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O'NEIL V. CRANE: THE SUPREME COURT'S MOST RECENT PRONOUNCEMENT CONCERNING IF AND WHEN A MANUFACTURER IS LIABLE FOR COMPONENTS USED IN OR IN CONNECTION WITH ITS PRODUCT

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Some businesses provide services; others provide products. In California, manufacturers, retailers and suppliers may be liable in strict liability when articles they place on the market prove defective, and such a defect causes injury. *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57 (1963).[1] In today's world, one product may be manufactured by incorporating other products, or may be used in conjunction with other products. The manufacturer's liability for what an injured party will always characterize as a system that caused it injury has been problematic. The Supreme Court's recent decision, *O'Neil v. Crane Co.*, 53 Cal. 4th 335 (2012), provides guidance, and some limits on product liability in this context. But ultimately, the area is still a minefield for product manufacturers and suppliers.

The *O'Neil* Opinion

In *O'Neil v. Crane*,[2] the California Supreme Court held that "a product manufacturer may not be held liable in strict liability or negligence for harm caused by another manufacturer's product ***unless the defendant's own product contributed substantially to the harm, or the defendant participated substantially in creating a harmful combined use of the products.***" *Id.* at 342 (emphasis added). This, the Court explained, followed the principle that a manufacturer may only be liable ***if the product that it places*** in the stream of commerce proves defective. *Id.* at 349.

In O'Neil, plaintiffs sued defendants Crane Co. ("Crane") and Warren Pumps LLC ("Warren") for strict liability. Crane and Warren manufactured valves and pumps. The Navy ordered these products for use on warships during World War II, and demanded that the valves and pumps purchased be insulated with asbestos in accordance with Navy specifications.[3] When Patrick O'Neil ("O'Neil") died, his family sued claiming that the valves and pumps were defective (for containing asbestos) and that the asbestos in the valves and pumps caused O'Neil's death.

The valves and pumps Crane and Warren manufactured did initially contain asbestos. *Id.* at 343. But neither Crane nor Warren made any recommendations that their products be insulated with asbestos. In fact, they generally manufactured their products without asbestos insulation.

Over the years, the Navy removed the asbestos originally installed with the valves and pumps and replaced it with asbestos products made by others. Neither Crane nor Warren sold the replacement asbestos insulation or gaskets to which the decedent was exposed. Years later, the decedent was exposed to the pumps and to the replacement asbestos, and died from the mesothelioma caused by that exposure. *Id.* at 345-46.

The decedent's survivors sought wrongful death damages and alleged that "defendants' products were defective because they included and were used in connection with asbestos-containing parts." Plaintiffs also contended that defendants should be held strictly liable "for failing to warn [decedent] about the potential health consequences of breathing asbestos dust released from the products used in connection with their pumps and valves." *Id.* at 348.

The Court dismissed product defect claims against Crane and Warren on nonsuit, holding that Crane and Warren were "not strictly liable for [the] injuries because (a) any design defect in defendants' products was not a legal cause of injury to O'Neil, and (b) defendants had no duty to warn of risks arising from other manufacturers' products." *Id.* at 348.

O'Neil's Teachings

The Good News

The Court has provided manufacturers of component parts (of a system) a path to avoid certain types of product liability claims in cases where other parts of that system are defective and cause harm. To take advantage of that path (and assuming the manufacturer's own product is not itself defective), the manufacturer must not "participate substantially in creating a harmful combined use of the products" (i.e., in creating the system). *See id.* at 342. In *O'Neil*, the Court applied this test to determine whether Crane and/or Warren "participated in the integration of their pumps and valves into the ship's propulsion system." *Id.* at 355.

Although the Court did not define what it means to "participate substantially," *O'Neil* does teach that it must mean more than simply making and selling your product knowing where it is to be used. Thus, the Court specifically concluded that one product manufacturer may not generally be held liable for harm caused by another's product. To avoid the general rule, a plaintiff must show that the product manufacturer had some direct responsibility for the harm, either because its product contributed to the harm, or because it took affirmative steps in aid of creating a "harmful combined use of the products." *Id.* at 362.[4]

The Court rejected the plaintiff's claim that foreseeability of harm is a substitute for proof of this direct responsibility. It refused to apply a rule that whenever harm is foreseeable (i.e. whenever a manufacturer has knowledge of how its product might be used in combination with others), that there is a duty to warn against that harm. The Court's business-friendly policy statements included that "the foreseeability of harm, standing alone, is not a sufficient basis for imposing strict liability on the manufacturer of a nondefective product, or one whose arguably defective product does not actually cause harm." *Id.* at 362. Stated differently, the Court explained that "in strict liability as in negligence, foreseeability alone is not sufficient to create an independent tort duty." *Id.*

Finally, the Court reiterated that: "[a]lthough an important goal of strict liability is to spread the risks and costs of injury to those most able to bear them, it was never the intention of the drafters of the doctrine to make the manufacturer or distributor the *insurer* of the safety of their products. It was never their intention to impose absolute liability." *Id.* at 363 (emphasis added).

