



California Asbestos Law Client Alert

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In Blow to Certain Product Manufacturers, California Appellate Court Uses *O'Neil* Exceptions to Allow Plaintiffs' Case to Withstand Judgment on the Pleadings

On Monday, April 30, 2012, in a disappointing decision for manufacturers of certain types of products, the California First Appellate District ruled in the consolidated case of *Leonard Shields, et al. v. Hennessy Industries, Inc.* (2012) _____ Cal. App. 4th _____ that Hennessy Industries, Inc., a manufacturer of brake arcing machines, could “be held liable in strict liability or negligence for harm caused by another manufacturer’s product.” The *Shields* plaintiffs had “pleaded viable causes of action for negligence and strict liability” against Hennessy, at least “for purposes of overcoming a motion for judgment on the pleadings,” because their allegations showed that Hennessy’s product had “caused, created or contributed substantially to the harm of airborne asbestos fibers to which [Plaintiffs] were exposed.”

Plaintiff Leonard Shields, a mechanic suffering from asbestosis, asbestos-related pleural disease, and lung cancer, alleged that “the normal action of Hennessy’s machine” released asbestos fibers into the air, causing him harm. Specifically, Hennessy’s brake arcing machines “ground and abraded th[e] hard [brake shoe] lining[s], as they were designed to do . . . making portions of [the linings] into a fine powder and releasing the formerly bound-up asbestos into the air as airborne fibers” In fact, “the only inevitable use” of Hennessy’s products was to “grind asbestos-containing brake linings.” Therefore, Hennessy “knew or should have known” that its brake arcing machine, “when used in the manner intended, would cause the release of asbestos fibers.” Based on this (actual or imputed) knowledge, Hennessy should have redesigned its product “to immediately convert the asbestos fibers . . . into inert forsterite, a nondangerous substance.” Plaintiff argued that Hennessy’s failure to do so was negligent and exposed Hennessy to strict liability.

Relying principally on the California Supreme Court’s decision in *O’Neil v. Crane* (2012) 53 Cal. 4th 335, the appellate court concluded, “[P]laintiffs’ causes of action are sufficient to withstand a motion for judgment on the pleadings.” In *O’Neil*, the California Supreme Court rejected the plaintiffs’ strict liability and negligence causes of action against the manufacturers of valves and pumps for the Navy. Because the valves and pumps themselves did not contain asbestos, but rather only incorporated other manufacturers’ asbestos-containing products, it rejected the plaintiffs’ theories of liability. However, the Supreme Court noted that manufacturers of non-asbestos containing products with asbestos-containing components **could** be held liable in strict liability and negligence if (1) the manufacturer’s product “caused, created, or contributed substantially to” the plaintiffs’ harm; or (2) the manufacturer “participated substantially in creating a harmful combined use of the products.”

Seizing on the *O’Neil* exceptions, the *Shields* court ruled in favor of the plaintiffs because they had successfully shown that the product at issue “caused, created, or contributed substantially to the harm of airborne asbestos fibers to which the [plaintiffs] in those cases were exposed.” Unlike the products at issue in *O’Neil*, “Hennessy’s product was intended to be used with another product for the very activity that created a hazardous situation for the user. Its sole intended use was for an activity known to Hennessy to pose an unreasonable risk of harm.”

The *Shields* decision may signal the beginning of a troubling trend for product manufacturers. Going forward, product manufacturers may have a more difficult time effectuating early resolution of asbestos cases in spite of the Supreme Court's favorable *O'Neil* decision.

Burnham Brown's attorneys have extensive experience in asbestos and other product defect litigation, and can advise product manufacturers looking to resolve cases as efficiently as possible.

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