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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CHIEF Y.R. BREWER et al., Plaintiffs and Respondents, v. CRANE CO., Defendant and Appellant.	B213096 (Los Angeles County Super. Ct. No. BC374988)

APPEAL from a judgment of the Superior Court of Los Angeles County. William A. MacLaughlin, Judge. Reversed and remanded.

K & L Gates, Robert E. Feyder, Geoffrey M. Davis, Nicholas P. Vari, J. Nicholas Ranjan, and Michael J. Ross for Defendant and Appellant.

Waters, Kraus & Paul, Paul C. Cook, Michael B. Gurien, and Michael L. Armitage for Plaintiffs and Respondents.

Crane Co. (Crane) appeals from a judgment entered after a jury trial on Chief Y.R. Brewer (Mr. Brewer) and Gale Brewer's (collectively Brewers) claims of strict liability and negligence arising from Mr. Brewer's exposure to asbestos-laden products used with valves manufactured by Crane. The jury found Crane liable to the Brewers on a strict liability design defect theory, and awarded the Brewers total economic and noneconomic damages of approximately $9.7 million. Crane was then determined to bear two percent of the fault. We find that under the recent decision of the California Supreme Court in *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335 (*O'Neil*), Crane is not liable for injuries arising from the asbestos-laden products to which Mr. Brewer was exposed. Therefore we reverse.

CONTENTIONS

Crane contends that it is not liable for Mr. Brewer's injuries as a matter of law because: (1) Crane cannot be liable for the defective design of another entity's product; (2) the Brewers's claim is barred by the component parts doctrine; and (3) the Brewers presented no evidence establishing a causal link between the alleged design defect and Mr. Brewer's injuries.

Crane further contends that, if this court affirms the judgment on liability, it must nonetheless reverse the judgment with respect to the amount of damages awarded because the verdict fails to account for postverdict settlements that the Brewers will recover from asbestos bankruptcy trusts. Because we reverse the judgment on liability, we do not reach this issue.

FACTUAL BACKGROUND

Mr. Brewer enlisted in the Navy in September 1961 and served aboard the U.S.S. Preble (Preble) from December 1961 until July 1965. He worked as a machinist's mate in the forward engine room, where he was "[j]ust about continuously" exposed to asbestos.

Crane manufactured metal valves that were used in steam propulsion systems which powered naval ships such as the Preble. To prevent leakage, certain valves manufactured by Crane incorporated gaskets or packing material that may have contained

asbestos.[1] Thus, when Crane first sold its valves to the Navy in approximately 1957 (when the Navy built the Preble), certain of its valves may or may not have contained asbestos-containing packing or internal gaskets. However, those original asbestos-containing parts were replaced many times throughout the years.[2] It is undisputed that any asbestos-containing gaskets and packing material to which Mr. Brewer may have been exposed were replacement parts that were not manufactured or supplied by Crane and that were placed in or on the valves by the Navy years after the original sale of the valves.[3]

Mr. Brewer worked on Crane valves in the forward engine room. He worked more with Crane valves than any other valves.[4] He regularly took Crane valves apart and removed packing and gaskets from inside the valves. Mr. Brewer was exposed to asbestos from this work. He removed the internal packing from Crane steam valves by chipping it out with a screwdriver or similar tool, then using an air line to blow out the remnants. The packing released visible dust that he breathed during the removal process. Mr. Brewer removed internal gaskets from Crane valves using various tools, and he usually had to cut and scrape the gaskets to remove them because they got so hot. The gaskets also released visible dust that he breathed during the removal process. The Crane

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[1] Packing and gaskets are sealing materials used inside a valve to seal and prevent the valve from leaking.

[2] Johnny Carlton Dill, who worked on the Preble with Mr. Brewer, surmised that the gaskets and packing material were replaced about once every three to six months. Mr. Brewer surmised that they were replaced once every six months.

