

The Role Of Manufacturers' Duties In Asbestos Litigation

Law360, New York (July 23, 2012, 1:28 PM ET) -- The Florida court of appeals in June 2012 reversed a \$6.6 million judgment for the plaintiff in an asbestos case, raising interesting issues of the law on design and warning defects. See *Union Carbide Corp. v. Aubin*, No. 3D10-1982 (3d DCA 6/20/12).

Plaintiff Aubin worked construction and alleged he routinely handled and was otherwise exposed to joint compounds and ceiling textures that contained asbestos. He contracted mesothelioma and sued.

At trial, plaintiff presented studies linking defendant's product to a higher degree of danger with respect to the development of asbestosis than other types of asbestos, but he failed to introduce any evidence suggesting it was more dangerous than other asbestos fibers with respect to the contraction of cancer or peritoneal mesothelioma.

Also at trial, the parties offered contrasting evidence as to whether Union Carbide adequately informed intermediary manufacturers about the dangers of asbestos. Defense representatives testified that, along with a U.S. Occupational Safety and Health Administration warning label, Union Carbide regularly updated its clients regarding the dangers of asbestos as such dangers came to light.

Conversely, plaintiff claimed that because there were no warnings on the end product, he was unaware of the dangers associated with the liberation of asbestos fibers into the air, and, therefore, did not wear any respiratory masks or protective gear while working around the asbestos.

Relying on the component parts doctrine recognized by the Restatement (Third) of Torts: Products Liability § 5 (1997), adopted by the Florida Third District Court of Appeal in *Kohler Co. v. Marcotte*, 907 So. 2d 596, 598-99 (Fla. 3d DCA 2005), defendant moved for a directed verdict on plaintiff's strict liability and negligence claims. That motion was denied.

At the charge conference, Union Carbide requested jury instructions regarding the Third Restatement's component parts doctrine, The trial court denied Union Carbide's requests, choosing instead to deliver the special instructions that were requested by plaintiff. The instruction read: "An asbestos manufacturer, such as Union Carbide Corp., has a duty to warn end users of an unreasonable danger in the contemplated use of its products."

The court of appeals concluded that the trial court erred in determining that Aubin's claims were governed by the Second Restatement rather than the Third Restatement and, as a result, erred in denying Union Carbide's motion for a directed verdict with respect to Aubin's design defect claim.

In addition, the trial court erred in instructing the jury that Union Carbide had a duty to warn end-users without also instructing the jury that Union Carbide could have discharged this duty by adequately warning the intermediary manufacturers and reasonably relying on them to warn end-users. Accordingly, the court remanded for a new trial as to the warning defect claim.

Specifically, the trial court erred as a matter of law in determining that Aubin's claims are governed by Sections 388 and 402 of the Second Restatement. In *Kohler*, the court adopted the component parts doctrine articulated in Section 5 of the Third Restatement as the governing law for products liability claims arising out of a defendant's sale of a component part to a manufacturer who then incorporates the component into its own products. *Kohler*, 907 So. 2d at 598-99.

This appeals court's adoption of the Third Restatement was later reaffirmed and extended in *Agrofollajes SA v. E.I. Du Pont De Nemours & Co.*, 48 So. 3d 976, 997 (Fla. 3d DCA 2010), which rejected the Second Restatement's "consumer expectations" test as an independent basis for finding a design defect, determining instead that, after *Kohler*, the appropriate standard is the "risk-utility/risk-benefit" test articulated in Section 2 of the Third Restatement.

Regarding the warnings claim instructions, reversible error exists where the trial court delivers an instruction that reasonably might have misled the jury. Plaintiff Aubin had requested, and the trial court granted, the special instruction: "An asbestos manufacturer, such as Union Carbide Corp., has a duty to warn end-users of an unreasonable danger in the contemplated use of its products."

While this requested special instruction was "technically accurate," it was, standing alone, misleading, because Florida law provides that this duty may be discharged by reasonable reliance on an intermediary.

Recognizing that Aubin's requested instruction was misleading, Union Carbide requested that Aubin's special instruction be supplemented with an explanation of how the duty to warn could have been discharged by Union Carbide. The trial court rejected Union Carbide's request, and delivered Aubin's instruction without further explanation. This was also error.

The court of appeals explained that under both the Third Restatement and the Second Restatement, the determination as to whether a manufacturer like Union Carbide may rely on intermediaries to warn end-users is to be analyzed by the trier of fact, and the standard to be employed is one of "reasonableness."

The Third Restatement provides several factors to guide the analysis, and these factors are substantially the same as those set forth in the Section 388 of the Second Restatement under comment n. The trial court, however, did not instruct the jury on any of these factors.

Because the trial court's instruction communicated to the jury that Union Carbide had a duty to warn end-users, but did not inform the jury that Union Carbide could have discharged its duty by adequately warning the intermediary manufacturers and reasonably relying on them to warn end-users, the court of appeals concluded that the instruction given was misleading and entitled Union Carbide to a new trial.

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