Manufacturers’ Duty to Warn for Replacement Parts

By Eliot M. Harris

Recent decisions clearly provide that manufacturers have no general duty to warn of dangerous conditions caused by another’s products.

It is not surprising that a product manufacturer can be held liable for failing to warn others about potential dangers arising from, or in association with, its product, when the danger is caused by the product that it manufactured, sold, or distributed. However, the issue of whether a duty to warn exists, and if so, the scope of this duty, for products that the manufacturer did not make, sell, or distribute, is less clear. For example, it is unclear what, if any, duty to warn an auto manufacturer about dangers arising from an engine that was installed post-sale when the auto manufacturer had no role in the manufacturing, sale, or distribution of the engine. Though the extent of the manufacturers’ liability may be limited, depending on applicable product liability statutes, the answer under the common law has historically been less than clear. Recent decisions show an increased effort by state courts to create bright-line rules on this issue. Courts in Washington and California have already adopted clear rules limiting a manufacturer’s duty to warn for dangers arising from a third-party’s product added, or used in conjunction with, the manufacturer’s product post-sale.

The issue of whether a manufacturer can be found liable for replacement component parts often arises in asbestos cases. Typically, an equipment manufacturer has faced a claim for failing to warn of an asbestos-containing product that it did not manufacture, supply, or sell, but was added to, or used with, the manufacturer’s product post-sale. In many of these cases, the manufacturers had little, if anything, to do with the actual sale, marketing, or distribution of the replacement parts that actually contained asbestos. While the most recent court decisions have arisen primarily in asbestos cases, prior decisions show that this issue is not limited simply to these cases.

Historical Analysis of Failure to Warn Claims

When analyzing claims for failure to warn, courts have noted a distinction between negligence and strict liability claims, but with little practical difference between these claims. In considering negligent failure to warn claims, courts analyze the conduct of manufacturers and their attempts to warn users. See Restatement of Torts (Second) §388 (1965). In considering common law strict liability claims for failure to warn, courts analyze the products themselves and the reasonable expectations of the users. See Restatement (Second) of Torts §402A (1965). Though courts have made a general distinction between negligence and
strict liability failure to warn claims, this distinction has had little practical effect. In other words, courts have treated failure to warn claims with an “all or nothing” approach. Either the manufacturer is held liable or not, regardless of whether the claim has been based on negligence or strict liability principles. That said, it is still important to understand the differences between negligence and strict liability failure to warn claims to understand the analytical focus that courts should apply when determining the existence and scope of manufacturers’ duty to warn.

For the most part, the underlying considerations in both negligence and strict liability failure to warn claims are similar. In considering strict liability, a product, though faultlessly manufactured and designed, may not be reasonably safe when placed in the hands of the ultimate user without first providing an adequate warning concerning the manner in which the user can safely use the product. Restatement §402A specifically provides that the seller of a product in a defective condition that is unreasonably dangerous to a user or consumer can be liable for personal injuries if: (1) the seller is engaged in the business of selling such a product, and (2) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. A court may find liability under §402A regardless of whether the seller exercised all possible care in the preparation and sale of its product.

Similarly, negligent failure to warn claims may arise under Restatement (Second) of Torts §388, which requires a manufacturer to exercise reasonable care to inform the user of a product of any known danger that the user will not understand before using the product. Section 388 provides that a product supplier, either directly or through a third person, is subject to liability for physical injuries to those whom the supplier should expect to use the product, or be endangered by its probable use, if the supplier: (1) knows or has reason to know that the product is, or is likely to be, dangerous for the use for which it is supplied; (2) has no reason to believe that those for whose use the product is intended will realize its dangerous condition; and (3) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which will likely make it dangerous. Restatement (Second) of Torts §388 (1965).

Prior Difficulties Drawing Bright-Line Rule
Over the years, many courts have attempted to define the extent of manufacturers’ duty to warn of potential dangers caused, not by their own products, but by the products of others when used in conjunction with the products of others. The main inquiry in these cases was whether the claimed injuries were caused by the “completed product” or by a component part incorporated in, or used in conjunction with, a defendant’s product after that product left the defendant’s hands. Courts have often considered whether the third party’s component product was essential to the operation of the manufacturer’s product. If so, courts have considered whether a defendant could then have “reasonably foreseen” that the third party’s product would be later added to, or used in conjunction with, the defendant’s product. This rule tended to lead courts to varying results, leaving manufacturers with limited predictability on the nature and extent of their ultimate liability. This has been especially true when danger was allegedly caused, not by a completed product, but by a third-party’s product by itself. In other words, it was unclear whether a manufacturer’s duty to warn existed regarding dangers arising solely and proximately from another entity’s product.