[3] The parties stipulated: "The plaintiffs and defendants have agreed and stipulated that plaintiffs do not contend that Mr. Brewer was exposed to any original asbestos-containing gaskets or packing provided by any of the defendants and that Mr. Brewer was not exposed to any asbestos-containing replacement gaskets or packing that were sold or described by any defendant."

[4] Portions of Mr. Brewer's deposition testimony were introduced into evidence and presented to the jury by videotape. Mr. Brewer, who was too infirm to appear at trial, died on August 12, 2008, before judgment was entered in this matter.

valves did not have any asbestos-related warnings, and he was never given any respiratory protection. Mr. Brewer was unaware of the dangers of asbestos.

Admiral David Putnam Sargent (Admiral Sargent) testified that the choice of the type of replacement gaskets and packing used on the valves was made by the Navy. Retired Navy Captain Francis Burger (Captain Burger) testified that the Navy maintained a stock of replacement parts on its ships, which it purchased under annual contracts that the Navy entered into with gasket and packing manufacturers. All products purchased had to conform to Navy specifications. The Navy conducted its own testing of the products it purchased and provided written instructions to sailors defining which types of gaskets and packing to use in various settings. Admiral Sargent testified that the Navy was responsible for selecting, and did in fact select, the types of gaskets, packing, and insulation to use with the valves aboard its ships.[5]

Captain Burger explained that manufacturers were required to provide a "design data sheet" that "told you all of the parameters under which that equipment was to be operated." In addition, "the manufacturer was required to provide a technical manual," and "certain drawings that would accompany his equipment and his tech manual, along with the equipment itself." The Navy required these technical manuals by contract, and they had to be approved by the Navy. The development of the manuals involved "quite a bit of give and take" and "exchange of information" until the Navy felt that it had a satisfactory manual.

There were two Crane valves on the main propulsion turbine in the main forward engine room of the Preble. Captain Burger testified that during Mr. Brewer's service on the ship, both of those valves had asbestos-containing gaskets and one of the valves had asbestos-containing packing (the other valve had no packing at all). Captain Burger identified several more Crane valves in the forward engine room that were used in the

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[5] Admiral Sargent testified that not all the gaskets and packing used on Navy ships contained asbestos. The choice was the Navy's: "The Navy has developed and has guidance on what materials are required depending on the service, whether it's gasket material, whether it's packing material, whether it's electrical cable, whether it's paint."

ship's steam system, all of which had asbestos-containing gaskets and packing during the relevant time period.

PROCEDURAL HISTORY

The Brewers initiated this action on July 27, 2007, alleging that Mr. Brewer had contracted pleural mesothelioma, a cancer of the membranes lining the chest cavity, as a result of exposure to asbestos. They alleged claims for strict liability (design defect and failure to warn) and negligence, among others, and named a series of Navy equipment manufacturers as defendants.

After a 23-day trial, the jury returned a verdict rejecting the Brewers's failure to warn and negligence claims, but finding Crane liable under a strict liability design defect theory. Specifically, the jury found that Mr. Brewer was exposed to asbestos from Crane valves; that the valves were defective in design under the consumer expectation test; and that the design of the valves was a substantial factor in causing harm to Mr. Brewer. The jury awarded the Brewers total economic and noneconomic damages of approximately $9.7 million and made a fault allocation of two percent to Crane.

After the verdict, Crane moved for judgment notwithstanding the verdict (JNOV), arguing that it could not be held liable for the design defects in another entity's product. On November 24, 2008, the trial court denied the JNOV motion, reasoning that "the jury could have reasonably concluded that any subsequent change to Defendant's product (the subsequent use of asbestos gaskets and packing from a source other than Defendant) was reasonably foreseeable and that the design of the valves, which required the use of gaskets and packing, was defective."

Crane also took exception to the calculation of damages. The trial court denied Crane's requests to offset the judgment and for other equitable relief.

The trial court entered judgment against Crane for $499,208.79 in economic damages and $180,000 in noneconomic damages.

