

Asbestos Alert!

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Macias v. Saberhagen Holdings, Inc.

Washington State Supreme Court
2012 WL 3207245 (August 9, 2012)

Washington State Extends Asbestos Exposure Liability to Manufacturers of Certain Non-Asbestos Containing Products

Washington law generally does not extend liability for asbestos-related diseases to defendants who did not place an asbestos-containing product into the stream of commerce. *Macias* was a tool keeper whose job duties included cleaning respirators and changing respirator cartridges. He claimed the respirator manufacturers had a duty to warn him that handling the respirators after they had been used could lead to exposure to asbestos and resultant asbestos-related disease. The trial court denied the respirator manufacturers' summary judgment motions. The court of appeal reversed because the respirator manufacturers were not in the chain of distribution of asbestos-containing products. The Washington Supreme Court reversed the court of appeal and reinstated the trial court's order denying the summary judgment motions.

The Washington Supreme Court distinguished the precedent it had set in *Simonetta v. Viad Corporation* (2008) 197 P.3d 127 and *Braaten v. Saberhagen Holdings* (2008) 198 P.3d 493. These were cases where equipment manufacturing defendants were found not liable for asbestos exposure from external insulation and internal packing and gaskets used in conjunction with those defendants' products and not supplied by them. Those cases held that a defendant must be in the chain of distribution of the harm-producing agent in order to be held strictly liable.

In *Macias* the Court reasoned that *Simonetta* and *Braaten* stated a general rule subject to exception in certain cases. The Court found that, because the danger Mr. *Macias* encountered was "based on the characteristics of the [respirator] manufacturers' own products," liability for failure to warn could apply to them. The characteristics of the respirators which the Court found important were that they were designed to filter contaminants from the air, specifically including asbestos; they were designed to be reused; and integral to their reuse, the respirators had to be cleaned of the contaminants from the last use, which involved handling of the dirty respirators and created an opportunity for exposure. In other words, the respirators, when used as designed, would cause the persons charged with cleaning them to be exposed to asbestos unless precautions were taken.

The Court took pains to note that it was not overturning or weakening *Simonetta* or *Braaten*, "because unlike in those cases, where the manufacturers' products did not, in and of themselves, pose any *inherent* danger of exposure to asbestos, here when the products were used exactly as intended and cleaned for reuse exactly as intended they *inherently* and invariably posed the danger of exposure to asbestos."

COMMENT AND EVALUATION

The California decision in *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335 held that product manufacturers do not have liability for exposure caused by replacement parts which they did not supply. In reaching that conclusion, the *O'Neil* court cited *Simonetta* and *Braaten*, and also the Washington Court of Appeal's earlier decision on the *Macias* case (*Macias v. Mine Safety Appliances Co.* (2010) 244 P.3d 978). Naturally, the question arises as to whether the Washington Supreme Court's *Macias* opinion undermines the holding of *O'Neil*.

While the Washington Supreme Court's new *Macias* opinion does nothing to strengthen *O'Neil*, it does not weaken the position that an equipment manufacturer should not be held liable for exposure to external insulation and internal packing and gaskets supplied by others, *so long as the equipment manufacturer did not design or manufacture the equipment in such a way that exposure to asbestos was an inherent risk.*

The *O'Neil* court certainly suggested that if a particular piece of equipment was required to be used in conjunction with another product that had to be asbestos-containing, there was a possibility of liability against the supplier of the non-asbestos-containing piece of equipment. However, *O'Neil* made clear that this would be a very rare circumstance, a position which was bolstered by *Barker v. Hennessy Industries, Inc.* (2012) 206 Cal.App.4th 140. In *Barker*, the manufacturer of a brake grinding machine was found not liable, despite the fact that the machine was used on asbestos-containing brake linings and would cause the release of asbestos fibers from those brake linings. The *Barker* court distinguished its holding from that of *Tellez-Cordova v. Campbell-Hausfeld* (2004) 129 Cal.App.4th 577 on the ground that in *Tellez-Cordova*, the defendant's product was manufactured specifically for a use that necessarily resulted in the release of toxic substances. In our view, the Washington Supreme Court's decision in *Macias* falls into the *Tellez-Cordova*-type of case, where exposure to a harmful substance is inherent, as opposed to the *Barker*-type of case where such exposure is likely but not inherent. In-depth analysis of each of these cases will be needed to provide guidance to trial judges.

For the full decision see: <http://www.courts.wa.gov/opinions/pdf/855358.opn.pdf>