



The Voice

And The Defense Wins

Published 2-1-17 by DRI

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Wheeler Trigg O’Donnell (WTO) attorneys and DRI members [Erik “Rick” Nadolink](#) and [Kate Mercer-Lawson](#) won reversal and remand for Foster Wheeler in an asbestos lawsuit before the U.S. Court of Appeals for the Fourth Circuit. At issue was application of the “government contractor defense” (for federal immunity) in an asbestos failure to warn case where the plaintiff claimed WTO’s client was liable for the illness and death of a former Navy shipyard worker. *Law360* [reported the win](#) on

November 1, 2016.

This was an issue of first impression for the Fourth Circuit. The doctrine of federal immunity is well established in design defect cases, but significantly less so in failure to warn cases. The government contractor defense states that a military contractor is immune from liability if the product at issue was designed and built under government control and supervision. The district court ruled that the government contractor defense does not apply in failure to warn cases. The Fourth Circuit reversed the district court and held that government contractor immunity is a valid defense in failure to warn cases.

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