

# Up the Creek With a Paddle?

## Recent California Decisions May Signal Narrowing Of Stream of Commerce for Bulk Suppliers and Component Parts Manufacturers

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In the past two years, California appellate courts have issued a series of decisions that narrow the scope of circumstances in which product manufacturers may be liable for injuries allegedly related to the use of their products. These rulings, explained below, signal a possible future expansion of opportunities for dismissals for companies that provide materials to end formulators in toxic tort matters, especially trace benzene litigation. Not only do these rulings indicate a recent willingness of California appellate courts to narrow the universe of defendants, but also to address causes of action beyond strict liability.

### Overview of the Bulk Supplier Doctrine

The raw material supplier, or bulk supplier, doctrine stipulates that sellers of nondefective raw materials should be immune from liability for injuries arising from their use. *Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 839, see Rest.3d Torts (Proposed Final Draft) § 5, com. c, p. 156 “[A] basic raw material such as sand, gravel, or kerosene cannot be defectively designed. . . . Accordingly, raw-material sellers are not subject to liability for

harm caused by defective design of the end-product”]; Rest.2d Torts, § 402A, com. p, p. 357 [“The manufacturer of pig iron, which is capable of a wide variety of uses, is not so likely to be held to strict liability when it turns out to be unsuitable for the child’s tricycle into which it is finally made by a remote buyer.]

An entity supplying a nondefective raw material or a component part is not strictly liable for defects created by a manufacturer in the final product over which the supplier had no control. *Bay Summit Community Ass’n. v. Shell Oil Co.* (1996) 51 Cal.App.4th 762, 772. As the court explained in *Lee v. Electric Motor Div.* (1985) 169 Cal.App.3d 375, “[w]e have found no case in which a component part manufacturer who had no role in designing the finished product and who supplied a nondefective component part, was held liable for the defective design of the finished product.” *Id.* at p. 385; see also *Wiler v. Firestone Tire & Rubber Co.* (1979) 95 Cal.App.3d 621, 629; *Walker v. Stauffer Chem. Corp.* (1971) 19 Cal.App.3d 669, 674.)

The Third Restatement further explains that the doctrine applies to both design and warning defect causes of action:

The manufacturer of the integrated product has a significant comparative advantage regarding selection of materials to be used.

Accordingly, raw-materials sellers are not subject to liability for harm caused by defective design of the end-product. The same considerations apply to failure-to-warn claims against sellers of raw materials. To impose a duty to warn would require the seller to develop expertise regarding a multitude of different end-products and to investigate the actual use of raw materials by manufacturers over whom the seller has no control. Courts uniformly refuse to impose such an onerous duty to warn.

Rest.3d Torts (Proposed Final Draft) § 5, com. c, p. 156, emphasis added.

### O’Neil and Maxton Decisions

In *O’Neil v. Crane Co.* (2012) 53 Cal.4th 335, defendants manufactured valves and pumps for U.S. Navy warships. *O’Neil, supra*, 53 Cal.4th at p. 343. During the 1940s, U.S. Navy specifications required asbestos-containing gaskets and packing inside of the valves and pumps. *Id.* Once installed, the shipbuilders covered the

outside of the valves and pumps with asbestos-containing insulation that was made and sold by other companies. *Id.* at pp. 343–344. The asbestos-containing materials were not necessary for the valves and pumps to function. *Id.* at p. 347.

Plaintiff Patrick O'Neil had served on a U.S. Navy ship in the 1960s. *Id.* at p. 345. While the ship contained the pumps and valves manufactured by the defendants, by the time of O'Neil served on the ship, the original asbestos-containing gaskets and packing that came with the valves and pumps had been discarded and replaced with parts made by other companies. *Id.* O'Neil was exposed to the asbestos contained in the replacement parts and the insulation applied to defendants' valves and pumps. *Id.* O'Neil's family filed a wrongful death action raising strict liability and negligence causes of action against several companies that provided asbestos-containing products to the Navy. *Id.* The trial court granted defendants' motion for nonsuit, but the Court of Appeal reversed, holding "a manufacturer is liable in strict liability for the dangerous components of its products, and for dangerous products with which its product will necessarily be used." *Id.* at pp. 346–347.