On December 22, 2008, Crane filed its notice of appeal.

DISCUSSION

I. Standards of review

This is an appeal from a jury verdict and denial of a JNOV motion.

"A party is entitled to judgment notwithstanding the verdict on a timely motion if there is no substantial evidence to support the verdict and the evidence compels a judgment for the moving party as a matter of law. (Code Civ. Proc., § 629; *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 877-878.) If the motion challenges the sufficiency of the evidence to support the verdict, we review the ruling under the substantial evidence standard. (*Clemmer, supra*, at pp. 877-878; *Shapiro v. Prudential Property & Casualty Co*. (1997) 52 Cal.App.4th 722, 730.) If the motion presents a legal question based on undisputed facts, however, we review the ruling de novo. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 284.) If we determine that the trial court denied a motion for judgment notwithstanding the verdict that should have been granted, we must order the entry of judgment in favor of the moving party. (Code Civ. Proc., § 629.)" (*Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1043-1044.)

II. *O'Neil* is controlling

While this appeal was pending, the California Supreme Court issued its decision in *O'Neil*, in which the court held "that a product manufacturer may not be held liable in strict liability or negligence for harm caused by another manufacturer's product unless the defendant's own product contributed substantially to the harm, or the defendant participated substantially in creating a harmful combined use of the products." (*O'Neil, supra*, 53 Cal.4th at p. 342.) We requested additional briefing from the parties as to how the Supreme Court's holding in *O'Neil* affected the issues presented in this appeal. Both parties submitted supplemental letter briefs for our consideration.

We find that the *O'Neil* decision directs that Crane may not be held liable for the Brewers's injuries on a strict liability design defect theory, and that the judgment must be reversed and remanded for entry of judgment notwithstanding the verdict in favor of Crane.

The *O'Neil* matter involved facts that are nearly identical to those before us. In *O'Neil*, Crane and its codefendant Warren Pumps made valves and pumps that were used with asbestos-containing external insulation or internal gaskets and packing, none of which were manufactured or distributed by the defendants. (*O'Neil*, *supra*, 53 Cal.4th at p. 324.) The defendants sold their valves and pumps to the Navy for use in steam propulsion systems on Navy ships. Navy specifications required the use of asbestos-containing insulation on all external surfaces of its steam propulsion systems as well as in the internal gaskets and packing materials in valves. (*Id.* at pp. 343, 344.)

The pumps and valves sold to the Navy were not made or shipped with external insulation. Such insulation was applied subsequently by the Navy. (*O'Neil*, *supra*, 53 Cal.4th at p. 349.) The valves sold to the Navy contained internal asbestos-containing gaskets and packing at the time they were sold; however, the Navy replaced the gaskets and packing from time to time during routine maintenance operations, and there was no evidence that the *O'Neil* defendants ever made or sold these replacement parts. (*Id.* at p. 344.)

The plaintiff in *O'Neil* served on a Navy ship from 1965 to 1967 and was exposed to asbestos fibers released from external insulation, gaskets and packing during repair and maintenance of the ship's equipment. The *O'Neil* defendants supplied equipment for the ship's steam propulsion system in 1943 or earlier, at least 20 years before the plaintiff worked aboard the ship. (*O'Neil*, *supra*, 53 Cal.4th at p. 345.) The plaintiff in *O'Neil* argued that the defendants were liable for his injuries caused by the asbestos exposures because their products included and were used in connection with asbestos-containing parts. The plaintiff also argued that the defendants should be held strictly liable for failing to warn him about the potential hazards of breathing asbestos released from their products. (*Id.* at p. 348.)

