Legal Backgrounder

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STATE HIGH COURT SOLIDIFIES TORT LIABILITY LAW'S "COMPONENT PART SUPPLIER" DOCTRINE

by
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On August 9, 2012, the Supreme Court of the State of Washington confirmed that manufacturers and sellers of multi-use industrial component parts are not liable for asbestos-containing materials made and supplied by third-parties.[1] In so doing, the Court reaffirmed its 2008 holding in *Braaten v. Saberhagen Holdings*, 165 Wash.2d 373, 198 P.3d 493, which has been followed by courts across the United States.[2]

BRAATEN AND ITS PROGENY

In *Braaten*, the court applied traditional principles of product liability and held that a manufacturer of valves used on Navy ships was not legally responsible for asbestos-containing products that were made and supplied by third-parties, which the Navy in turn incorporated into steam systems that also incorporated the defendants' equipment. Specifically, the court held that:

> The general rule under the common law is . . . that a manufacturer does not have an obligation to warn of the dangers of another manufacturer's product. The defendant-manufacturers are not in the chain of distribution of asbestos-containing packing and gaskets that replaced the original packing and gaskets and thus fall within this general rule. Moreover, whether the manufacturer knew replacement parts would or might contain asbestos makes no difference, because such knowledge does not matter . . ."[3]

In so doing, the Court overturned a lower court decision holding that a manufacturer's "foreseeability" that its product could or would be used with asbestos-containing materials made and supplied by others

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[1] *Macias v. Saberhagen Holdings, Inc.*, 282 P.3d 1069 (Wash. 2012).

[2] The decisions following *Braaten* include *O'Neil v. Crane Co.*, 53 Cal. 4th 335, 266 P.3d 987, 135 Cal. Rptr. 3d 288 (2012); *Taylor v. Elliott Turbomachinery Co., Inc.*, 171 Cal. App. 4th 564, 90 Cal. Rptr. 3d 414 (2009); *Merrill v. Leslie Controls*, 179 Cal. App. 4th 262, 101 Cal. Rptr. 3d 614 (2009); *Hall v. Warren Pumps*, LLC, 2010 WL 528489 (Cal. App. 2010); *Schaffner v. Aesys Technologies, LLC*, 2010 WL 605275 (Pa. Super. 2010); *Conner v. Alfa Laval, Inc.*, 842 F.Supp.2d 791 (E.D. Pa. 2012); *In re Asbestos Litigation (Wesley F. Davis)*, 2011 WL 2462569 (Del. Super. Applying maritime law); *In re Asbestos Litigation (Arland Olson)*, WL 322674 (Del. Super. applying Idaho law).

[3] 165 Wash.2d at 391; 198 P.3d at 501.

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was sufficient to impose a duty to warn.

The following year, the California Court of Appeal, First Department, issued its decision in *Taylor v. Elliott Turbomachinery*,[4] in which the court found the facts of *Braaten* to be "especially compatible" with the fact pattern before the court, which involve steam system components—namely pumps and valves—that the defendant manufacturers sold to the United States Navy.[5] The *Taylor* court recognized that, under California law, the same stream of commerce test that controlled in *Braaten* supported the trial court's entry of summary judgment in favor of several equipment manufacturer defendants. In addition, however, the *Taylor* court concluded that the trial court's decision was justified further by the "component part supplier doctrine" embodied in Section 5 of the Restatement (Third) of Torts—which provides that the manufacturer of a raw material or component part (such as a pump or valve) that can be used in multiple settings is not responsible for warning of all possible ways in which a customer may use the component-part or raw material, even if the allegedly injurious use of the raw material or component part was "foreseeable" to the defendant/seller.[6]

Following *Taylor*, the vast majority of courts across the country embraced the concept that liability does not exist in asbestos personal injury claims under fact patterns similar to *Braaten* and *Taylor*.[7] The most noteworthy decision rejecting *Taylor* was the California Court of Appeal's decision in *O'Neil v. Crane Co.*, in which the Court of Appeal opined that a legal duty to warn extended to the full-extent of what may have been "foreseeable" (in hindsight) to the supplier. 177 Cal. App. 4th 1019, 99 Cal. Rptr. 3d 533 *rev'd* by 53 Cal. 4th 335, 266 P.3d 987, 135 Cal. Rptr. 3d 288 (2012). In January 2012, however, a unanimous Supreme Court of California reversed the Court of Appeal, and held a manufacturer's duty to warn was limited to products that it placed into the stream of commerce, and that a manufacturer's duty to warn did not extend to the bounds of what may have been "foreseeable" to the manufacturer at the time of sale. In so doing, the Court emphasized that the defendants before it—which sold pumps and valves to the Navy that the Navy subsequently incorporated into steam systems that also used asbestos-containing insulation and sealing materials—were not responsible for warning Navy sailors of dangers allegedly associated with asbestos-containing materials that the defendants did not make, sell, or otherwise place into the stream of commerce.[8]

