

## **State Supreme Court Reverses Dangerous Expansion of Product Liability**

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The California Supreme Court held last week that the law does not impose liability on manufacturers of equipment used in conjunction with asbestos-containing parts made by others. See [O'Neil v. Crane Co.](#), Cal., No. S177401 (Cal. 1/12/12).

Readers may recall that we posted [on this case before](#). The Restatement of Torts (Third): Products Liability says that in the context of a final, finished product that injures a user and which is made up of components from different manufacturers, if a given component is itself defective and the defect causes the harm, then the supplier of that component is of course liable. In addition, the supplier can be liable even if the component by itself is not defective, but only if the seller substantially participates in the integration of the component into the design of the product (and the defect causes the harm). See Restatement 3d, Section 5. In essence, the doctrine holds that an entity supplying a non-defective raw material or a non-defective component part is not strictly liable for defects in the final product over which it had no control. In this respect, the Third Restatement of Torts simply codified the doctrine of various states' common law.

Nevertheless, a split had existed among the lower courts in California about whether to extend liability for asbestos-related disease beyond the manufacturers of the asbestos insulation, gaskets, and packing to which many ship workers were exposed (and which makers are now bankrupt) to the makers of the products the asbestos was used with (to find a solvent target). So the state supreme court confronted the limits of a manufacturer's duty to prevent foreseeable harm related to its product: When is a product manufacturer liable for injuries caused by adjacent products or replacement parts that were made by others and used in conjunction with the defendant's product? It held that a product manufacturer may not be held liable in strict liability or negligence for harm caused by another manufacturer's product unless the defendant's own product contributed substantially to the harm, or the defendant participated substantially in creating a harmful combined use of the products.

Defendants made valves and pumps used in Navy warships. They were sued here for a wrongful death allegedly caused by asbestos released from external insulation and internal gaskets and packing, all of which were made by third parties and added to the pumps and valves post-sale. It is undisputed that defendants never manufactured or sold any of the asbestos-containing materials to which plaintiffs' decedent was exposed. That is, no evidence was presented that any of the asbestos-containing dust came from a product made by defendants. Neither company manufactured or sold the external insulation or flange gaskets that the repairmen like plaintiff removed. Although the valves and pumps contained internal asbestos-containing gaskets and packing, these original components had been replaced long before plaintiff encountered them years later. There was no evidence that any of these replacement parts were made by defendants. The Court of Appeal asserted defendants' products were defectively designed "because they required asbestos packing and insulation." But this factual assertion was unsupported by the record. The evidence established that the requirement for asbestos derived from military specifications, not from any inherent aspect of defendants' pump and valve designs

Nevertheless, plaintiff claimed that defendants should be held strictly liable and found negligent because it was foreseeable that workers would be exposed to and harmed by the asbestos in replacement parts and products used in conjunction with their pumps and valves. The Court of Appeals held that the component parts defense applied only to manufacturers of "multi-use or fungible products" designed to be altered and incorporated into another product. It then concluded defendants' products did not meet these requirements. The Court of Appeal

also rejected defendants' argument that they could not be found strictly liable because they did not manufacture or supply the asbestos-containing products that caused plaintiffs' disease. The lower court announced a broad definition of strict products liability: a manufacturer is liable in strict liability for the dangerous components of its products, and for dangerous products with which its product will necessarily be used. Even though it was replacement gaskets and packing that allegedly caused disease, the lower appeals court concluded these replacement parts were "no different" from the asbestos-containing components originally included in defendants' products.

Plaintiff's claims would represent an unprecedented expansion of strict products liability, which the supreme court declined to do. California law, like most states, has long provided that manufacturers, distributors, and retailers have a duty to see to the safety of their products, and will be held strictly liable for injuries caused by a defect in their products. Yet, the state has never held that these responsibilities extend to preventing injuries caused by other products that might foreseeably be used *in conjunction with* a defendant's product. Nor has the state's high court ever held that manufacturers must warn about potential hazards in replacement parts made by others when, as here, the dangerous feature of these parts was not integral to the product's design. From the outset, strict products liability in California has always been premised on harm caused by deficiencies in the defendant's own product. The reach of strict liability is not limitless; strict liability does not extend to harm from entirely distinct products that the consumer can be expected to use with, or in, the defendant's non-defective product. Instead, the courts require proof that the plaintiff suffered injury caused by a defect in the defendant's own product.

In this case, it was undisputed that plaintiff was exposed to no asbestos from a product made by the defendants. Although he was allegedly exposed to potentially high levels of asbestos dust released from insulation the Navy had applied to the exterior of the pumps and valves, defendants did not manufacture or sell this external insulation. They did not mandate or advise that it be used with their products. It is fundamental that the imposition of liability requires a showing that the plaintiff's injuries were caused by an act of the defendant or an instrumentality under the defendant's control.

Generally speaking, manufacturers have a duty to warn consumers about the hazards inherent in their products. The requirement's purpose is to inform consumers about a product's hazards and faults of which they are unaware, so that they can refrain from using the product altogether or evade the danger by careful use. Typically, under California law, manufacturers are strictly liable for injuries caused by their failure to warn of dangers that were known to the scientific community at the time they manufactured and distributed their product. The supreme court has never held that a manufacturer's duty to warn extends to hazards arising exclusively from other manufacturers' products. Plaintiff's alleged exposure to asbestos came from replacement gaskets and packing and external insulation added to defendants' products long after their installation; there was no dispute that these external and replacement products were made by other manufacturers.

So the supreme court reaffirmed that a product manufacturer generally may not be held strictly liable for harm caused by another manufacturer's product. The only exceptions to this rule arise when the defendant bears some direct 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. Plaintiffs sought to expand these exceptions to make manufacturers strictly liable when it is foreseeable that their products will be used in conjunction with defective products or even replacement parts made or sold by someone else. However, the mere foreseeability of harm, standing alone, is not a sufficient basis for imposing strict liability on the manufacturer of a non-defective product, or one whose arguably defective product does not actually cause harm.

The decision was supported by common sense. A manufacturer cannot be expected to exert pressure on other manufacturers to make their products safe and is not able to share the costs of ensuring product safety with these other manufacturers. It would be unfair to require manufacturers of non-defective products to shoulder a burden of liability when they derived no economic benefit from the sale of the products that injured the plaintiff. And a contrary rule would require manufacturers to investigate the potential risks of all other products and replacement parts that might foreseeably be used with their own product and warn about all of these risks. Such a duty would impose an excessive and unrealistic burden on manufacturers. Such an expanded duty could also undermine consumer safety by inundating users with excessive warnings. "To warn of all potential dangers would warn of nothing."