The Supreme Court concluded the *O'Neil* defendants were not strictly liable for the plaintiff's injuries because (a) any design defect in the defendants' products was not a legal cause of injury to the plaintiff, and (b) the defendants had no duty to warn of risks arising from other manufacturer's products. (*O'Neil*, *supra*, 53 Cal.4th at p. 348.) The

court reasoned that the plaintiff was not exposed to asbestos from a product made by the defendants. The evidence showed that plaintiff was exposed to asbestos dust released from exterior insulation the Navy had applied to the pumps and valves. None of the defendants manufactured or sold that insulation, nor had they required or advised that it be used with their products. (*Id.* at p. 349.) The uncontroverted evidence also showed that the plaintiff had been exposed to asbestos from replacement gaskets and packing inside the pumps and valves that were not the original parts supplied by the defendants, but were replacement parts the Navy had purchased from other sources. (*Ibid.*) The *O'Neil* court therefore determined that "even assuming the inclusion of asbestos makes a product defective, no defect inherent in defendants' pump and valve products caused O'Neil's disease." (*Id.* at p. 350.)

The Supreme Court also rejected the plaintiff's argument that the products were defective because they were "designed to be used" with asbestos-containing components. (*O'Neil, supra*, 53 Cal.4th at p. 350.) The court stated: "The products were designed to meet the Navy's specifications. Moreover, there was no evidence that defendants' products *required* asbestos-containing gaskets or packing in order to function. Plaintiff's assertion to the contrary is belied by evidence that defendants made some pumps and valves without asbestos-containing parts. As alternative insulating materials became available, the Navy could have chosen to replace worn gaskets and seals with parts that did not contain asbestos. Apart from the Navy's specifications, no evidence showed that the design of defendants' products required the use of asbestos components, and their mere compatibility for use with such components is not enough to render them defective." (*Ibid*., fn. omitted.)[6]

Similarly, here, Crane made valves that were used with asbestos-containing gaskets and packing. However, the parties stipulated that Mr. Brewer was not exposed to any original asbestos-containing gaskets or packing supplied by Crane. There was also

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6 The cases discussed in the parties' briefs are discussed at length in *O'Neil*. We find it unnecessary to address those cases in light of the *O'Neil* decision.

evidence that the Navy was responsible for making the decision as to the type of replacement gaskets and packing to be used with the valves. There is no evidence that Crane ever made or sold any of the asbestos-containing replacement parts to which Mr. Brewer was exposed.

Given the similarities between the two cases, we find that the *O'Neil* case mandates a verdict in favor of Crane.

III. The factual distinctions pointed out by the Brewers do not change the result

In their supplemental letter brief, the Brewers attempt to distinguish the facts of *O'Neil* from the facts of this matter. For the reasons set forth below, we are not persuaded that a different result is warranted in this case.

First, the Brewers point to a factual difference based on the number of years which had passed between the time the ships were built and the time that the two plaintiffs worked on the ships. In *O'Neil*, the ship on which the plaintiff worked -- the U.S.S. Oriskany -- was built in the early to mid 1940's. The plaintiff, Mr. O'Neil, did not work on the ship until more than 20 years later. (*O'Neil*, *supra*, 53 Cal.4th at p. 345.) Here, in contrast, the Brewers point out that the ship on which Mr. Brewer worked -- the Preble -- was built in the mid to late 1950's. Mr. Brewer began working on the ship in December 1961.

The Brewers fail to explain the significance of this factual distinction. Although Mr. Brewer began working on the Preble closer in time to its construction, there is no evidence that he came in contact with any asbestos-containing materials supplied by Crane. In fact, the parties have stipulated to the contrary. The Brewers offer no further explanation of why this factual distinction is significant. Therefore we find it to be irrelevant.

Next, the Brewers attempt to show that, unlike the evidence in *O'Neil*, the evidence in this case shows that Crane had a choice in selecting the use of asbestos gaskets and packing with its valves. The Brewers focus on footnote 6 of the *O'Neil* opinion, in which the Supreme Court noted:

> "A stronger argument for liability might be made in the case of a product that *required* the use of a defective part in order to operate. In such a case, the finished product would inevitably incorporate a defect. One could argue that replacement of the original defective part with an identically defective one supplied by another manufacturer would not break the chain of causation. Similarly, if the product manufacturer specified or required the use of a defective replacement part, a stronger case could be made that the manufacturer's failure to warn was a proximate cause of resulting injury. In both contexts, however, the policy rationales against imposing liability on a manufacturer for a defective part it did not produce or supply would remain. [Citation.] These difficult questions are not presented in the case before us, and we express no opinion on their appropriate resolution."