After *O'Neil*, the remaining opposition to the *Braaten* holding is confined primarily to a series of unpublished New York trial court opinions, which are based upon an unduly expansive reading of an eleven year-old intermediate level appellate decision.[9] This line of cases has been rejected recently in

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[4] 171 Cal. App. 4th, 564 90 Cal. Rptr.3d 414, appeal denied, (2009).

[5] 90 Cal. Rptr.3d at 435, 171 Cal. App. 4th at 591.

[6] The leading decisions applying the component part doctrine include *In re Temporomandibular Joint (TMJ) Implants Product Liability Litigation*, 97 F.3d 1050 (8th Cir. 1996), *Artiglio v. General Electric Co.*, 61 Cal. App. 4th 830, 71 Cal. Rptr. 2d 817 (1998); and *Maxton v. Western States Metals*, 203 Cal. App. 4th 81, 136 Cal. Rptr. 3d 630 (2012). The application of this doctrine under a fact pattern similar to that of *Braaten* and *Taylor* can be found in *Walton v. William Powell Company*, 183 Cal. App. 4th 1470, 108 Cal. Rptr. 3d 412 (2010) (review granted 2010, review dismissed 2012).

[7] In addition to the cases identified in note 2, *supra*, the decisions accepting the "*Braaten/O'Neil*" doctrine include *In re Eighth Judicial District Asbestos Litigation (Drabcyzk)*, 92 A.D.3d 1259, 938 N.Y.S.2d 715 (2012); *Rollin v. Foster-Wheeler, LLC*, 2012 WL 3126742 (Cal. App. 2012); *Brewer v. Crane Co.*, 2012 WL 3126523 (Cal. App. 2012); *Woodard v. Crane Co.*, 2011 WL 3759923 (Cal. Spp. 2011); *Surre v. Foster-Wheeler LLC*, 831 F.Supp.2d 797 (S.D.N.Y. 2011); *Faddish v. Buffalo Pumps*, - - F. Supp. 2d - -, 2012 WL 3140200 (S.D. Fla. 2012); *Floyd v. Air & Liquid Systems Corp.*, 2012 WL 975615 (E.D. Pa. 2012).

[8] *Id.*

[9] *See, e.g., Sawyer v. A.C.& S, Inc.*, 2011 WL 3764074 (N.Y. Supp.) *citing Berkowitz v. A.C.& S, Inc.*, 288 A.D.2d 148 (1st Dept. 2001).

published opinions from the New York Supreme Court Appellate Division[10] and the United States District Court for the Southern District of New York,[11] both of which held that the New York Court of Appeals opinion in *Rastelli v. Goodyear* places New York law in accordance with *O'Neil* and *Braaten*.[12] Indeed, one of the trial judges who held on several occasions that the duty to warn in New York is defined by the bounds of "foreseeability" has recognized the error of prior decisions, and now concludes that New York law is in accordance with *O'Neil* and *Braaten*.[13]

THE *MACIAS* OPINION

In *Macias*, the Supreme Court of Washington faced the question of whether a specific type of product (i.e. protective respirators)—which was different from the types of multi-use industrial products at issue in *Braaten*—fell within the scope of the *Braaten* and *O'Neil* decisions.[14] In finding that respirators did not fall within the scope of those precedents, the Court unanimously reaffirmed the ongoing validly of its *Braaten* decision, and its impact upon products similar to the ones that were at issue in *Braaten.*

What types of products fall within *Braaten*'s general prohibition of liability for harms caused by products made and sold by others is a fact-based question that requires the court to analyze the particular product at issue. From its ready affirmation of *Braaten*, however, the *Macias* court made clear that the liability addressed in the *Macias* opinion does not reach manufacturers and suppliers of industrial equipment such as pumps and valves where the use of asbestos is dependent upon the use chosen by customer (as opposed to some inherent feature of the product).[15] In drawing this distinction, the *Macias* court appeared to focus upon whether exposure to allegedly harmful agents was "inherent" in the proposed use of the product at issue.[16] In this respect, the *Macias* opinion is similar to several other decisions involving finished products—as opposed to component-parts of larger systems—that courts decided, themselves, created a risk of harm.[17]

The distinction between the types of claims for which the *Braaten* rule may and may not apply is illustrated by the New York opinions of *Rogers v. Sears, Roebuck & Co.*, 268 A.D.2d 245, 701 N.Y.S.2d 359 (1st Dept. 2000) and *Tortoriello v. Bally Case, Inc.*, 200 A.D.2d 475, 606 N.Y.S.2d 625

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[10] *See In re Eighth Judicial District Asbestos Litigation (Drabczyk)*, 92 A.D.3d 1259, 938 N.Y.S.2d 715 (4th Dept. 2012) (*citing Rastelli v. Goodyear Tire & Rubber Co.*, 79 N.Y.2d 289, 297-98, 582 N.Y.S.2d 373, 571 N.E.2d 222 (1992).

