Not Your Product? Not Your Duty To Warn

Law360, New York (August 03, 2012, 1:00 PM ET) -- The California Second District Court of Appeal's May 22, 2012, decision in Fern Barker v. Hennessy Industries Inc., 206 Cal.App.4th 140 (2012), reaffirmed that California law does not impose a duty to warn about dangers of asbestos exposure arising from another manufacturer's product.

In Barker, the Court of Appeal upheld the principle that manufacturers of asbestos-free machinery owe no duty to warn about the respiratory dangers posed by use of such machinery, even if and when used in conjunction with asbestos-based products.

This principle has recently seen wider application amid judicial efforts to better balance the rights of asbestos exposure victims against those of the manufacturers whose devices enabled such exposure.

In Barker, the widow of a car mechanic sued Hennessy, a manufacturer of machinery designed to repair brake drums and pads. Barker alleged that her husband had been exposed to asbestos dust when he used Hennessy lathes and arcing devices to grind asbestos-based brake pads made by other manufacturers.

The Court of Appeal denied relief, finding that Hennessy lacked a duty to warn about potential dangers surrounding the use of its asbestos-free machinery to manipulate other manufacturers' asbestos-based products.

The deciding factor in the court's finding was the fact that the lathes and arcing devices in question were designed specifically to be used with any appropriately shaped braking products, regardless of those products' composition. Had Hennessy machines been designed to manipulate asbestos-based brake products at the exclusion of all other types, the court warned, Tellez-Cordova v. Campbell-Hausfield, 129 Cal.App.4th 577 (2004), would have mandated affirming the existence of a duty to warn.

Barker relied largely on the California Supreme Court's recent holding in O'Neil v. Crane Co., 53 Cal.4th 335 (2012), that "California law does not impose a duty to warn about dangers arising entirely from another manufacturer's product, even if it is foreseeable that the products will be used together." Id. at 361.

There, the Supreme Court differentiated sharply between mere foreseeability and the concept of sheer inevitability upon which Tellez-Cordova was decided. Barker recognized this dichotomy and found that use of the Hennessy machines with asbestos-based brake products was no more than a foreseeable consequence of the machines' wide compatibility.

After considering Hennessy's lack of both moral blameworthiness and control over compatible third-party products' specifications, the court found against Barker, reasoning, "a foreseeability-based test could result in the imposition of a duty to warn on the manufacturers of putty knives, wire brushes and metal scraps" that might be used to manipulate asbestos-based products. Barker, No. B232316 at 17.

The court further commented that the plaintiff could have demonstrated the requisite inevitability by better evidencing the lack of asbestos-free brake pads at market at the time when Barker was exposed to asbestos dust. Barker, 206 Cal.App.4th at 156.

Courts from other jurisdictions have also recently issued decisions in line with Barker. See In re Asbestos Litigation: Wolfe, C.A. No. N10C-08-258 ASB (Del. Super. 2012); In re Asbestos Litigation: Howton, C.A. No. N11C-03-218 ASB (Del. Super. 2012); and Lois Jean Conner v. Alfa Laval, No. MDL-875 (E.D. Pa. 2012).

Taken together, these cases form the common theory that where the functionality of an asbestos-free device does not depend on the asbestos content of aftermarket companion products, its manufacturer cannot be held accountable for asbestos-related injuries resulting from the use of that device.

They further suggest wider acceptance of approaches emulating the foreseeability analysis endorsed in O'Neil. Indeed, Mary Campbell v. Ford Motor Co., 206 Cal.App.4th 15 (2012), employed this mode of reasoning to a different factual scenario and held that an employer is not liable for the secondary exposure of its employees' family members to asbestos inadvertently brought home from work.

Though Barker has yet to be cited by other cases in the two months since its decision, O'Neil has already seen notably positive treatment in Delaware and Pennsylvania state courts. If its spread to other jurisdictions is any indication, the foreseeability-inevitability analysis will come to play a very significant role in the outcomes of future asbestos cases across the country.

Ultimately, practitioners should familiarize themselves with the new evidentiary issues raised by this shift in the law, especially in light of the Barker plaintiff's failure to demonstrate the critical element of inevitability.

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