(*O'Neil, supra*, 53 Cal.4th at p. 350, fn. 6.)

The Brewers argue that here, unlike in *O'Neil*, it was Crane's choice to select the use of asbestos gaskets and packing with its valves. In support of this argument, the Brewers point to the testimony of Captain Burger.

We find that the specific testimony cited does not support the Brewers's position that Crane selected the use of asbestos-containing replacement parts for its valves. The Brewers first cite to testimony discussing the "Warren condensate pump manual," which presumably was a manual issued by Crane's codefendant which involved pumps, not valves. Captain Burger conceded that the document related to a pump on "another ship that was built at a another shipyard." The majority of the remainder of the cited testimony also involved Warren pumps.

In a later exchange between defense counsel for another codefendant, Leslie Controls, Inc., and Captain Burger, the question of whether alternative materials to asbestos were available was discussed:

> "Q: In the 50's when the Preble was being built for high temperatures and high pressure steam lines, were there various applications where the only choice for a gasket material was that it had to contain asbestos or it just wouldn't work?
>
> "A: I can't answer that question. That's design engineering that I don't really feel qualified to answer.

"Q: As you sit here today . . . do you know if the Navy had any alternative other than to use asbestos gaskets on some of the applications on this power plant on this ship?

"A: The answer that I can give you is in my experience, all that was used was asbestos product.

"[¶] . . . [¶]

"Q: Now the question is, are you aware of anything else that was even available?

"A: Yes, there was some fiberglass product that was available.

"[¶] . . . [¶]

"Q: . . . As you sit here today, do you know, was there anything else other than asbestos that could be used for the gaskets and packing that was used on the high pressure/high temperature steam system on the Preble?

"A: No.

"Q: . . . So that if the Navy wanted to build this ship with that power plant, their choice was to use asbestos or asbestos or asbestos, correct?

"A: I don't believe that choice was the Navy's. I believe the choice was the manufacturers'."

The context of this exchange with counsel for defendant Leslie Controls, Inc. suggests that the "manufacturer" being discussed was the manufacturer of the gaskets and packing. Neither Crane, nor its valves, are mentioned or discussed.

Next, the Brewers argue that the use of asbestos-containing replacement materials was specified by Crane in its technical manuals and drawings. In support of this argument, the Brewers cite the same testimony already discussed above, none of which supports their position that Crane required the use of asbestos-containing packing and gaskets for its valves. They also cite testimony of Captain Burger in which he discussed "manufacturer's tech manuals." The Navy required its pump and valve suppliers to provide such manuals with their products. Captain Burger explained that the technical

manuals served as a step-by-step maintenance guide for the manufacturer's product, including the repair of parts that were known to wear out. Captain Burger specified that the process of developing these technical manuals involved "give and take" between the manufacturer and the Navy until the manual was approved by the Navy. The Brewers point to testimony indicating generally that, in determining how to order replacement gaskets and packing for various types of equipment, a sailor would look to the technical manuals. However, Captain Burger never pointed to any particular manual or drawing indicating that Crane required the use of asbestos-containing replacement parts, nor have the Brewers provided any specific citation to a manual or drawing showing that Crane required asbestos-containing replacement parts.[7]

Finally, the Brewers point to the testimony of retired Navy Commander James Delaney (Commander Delaney), who testified that "the maintenance information flows from the vendor." However, read in context, it is clear that this testimony involved the schedule of maintenance, not the use of asbestos products:

> "Q: And in fact all that information flows from the manufacturers because the manufacturers are the ones that actually built the product and know the exact maintenance schedule that would be required on their particular product.
>
> "A: Not necessarily. Once again, that's where the Naval Sea System Command comes in because of course every vendor is expected to make recommendations on the maintenance to be performed on his equipment. No question that the basic recommendations do come from the vendor. But the Navy has certain periodicity for types of maintenance that they require based on their own demands for reliability. And in many cases you will find that their maintenance may be more frequent or more conservative than the vendor that's all disciplined by the Navy's own standards, so they'll make the final judgment."