Procedurally, *O'Neil* arose on non-suit, i.e., assuming all of the plaintiffs' facts to be true. Arguably, then, under *O'Neil*, if the facts are accurately and fully stated in the complaint, it is possible for the manufacturer to obtain dismissal at the demurrer or pleading stage. *O'Neil* may also provide an alternative ground for obtaining summary judgment, assuming the necessary facts may be established.

The Caveats

The opinion is not all good news for manufacturers; further, some of the case facts and Court comments may make it difficult to apply the holding on a broad scale. For example, the Court noted that "it was never the intention of the drafters of the [strict liability] doctrine to make the manufacturer or distributor the *insurer* of the safety of their products." *Id.* at 363 (emphasis added). This business friendly comment is mitigated by the equally broad comment at the opinion's opening, which states: "California law has long provided that manufacturers, distributors, and retailers have a duty to *ensure* the safety of their products, and will be held strictly liable for injuries caused by a defect in their products." *Id.* at 363 (emphasis added).

Some may argue that these two principles are distinct; others would find it quibbling to suggest there is a difference between a duty to "ensure the safety" of a product and making the manufacturer an "insurer of the safety" of their product. The Court later repeated that the "purpose of such [strict] liability is to *insure* that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market rather than by the injured persons who are powerless to protect themselves." *Id.* at 348 (emphasis added).[5]

Liability Avoidance Factors

Several liability avoidance factors were repeated more than once in the Court's opinion; and they should be considered in determining what conduct a manufacturer should avoid, if possible, to avoid being held liable for a defect in another company's product. One oft-repeated fact was that the pump manufacturer's product ***did not require*** the use of asbestos to operate. The pumps could operate without asbestos. The gaskets and packing that accompanied the pumps could have been made of something other than asbestos (although not if used in a warship's propulsion system application). *Id.* at 344. A second repeated fact was that one of the defendant-manufacturers did not manufacture or sell the replacement asbestos gaskets or packing material. The other defendant-manufacturer's replacement items were not purchased by the Navy nor actually

installed in the pumps, so the decedent did not actually become exposed to the replacement items defendant sold (and decedent was not harmed by the original asbestos installed by these manufacturers). *Id.* at 344-45.

The fact that the defendant-manufacturers' did not manufacture or sell the replacement asbestos was important to the Court. The third time this was mentioned, the Court noted that it is "unfair to require manufacturers of nondefective products to shoulder a burden of liability when they derived no economic benefit from the sale of the products that injured the plaintiff." *Id.* at 362-63. This perhaps reflects the common sense notion that since the manufacturers did not place the replacement asbestos in the market, they should not be held strictly liable for any defects in that asbestos.

Similarly, at least four times, the Court mentioned the defendant-manufacturers' lack of control over the allegedly defective products or parts – in this case the defective replacement asbestos. *Id.* at 346, 349, 353, 365. The Court specifically noted that "there is no reason to think a product manufacturer will be able to exert any control over the safety of replacement parts or companion products made by other companies." *Id.* at 365.

This suggests manufacturers should avoid arrangements or agreements (a) that give the manufacturer control over the replacement parts or (b) that provide the manufacturer with an economic benefit from the sale of parts or replacement parts which might give rise to a duty, and thus potential liability for such allegedly defective parts, even if they were designed, manufactured and sold by others.

The more involved the manufacturer is in the process of combining component parts to provide the consumer with a greater good, the more likely it is that the well-intentioned manufacturer will be held to answer for an alleged defect in the resulting system. A manufacturer who visits the intended site of the installation of their product risks being held responsible for what it sees. *Id.* at 359.

In sum, the lesson unfortunately being taught by the *O'Neil* court is that the manufacturer has less liability exposure if it simply sells a component part, ignorant of where or how it is to be used, without attempting to control replacement parts or companion products made by others.[6]

Cases that turn on a policy decision not to impose a duty in particular circumstances because of the consequences may have the greatest potential for an inconsistent outcome. While oversimplified, such policy outcomes may not be much more than someone saying "stop" or "we've gone too far."

