duty to warn on defendant manufacturers, Tennessee should have adopted a foreseeability rule—like other jurisdictions—and the U.S. Supreme Court’s holding in *DeVries* does apply to *Coffman*.¹³⁶

1. Justice Lee’s Statutory Analysis: The TPLA Creates a Duty to Warn

According to Justice Lee, “[p]lacing a duty to warn on the Defendants follows from section -105(a)” of the TPLA;¹³⁷ she argued the emphasized language from Section 29-28-105(a) is particularly noteworthy as it creates that duty: “A manufacturer . . . shall not be liable for any injury . . . caused by [its] product unless the product is determined to be in a defective condition or unreasonably *dangerous at the time it left the control of the manufacturer . . .*”¹³⁸ Relying on this section, Justice Lee maintained that if a manufacturer knows a final integrated product will be dangerous, but does not tell users about those dangers, effectively that manufacturer failed to warn while it had control of the product.¹³⁹ In other words, the absence of a product warning (at the time the product

129. *Id.* at 899.

130. *See id.* (“That determination is for the legislature.”).

131. *See id.* (“Our Legislature has set forth a statute by which we must abide.”).

132. *Id.*

133. *See id.* at 899–900.

134. *Id.* at 900 (Lee, J., dissenting).

135. *Id.* at 900.

136. *See id.* at 900–10.

137. *Id.* at 901.

138. *Id.*

139. *Id.* at 901–02.

leaves a manufacturer's control) is a product defect when the manufacturer *knows* the integrated product will contain asbestos.¹⁴⁰

Justice Lee also argued that other relevant provisions of the TPLA must be considered when determining if the statute creates a duty for defendant manufacturers.¹⁴¹ For example, Section 29-28-105(d) of the TPLA holds that “[a] product is *not* unreasonably dangerous because of a failure to adequately warn of a danger . . . that is *apparent* to the ordinary user.”¹⁴² Justice Lee asserted that the inverse must also be true: “[A] product *is* unreasonably dangerous because of a failure to adequately warn of a danger . . . that is *not* apparent to the ordinary user.”¹⁴³ Moreover, another section, Section 29-28-108, holds that a defendant is not liable when the product “was made unreasonably dangerous by subsequent *unforeseeable* alteration.”¹⁴⁴ Justice Lee argued that the phrase “subsequent unforeseeable alteration,” in particular, “cannot [be] ignore[d]” because it means that “a manufacturer will sometimes be liable for later alterations that are foreseeable.”¹⁴⁵

With regard to statutory interpretation, Justice Lee asserted that two canons of construction provided guidance¹⁴⁶: first, “a special provision of a particular statute[] will prevail over . . . a general provision in the same statute”;¹⁴⁷ and second, a statute must be construed “so that no part [of the statute] will be inoperative, superfluous, void, or insignificant.”¹⁴⁸ Thus, in *Coffman* she argued that Section 29-28-108 prevailed over the general provision Section 29-28-105(a), which lays out the broad standards for liability.¹⁴⁹ Furthermore, she recognized that “[l]imiting a manufacturer’s liability to only apparent or extant defects in the product when it leaves the manufacturer’s hands makes the key language¹⁵⁰ in Section 29-28-108 superfluous,”¹⁵¹ which goes against the canons of statutory interpretation.¹⁵² As a result, Justice Lee gave great weight to the key phrase of Section 29-28-108 of the TPLA, maintaining that since the bare metal

140. See RESTATEMENT (SECOND) OF TORTS § 402A cmt. j (AM. L. INST. 1965) (“In order to prevent the product from being unreasonably dangerous, the seller may be required to give . . . warning, on the container, as to its use.”).

141. See *Coffman*, 615 S.W.3d at 902.

142. *Id.*; TENN. CODE ANN. § 29-28-105(d) (West 2022) (first emphasis added).

143. *Coffman*, 615 S.W.3d at 902 (Lee, J., dissenting) (first emphasis added).

144. *Id.* at 903 (emphasis added).