In cases in which courts have found no duty to warn under these circumstances, many courts have relied on an axiomatic principle of product liability law that a defendant’s product must have been the proximate cause of the claimed injury to impose liability on the defendant. Relying on the plain language of the Restatement’s §402A, courts have found that a manufacturer can be held liable only when it “sells any product in a defective condition.” One of the seminal cases on this issue was In re Deep Vein Thrombosis, 356 F. Supp. 2d 1055 (N.D. Cal. 2005), in which the court found it persuasive that an airplane manufacturer had no knowledge about the type of seats that the airplane purchaser would install in the airplane after the airline manufacturer sold the airplane to its purchaser. As a result, the airplane manufacturer did not know if the seats selected by the purchaser were somehow defective, or could potentially cause injury to airline passengers. The Deep Vein Thrombosis court hinted, however, that even if the airplane manufacturer had known that the airplane purchaser would install potentially defective seats, it was unreasonable to impose a duty on the airplane manufacturer to place warnings inside the airplane, since it no longer owned or controlled the airplane. The court found no precedent necessitating that the airplane manufacturer “investigate and sanction wayward purchasers” regarding their decisions to use potentially dangerous component parts, airplane seats in this case, in connection with the airplane manufacturer’s product.

Conversely, other courts have found potential liability for failing to warn when a manufacturer failed to warn of dangerous situations associated with a harmful product when the potentially dangerous condition was created by using a third party’s product. In these cases, courts have found liability when a manufacturer produced a sound product, which was later rendered potentially dangerous when used with another’s defective product. Prior cases have shown a propensity to find liability for failing to warn of these dangers when one of the following factors was present: (1) the manufacturer’s product required the use of the third party’s product; (2) the intended use of the manufacturer’s product was likely to cause a foreseeable dangerous condition; (3) the manufacturer had known of a specific risk created by using the third party’s product in conjunction with its own product; or (4) the manufacturer could have foreseen that another party could possibly alter or modify
Courts have considered whether the modification was “foreseeable” to the defendant at the time of sale.

found liable for failing to warn of potential dangers resulting from the use of a flowrator used to measure ammonia. The flowrator required the use of a third party’s product to function as intended. However, the third party’s product, when used with the flowrator, disintegrated and increased the likelihood that the flowrator would explode. The Washington Supreme Court found that the flowrator manufacturer owed a duty to warn of the potential hazard. Similarly, in Deleon v. Commercial Manufacturing & Supply Co., 148 Cal. App. 3d 336 (Cal. Ct. App. 1983), the California Court of Appeal reversed a summary judgment that favored the manufacturer. This court found potential liability for a manufacturer when a potential hazard, caused by the normal operation of the defendant’s product, when used in combination with a third party’s product, was “foreseeable” to the manufacturer. The DeLeon court recognized that even though the product could have been used safely as designed and manufactured, the manufacturer still had a duty to warn against foreseeable dangers created during the normal use of the product when used in proximity with other dangerous products.

Similarly, when analyzing a situation in which a product that is sound when sold, but subsequently becomes dangerous when modified, post-sale, courts have considered whether the modification was “foreseeable” to the defendant at the time of sale. In Davis v. Pak-Mor Manufacturing, Co., 672 N.E.2d 771 (Ill. App. Ct. 1996), the Illinois Appellate Court found that the manufacturer of a garbage truck could have foreseen, and thus, had a duty to warn, that the garbage truck could have been modified to allow the packing device to operate while the truck was in gear, thus creating danger of the garbage truck running over an operator if he tried to pack trash while the truck was in gear. Courts have also found a duty to warn when a product has been used in an unusual way, even when this use still has been consistent with the common practices of the industry. In Small v. Pioneer Machinery, Inc., 494 S.E.2d 835 (S.C. Ct. App. 1997), the South Carolina Court of Appeals found that the manufacturer of a log skidder, which was intended to be used to pull trees out of a forest, had a duty to warn of danger created when the log skidder was used to free a wedged chainsaw from a tree. The court found that even though substantial evidence showed that the throttle on the log skidder had been modified, it was proper for a jury to determine whether the modification could have been foreseen by the manufacturer.

