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COURT PASSES UP OPPORTUNITY TO REIN IN ASBESTOS LIABILITY SUITS

(Norris v. Crane Co.)

The California Supreme Court this week declined to review a lower court decision that allows those suffering from asbestos-related illnesses to bring product liability suits against virtually any firm that has ever manufactured a product containing asbestos -- even where there is little or no evidence that the firm's product caused the illness.

The decision not to hear the case, *Norris v. Crane Co.*, was a setback for the Washington Legal Foundation (WLF), which filed a brief urging the court to grant review. WLF argued that liability should not be imposed in the absence of evidence that a defendant's product was a substantial factor in the onset of the plaintiff's illness. Evidence that the plaintiff was exposed on one or two occasions to a product containing asbestos is insufficient to establish that those isolated exposures caused the disease, WLF argued.

"Because all the major asbestos manufacturers have long since been driven into bankruptcy, plaintiffs' lawyers are now targeting any and all deep-pocketed companies that ever manufactured a product that contained any amount of asbestos, no matter how minute," said WLF Chief Counsel Richard Samp after the court issued its one-sentence order denying review. "But while we sympathize with those who are suffering from asbestos-related diseases, their plight does not justify a legal regime that permits recovery based on anecdotal evidence that fails to establish any causal connection between minute exposures and the onset of their illnesses," Samp said.

The case before the California Supreme Court involved Joseph Norris, who served in the U.S. Navy from 1955 to 1957. He contracted mesothelioma (a deadly cancer associated with asbestos exposure) in 2005 and died in 2006. While in the Navy, Norris served on board the U.S.S. Bremerton, a ship that contained large amounts of asbestos; a small portion of that asbestos was contained in valves manufactured by Crane Co. Norris never worked directly with the Crane valves, but he alleged that he passed by the valves while others were repairing them and was likely exposed to airborne asbestos fibers released during those repairs. A jury awarded

Norris \$2.2 million in damages against Crane, the sole defendant at the time of trial, finding that Crane should be strictly liable for having sold a "defective" product that caused Norris's illness. The California Supreme Court's order declined Crane's request to review that judgment.

In its brief urging the Court to grant review, WLF argued that an asbestos plaintiff should not be entitled to establish causation based solely on a claim that *every* exposure to asbestos, no matter how minute, contributes to asbestos-related disease. Noting that everyone is exposed to trace amounts of asbestos that occur naturally in the environment, WLF argued that causation cannot be established in the absence of evidence that the plaintiff's exposure to asbestos from a specific manufacturer was substantial.

WLF also argued that the lower courts erred in defining what constitutes a "defective" product that exposes a manufacturer to strict liability in tort. The trial court instructed the jury that a product could be deemed "defective" under the "consumer expectations" test; that is, if the product did not perform as well as its consumer could reasonably expect. WLF argued that use of the "consumer expectations" test was inappropriate, because Norris was not a user/consumer of Crane's valves but rather a mere bystander. WLF argued that use of the "consumer expectations" test was also inappropriate because consumers do not understand the complex engineering that goes into manufacturing valves and thus have no reasonable expectation one way or the other regarding what is a reasonable level of asbestos within such valves. Instead, WLF argued, the jury should have been instructed to determine whether the Crane valves were "defective" by determining (based on expert evidence) whether the benefits of the challenged design outweighed the risk of danger inherent in that design.

WLF is a public interest law and policy center with members in all 50 states, including many in California. WLF devotes a substantial portion of its resources to promoting tort reform and defending the rights of the business community.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.