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LITIGATION

## Push for new liability over asbestos denied

By **Laura Ernste**

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The state Supreme Court on Thursday unanimously rejected a push by the plaintiffs' bar to expand liability in asbestos cases.

Manufacturers of pumps and valves used in U.S. Navy warship boilers during World War II cannot be held liable for asbestos-related diseases because their parts didn't cause the problem, the court said. *O'Neil v. Crane* 2012 DJDAR 464.

Defense lawyers hailed the ruling, not only for its importance in California product liability law, but also because it could influence courts in other states.

The pumps and valves in question contained asbestos and were wrapped in asbestos to insulate the parts from the extremely high temperatures in the warship boilers, so plaintiffs' lawyers argued that manufacturers should have warned users about the dangers.

The case stemmed from Patrick O'Neil's exposure to asbestos in the 1960s while supervising engine and boiler room repairs. Nearly 40 years later, he was diagnosed with mesothelioma, a type of lung cancer caused by asbestos exposure, and died.

O'Neil's heirs sued companies Crane Co. and Warren Pumps LLC, which made valves and pumps installed on the ship in the 1940s.

But Justice Carol A. Corrigan called the connection between the defendants' products and O'Neil's death "extremely remote." O'Neil's disease can be traced only to the surrounding insulation and replacement parts that were made by other companies, she said.

"Little moral blame can attach to a failure to warn about dangerous aspects of *other* manufacturers' products and replacement parts," Corrigan wrote.

The court held that public policy does not favor expanding the strict liability doctrine, which requires manufacturers to warn users about their own products.

"Expansion of the duty of care as urged here would impose an obligation to compensate on those whose products caused the plaintiffs no harm," Corrigan wrote. "To do so would exceed the boundaries established over decades of product liability law."

A stronger argument for liability might be made in the case of a product that required the use of a defective part, such as asbestos, but those parts were designed to work with or without asbestos, the court said.

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— *Mark A. Behrens*

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Jeffrey Isaac Ehrlich of the Ehrlich Law Firm, who represented the plaintiff at the high court, did not immediately return a call for comment Thursday.

Another prominent plaintiffs' asbestos firm, Brayton Purcell LLP, said people injured by asbestos will still be able to bring cases, just not against those types of defendants.

"Obviously, we're disappointed that the court reached the result that it reached," said attorney Lloyd F. "Butch" Leroy. "It doesn't really change anything, which is what we hoped it would do."

Curt Cutting of Horvitz & Levy LLP, who represented defendant Crane, said the ruling is significant for the thousands of asbestos cases on court dockets statewide.

"The California Supreme Court has made it clear these types of defendants can't be held liable," he said. "It will have a big impact on pending litigation, in part because the *O'Neil* Court of Appeal opinion had created a lot of uncertainty."

Contrary to other appellate courts, the 2nd District Court of Appeal found that the defendants could be held liable. That decision is now overruled.

Laurie Hepler of Carroll, Burdick & McDonough LLP, who argued on behalf of Warren Pumps, said the Supreme Court reached a just result.

Mark A. Behrens of Shook, Hardy & Bacon, who filed a friend-of-the-court brief on behalf of business interests in support of the defendants, said the ruling has national implications because of the California Supreme Court's influence on products liability law.

"Wherever the plaintiff may try to export this theory, now they're going to have a challenge in doing so," he said. The Washington Supreme Court has also rejected the notion of expanded liability.

Behrens said plaintiffs' lawyers have been pressing the novel theory because many asbestos manufacturers have gone bankrupt, and the U.S. Navy is immune from liability. But he said an estimated \$30 billion has been put in trust to compensate victims.

Behrens said he had urged the justices, "Don't feel compelled to take tort law in an unsound direction simply because you're afraid these people will get nothing."