145. *Id.*; see also *Davis v. Komatsu Am. Indus. Corp.*, 42 S.W.3d 34, 43 (Tenn. 2001) (“[I]f a manufacturer is *not* liable for injuries when its non-defective, safe product is ‘made unreasonably dangerous by subsequent unforeseeable alteration . . .,’ as Section 108 provides, it is logical to conclude that liability is appropriate when a . . . manufacturer substantially participates in integrating its non-defective, safe component into the *design* of a final product, the integration causes the final product to be defective, and the resulting defect causes the harm.”).

146. *Coffman*, 615 S.W.3d at 903.

147. *Id.* (alteration in original) (omission in original) (quoting *Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011)).

148. *Id.* (quoting *Young v. Frist Cardiology, PLLC*, 599 S.W.3d 568, 571 (Tenn. 2020)).

149. *Id.*

150. The “key language” Justice Lee was referring to is “subsequent unforeseeable alteration.” *Id.*

151. *Id.*

152. See *id.*

manufacturers in *Coffman* knew integration of third-party asbestos parts was required for their products to properly function, and their products were therefore made unreasonably dangerous by subsequent foreseeable alteration, Section 29-28-108 must apply and the manufacturers must be held liable.¹⁵³

2. Tennessee Should Have Adopted a Foreseeability Rule Instead

Justice Lee rejected Tennessee’s adoption of the bare metal defense and advocated instead for a foreseeability rule.¹⁵⁴ She interpreted the TPLA as imposing a duty to warn “when the manufacturer (1) knows or should know that its product requires aftermarket integration with another product . . . to function properly; and (2) knows or should know that this aftermarket integration will likely render the final integrated product reasonably dangerous.”¹⁵⁵ So, in *Coffman*, Justice Lee held that the defendant manufacturers should have been held liable because the defendants’ products required asbestos-containing components to function properly, and the defendants knew that a third party would incorporate asbestos into their product (making it unreasonably dangerous), yet the defendants warned no one.¹⁵⁶

Additional reasons mentioned by Justice Lee for adopting a foreseeability rule included: (1) ensuring “substantive justice,”¹⁵⁷ (2) the fact that a foreseeability rule is “not open-ended” and does not lead to “limitless liability” for defendant manufacturers,¹⁵⁸ (3) the fact that the duty to warn is a “fairly inexpensive duty [for defendant manufacturers] to fulfill,”¹⁵⁹ and (4) the reality that several other courts (including the U.S. Supreme Court) have imposed liability on manufacturers where the manufacturer failed to warn of asbestos in a third-party part necessary to enable the manufacturer’s bare metal product to function as intended.¹⁶⁰

153. *See id.* at 904.

154. *See id.* at 900–01, 910.

155. *Id.* at 910.

156. *See id.* at 900.

157. *Id.* at 905 (“[W]e should be cautious of erecting absolute rules to bar products liability claims, which . . . over the past century have slipped the formalistic bonds of privity of contract to ensure substantive justice.”).

158. *Id.* (“The Defendants are concerned that requiring them to warn about foreseeable alterations that cause their products to become unreasonably dangerous will lead to ‘near limitless liability.’ This concern is unfounded.”); *see also id.* (explaining that, under a foreseeability rule, a manufacturer is not liable for failing to warn of *any* alteration that makes a product unreasonably dangerous, but rather only liable for alterations that are foreseeable and make a product unreasonably dangerous because the manufacturer knows or should know that the alterations are required to make the product function properly).

159. *Id.* at 906 (“The [U.S.] Supreme Court [in *DeVries*] . . . wisely notes that the duty to warn is a fairly inexpensive duty to fulfill (as far as defendants’ duties in tort go), even more so in that the *marginal* cost of an additional warning is slight.”).

160. *See id.* at 907 (“As a New Jersey appellate court recently observed, there is a ‘recent trend . . . towards the imposition of liability on manufacturers even where the worker’s exposure was to replacement parts, where the original product was manufactured with asbestos-containing parts.’” (omission in original) (quoting *Whelan v. Armstrong Int’l Inc.*, 190 A.3d 1090, 1108 (N.J. Super. Ct. App. Div. 2018))).