Commander Delaney did not specifically indicate that Crane required the use of asbestos in the replacement parts for its valves. He confirmed that when working on the

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[7] In fact, Captain Burger testified that he had never seen a Crane valve technical manual or drawing for the Preble.

equipment, the individual was required to go back to the technical manual, which he described as a "Navy document that originated with the manufacturer."

These general statements do not constitute evidence that Crane specified or required the use of asbestos in its replacement gaskets and packing. The Brewers have cited no testimony to that effect, nor have they cited any trial exhibit which provides evidence to support their claim that Crane specifically directed the use of asbestos gaskets and packing with its valves. To the contrary, the evidence suggested that the Navy was autonomous in making the decision as to the types of replacement gaskets and packing to be used in the valves. Thus, this does not present the "difficult" case described by the Supreme Court in footnote 6 of *O'Neil*. As set forth in *O'Neil*, "no evidence showed that the design of [Crane's] products required the use of asbestos components, and their mere compatibility for use with such components is not enough to render them defective." (*O'Neil, supra*, 53 Cal.4th at p. 350, fn. omitted.)

The Brewers suggest that the Supreme Court in *O'Neil* recognized that whether a manufacturer has sufficiently participated in the design of a product to be subjected to liability is a factual issue for the trier of fact to resolve. (*O'Neil, supra*, 53 Cal.4th at p. 359 [discussing *DeLeon v. Commercial Manufacturing & Supply Co.* (1983) 148 Cal.App.3d 336, 340 (*DeLeon*)].) However, the Supreme Court noted that the *DeLeon* decision was decided on a strict liability failure-to-warn theory. The plaintiff was injured when her "arm became tangled in an exposed rotating line shaft" located above a bin that the defendant manufacturer had designed. (*O'Neil, supra*, at p. 359.) The *O'Neil* court distinguished the facts in *DeLeon* from the facts before it: "DeLeon's injury resulted not from any intrinsic defect in the bin or the line shaft, but in the dangerous proximity of these two products. The bin manufacturer contributed to this dangerous condition because it designed the bin specifically for use in the particular site where it was located." (*O'Neil, supra*, at p. 359.) Quoting favorably from *Taylor v. Elliott Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564, 571-572), the *O'Neil* court noted that "'[t]here is nothing in *DeLeon* that suggests that a manufacturer may be liable for failing to warn of

the dangerous qualities of another manufacturer's product.' [Citation.]" (*O'Neil, supra*, at p. 359.)

As the *O'Neil* court observed, *DeLeon* is distinguishable on its facts. The issue was the bin manufacturer's involvement in the bin's designed proximity to the line shaft. There was a factual issue regarding the extent to which the bin manufacturer had contributed to a dangerous condition because it designed the bin specifically for use in the particular site where it was located. In contrast, there is no evidence that Crane participated in the design of the asbestos-containing gaskets or packing material or the Navy's steam propulsion systems.

IV. Conclusion

The Brewers have failed to distinguish the facts of this case from those before the Supreme Court in *O'Neil*. As explained in *O'Neil*, "[t]he defective product in this setting was the asbestos [gaskets and packing], not the pumps and valves to which it was applied after defendants' manufacture and delivery." (*O'Neil, supra*, 53 Cal.4th at pp. 350-351.) *O'Neil* mandates a judgment in favor of Crane.

DISPOSITION

The judgment is reversed, and the matter is remanded for entry of judgment notwithstanding the verdict in favor of Crane. Each party is to bear their own costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST