

Source: Toxics Law Reporter: News Archive > 2012 > Latest Developments > Toxic Torts > Asbestos: No Liability for Others' Asbestos Products, California High Court Holds, Resolving Split

Asbestos

No Liability for Others' Asbestos Products, California High Court Holds, Resolving Split

By Martina S. Barash

California law does not impose liability on manufacturers of shipboard valves and pumps used in conjunction with asbestos-containing parts made by others, the California Supreme Court held unanimously Jan. 12 (*O'Neil v. Crane Co.*, Cal., No. S177401, 1/12/12).

The state top court, joining the other jurisdictions that have considered the issue, effectively declined to extend liability for asbestos-related disease beyond the now-bankrupt manufacturers of the asbestos insulation, gaskets, and packing to which many U.S. Navy seamen were allegedly exposed.

The decision resolves a split in the California intermediate appellate courts.

BNA Snapshot

O'Neil v. Crane Co., Cal., No. S177401, 1/12/12

Key Holding: A product manufacturer may not be held strictly liable or negligent for harm caused by another maker's product, except where the defendant has some direct responsibility for the harm.

Key Takeaway:

California, whose ports were major hubs for the Navy, has blocked plaintiffs in asbestos cases from pursuing defendants that were not directly involved with supplying asbestos products.

In this case, the high court reversed the California Court of Appeal, Second Appellate District, which ruled in favor of the family of Patrick O'Neil, a naval officer allegedly exposed to asbestos from 1965 to 1967. O'Neil died of mesothelioma, a disease caused by asbestos, at 62.

O'Neil is the lead case of four before the supreme court that were brought by former Navy personnel or their families against valve and pump makers (26 TXLR 1387, 12/1/11). The high court declined to hear an earlier case, *Taylor v. Elliott Turbomachinery Co.* (24 TXLR 309, 3/5/09).

In the cases other than *O'Neil*, the Court of Appeal panels found no liability on the part of companies that did not make the asbestos-containing products.

Foreseeability Not Enough

The supreme court addressed strict-liability claims for design defects and failure to warn, as well as negligence claims, and its language extended beyond the asbestos context.

"[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," Justice Carol A. Corrigan wrote for the court.

The court rejected the family's argument that Crane Co. and Warren Pumps LLC, which made valves and pumps used on the ship, should be held strictly liable because they foresaw that their products would be used with replacement asbestos parts.

"[T]he 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," Corrigan wrote.

The court carved out exceptions where "the defendant's own product contributed substantially to the harm" or "the defendant participated substantially in creating a harmful combined use of the products."

Addressing the plaintiffs' negligence claims—an issue the Court of Appeal did not decide—the justices said Crane and Warren Pumps owed no duty of care in the circumstances, based on "strong policy considerations."

The companies' connection to O'Neil's injury was remote because they did not manufacture the asbestos-containing products; imposing a duty would be unlikely to prevent future harm; the Navy made its own purchasing choices and specifications; and consumers could potentially be harmed by too many product warnings, the court reasoned.

Paul C. Cook and Michael B. Gurien of Waters Kraus & Paul in Los Angeles, and Jeffrey Isaac Ehrlich, who practices in Encino, Calif., represented the plaintiffs.

David M. Axelrad, Jason R. Litt, and Curt Cutting of Horvitz & Levy in Encino; and Raymond L. Gill, Robert E. Feyder, Geoffrey M. Davis, Paul J. Lawrence and Nicholas P. Vari of K&L Gates in Los Angeles represented Crane.

James P. Cunningham, Laurie J. Hepler and Gonzalo C. Martinez of Carroll, Burdick & McDonough represented Warren Pumps.

For More Information

The opinion is at <http://op.bna.com/pslr.nsf/r?Open=mbah-8qfsp5>.

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