

Conflicting Appellate Decisions Create Uncertainty Regarding Defenses In California Toxic Tort Litigation

Two recent decisions from the California Court of Appeal have created uncertainty regarding the defenses that defendants can rely on in asbestos and other toxic tort cases. In the most recent case, *O'Neil v. Crane Co.*, Case No. B208225 (September 18, 2009), the Court of Appeal reversed the granting of a motion for non-suit in an asbestos-wrongful death case. Decedent Patrick O'Neil died of mesothelioma in 2005. His wife and children sued the manufacturers of pumps and valves that were installed on an aircraft carrier on which O'Neil had served as a Naval officer in the 1960s. Following the close of plaintiffs' evidence, the trial court granted the manufacturer's motion for non-suit.

The evidence at trial showed that numerous valves and pumps installed on the aircraft carrier on which O'Neil served had packing and insulation containing asbestos. Expert and percipient witnesses also testified that the valves and pumps were designed to military specifications, that the Navy required manufacturers to provide manuals regarding the maintenance, installation and operation of their equipment and that by the time O'Neil was aboard the ship, packing and insulation initially supplied with the pumps and valves had been replaced during routine maintenance.

The trial court granted the manufacturer's motion for non-suit on several grounds. One basis was the "component parts" defense, also known as the raw material or bulk supplier defense. This defense holds that unless a component part itself is defective, a manufacturer or supplier of that part cannot be held liable for injuries caused by the finished product. Defendants argued that the valves and pumps were component parts of the propulsion system for the ship. The trial court accepted this argument, which was subsequently rejected by the Court of Appeal. In doing so, the appellate court found that the pumps and valves were "separate products with a specific purpose and use," they were not fungible or multi-use and that the manufacturers of these products supplied manuals to the end-user, giving them the opportunity to provide warnings and use instructions. According to the O'Neil decision, these facts made the component part defense inapplicable.

The opposite result occurred in *Taylor v. Elliot Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564. Plaintiff in Taylor had worked on an aircraft carrier similar to the one on which O'Neil served and was exposed to asbestos from pumps, valves and other equipment. The Taylor Court found that the pumps and valves were part of a "larger marine steam propulsion system" and thus the defendant manufacturers were shielded from liability based upon the component parts defense.

On similar facts, the O'Neil decision rejected this outcome, finding that considering the entire ship or steam system as a "finished" product stretched the component parts defense too far. In addition, according to O'Neil, even if the defense applied it would not shield the manufacturers from liability because evidence existed that the component parts contained a design defect, i.e., the valves and pumps were designed to be used with asbestos-containing insulation and packing.

The two decisions also reach opposite conclusions in regard to another defense. The defendants in O'Neil argued that they could not be held liable because the asbestos packing and insulation initially supplied with their pumps and valves was replaced through routine maintenance by the time plaintiff was exposed to the material. There was no evidence that defendants had supplied the replacement parts and they argued that they could not be held liable for injuries caused by products manufactured by third parties. The Taylor Court found a similar argument to be persuasive; the O'Neil Court did not.

After reviewing a number of prior decisions, the O'Neil Court found that a manufacturer could still be held liable under a design defect or failure to warn theory where injuries are due to "predictable and ordinary maintenance and repair." The Court also held that a manufacturer can be held liable for injuries caused by "dangerous products with which its product will necessarily will be used."

O'Neil and Taylor truly reach opposite conclusions from similar facts. The California Supreme Court may have to resolve this split in authority. Obviously, the O'Neil decision takes a much more expansive view of a manufacturer's liability in the toxic tort/product liability context than did the Taylor Court. While supporting case law exists for the holding in O'Neil, finding a manufacturer liable for injuries caused by products it did not place into the stream of commerce directly contradicts one of the founding principles of products liability law.

These conflicting decisions may be the result of the difficult facts presented by many asbestos cases. Given the long latency period for mesothelioma, little evidence of exposure may exist at the time of trial. In addition, holding a corporation liable for actions that took place forty years in the past may simply seem inherently unfair and at odds with the law's general preference that claims be made in a timely manner. A trial judge faced with a case with minimal evidence of exposure and product identification and a long timeline may look for a basis to dismiss or grant a non-suit. Whether that decision is upheld now appears to depend on which appellate panel reviews the decision.



Steve Henning
Los Angeles



Patrick Schoenburg
Central CA