Legal Opinion Letter

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SUPREME COURT OF CALIFORNIA:
MANUFACTURERS ARE NOT LIABLE FOR INJURIES CAUSED BY SOMEONE ELSE'S PRODUCT

by
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In recent years, plaintiffs nationwide have been asking courts to expand the traditional boundaries of products liability by holding manufacturers accountable for injuries caused by other manufacturers' products. These plaintiffs contend that a manufacturer should be liable if it knows, or can reasonably foresee, that its product will be used with someone else's defective product.

This argument has arisen in a variety of contexts, but has received particular attention in asbestos litigation. For decades, asbestos lawsuits primarily targeted the manufacturers of asbestos-containing insulation. When the insulation manufacturers went into bankruptcy, plaintiffs turned their attention to the makers of smaller asbestos-containing products, such as gaskets and brake pads. More recently, plaintiffs have targeted other manufacturers who did not themselves make any asbestos products, but whose products were wrapped in asbestos insulation or were used with an asbestos-containing gasket or other replaceable parts.

California has been one of the primary battlegrounds for this issue. In 2009 and 2010, six intermediate appellate courts in California issued opinions on the liability of equipment manufacturers for asbestos products made by others. The first decision, *Taylor v. Elliot Turbomachinery*, 90 Cal. Rptr. 3d 414 (2009), went for the defense. But the second decision, *O'Neil v. Crane Co.*, 99 Cal. Rptr. 3d 533 (2009), *rev'd*, 135 Cal. Rptr. 3d 288 (2012), favored the plaintiff, expressly disagreeing with *Taylor* (and the Washington Supreme Court).[1] Four more decisions followed, each of which ruled for the defense.[2]

This split in California law set the stage for the Supreme Court of California to step in. It granted review in five of these cases, designating *O'Neil* as the lead case and putting the other four cases on hold.

***The California Supreme Court's Decision in* O'Neil**. *O'Neil* involved two defendants—Crane Co. and Warren Pumps—who manufactured and supplied valves and/or pumps to the Navy in the 1940s for use within the steam propulsion systems on Navy ships. The Navy required the use of asbestos-containing gaskets and packing inside of certain valves and pumps, and the Navy covered the entire propulsion system—including the valves and pumps—with asbestos-containing insulation.

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[1] *See Simonetta v. Viad Corp.*, 197 P.3d 127, 129 (Wash. 2008); *Braaten v. Saberhagen Holdings*, 198 P.3d 493 (Wash. 2008).

[2] *Woodard v. Crane Co.*, 2011 WL 3759923 (Cal. Ct. App. Aug. 25, 2011), *review granted* (Cal. 2011); *Walton v. William Powell Co.* 108 Cal. Rptr. 3d 412 (2010), *review granted*, 232 P.3d 1201 (Cal. 2010); *Hall v. Warren Pumps LLC*, 2010 WL 528489 (Cal. Ct. App. Feb. 16, 2010), *review granted* (Cal. 2010); *Merrill v. Leslie Controls, Inc.*, 101 Cal. Rptr. 3d 614 (2009), *review granted*, 224 P.3d 919 (Cal. 2010).

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Lt. Patrick O'Neil served on a Navy ship in the 1960s. The ship contained valves and pumps made by the defendants, but by the time of his service, the original gaskets and packing supplied by the defendants were long gone. The Navy had replaced the original parts with asbestos-containing gaskets and packing made by third parties. Decades later, Lt. O'Neil developed mesothelioma and his family sued Crane Co. and Warren, alleging that they were responsible for exposing him to both the asbestos-containing replacement parts and the asbestos-containing external insulation.

The trial court granted the defendants' motions for nonsuit, but the Court of Appeal reversed, holding that manufacturers are liable for injuries caused not only by their own products, but also by products of others that will be foreseeably used with their products.

The Supreme Court of California, having granted the defendants' petitions for review in *O'Neil*, accepted nearly a dozen *amicus* briefs from interested parties on both sides. It issued its opinion on January 12, 2012, unanimously rejecting the Court of Appeal's analysis, which the Supreme Court characterized as "an unprecedented expansion of strict products liability." *O'Neil v. Crane Co.*, 135 Cal. Rptr. 3d 288, 292 (2012).

The Supreme Court began its analysis by noting, "From the outset, strict products liability [law] . . . has always been premised on harm caused by deficiencies in defendant's own product." *Id.* at 297. The Supreme Court added that, although it had previously expanded strict liability to apply to retailers and distributors as well as manufacturers, it had never held any defendant liable for some other manufacturer's distinct products. The Supreme Court emphasized that strict liability can be imposed only when the plaintiff's injuries were caused by an act of the defendant or an instrumentality under the defendant's control. In *O'Neil*, the injuries were caused by products that the *Navy* selected, purchased, and installed without the defendants' involvement.

The plaintiffs' argument that the defendants' products were themselves defective because they were "designed to be used" with asbestos-containing products did not carry the day. The Supreme Court found the record contained no evidence that the defendants' products required the use of asbestos-containing gaskets or packing in order to function. A footnote in the opinion implied that the defendants might not be liable even if their products *did* require the use of asbestos-containing products, but the Supreme Court declined to decide that question because it was not presented by the facts of *O'Neil*.

Finally, the Supreme Court rejected the plaintiffs' argument that the defendants could be liable for negligence. The court declined the plaintiffs' invitation to impose negligence liability based on the foreseeability of the injuries to Lt. O'Neil: "We have not required manufacturers to warn about all foreseeable harms that might occur in the vicinity of their products." *Id.* at 308.

***The Impact of* O'Neil.** When the California Supreme Court adopted the doctrine of strict products liability in the 1960s, courts around the country followed suit. Those same courts are now likely to take guidance from *O'Neil*. According to a 2007 law review article, the California high court is the most influential state supreme court in the nation—its opinions are followed more often than any other, with the Washington Supreme Court running a distant second.[3] Now that *both* of those courts have rejected attempts to hold a manufacturer liable for another manufacturer's products, the plaintiffs' theory appears destined for the legal scrap heap. Indeed, just this month, the U.S. District Court for the Eastern District of Pennsylvania cited *O'Neil* and the Washington Supreme Court decisions in an opinion rejecting similar claims under federal maritime law.[4]

O'Neil's influence will not be limited to the asbestos context. The reasoning of *O'Neil* was based on the basic principles and policies underlying products liability doctrine and should apply in any context in which a plaintiff seeks to hold a manufacturer liable for injuries caused by another manufacturer's product.

[3] Jake Dear & Edward W. Jessen, *"Followed Rates" and Leading State Cases*, 1940-2005, 41 U.C. DAVIS L. REV. 683 (2007).

[4] *Conner v. Alfa Laval, Inc.*, Nos. MDL-875, 09-02317, 09-06698, 09-02327, 2:09—CV—67009—ER, 2:09—CV—91848—ER, 2:09—CV—93726—ER, 2012 WL 288364 (E.D.Pa. Feb. 1, 2012).