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Manufacturers Of Non-Defective Products Still Not Liable For Those of Others

By Jules Zeman and William "Skip" Martin

The California Supreme Court is not expected to decide whether manufacturers of non-defective products can be held liable when third parties use their products with defective or dangerous products manufactured or supplied by others, until at least 2011. [*O'Neil v. Crane Co.*], S177401.

Yet, in an April 22, 2010 decision, another unanimous California Court of Appeal followed the trend of courts favoring manufacturers in these kinds of cases. In [*Walton v. William Powell Co.*], (2010 DJDAR 5987), the 2nd Appellate District agreed with the majority of recent decisions that manufacturers of non-defective equipment, which had been used with asbestos-containing parts manufactured and supplied by others, may not be held liable in cases alleging either a failure to warn or design defects.

This trend reflects a view that a component manufacturer will be subject to product liability only when its component has a defect that results in injury or when the manufacturer plays a material role in integrating the component into a finished product whose defect causes injury. Valves and pumps (the products at issue in [*Walton*]*)* are considered components of larger integrated propulsion and other systems within which they operate. While [*Walton*] itself will most likely be the subject of a successful petition for review by the plaintiffs, it continues this trend. It also relies on traditional concepts of product liability law and applies these rules to bar design defect causes of action and failure to warn claims.

Manufacturers of equipment not containing asbestos originally were not targets in asbestos litigation. Likewise, manufacturers who supplied asbestos manufactured by others for use with their equipment at the time of sale, but had no relationship to the asbestos used with their equipment many years after the plaintiffs' exposures, were typically not defendants either. For the last several years, however, plaintiffs' attorneys have pursued manufacturers of mechanical equipment such as pumps and valves as the next wave of asbestos defendants, since their original targets were no longer viable sources of recovery as a result of bankruptcy or other developments. The gist of the plaintiffs' claims is that manufacturers of equipment have a legal duty to warn users of its product about the dangers of asbestos exposure; this duty exists because it was "foreseeable" that the manufacturers' equipment would or could be used with the asbestos-containing product that allegedly injured the plaintiff.

Some trial courts have permitted plaintiffs to pursue design defect claims. Those cases are brought on the theory that the equipment was designed to be used in conjunction with defective and dangerous asbestos-containing parts. Further, the foreseeable use of the equipment required maintenance that included replacement and disturbance of the parts containing asbestos.

In recent years, many trial courts have permitted failure to warn and design defect claims to be submitted to juries. This often has resulted in multi-million dollar awards based, in essence, on the theory that the equipment manufacturer may be held forever responsible for asbestos-containing products that were manufactured, sold or supplied by other companies, so long as the further use of asbestos-containing products was "foreseeable" to the equipment manufacturer.

Beginning with the Feb. 25, 2009 decision in [*Taylor v. Elliott Turbomachinery*] (2009) 171 Cal. App, 4th 564, California Courts of Appeal have been rejecting the plaintiffs' theories. The [*Taylor*] court found that the manufacturer was not liable because:

First, California law restricts the duty to warn for replacement parts and external insulation to parties that manufactured or supplied those items. In other words, a manufacturer that was not in the chain of distribution of the defective part and received no profit or other economic benefit from the sale of the part should not be held liable.

Second, an original product manufacturer has no duty to warn of defects in products supplied by others and used in conjunction with the manufacturer's product, unless the product supplied by the original manufacturer caused the risk of harm.

Last, the component parts doctrine insulates the original manufacturers and suppliers of non-defective component parts, as long as they do not substantially participate in the integration of the components into a final product.

The [*Taylor*] court did not have the question of design defect claims before it and thus, there was no discussion of those claims in its opinion. Quite significantly, the California Supreme Court denied review of the decision.

The next relevant decision came from the 2nd Appellate District on Sept. 18, 2009. [*O'Neil v. Crane Co.*] *(2009) 99 Cal. Rptr. 3d 533*. On analytically indistinguishable facts, the court expressly rejected the analysis of [*Taylor*] and held that the original equipment manufacturer may be liable on both causes of action for failure to warn and for design defect. The court relied on the above-mentioned theory that pumps and valves were designed to be used in conjunction with asbestos-containing parts and that the foreseeable use of the equipment required maintenance that included periodic replacement and disturbance of parts containing asbestos. On Dec. 23, 2009, the Supreme Court granted review of [*O'Neil]* and briefing is underway.

