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California Supreme Court Upholds Product Liability Precedent That Defendants Are Not Liable for Harm Caused by Other Defendant's Products

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On January 12, 2012, the California Supreme Court held that a product manufacturer cannot be held liable under the theories of strict liability or negligence for harm caused by another manufacturer's product, unless the defendant's own product substantially contributed to the harm, or the defendant substantially participated in creating a harmful combined use of the products. *O'Neil v. Crane Co., et al.*, S177401, slip op. (Cal. Jan. 12, 2012). Following this important products liability decision, it is questionable whether *Conte* will survive. See *Conte v. Wyeth, Inc.*, 168 Cal. App. 4th 89 (Cal. 2008).

During World War II, naval ships were built in conformance with certain government specifications, including those that mandated the use of asbestos for its insulating properties. Patrick O'Neil served in the U.S. Navy and was exposed to asbestos through his duties of supervising enlisted men who repaired equipment in the engine and boiler rooms on naval ships. O'Neil died from mesothelioma, a fatal cancer of the lining of the lung caused by asbestos exposure, and his family filed a wrongful death complaint claiming that the defendants were strictly liable and negligent based on the companies' supply of asbestos-containing products to the Navy. Two of the defendants, Crane Co. and Warren Pumps, LLC, manufactured parts that were used on naval ships, and contained asbestos. However, no evidence was presented that the asbestos-containing dust that O'Neil was exposed to came from a product made by either Crane or Warren.

Crane and Warren both moved for nonsuit on all causes of action based on the fact that plaintiffs had presented no evidence that O'Neil had been exposed to a Crane or Warren product that contained asbestos. Plaintiffs argued that even if O'Neil had not been exposed to asbestos from a Crane or Warren product, those companies were still responsible because the original products they sold contained asbestos. Plaintiffs also argued that it was foreseeable that the parts would be replaced with other component parts that would contain asbestos and that the repair and maintenance procedures would release harmful asbestos dust.

The trial court granted Crane's and Warren's nonsuit motions. The Court of Appeals reversed the trial court's holding and announced a broad definition of strict products liability, extending liability to manufacturers of its own components and for "dangerous products with which its product will be used." Slip op. at 7.

The California Supreme Court reversed the Court of Appeals decision and held that Crane and Warren were not strictly liable for O'Neil's injuries for two reasons. First, any design defect in defendants' (Crane's and Warren's) products was not a legal cause of injury to O'Neil.

The Court reaffirmed the strict liability rule that California courts require proof that the plaintiff suffered injury caused by a defect in the defendant's own product. Slip op. at 10. "[A] product manufacturer generally may not be held strictly liable for harm caused by another manufacturer's product." Slip op. at 28.

Client Alert.

Second, the Court established that defendants had no duty to warn of risks arising from other manufacturer's products. Even though Crane and Warren gave no warnings about the dangers of asbestos in the original gaskets and packing, because O'Neil never encountered those products, the Court held that he was not entitled to warnings from those manufacturers. "No case law . . . supports the idea that a manufacturer, after selling a completed product to a purchaser, remains under a duty to warn the purchaser of potentially defective additional pieces of equipment that the purchaser may or may not use to complement the product bought from the manufacturer." Slip. Op. at 15, citing *In re Deep Vein Thrombosis*, 356 F. Supp. 2d 1055, 1068 (N.D.Cal. 2005).

The Court clarifies that "the foreseeability of harm, standing alone, is not a sufficient basis for imposing strict liability on the manufacturer of a nondefective product, or one whose arguably defective product does not actually cause harm." Slip op. at 28. The Court stated that to impose a duty to warn on a party for another manufacturer's products "reaches too far" and concludes that "[t]here is no precedent in California law for such a broad expansion of a product manufacturer's duty." Slip op. at 25-26.

The Court established two exceptions to its holding. A manufacturer may be held liable when the defendant bears *some responsibility* for the harm, either because the defendant's own product contributed substantially to the harm, or because the defendant participated substantially in creating a harmful *combined use* of the products. Slip op. at 28 (emphasis added).

This decision is consistent with the public policy rationale behind strict liability as "it was never the intention of the drafters of the [strict liability] doctrine to make the manufacturer or distributor the insurer of the safety of their products. It was never their intention to impose absolute liability." Slip op. at 29 citing *Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal.3d 987, 995 (1991). The Court held that any contrary ruling would require manufacturers to investigate the potential risks of all other products and replacement parts that could foreseeably be used with their product and warn of all potential risks. Such a duty was deemed to be excessive, an unrealistic burden on manufacturers, and to undermine consumer safety with excessive warnings.

The Court also ruled that the trial court properly entered nonsuit on plaintiffs' negligence cause of action under the current State of California negligence law. "In short, expansion of the duty of care as urged here would impose an obligation to compensate on those whose products caused the plaintiffs no harm. To do so would exceed the boundaries established over decades of product liability law." Slip op. at 33.

The opinion reiterates and analyzes California product liability precedent that defendants are not responsible for liability outside a defective product's chain of distribution, and that defendants are not required to warn of defects in another manufacturer's product. It also calls into question whether the *Conte* decision, issued by the California Court of Appeals in 2008, may eventually be overturned. See *Conte v. Wyeth, Inc.*, 168 Cal. App. 4th 89 (Cal. 2008).

In *Conte*, the California Court of Appeals upheld fraud and negligent misrepresentation claims against the brand manufacturer of the drug Reglan (Wyeth), even though it was undisputed that the plaintiff had only received the drug in its generic form, and never received Wyeth's Reglan. The plaintiff claimed that both the generic and brand manufacturers provided false, misleading, or incomplete warnings about the dangers of overexposure to Reglan, or metoclopramide. The *Conte* court stated, "the common law duty to use due care owed by a name-brand prescription drug manufacturer when providing product warnings extends not only to consumers of its own product, but also to those whose doctors foreseeably rely on the name-brand manufacturer's product information when prescribing a medication, even if the

Client Alert.

prescription is filed with the generic version of the prescribed drug.” *Id.* at 94-95.

Because *Conte* only pursued fraud and negligent misrepresentation claims against Wyeth while the *O’Neil* holding addressed strict liability and negligence claims, the *O’Neil* decision does not overturn *Conte*. However, it puts the longevity of the *Conte* decision in dispute given the California Supreme Court’s holding related to strict liability and negligence claims.

To view the Court’s decision, please click [here](#).

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