Courts use many factors to determine where to draw the line on a manufacturer’s duties concerning a third party’s product and its liability. The most common factors include the following: (1) whether the manufacturer of the original product had control over the production of the third party’s product; (2) whether the manufacturer had any role in the stream of commerce of the third party’s product; and (3) whether the manufacturer derived an economic benefit from the sale of the third party’s product. Absent a finding of one or more of the above factors, courts have tended to find that defendants were not liable for these third parties’ products, or those products if distributed by others.

In Powell v. Standard Brands Paint Co., 212 Ca. Rptr. 395 (Cal. Ct. App. 1985), the California Court of Appeal found that a manufacturer owed no duty to warn of dangers of its solvents and cleaning equipment when the evidence showed that the efficient proximate cause of the plaintiffs’ injury was a product manufactured by a third party. The Powell court found that a manufacturer’s duty was limited to dangers caused by its own product because it was not reasonable for the manufacturer to investigate and analyze other products to warn against potential risks posed by those products. The same rule was recognized in Garman v. Magic Chef, Inc., 173 Ca. Rptr. 20 (Cal. Ct. App. 1981), in which the court held that the defendant, which manufactured an appliance installed in the plaintiff’s motor home, owed no duty to warn about using the stove near a gas leak caused by faulty tubing attached to the motor home’s propane tank. After finding that the stove did not have a defect, the court found it “semantic nonsense” to argue that the absence of a warning to check for gas leaks in other products made a physically non-defective stove defective.

Courts in various other jurisdictions have issued holdings similar to the findings in Powell and Garman. In Cleary v. Reliance Fuel Oil Assocs., 793 N.Y.S.2d 468 (N.Y. App. Div. 2005), the court found that a manufacturer of a water heater had no duty to warn of dangers of misplacing an aquastat that it did not manufacture in its product. Likewise, in Walton v. Harnischfeger, 796 S.W.2d 225 (Tex. Ct. App. 1990), the court found that a crane manufacturer had no duty to warn under negligence or strict liability theories of a nylon strap used as rigging material because the defendant did not manufacture, distribute, sell, or otherwise place the nylon strap into the stream of commerce. In Baughman v. Gen. Motors Corp., 780 F.2d 1131 (4th Cir. 1986), the court found that a truck manufacturer was not liable for injuries caused by a defective replacement wheel that the truck manufacturer had not designed, manufactured, or sold nor was the truck “defective” because its manufacturer failed to warn of dangers associated with multi-piece wheel rims.

In Lindstrom v. A-C Product Liability Trust, 424 F.3d 488 (6th Cir. 2005), the plaintiff sued several manufacturers of products used in conjunction with other manufacturers’ asbestos products under theories of negligence and strict liability for injuries allegedly caused by asbestos exposure. Though the central issue in Lindstrom was causation as it related to component parts, not the existence of a duty to warn, the court found that the defendants’ products had not caused the injuries, concluding that a manufacturer could not be held responsible for the asbestos contained in another’s product. Although, in this case, the products manufactured by others had been attached to the defendants’ products.
Washington State Finds No Liability for Manufacturers in Asbestos Cases

The Washington Supreme Court has limited the scope of liability for equipment manufacturers for injuries sustained by plaintiffs in asbestos cases when an asbestos-containing product has been manufactured by a third party and merely used in conjunction with a product manufactured by a defendant. In two companion cases, this court recently held that manufacturers were not liable under common law negligence or strict liability principles for failing to warn of asbestos exposure when the manufacturer did not sell, market, or distribute the asbestos-containing product that caused the plaintiffs’ alleged harm. Simonetta v. Viad Corp., 197 P.3d 127 (Wash. 2008); Braaten v. Saberhagen Holdings, 198 P.3d 493 (Wash. 2008). Simonetta and Braaten followed prior decisions that found no duty to warn when a manufacturer had no control over the sale or distribution of a product and derived no benefit, economic or otherwise, from sale of a third-party’s product. The court noted that even when a manufacturer could foresee that an asbestos-containing replacement component part could be used in conjunction with its product and that asbestos exposure could occur during the regular use and maintenance of its product, the defendant was still not responsible for a third-party product that it did not control.