3. *DeVries* Does Apply to *Coffman*

Justice Lee argued that the U.S. Supreme Court case, *DeVries*, does apply to the case at hand.¹⁶¹ Although *DeVries* acknowledges that its holding is especially appropriate in the maritime context, she argued that nothing explicitly bars *DeVries* from applying to *Coffman*.¹⁶² Moreover, Justice Lee stressed that the Tennessee Supreme Court should give immense weight to the United States Supreme Court's position on the matter even though the latter did not set out to interpret the language of the TPLA in *DeVries*.¹⁶³

4. Tennessee Should Follow Other Jurisdictions

Finally, Justice Lee named several other jurisdictions that adopted a foreseeability rule to argue that Tennessee, too, should have adopted a foreseeability rule.¹⁶⁴ Even though those other jurisdictions do not interpret the Tennessee statute, she maintained that, since the statute "reflects section 402A of the Restatement (Second) of Torts . . . parallel developments in other states . . . would have some considerable significance in understanding [the statute] today."¹⁶⁵ Furthermore, "many of those states whose products liability statutes *do* have language tracking basic concepts in section 402A of the Restatement (Second) of Torts have embraced the standard proposed by this dissent."¹⁶⁶ Justice Lee also highlighted that Oregon, for instance, rejected the bare metal defense and has a very similar statute to the TPLA.¹⁶⁷ Thus, she claimed the *Coffman* court should have done the same.¹⁶⁸

V. PERSONAL ANALYSIS

The *Coffman* majority relied solely on the language of the TPLA when deciding the case in favor of the defendant manufacturers.¹⁶⁹ However, the majority should have looked beyond the statute and given equal consideration to the downsides of the bare metal defense. Specifically, the majority should have considered that (1) requiring defendant manufacturers to warn of asbestos in third-party component parts is a small price for them to pay, especially when compared to the cost borne by mesothelioma

161. *See id.* at 905–06 ("The majority dismisses *DeVries* . . . because its reasoning rests on 'maritime law's longstanding solicitude for sailors.' But the *DeVries* opinion never states that its decision depends on this distinction . . .").

162. *See id.* at 906 ("In *DeVries* . . . the solicitude principle brings maritime law into harmony with the common law by removing formalistic barriers to substantive justice. Special solicitude for sailors is not the basis for the analysis.").

163. *See id.* at 907 ("[W]e still have good reason to pay attention to the Supreme Court. That is because the same general body of legal principles informs maritime law, the common law, and even the best construction of a Tennessee statute.").

164. *See id.* at 907–08.

165. *Id.* at 908.

166. *Id.* (noting that Missouri and Rhode Island, for example, pull directly from the Second Restatement).

167. *See id.*

168. *See id.*

169. *See id.* at 899 ("We reiterate that the language of the [Tennessee Products Liability Act] dictates our decision here . . .").

plaintiffs; and that (2) as a matter of public policy, the bare metal defense is incompatible with tort law's aim of deterring wrongful conduct and preventing personal injury.

A. *The Costs of Incurable Mesothelioma*

Mesothelioma, “a cancer of the membranes that line the lungs and chest or abdomen,”¹⁷⁰ has no cure.¹⁷¹ It is “almost always fatal.”¹⁷² Moreover, the only proven cause of mesothelioma is asbestos,¹⁷³ specifically “the inhalation of asbestos fibers.”¹⁷⁴

After an individual is exposed to asbestos fibers, that individual may develop mesothelioma thirty to thirty-five years later; thus, this cancer has a “long latency period.”¹⁷⁵ Mesothelioma symptoms may include “chest pain, shortness of breath, and cough.”¹⁷⁶ Over time, this cancer spreads and causes severe pain.¹⁷⁷ After someone is diagnosed with mesothelioma, that person typically only has four to eighteen *months* left to live.¹⁷⁸

B. *The Mere Cost of Adding a Warning*

Will it cost bare metal manufacturers time and money to issue an additional warning—one addressing the dangers of asbestos exposure? Yes.¹⁷⁹ But will it be a significant burden for a manufacturer? Most likely not.¹⁸⁰ Bare metal manufacturers “already have a duty to warn of the dangers of their own products.”¹⁸¹ So, requiring them to either add an additional warning label or include in their existing label information about the dangers of required later-added third-party parts is a small cost, especially when compared to the prospect that users may develop incurable cancer from the third-party parts. In *Whelan*, for example, the Supreme Court of New Jersey emphasized that “[w]arnings about the dangers of the original . . . components could easily encompass

170. Daniel J. Penofsky, *Asbestos Injury Litigation*, 60 AM. JUR. TRIALS 73, § 23 (1996).

171. Karen Selby, *Mesothelioma Cure*, ASBESTOS.COM (Nov. 2, 2021), <https://www.asbestos.com/treatment/mesothelioma-cure/> [https://perma.cc/GF6X-7YPE].

172. Penofsky, *supra* note 170.

173. *See* Selby, *supra* note 171.

174. Penofsky, *supra* note 170.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Mesothelioma Prognosis*, PENN MED., <https://www.pennmedicine.org/cancer/types-of-cancer/mesothelioma/prognosis> [https://perma.cc/B24C-9ATY] (last visited Apr. 1, 2023).

179. *See* *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 994 (2019) (“To be sure, as the manufacturers correctly point out, issuing a warning costs time and money.”).

180. *Id.* (“But the burden usually is not significant.”); *see also* *Ross Labs. v. Thies*, 725 P.2d 1076, 1079 (Alaska 1986) (“The cost of giving an adequate warning is usually so minimal, i.e., the expense of adding more printing to a label, that the balance must always be struck in favor of the obligation to warn where there is a substantial danger which will not be recognized by the ordinary user.”); *Campolongo v. Celotex Corp.*, 681 F.Supp. 261, 264 (D.N.J. 1988) (“Experience demonstrates that an asbestos-related product is unsafe because a warning could have made it safer at *virtually no added cost* and without limiting its utility.”) (emphasis added).

181. *See DeVries*, 139 S. Ct. at 994–95 (“That duty typically imposes a light burden on manufacturers.”).

the dangers of the required asbestos-containing replacement components integrated into the [original] product.”¹⁸²

Moreover, this duty to warn is one that bare metal manufacturers can easily discharge since all they would have to do is add an extra label or warning to their product. If, in response to a plaintiff’s lawsuit, a bare metal manufacturer shows it provided an adequate warning label addressing the dangers associated with a later-added third-party part, the duty to warn is satisfied *and* the plaintiff’s case collapses. Given that additional printing or an extra label on their product (a small cost) could help shield bare metal manufacturers from potential tort liability (a huge cost), it makes sense for these manufacturers to warn of third-party asbestos-containing parts.

Warning of third-party asbestos-containing parts benefits more than just the bare metal manufacturers. It benefits prospective purchasers. Requiring bare metal manufacturers to warn of asbestos in the ultimate integrated product is valuable to prospective purchasers of that product because those purchasers can assess the asbestos-containing product against the dangers of other competing products on the market. The purchaser is most likely also the employer of the individual(s) exposed to asbestos; thus, the purchaser may face potential liability—probably in the form of workers’ compensation—to employees who subsequently contract mesothelioma or other asbestos-related diseases.¹⁸³ Purchasers, like manufacturers, have an interest in minimizing their liability. Therefore, adding a warning label, addressing the dangers of an asbestos-containing third-party part, to a manufacturer’s bare metal product would enable purchasers to minimize their risk by opting to buy a different product altogether.

C. *The Mesothelioma Plaintiff Has Significantly More to Lose*

Whether or not an individual contracts mesothelioma is not a choice. Some individuals who work with asbestos-containing parts never contract the disease, whereas others in the same situation do.¹⁸⁴ By contrast, whether a manufacturer provides a warning is very much a choice.

Many individuals, furthermore, do not have the luxury of being selective about the employment they enter into—if one’s job requires one to work with asbestos-containing parts, one must work with asbestos-containing parts. It is also wrong to assume that all individuals who work with asbestos know how dangerous it is, what it can cause, and that its effects may only manifest *decades* later. Product manufacturers, on the other hand, likely do know how serious inhalation of asbestos can be and are financially capable of providing warnings so that their product users may take the necessary

182. *Whelan v. Armstrong Int’l Inc.*, 231 A.3d 640, 656 (N.J. 2020).

183. See Jennifer Lucarelli, *Workers’ Compensation for Mesothelioma*, MESOTHELIOMA.COM, <https://www.mesothelioma.com/lawyer/compensation/workers-compensation/> [https://perma.cc/7LP2-P4E4] (last visited Apr. 1, 2023) (“Asbestos exposure is considered a work injury. As a result, individuals with illnesses caused by asbestos exposure may be eligible for workers’ compensation.”).

