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Component Parts Defense: Who's Protected?

By Carolin K. Shining

Recently, four different California appellate divisions have split on whether or not the "component parts defense" immunizes manufacturers of industrial equipment from strict liability. Three panels have approved this defense: *Taylor v. Elliott Turbomachinery*, 171 Cal.App.4th 564 (1st District, Div. 5, Feb. 25, 2009); *Merrill v. Leslie Controls Inc.* 179 Cal. App. 4th 262 (2nd Dist., Div. 3, Nov.17, 2009); and most recently *Walton v. William Powell*, 183 Cal. App. 4th 1470 (2nd Dist., Div. 4, Apr. 22, 2010). The court in *O'Neil v. Crane Co.*, 177 Cal. App. 4th 1019 (2nd Dist., 4th Div., Sept. 19, 2009), however, has ruled quite differently.

Following well-established California law, *O'Neil* holds that harmful and defective "component" parts that are "substantially integrated" into a product's final design can be the source of liability. As such, *O'Neil* is the better reasoned, more compelling opinion and continues to provide trial judges and juries the flexibility to determine responsibility based on the facts of each particular case.

In California, "[a] manufacturer of a completed product cannot escape liability by tracing the defect to a component part supplied by another." *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256, 261. California courts have readily applied strict liability to so-called "non-manufacturers" when they play significant roles in putting defective products into the stream of commerce. In *Bay Summit Community Assn. v. Shell Oil Co.*, 51 Cal. App. 4th 762 (Cal. App. 4th Dist. 1996), Shell Oil was held strictly liable for the manufacture of a particular type of plastic resin that had been used for defective plastic pipe systems. Shell argued that they did not make the pipe system but merely the resin for the pipe. But the evidence demonstrated that Shell had been "actively" involved in marketing the pipe itself, and had worked to create a consumer market for the pipe, and thus strict liability was fairly applied: "California courts have further recognized the doctrine [of strict liability] extends to nonmanufacturing parties, outside the vertical chain of distribution of a product, which play an integral role in the "producing and marketing enterprise" of a defective product and profit from placing the product into the stream of commerce." See also, *Kasel v. Remington Arms Co.*, 24 Cal. App. 3d 711 (Cal. App. 2d Dist. 1972) (licensee of shotgun shells could be strictly liable for injuries even though it did not manufacture the shell since defendant had "extensive involvement with the shell and the making of a market for the shell, defendant was an integral part of the composite business enterprise that placed the defective shell into the stream of commerce").

Another illustrative case is *Fortman v. Hemco*, 211 Cal. App. 3d 241, 252 (Cal. App. 2d Dist. 1989). In *Fortman*, a designer of "suicide" after-market car doors was held liable for injuries caused by the door, even though it did not build or sell the doors themselves: "If one is part of the overall production and marketing enterprise, he may not escape liability by arguing he had no control over the cause of the defect. To hold otherwise would shift the focus from the product itself to an individual defendant's conduct."

Manufacturers should be liable for foreseeable injuries based on harmful exposures that arise from the repetitive handling of replacement materials necessary to keep their machinery functioning.

In each of the recent "component parts" opinions, the operative facts are nearly identical: Navy veterans were injured when asbestos-replacement parts were used to repair, maintain and overhaul heavy naval high-steam propulsion equipment. In evaluating these claims, the question has become whether California should continue to require judges and juries to consider facts relating to product liability, or whether predetermined immunities will eviscerate entire types of fact patterns. See e.g., Alani Golanski, "*Article: When Sellers Of "Safe" Products Turn Ostrich In Relation To Dangerous Post-Sale*

Components," (2009) 39 Sw. L. Rev. 69, 70 (criticizing legal scholars who claim that "the failure-to-warn doctrine is "an empty shell of rhetoric.")

The *O'Neil* panel reasoned that the component parts defense should only be available to the manufacturers *of those "component parts*," and not to the manufacturers of a final product. In true component parts cases, "the component manufacturer may not even know what the customer intends to do with the part, and the point of the doctrine is that they need not know." In contrast, valve and pump manufacturers absolutely knew or should have known that the internal components chosen by them for use in their equipment would be used, repaired and overhauled with internal asbestos gasketing and packing for many decades.

Moreover, the *O'Neil* court held that the component parts doctrine should not apply when the components themselves are defective. Asbestos has long been recognized in California courts as a defective product either alone or as incorporated in a multitude of ways. See e.g., *Sparks v. Owens-Illinois Inc.*, (1995) 32 Cal.App.4th 461, 465, 472; *Lindquist v. Buffalo Pumps Inc.*, No. PC 06-2416, 2006 R.I. Super. LEXIS 168, at 7 (R.I. Super. Ct. Nov. 28, 2006).

The fact that an injury was caused by the operation of the equipment in conjunction with a replacement part that is *no different* than the original should not be the deciding factor. The use of asbestos was not happenstance in these cases, it was by design. In the recent case of *Walton v. The William Powell Co.*, 183 Cal.App.4th 1470 (2nd Dist., Div. 4, April 22, 2010), the appellate panel however followed the analysis of *Taylor*, as to failure to warn, and also extended *Taylor*'s holding to apply to design defect theories. Yet, the *Walton* court cited mainly as support a single paragraph in the Restatement of Torts 3rd, Section 5, comment a. And even more importantly, the court did not explain why the general rule set forth in Restatement of Torts, 3rd Section 5 itself should not apply, as opposed to comment a. Section 5 specifically holds that sellers who "substantially participate in the integration of the component into the design of the product" are in fact strictly liable for injuries related thereto. The commentators' notes give the obvious example that "some components, such as raw materials, *valves*, or switches, have no functional capabilities unless integrated into other products."

The key to Section 5 liability is the "substantial participation" in the "integration" of the component. In asbestos-containing pump and valve cases, the equipment maker's participation is 100 percent. The manufacturer selected and typically supplied the initial internal asbestos gaskets and packing. Valves and pumps were then foreseeably repaired, overhauled and maintained for decades as part of a navy ship. In order to apply the component parts defense as set forth in *Walton*, courts will have to disregard evidence showing "substantial participation" and "integration" of components like gaskets and stem packing into valves.

On the other hand, applying Section 5 to certain "non-manufacturers" is absolutely consistent with existing law. In *Torres v. Xomox Corp.*, (1st Dist., 1996) 49 Cal.App.4th 1, a manufacturer of a valve used in a piping system was held liable for injuries in a complex accident. The fact that the valve had been altered did not by itself exonerate the defendant: "Conduct can be considered a substantial factor in bringing about harm if it 'has created a force or series of forces which are in continuous and active operation up to the time of the harm' (Rest.2d Torts, *Section* 433(b)), or stated another way, 'the effects of the actor's negligent conduct actively and continuously operate to bring about harm to another' (Rest.2d Torts, *Section* 439, 433, com. e.)" The *Torres* appellate court examined the different factual scenarios and concluded that there were sufficient facts to support the jury's verdict as to foreesability.

If validated by the Supreme Court, the *Taylor/Walton* rule would undercut California's long tradition of requiring judicial consideration of all relevant factors involved in a strict liability analysis. Determining that internal component parts can *never* be the source of corporate responsibility immunizes conduct without consideration of important factual issues regarding engineering design, implementation, research and applicable safer substitutes. The California Supreme Court should therefore uphold *O'Neil* so that the trial courts will maintain their ability to review future factual scenarios and make case-by-case determinations based on all the evidence before them.

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