In Simonetta, the plaintiff developed lung cancer, allegedly caused by exposure to asbestos from an evaporator manufactured by the defendant and located onboard the USS Saufley from 1958 to 1959. The defendant shipped the evaporator to the Navy in the early 1940s without insulation, but the evaporator was later insulated with asbestos manufactured by an unknown company. In a 6–3 decision, the Washington Supreme Court held that the defendant was not liable for the plaintiff’s injury for failing to warn of the hazards of asbestos manufactured and sold by another company because it owed no duty to warn of possible dangers arising from a product that it did not manufacture, supply, or sell. The Simonetta court found that the evaporator was unreasonably dangerous without warnings, despite the plaintiffs’ argument that the evaporator required asbestos insulation to be useful, because the dangerous condition was not caused by the defendant’s product, but another entity’s asbestos-containing product.

In Braaten, the court found that manufacturers of valves and pumps sold to the Navy for use onboard naval vessels were not liable for failing to warn of the dangers of replacement parts. The court’s decision hinged on the fact that the plaintiff could not establish a connection between himself and the original insulation that had been used in the defendants’ equipment. In fact, the plaintiff testified that he had never worked with new pumps and valves and could not determine if the asbestos-containing insulation inside the pumps and valves that he had used had original or replacement insulation. Another important factor in Braaten was the lack of evidence that the manufacturers had required or specified the use of asbestos-containing insulation in replacement parts. By upholding the dismissal of the plaintiff’s claims, the Braaten court rejected the plaintiff’s theory that the manufacturers were liable for failing to warn because they could have foreseen that the Navy could have potentially applied asbestos-containing replacement insulation to the valves and pumps. The Braaten court also found that the majority rule restricted a manufacturer’s duty to warn “based on the characteristics of the manufacturer’s own products.”

California Law Clarified (somewhat) Following Series of Appellate Court Opinions

Following Simonetta and Braaten, the California Court of Appeal adopted a rule that is similar to the rule adopted in those decisions. Taylor v. Elliott Turbomachinery Co., Inc., 171 Cal. App. 4th 564 (Cal. Ct. App. 2009). In Taylor, the plaintiff alleged that he had been exposed to the asbestos-containing interior and exterior insulation on various pieces of equipment onboard the USS Hornet. There was no evidence that the equipment manufacturers had made or supplied the asbestos-containing parts. In addition, there was no evidence that any of the original asbestos-containing parts were still used with the equipment at the time of the plaintiff’s work, or that the equipment manufacturers had made, sold, or supplied the replacement parts, which allegedly contained asbestos. The California Court of Ap-
turer's product, from those cases in which a manufacturer's product remained sound at the time of injury, and the injury was solely caused by the plaintiff’s use of another's product contemporaneously with the manufacturer's product. Citing Garman, the Taylor court noted that there was no legal precedent for imposing a duty to warn in the later case, reiterating that a dangerous condition must have been caused by the defendant’s product, not by using another's product in conjunction with the defendant's product.

Finally, the Taylor court found that manufacturers may have a duty to warn, and therefore, bear liability for injuries, if they receive a direct financial benefit from the sale of another's product. The court noted that evidence of a financial benefit from the sale of another's product could create a duty to warn of dangers in another's product. Though the Taylor court found that financial incentive was an important factor, it stopped short of establishing an absolute rule that a manufacturer receiving some financial benefit would always have a duty to warn in this circumstance.

In short, the Taylor court essentially adopted an enhanced “foreseeable use” test, which provides a clear rule for the future in cases involving claims for failure to warn from dangers created by another's product.

The Aftermath
Following Simonetta, Braaten, and Taylor, the issue appeared to be resolved, at least in California. The Second Appellate District, Division 3 of the California Court of Appeal rendered a decision supporting Taylor, and adopting the same rationale in a factually similar asbestos case. Merrill v. Leslie Controls, Inc., 2009 WL 3051534 (Cal. Ct. App. 2009). In Merrill, the plaintiff sued a manufacturer of equipment used on Navy ships from the 1950s through 1970s. There was evidence submitted at the trial that the defendant was aware that amosite asbestos insulation was applied to and removed from the defendant’s equipment on board U.S. naval vessels. As in Taylor, the main issue on appeal was whether the defendant was strictly liable for failing to warn about hazards posed by asbestos-containing products, which the defendant did not manufacture, supply, or place in the chain of distribution.

