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California Supreme Court Hears Argument in Pivotal Asbestos Product Liability Case

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The California Supreme Court heard oral argument in *O'Neil v. Crane Co.* The Court's decision will likely define an important area of strict products liability law in California – specifically, it will expand or limit the duty of product manufacturers to warn about the hazards of replacement parts made by others that are subsequently incorporated by the purchaser into the manufacturer's original product.

O'Neil arises out of the plaintiff's exposure to asbestos-containing gaskets and packing materials used in and around the defendants' valves and pumps, which were incorporated by the Navy into the steam propulsion system aboard the USS Oriskany, where the plaintiff served while he was enlisted. Though the pumps and valves delivered to the Navy originally incorporated asbestos-containing gaskets and packing, all parties agreed that by the time plaintiff served aboard the Oriskany, the original asbestos packing and gaskets had been removed and replaced with packing and gaskets manufactured by third parties. Nevertheless, the plaintiff argued the pump and valve manufacturers had a duty to warn him regarding the hazards of asbestos.

Prior to *O'Neil* this legal issue had been addressed by the California Court of Appeal, most notably in *Taylor v. Elliot Turbomachinery Co., Inc.* (2009) 171 Cal. App. 4th 564. There, the First Appellate District noted, on facts indistinguishable from the present case, that the plaintiff's injury did not come from the defendants' equipment itself, but instead was released from products made or supplied by other manufacturers, though used in conjunction with the defendants' equipment. Thus, the defendant manufacturers were not part of the chain of distribution of the injury-causing product, which was actually the asbestos-containing insulation. The court held that California law did not recognize a duty to warn of defects in another manufacturer's product. The Second District Court of Appeal below in *O'Neil* rejected the reasoning of *Taylor*, and instead ruled that a manufacturer is strictly liable for dangerous products with which its product will necessarily be used. The Supreme Court granted certiorari in *O'Neil* to resolve the conflict between the *O'Neil* and *Taylor* decisions.

At oral argument, one of the Justices' primary concerns appeared to be factual in nature: What exactly was meant by the parties' contention that the Navy "specified" or "required" the use of asbestos-containing insulation? As phrased by Chief Justice Cantil-Sakauye, did the Navy "say the magic word, 'asbestos'" in its specifications to the defendants, or did the Navy merely promulgate *performance* specifications and the defendant manufacturers independently determined that asbestos-containing insulation was the best (or even only) material suitable to meet those requirements?

Another significant concern of the Court appeared to be whether the pumps and valves were capable of functioning without the asbestos-containing components. In other words, was asbestos required for the pumps and valves to function properly, or was asbestos merely required by the dictates of the steam propulsion system, and not the design of the valves or pumps themselves. The Court seemed troubled settling on the proposition that the pumps and valves could be deemed defectively designed if the pumps and valves were "asbestos neutral," and could function just as well in other systems utilizing non-asbestos containing materials.

Ultimately this latter point may be where the court draws the line, assigning a duty to warn about replacement parts made by others only if the replacement part is identical to the original hazardous part, and the replacement part is essential to the function of the defendant's product. The Court will issue its opinion within 90 days.