However, in striking down this "unprecedented expansion of strict products liability," the Supreme Court explained how the appellate court's proposed rule would run afoul of unwavering precedent holding to the contrary:

[T]he reach of strict liability is not limitless. We have never held that strict liability extends to harm from entirely distinct products that the consumer can be expected to use with, or in, the defendant's nondefective product. Instead, we have consistently adhered to the *Greenman* formulation requiring proof that the plaintiff suffered

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injury caused by a defect in the defendant's own product. [Citations omitted.] Regardless of a defendant's position in the chain of distribution, "the basis for his liability remains that he has marketed or distributed a defective product. [Citations omitted.]

*Id.* at p. 349 [citations omitted]. The Court observed that, under the component parts doctrine, a manufacturer of a component part is not liable for injuries caused by the finished product into which the component has been incorporated, unless the component itself was defective and caused harm. *Id.* at 355 (citing *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 480-481); Rest. 3d Torts, Products Liability, § 5, subd. (a). The Court upheld the trial court's judgment in favor of the defense.

In *Maxton v. Western States Metals, et al.* (2012) 203 Cal.App.4th 81, the Court of Appeal reviewed orders granting defendants' motions for judgment on the pleadings without leave to amend. In *Maxton*, the plaintiff alleged he developed interstitial pulmonary fibrosis as a result of workplace exposure to toxic metal particles and fumes while performing manufacturing activities on aluminum products supplied by Alcoa

and other defendants. Based thereon, Maxton asserted claims of negligence, strict liability (design and warning defects), fraudulent concealment, and breach of implied warranties. In granting the motions based on the component parts doctrine, the trial court found that, as a matter of law, a supplier of raw metal material cannot be held liable for products liability for workplace exposure resulting from manufacturing activities performed on the raw metal. *Maxton*, 203 Cal.App.4th at 86-87.

On appeal, the Court of Appeal first recognized the applicability of the component parts doctrine set forth in the *Restatement Third of Torts, Products Liability*. *Maxton*, 203 Cal.App.4th at 88 (citing *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 355). As the Court further observed, product "components" include raw materials, bulk products, and other constituent products sold for integration into other products. *Id.* (citing Rest. 3d, § 5, com. a, p. 130). The Court of Appeal in *Maxton* then reviewed the reasoning of *Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, in which the Court applied the component parts doctrine to hold a manufacturer is not liable where the goods supplied were not inherently dangerous, were sold in bulk

to a sophisticated buyer, the material was substantially changed during the manufacturing process, and the supplier had a limited role in developing and designing the end product. *Artiglio*, 61 Cal.App.4th at 839.

The Court in *Maxton* recognized that the doctrine applies to both negligence and strict liability causes of action. *Maxton*, 203 Cal.App.4th at 89. It also recognized that the doctrine, if its elements are satisfied, would bar plaintiff Maxton's causes of action for fraudulent concealment and breach of implied warranties, because defendants had no duty to disclose hazards of their products directly to the plaintiff, and because the non-defective nature of the metal products meant there was no

sophisticated buyer; (4) the complaint pled facts indicating the metal products were substantially changed during the manufacturing process; and (5) nothing in the complaint indicated defendants played any role in developing or designing the plaintiff's employer's end products. *Id.* at 92-93. The Court also rejected plaintiff's conclusory allegation that defendants' products were defective, holding that they were "closer to raw materials like kerosene and nuts and screws than they are to more-developed components of finished products . . . because they can be used in innumerable ways." *Id.* at 94 (citations omitted). "Raw materials generally cannot by themselves be defective unless they are contaminated. . . . Because the metal products here are not

96. It therefore upheld the trial court's judgments in favor of defendants. *Id.*

### Recent *Sanchez* Decision

In *Sanchez v. Hitachi Koki, Co., Ltd., et al.* (2013) 217 Cal.App.4th 948, the court reviewed an order granting summary judgment for the defendants, two Hitachi entities, based on the component parts doctrine as articulated in *O'Neil*. In *Sanchez*, plaintiff Andres Sanchez and his spouse alleged injuries arising from his use of a grinder manufactured by the defendants with a saw blade manufactured by a third party. Sanchez had purchased a Hitachi grinder and a separate Razor Back tooth saw blade to use in cutting a tire. The safety instructions for the Hitachi

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breach of any implied warranty. *Id.* at 89 n.4. The Court took pains to reject the plaintiff's argument that Alcoa's metals were analogous to asbestos and were inherently hazardous, explaining that the metal products "were not dangerous when they left defendants' control. They only became dangerous because of the manufacturing processes controlled by Maxton's employer, LeFeill." *Id.* at 93.