Citing Taylor, the Merrill court began with the premise that a manufacturer could not bear strict liability for failing to warn of potential danger of another's product. Because the plaintiff did not present evidence that the defendant manufactured or supplied the asbestos-containing internal packets and gaskets that allegedly harmed the plaintiff, nor manufactured or supplied the flange gaskets on the outside of its product, nor manufactured or supplied the exterior insulation pads for the defendant’s equipment, the defendant was not strictly liable for failing to warn of hazards associated with handling these products. The Merrill court noted that the plaintiff could not prove that the defendant had supplied internal packing and gaskets that the plaintiff had removed, or new packing or gaskets that the plaintiff installed on the defendant’s equipment. As a result, the court held that Leslie, the defendant in this case, was not strictly liable for failing to warn of danger inherent in these products because it had not been part of the stream of commerce of the allegedly dangerous product.

The plaintiff in Merrill had argued that the defendant was required to warn of all inherent dangers associated with the use of its product, including those arising from asbestos-containing parts used with its product, even if it did not supply these parts, because these parts were allegedly necessary for the functionality of the defendant’s product. The court rejected this argument and stated that the defendant had no duty to warn because “the injury was caused by products made or supplied by other manufacturers and used in conjunction with” the defendant's equipment. Further, the Merrill court held that a manufacturer’s duty to warn is restricted based on the characteristics of the manufacturer’s own product, because the law does not require a manufacturer to study and analyze the products of others and to warn users about the risks of those products.

The Merrill court also noted that a manufacturer may owe a duty to warn when the use of its product in combination with the product of another creates a potential hazard, but that the duty arises only when the manufacturer’s own product causes or creates the risk of harm. Additionally, the Merrill court distinguished Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co., 129 Cal. App. 4th 577 (Cal. App. Ct. 2004), by finding that the plaintiff’s injuries in this case were not caused by the defendant’s product, but rather by the release of asbestos from products produced by others. This last point is key to understanding why strict liability applies only when a defendant's product creates or causes the risk of harm.

However, at about the same time as the Merrill court rendered its decision, the Second District, Division 5 of the California Court of Appeal found a manufacturer liable under nearly identical facts as the facts presented in Merrill. See O’Neil v. Crane Co., 99 Cal. Rptr. 3d 533 (Cal. Ct. App. 2009). Though O’Neil was later de-published, the court found that a manufacturer of naval equipment may be liable for failing to warn of a dangerous condition created by “foreseeable uses” of its product even if the dangerous condition was caused by another’s product. The O’Neil court found that the defendant’s product was designed to be used with asbestos insulation and packing, which would have to be removed during routine repair and maintenance.

The O’Neil court expressly disagreed with Taylor, stating that Taylor, as well as Simonetta and Braaten, were decided wrongly. The O’Neil court rejected the Taylor court’s finding that the defendants in these cases had no control over which replacement parts another would subsequently incorporate into its product. The O’Neil court found that the defendant’s equipment was defective because it was designed to be used with asbestos-containing insulation and packing, which would become dangerous during the ordinary and foreseeable use of its product. The court found it a “perfectly acceptable theory” that the performance of a product during ordinary, expected, and
routine maintenance and repair is part of the functionality of that product, and thus, could give rise to a basis for liability for failing to warn.

The O’Neil court also rejected the Taylor court’s finding that a defendant was not liable for another’s product when that defendant was not involved in the vertical distribution of the defective product and played no role in producing or marketing that product. The O’Neil court went on to state as follows: “We see no relevance to the fact that the injury was caused by the operation of its product in conjunction with a replacement part which is no different than the original.” Essentially, the O’Neil court found that if original parts supplied with the defendant’s product were somehow dangerous, and the replacement parts were similarly dangerous for the same reasons, the manufacturer would be liable for these same dangers in a replacement part, regardless of whether the original manufacturer made, sold, or supplied the replacement part.

**Where Do We Go from Here?**

Though the O’Neil decision was de-published, the California Supreme Court granted certiorari for this case. This is significant given that the California Supreme Court previously denied review of Taylor. Under these circumstances, we can infer that the California Supreme Court will reverse O’Neil, and thus, uphold the clear rule adopted in Taylor and Merrill, which is consistent with Simonetta and Braaten.

The decisions in Merrill, Simonetta and Braaten provide a clear rule under which manufacturers have no duty to warn of dangerous conditions caused by another’s product, even if they can foresee that the products of others could be used with the manufacturers’ products. The potential mitigating circumstances, including controlling another’s product, participating in the stream of commerce of another’s product, and benefitting financially from the sale of another’s product, can be used in individual cases to further distinguish between those manufacturers that somehow avail themselves of a duty to warn for the products of others, as opposed to those manufacturers that have not actively controlled, participated in the stream of commerce of, or benefitted financially from the sale of others’ products used in conjunction with their own.