On Nov. 17, 2009, approximately two months after [*O'Neil*] was decided, but before the Supreme Court granted review, the 2nd Appellate District rendered its decision in [*Merrill v. Leslie Controls*] *(2009)* 101 Cal. Rprt. 3d 614. It followed [*Taylor*] in every respect and did not mention [*O'Neil*]*,* even though both [*Taylor]* and [*O'Neil]* were citable at the time [*Merrill*] was decided. Because [*Merrill*] included a jury verdict on causes of action for design defect (whereas [*Taylor*] did not have design defect before it), the [*Merrill*] court also held that the [*Taylor*] analysis regarding failure to warn applied to the design defect claims. In other words, where plaintiffs cannot show that plaintiff was exposed to a product manufactured, supplied, distributed or placed in the chain of commerce by the equipment manufacturer, the manufacturer cannot be held liable for injury caused by design defect. On Feb. 3, 2010, the Supreme Court issued a grant and hold, but deferred briefing pending the outcome in [*O'Neil*.]

Next was [*Hall v. Warren Pumps, LLC*]*, 2010 Cal. App. Unpub. LEXIS 1088,* which was an unpublished decision rendered by the 2nd District. [*Hall*] affirmed judgment in favor of the equipment manufacturer on claims of failure to warn and design defect. On March 29, 2010, the plaintiffs filed a petition for review. It is expected that the Supreme Court will issue another grant and hold on [*Hall*], again pending the outcome of [*O'Neil.*]

This brings us back to [*Walton*], in which the Court of Appeal expressly adopted the analysis and conclusions of [*Taylor*] and ignored *[O'Neil*]. It additionally applied [*Taylor*] to dispose of the plaintiffs' design defect causes of action, while providing significantly more discussion regarding design defect than in [*Merrill]*. [*Walton*] relied upon the component parts doctrine as fashioned in [*Restatement Third of Torts*], *Products Liability*, Section 5, which emphasizes that placing liability upon manufacturers and sellers of component products that are not defective would unfairly require them to scrutinize another manufacturer's product which they have no role in developing. It would also require them to review the decisions of business entities that were

already charged with responsibility for the integrated product. The [*Walton]* court found that Powell's valves fell squarely within the rationale for the components parts doctrine. Powell only made metal valves, which the court found to have no functional value until integrated into broader systems.

We expect the Supreme Court will issue a grant and hold if a petition for review is filed in [*Walton*]. That's because it too provides no new analytically distinguishable facts from those in [*O'Neil*.]

Counting [*Walton],* there are now four different panels of the Court of Appeal that have foundno liability for equipment manufacturers whose non-defective and non-injury-causing products are used by third parties. For those who think a growing consensus of the intermediate courts can help predict how the Supreme Court might rule in [*O'Neil*], that trend is significant.

Recent decisions in other jurisdictions reflect the same. See, for example, the Washington Supreme Court's decisions in [*Braaten v. Saberhagen Holdings*] (2008) 193 P. 3d 493 and [*Simonetta v. Viad Corp*.] (2008) 197 P. 3d 127. Some observers may also factor in the fact that the California Supreme Court denied review in [*Taylor],* a no liability decision, while it granted review in [*O'Neil],* where the court found liability. Also worth noting, the Supreme Court's recent decisions in [*Johnson v. American Standard Inc*.] (2008) 43 Cal. 56 and [*McCann v. Foster Wheeler LLC]* (2010) 48 Cal. 4th 68, which both favored manufacturers.

The most important consideration may be the recognition of the view shared by many that the "no liability" decisions in [*Taylor*, *Merrill*, *Hall*] and [*Walton*] were not based on any novel proposition. Rather, they were grounded in decades of California tort jurisprudence in which California had never imposed liability regarding products manufactured and supplied by others.

For these reasons, many believe that it is likely the Supreme Court will reverse [*O'Neil*].

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