184. See *Risk Factors for Malignant Mesothelioma*, AM. CANCER SOC’Y (Nov. 16, 2018), <https://www.cancer.org/cancer/malignant-mesothelioma/causes-risks-prevention/risk-factors.html> [https://perma.cc/MK97-BHT5] (“[M]ost people exposed to asbestos, even in large amounts, do not get mesothelioma. Other factors, such as a person’s genes or having radiation treatments in the past, may make [an individual] more likely to develop mesothelioma when exposed to asbestos.”).

precautions.¹⁸⁵ Manufacturers are also much better situated than their product users because the manufacturer “knows the nature of the ultimate integrated product and is typically more aware of the risks associated with that integrated product.”¹⁸⁶ Product users, however, lack that “big picture” knowledge since they only come into contact with the asbestos-containing replacement parts during the maintenance or replacement of a piece of equipment.¹⁸⁷

Individuals unwarned about the presence of asbestos in products they use might lose their lives suffering from a painful, incurable cancer. On the other hand, manufacturers who are required to warn of third-party asbestos-containing parts lose little (money, if anything) to nothing, considering that the cost of adding an additional warning is minimal.¹⁸⁸ While a price can be put on an additional warning, a price cannot be put on human life.

Compared to the defendant product manufacturers, mesothelioma plaintiffs have less control, less knowledge of the ultimate integrated product, less protection from the dangers of asbestos, and much more at stake. A rule like the bare metal defense utterly fails to acknowledge this reality and the stark imbalance between the two parties. Though the bare metal defense is a clean and predictable bright-line rule, it fails to account for the heavy costs borne by asbestos exposure victims and society as a whole.¹⁸⁹

D. *The Bare Metal Defense is Incompatible with Tort Law’s Aims*

Two fundamental purposes of tort law are to deter wrongful conduct and prevent personal injury.¹⁹⁰ Tort law aims to “discourage conduct that creates an unreasonable risk of injury to others;” to accomplish this “deterrent goal,” tort law imposes a duty of care and liability for breach of that duty.¹⁹¹ The threat of liability is what achieves deterrence, and this threat looms large in the realm of products liability.¹⁹² This is because manufacturers of defective products (products that—when not properly warned about—cause death or serious disease) quickly learn to rectify their products’ defects

185. *See DeVries*, 139 S. Ct. at 994.

186. *Id.*

187. *Cf. Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076, 1081–82 (5th Cir. 1973) (illustrating that the product user-plaintiff, an industrial insulation worker who worked with asbestos-containing insulation material and ultimately contracted mesothelioma, and his fellow insulation workers knew inhaling asbestos dust was “bad,” “vexatious and bothersome,” but “never realized that it could cause any serious or terminal illness.”).

188. *See, e.g., Coffman v. Armstrong Int’l, Inc.*, 615 S.W.3d 888, 906 (Tenn. 2021) (Lee, J., dissenting) (“The Supreme Court [in *DeVries*] also wisely notes that the duty to warn is a fairly inexpensive duty to fulfill . . . even more so in that the *marginal* cost of an additional warning is slight.”).

189. *See, e.g., Whelan*, 231 A.3d at 656 (explaining that the public has a “clear stake” in the matter because exposure to asbestos can cause “serious diseases and even death,” reducing the number of individuals subject to asbestos-related illnesses is an “obvious societal benefit on many different levels,” and the public has an interest in limiting the extent of individual suffering and the “devastating consequences that illnesses have on families” and the healthcare system).

190. 1 AM. L. OF TORTS § 1:3, Westlaw (database updated March 2022); *see also* Daniel W. Shuman, *The Psychology of Deterrence in Tort Law*, 42 U. KAN. L. REV. 115, 115 (1993) (“Deterrence delineates tort law. Tort law seeks to reduce injury by deterring unsafe behavior and that goal informs tort standards for behavior.”).

191. 1 AM. L. OF TORTS § 1:3, Westlaw (database updated March 2022).

192. *See* 1 AM. L. OF TORTS § 1:36, Westlaw (database updated March 2022).