[11] *See Surre v. Foster Wheeler LLC*, 831 F. Supp. 2d 797, 802 (S.D.N.Y. 2012, Chin J.) (criticizing *Berkowitz* decision as "a one-paragraph opinion with no clear holding").

[12] Both the *Braaten* and *O'Neil* courts cited *Rastelli* as reflecting New York law.

[13] The *Bernard Egelston* and *John Jones* decisions are reported in *Mealey's Litigation Report: Asbestos*, Vol. 27, Issue #13 (August 15, 2012).

[14] 282 P.3d at 1074-75.

[15] 282 P.3d at 1076.

[16] 282 P.3d at 1078-79.

[17] Decisions involving products that courts have held, themselves, created an inherent risk of harm include grindery machines (*see Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co.*, 129 Cal. App. 4th 577, 28 Cal. Rptr. 3d 744; *Bettencourt v. Hennessy Industries, Inc.*, 205 Cal. App. 4th 1103, 141 Cal. Rptr. 3d 167 (2012); *Shields v. Hennessy Industries, Inc.*, 205 Cal. App. 4th 782, 140 Cal. Rptr. 3d 268 (2012) and gas barbeque grills (*see Rogers v. Sears, Roebuck & Co.*, 268 A.D.2d 245, 701 N.Y.S.2d 359 (1st Dept. 2000). The *O'Neil* court provided a detailed explanation as to why those cases do not address the products at issue in cases like *Braaten*, *Taylor*, and *O'Neil*. 53 Cal. 4th at 358-62, 266 P.3d at 1002-05, 135 Cal. Rptr. 3d at 306-09. Moreover, at oral argument in the *Bettencourt* case, defense counsel conceded that these products do not involve component parts. 205 Cal. App. 4th at 1119, 141 Cal. Rptr.3d at 180. This is yet another distinction between the foregoing line of cases of the *O'Neil/Braaten/Taylor* line of cases.

(1st Dept. 1994). In *Rogers*, the plaintiff was injured when a propane tank used with a gas grill exploded. The plaintiff sued the grill's manufacturer claiming that it failed to warn of dangers associated with leaking propane tanks. In *Tortoriello*, the plaintiff was injured when he slipped on a quarry tile flooring in a walk-in freezer. Plaintiff thereafter sued the freezer's manufacturer, claiming that it should have warned of slippery conditions in the freezer, particularly since quarry tile was one of the flooring options that the freezer manufacturer suggested in written materials.

In holding that a duty existed in *Rogers*, but not in *Tortoriello*, the courts appeared to focus on the extent to which the different product manufacturers controlled the use of the allegedly harmful agent with its products. Accordingly, if the product manufacturer had control over the use of the product with the allegedly defective agent, there can be a duty to warn. Since the grill in *Rogers* could only be used with propane fuel, the court found that the product manufacturer had control over the use of propane with the grill, while the walk-in freezer in *Tortoriello* lacked such control, because its freezers could be used with at least three different flooring options—only one of which was allegedly harmful. Under the same logic, multiple-use pumps and valves, which can be used with different types of sealing and insulation materials depending upon the system design and material choices of the customer, fall into the latter category. And, while the *Macias* court decided that protective respirators fall into the former category based upon its conclusion that protective respirators were necessarily used with harmful agents, this is certainly a fact-driven determination that may differ among jurisdictions.

CONCLUSION

In deciding that protective respirators fall outside the scope of its prior *Braaten* decision, the Washington Supreme Court provided limited guidance in defining the products that fall within the realm of *Braaten*. Nevertheless, in affirming *Braaten* and its progeny, this court left no doubt that *Braaten* remains in full force, and that suppliers of valves and pumps to the United States Navy are not legally responsible for asbestos-containing materials that the Navy chose to use with the steam systems on its ships. Moreover, the Court continued the trend of considering the element of control of a particular use to be the guiding principle in deciding whether a product manufacturer can be liable for harms caused directly by materials made and sold by others.

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