Clearly, there were reasons to say "stop" in the circumstances presented by *O'Neil*. In a footnote to the opinion, the Court noted that Crane and Warren were among the defendants in another asbestos case, and that their involvement in both cases had more to do with the bankruptcies of the major asbestos suppliers on whom liability should more properly rest than on anything else. *Id.* at 366, fn. 9. The Court specifically referenced some commentators' suggestions that "asbestos personal injury litigants have shifted their focus in the past decade to 'ever-more peripheral defendants,'" as a result of "the bankruptcies of Johns-Manville and other major suppliers of asbestos-containing products." *Id.*

Later in its opinion, the Court stated that in some cases, certain claims should be precluded "to avoid an intolerable burden on society." *Id.* at 364. In keeping with the Court's concern, we suggest that allowing product liability lawsuits to unfairly bankrupt multiple American companies resulting in the loss of thousands of jobs and homes (and thereby contributing to the present economic climate in which many are barely surviving) is an intolerable burden on society.

Conclusion

O'Neil's effect is probably limited. It involved product specifications mandated by the United States military concerning the construction of warships built during WWII.[7] The case concerns a group of "peripheral" component part manufacturers who have been sued because the real defendant-manufacturers have been driven into bankruptcy. Additionally, given the modern day economy in which manufacturers exist, and given the technologies that encourage working together to produce better and more economical products, it is becoming even harder to manufacture and sell products in isolation – that is, without any substantial involvement in the integration of the product into a system or larger product. However, to the extent that a manufacturer has the option of simply providing a component part or a stand-alone product without substantially participating in the integration of that product into a system or another's product, the manufacturer can limit its product liability exposure. ■

Endnotes

1 A manufacturer may also be held liable in negligence, as long as a plaintiff establish the elements of such a claim: i.e. a duty, a breach of duty, causation and damages. 6 WITKIN, SUMMARY OF CALIFORNIA LAW (10th Ed. 2005), Ch. IX, Torts, § 835.

2 Issued January 2012.

3 The specifications required this special insulation to ensure proper functioning of the valve and pumps in light of the high temperatures and pressures involved in the ship propulsion systems into which the pumps were integrated. *O'Neil*, 53 Cal. 4th at 343.

4 In *O'Neil*, the asbestos originally included in the valves and pumps was installed at the insistence of the Navy, but was gone by the time that the decedent was exposed to the defendants' pumps and valves. Had defendant been exposed to the asbestos supplied by defendants, the *O'Neil* defense would have likely failed.

5 Derivatives of "insure" or "ensure" came up more than once in the opinion. The Court listed "the availability, cost, and prevalence of insurance for the risk involved" as a factor bearing on whether a duty should be found. *Id.* at 364. The Court then justified declining to impose liability in this case by saying that "it is doubtful that manufacturers could insure against the 'unknowable risks and hazards' lurking in every product that could possibly be used with or in the manufacturer's product." *Id.* at 365. However, the claim in this case was that the manufacturer should have included a warning with the manufacturer's own product about the risks of asbestos, as asbestos was included in the manufacturer's own product when it left the hands of that manufacturer. This failure to warn would typically be covered by product liability coverage on the manufacturer's product. Respectfully, this reason, by itself, does not justify the limitation on duty in this case (though the right result was reached for the other reasons expressed in the opinion).

6 The Court cited to a case where a plaintiff was injured while cleaning the defendant's non-defective shaker bin and her arm became tangled in an exposed rotating line shaft manufactured by another defendant located above the bin. *DeLeon v. Commercial Manufacturing & Supply Co.*, 148 Cal. App. 3d 336, 340 (1983). The intermediate court of appeal held that liability might be found due to the bin's designed proximity to the line shaft, because the intended use of the bin included periodic cleaning. The court reasoned that the bin's dimensions and its placement near an exposed line shaft arguably constituted design defects and gave rise to a duty to warn. The Court found an important difference between that case and *O'Neil* was that "the bin manufacturer ... was heavily involved in creating the dangerous condition that gave rise to the plaintiff's injury," namely "the dangerous proximity" of the bin and shaft. The bin manufacturer designed it specifically for use in the particular site where it was located and "visited the site" and did not investigate to determine whether the shaft presented a safety hazard.

7 Interestingly, while the Court repeatedly mentions the mandate of United States Military Specifications (or MilSpec), the opinion does not mention the military contractor defense as explained in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988). *Boyle* teaches that the appropriate design of military equipment constitutes a discretionary function of federal government agencies and employees. Where this is the case, the court expressed that it would not allow state court suits against contractors that in effect "second guess" judgments made by the military. Federal law would preempt state law adjudication.