“when they and their liability insurers are assessed heavy damages” for placing a defective product “into the stream of commerce.”¹⁹³

The bare metal defense adopted by Tennessee in *Coffman* essentially goes against the aims of tort law to deter wrongful conduct and prevent personal injuries. According to the *Coffman* majority, under the defense, even when a product manufacturer knows that its product will be attached to an asbestos-containing third-party component part, that manufacturer will not be liable unless the individual’s mesothelioma was caused by the *specific* product made, distributed, or sold by that manufacturer.¹⁹⁴ The *Coffman* majority lasers in on the particular language of the TPLA without considering the overarching principles of tort law and the costs of this narrow reading to society.

The bare metal defense is allowing (instead of deterring) product manufacturers to cause serious harm and act wrongfully. When a manufacturer possesses specialized knowledge that the final product can cause mesothelioma, the manufacturer participates in the pipeline of an individual’s development of mesothelioma when intentionally omitting that information from its warning label.¹⁹⁵ That participation *is* wrongful, intentional conduct; wrongful because the manufacturer knows the integrated product has the potential to cause mesothelioma yet says nothing to the other party, who may be clueless about the presence of asbestos in the later-added third-party part. But since the manufacturer cannot be held liable thanks to the bare metal defense, the manufacturer does not care about the harm and pain it is causing.

Thus, the bare metal defense permits the manufacturer to knowingly cause suffering, leading to someone’s painful, sudden death. Given that the cost of an additional warning to these manufacturers is so small, it is cruel and unfair that these manufacturers are allowed to sit back and relax while they possess special knowledge that someone else who will work closely with the product will likely not possess.

Bare metal manufacturers are involved with third-party manufacturers to create an ultimate product containing asbestos. However, both parties are treated disparately under the bare metal defense—bare metal manufacturers are “off the hook,” while third-party parts manufacturers supplying the asbestos-containing part are “on the hook.” If both parties know about the presence and dangers of asbestos in the ultimate product, how is it fair that bare metal manufacturers can evade liability when they were involved in the creation of the same product and possessed the same knowledge? That outcome does not make sense.

193. *Id.*

194. *See Coffman v. Armstrong Int’l, Inc.*, 615 S.W.3d 888, 900 (Tenn. 2021).

195. *See Air & Liquid Sys. Corp. v. Devries*, 139 S. Ct. 986, 994 (2019).

VI. CONCLUSION

Products liability law serves to spread the costs of injuries caused by defective products away from the powerless, injured, innocent consumer and onto “the manufacturers that put such products on the market” and profit from their sale.¹⁹⁶ This legal theory is consistent with the broader goals of tort law to deter and reduce harm by imposing liability on responsible parties.¹⁹⁷ Though the bare metal defense is a convenient bright-line rule, providing clarity and predictability for manufacturers, it fails to serve public policy. The *Coffman* majority acknowledged this fact in its opinion but refused to address these public policy implications.¹⁹⁸ The bare metal defense enables the causing of harm to innocent consumers because manufacturers are let off the hook, and the defense fails to account for the fact that requiring manufacturers to provide warnings of asbestos-containing third-party component parts is such a minimal price when compared to the price of human lives lost to diseases like mesothelioma.

Thus, the *Coffman* court should have given weight to public policy considerations in its decision, considered the purpose of products liability law and tort law, and weighed the burden of mesothelioma against the duty to warn placed on manufacturers (which is a very light burden). The court, ultimately, should have rejected the bare metal defense, opting instead for one of the foreseeability approaches adopted by other jurisdictions around the country.

196. See *O’Neil v. Crane Co.*, 266 P.3d 987, 995 (Cal. 2012) (explaining that the “purpose of such liability is to insure that the costs of injuries resulting from defective products are borne by manufacturers that put such products on the market rather than by the injured persons who are powerless to protect themselves” (quoting *Greenman v. Yuba Power Products, Inc.*, 377 P.2d 897, 901 (Cal. 1963))).

197. See AM. L. TORTS *Purpose and Aims of Tort Law* § 1:3, Westlaw (database updated May 2014).

198. See *Coffman*, 815 S.W.3d at 899 (“[W]e do not opine on what we perceive to be the optimal outcome of this case in terms of public policy.”).