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Products Liability Law Ebbs as California Supreme Court Issues Definitive O'Neil Opinion

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The California Supreme Court has issued a resounding and conclusive opinion rejecting the surging liability theory that a product manufacturer may be held liable for harmful defects in products made by third parties unless the manufacturer's own product contributed substantially to the harm, or the manufacturer participated substantially in creating a harmful combined use of the products.

The Court's unanimous opinion in *O'Neil v. Crane Co.* – issued Thursday – slammed the door on plaintiffs' attempt to create "an unprecedented expansion of strict products liability," and reaffirmed the "bedrock principle" that strict liability is premised on harm caused by deficiencies in the defendant's own product.

The plaintiffs in *O'Neil* had postulated that the defendant valve and pump manufacturers should be liable for the harm caused by the plaintiff's exposure to asbestos-containing insulation products (made by others) that were used on or near the defendant's all-metal products. However, there was no evidence that asbestos insulation – as opposed to some other type of insulation material – was necessary for the defendants' pumps and valves to function properly.

A product's "mere compatibility for use" or even its foreseeable use with defective components is not enough to render the defendant's product itself defective. The Court noted the absurdity that would follow recognition of plaintiffs' liability theory. Manufacturers of the saws and tools used to cut and remove asbestos insulation would become the next targets in asbestos litigation. And taken to its logical extreme, match manufacturers might be required to warn about the hazards of dynamite.

"The broad rule plaintiffs urge would not further the purposes of strict liability. Nor would public policy be served by requiring manufacturers to warn about the dangerous propensities of products they do not design, make, or sell," wrote Justice Corrigan, writing for the unanimous Court. A manufacturer of a non-defective product is unable to exert pressure on other manufacturers to make their products safe. Additionally, manufacturers of non-defective products should not shoulder a burden of liability for products, the sale from which they derived no economic benefit. Nor should strict liability require manufacturers to investigate the potential risks of all other products and replacement parts that might foreseeably be used with their own product and warn about such risks. This "unrealistic" and "excessive" burden would actually undermine consumer safety by inundating users with excessive warnings.

The Court did not expressly opine on, but rather left open the possibility of liability in the case of a product that *requires* the use of a defective product in order to operate, or if a product manufacturer specifies or requires the use of a defective replacement part. However, the Court noted that in both contexts, "the policy rationales against imposing liability on a manufacturer for a defective part it did not produce or supply would remain."

Now that two state Supreme Courts – California and Washington (*see Braaten v. Saberhagen Holdings* (2008) 165 Wn.2d 373,and *Simonetta v. Viad Corp.* (2008) 165 Wn.2d 341.) – have recently rejected this proposed expansion of products liability law in the asbestos context, expect that many other jurisdictions will follow and cap this emerging theory.