The Court then found that all of the four *Artiglio* factors existed: defendants' metal products (1) "are clearly raw materials because they can be used in innumerable ways and they are not sold directly to consumers in the marketplace," (2) plaintiff's complaint alleged that plaintiff was injured not from handling the product itself, but rather, "as a result of the manufacturing process," (3) the complaint pled facts indicating plaintiff's employer was a

analogous to raw asbestos or otherwise inherently dangerous, they are not themselves defective." *Id.* at 94.

Finally, the *Maxton* Court held that, even if plaintiff's allegations that defendants violated statutory duties to warn under Labor Code sections 6390 and 6390.5 and the Hazard Communication Standard were true, the plaintiff could not maintain a tort cause of action based on such a breach because defendants had no duty of care to Maxton and could not be liable to him for negligence. *Id.* at 94-95. Accordingly, Maxton could not recover in tort for any alleged breach of those obligations. *Id.* at 95 (citing *Johnson v. Honeywell Int'l, Inc.* (2009) 179 Cal.App.4th 549, 557. For all of the above reasons, the Court held that there was no reasonable possibility that the deficiencies in Maxton's complaint could be cured by amendment. *Id.* at

grinder warned expressly that saw blades should not be used with the grinder. When Sanchez tried to cut the tire using the grinder and saw blade, he lost control of the grinder and the saw blade cut his hand. Sanchez and his wife sued Hitachi based on product liability and general negligence theories.

The Hitachi defendants filed a motion for summary judgment based on the component parts doctrine and *O'Neil*, asserting that they had not manufactured the saw blade, the grinder did not require its use, and that plaintiff's own expert admitted that a saw blade was not intended to be used with the Hitachi grinder. They asserted further that they had no duty to warn the plaintiff not to use a saw blade with the grinder or provide kickback prevention for a saw blade not intended to be used with the grinder, and that they were not responsible for statements by

employees of the hardware store where plaintiff bought the grinder about use of a saw blade with the grinder.

Plaintiff opposed the motion on the basis that the grinder was defective because it lacked kickback protection, because common saw blades would fit it, and there was no warning not to use saw blades on the grinder itself. The court granted the motion, finding that use of the saw blade was not intended and Hitachi had no duty to design the grinder to prevent its use, to provide kickback protection, or to warn about the dangers of using a saw blade with the grinder.

On appeal, plaintiffs contended that the trial court erred in granting summary judgment because there were triable issues as to whether *O'Neil* precluded their claims. First, they argued that, because they had alleged the grinder itself was defective, *O'Neil* did not apply. The court disagreed, noting that plaintiffs had alleged another manufacturer's product caused their harm, as had the plaintiffs in *O'Neil*. Plaintiffs also argued that *O'Neil* was distinguishable because they had alleged the grinder was dangerous, even when used properly. The court rejected that theory, noting that the doctrine of strict liability is not one of absolute liability, and a manufacturer is not the insurer of the safety of the product's user.

Plaintiffs also argued that defendants were strictly liable because the grinder contributed substantially to the harm since it was defectively designed, and that the defendants participated substantially in creating a harmful combined use of the products. The court rejected each of these arguments as well. It found that a product substantially contributes to a plaintiff's harm only where the intended use of the product "inevitably resulted in the harm." *Id.* at 957. There was no such

evidence. The court also rejected the plaintiffs' contention that defendants participated substantially in creating a harmful combined use of the products, noting that *O'Neil* held that a manufacturer does so "only if it specifically designs its product for the combined use" and that there was no evidence the defendants had specifically designed the grinder to be used with saw blades. *Id.* The court rejected the plaintiffs' contention that defendants should have placed warnings on the grinder itself, observing that there is no duty to warn about risks associated with another manufacturer's product. Finally, the court rejected the plaintiffs' argument that the grinder should have been designed to prevent its use with saw blades or with kickback protection, noting that *O'Neil* did not require manufacturers to eliminate all potential risks from other products or unintended combined uses. Finding that the defendants were not strictly liable

because any design defect in the grinder was not a legal cause of injury to plaintiff, and they had no duty to warn of risks of harm from other manufacturers' products, the court upheld the summary judgment. *Id.* at 959.

## Conclusion

The progression of *O'Neil*, *Maxton*, and *Sanchez* may bolster the defenses of a supplier of raw materials to an end formulator of products to which a plaintiff claims exposure. To the extent the supplier can establish that the nature of the raw material qualifies under the *Maxton* analysis, these companies have a good argument that the matter fails as a matter of law in California. It will be worth tracking cases that fit this scenario over the next 12 months, as we expect motion practice to increase, and further appellate activity on behalf of bulk suppliers named as defendants, in trace benzene matters in California.

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