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Estrada v. 24stcv15531 Am. Honda Motor Co.

Court of Appeal of California, Second Appellate District, Division Five

November 17, 2026, Opinion Filed

B347694

Reporter
2026 Cal. App. Unpub. LEXIS 7507 *; 2026 LX 709143

JOSE MANUEL ESTRADA et al., Plaintiffs and Appellants, v. 24STCV15531 AMERICAN HONDA MOTOR CO., JCCP 4674 INC, Defendant and Respondent.

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Core Terms

brake, ***asbestos***, ***asbestos***-containing, brake system, manufacturer, replacement, redesign, jobs, special instruction, no evidence, non-***asbestos***, exposure to ***asbestos***, trial court, repair, replacement part, special jury, mesothelioma, gasket, warn

Opinion

[*1] APPEAL from a judgment of the Superior Court of Los Angeles County, Michael I. Levanas, Judge. Affirmed.

Simmons Hanly Conroy, Deborah R. Rosenthal, and William A. Kohlburn for Plaintiffs and Appellants.

Horvitz & Levy, Jason R. Litt, and Emily V. Cuatto; Segal McCambridge Singer & Mahoney, Craig L. Hodgson, Jennifer K. Thai, and John A. Eberlein; Lewis Brisbois Bisgaard & Smith and Sharon Sonnett for Defendant and Respondent American Honda Motor Co., Inc.

Jose Manuel Estrada (Estrada) was diagnosed with mesothelioma. He and his wife Isabel Estrada (collectively, Plaintiffs) sued American Honda Motor Co., Inc. (Honda) and others claiming his exposure to ***asbestos***-containing brake products while working as a mechanic caused his illness. The case proceeded to trial, and over Plaintiffs' objection, the trial court gave the jury a special instruction explaining it could not hold Honda liable for brake products used on Honda vehicles that Honda did not distribute or sell. The jury returned a verdict for Honda based on its finding that Honda's products and conduct were not substantial factors in causing harm to Estrada. We consider a single claim of error: that the trial court's special jury instruction was erroneous because the jury could have found

Honda's vehicles were designed to *require* the **[*2]** use of ***asbestos***-containing brake pads.

I. BACKGROUND

A. Estrada's Work History, Illness, and the Lawsuit against Honda and Others

Estrada was born and lived most of his life in Brawley, California. In 1972, after graduating from high school and before enlisting in the United States Air Force, he worked for several months at Kennedy's for Tires (Kennedy's) .**1** At the time, Kennedy's principal business was the sale and repair of commercial tires, although some brake work was also done.

Estrada primarily repaired tires at Kennedy's and he also worked

1 During Estrada's employment with the company, the

business was also known as Kennedy's Firestone and Kennedy's

Goodyear.

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as a mechanic (including some work on brakes) as needed when the shop was busy.

After he was honorably discharged from the Air Force, Estrada returned to Brawley in 1976 and resumed working for Kennedy's. In 1986, Estrada became an assistant manager at Kennedy's-a position he held until he retired in 2005 as a result of a non-work-related injury. **2** In the spring of 2024, he was diagnosed with mesothelioma, a disease where "90 percent" of the cases "are caused by ***asbestos*** dust inhalation." Mesothelioma is an "invariably fatal **[*3]** illness" with "no cure."

In June 2024, Plaintiffs sued Honda and more than a dozen other business entities, alleging injuries from design defect and failure to warn under theories of strict liability and negligence, as well as loss of consortium. By the time of trial in the winter of 2025, Honda was the only defendant.

B. The Evidence at Trial

Plaintiffs introduced evidence at trial in an effort to show Honda was a "contributing" cause of their injuries. Their theory was Estrada worked with ***asbestos***-containing "original equipment manufactured brakes" on Honda vehicles, and they asked the jury to hold Honda responsible only for "its portion" or "its piece" of the harm to them.

2 In his interrogatory responses, Estrada stated he went on

disability in 2005 after suffering an injury while at work at

Kennedy's. At trial, he admitted his interrogatory response was incorrect and he testified he injured his back in a jewelry store.

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1.Estrada's exposure to Honda brake products

Plaintiffs' expert on industrial hygiene opined that Estrada, who was not a certified mechanic, performed as many as

16,750 brake jobs during the course of his career at Kennedy's. **3** Based on Estrada's estimate that during the **[*4]** period between 1976 (when Estrada returned to Kennedy's after his military service) and 1994 (the time by which Honda had eliminated ***asbestos*** from its vehicles) he performed one to two brake jobs per month on Honda vehicles, Plaintiff's industrial hygienist testified Estrada performed between 216 and 432 brake jobs on Honda vehicles- making Honda's share of Estrada's total brake work during that time to be between 2.6 and 2.9 percent.

Estrada testified that during his tenure at Kennedy's he used original equipment manufacturer (OEM) brakes approximately 20 percent of the time when performing brake replacements, with the balance of the work being performed with aftermarket brake parts. Estrada told the jury he recalled using Honda OEM brakes when doing brake replacement work on Honda vehicles and he testified he ordered OEM brakes from a Honda dealership in Imperial, a town nine miles away from Brawley. According to Estrada, he never saw any ***asbestos*** hazard warnings on the Honda OEM brake products.

3 The total number of brake jobs was based on Estrada's

deposition testimony that he performed on average seven to eight brake jobs per week. Estrada's approximation was twice the estimate **[*5]** (three to four brake jobs per week) that he gave in his pre-deposition interrogatory responses. At trial, Estrada testified to doing less brake work during his career at Kennedy's than he had at his deposition and more than he had in his interrogatory responses, i.e., five to six brake jobs per week.

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Two of Estrada's former colleagues, Miguel Rodriguez (Rodriguez) and Randall Grasmick (Grasmick), also testified about his exposure to Honda brake products at Kennedy's.

Rodriguez, who was Estrada's supervisor, testified Estrada began work at the company as a commercial tire repairman but that

"was just a title because we did a little bit of everything, whatever was required." Because all of Kennedy's employees were "cross trained," Estrada could assist the mechanics "on brake jobs or whatever they needed." Although Rodriguez could not recall a specific car or a specific instance where Estrada performed brake work, he "kn[e]w" Estrada had performed such work.

Grasmick, who began work for the company in 1974 and served as its chief financial officer from 1990-2012, testified that because OEM brakes were more expensive than their aftermarket counterparts, the company stocked few OEM parts in **[*6]** its stores. Grasmick also stated that, although he visited the Brawley store four to five times each year, he never saw Estrada performing brake work on a Honda vehicle or on any other vehicle.

2. Design of Honda brake systems

Pursuant to Evidence Code section 776, **4** Plaintiffs called James Jongkind (Jongkind), Honda's corporate representative.

4 Evidence Code section 776, in pertinent part, provides: "A

party to the record of any civil action, or a person identified with such a party, may be called and examined as if under cross-examination by any adverse party at any time during the

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Plaintiffs showed Jongkind a letter Honda sent to the United States Environmental Protection Agency (EPA) in 1986 that commented on the agency's proposal to prohibit the manufacture of ***asbestos*** in certain products and to "phase-out" the use of ***asbestos*** in other products. In its letter, Honda urged the agency to set a timetable for any phase-out of ***asbestos***-containing products on in-use vehicles to account for "the necessary

lead[ ]time for developing and testing ***asbestos*** free parts to replace the current parts." The letter further explained: "[T]he engineering effort needed to provide ***asbestos*** free brake pads and shoes should include the re-design of other **[*7]** brake system parts in order to maintain the original brake system performance as the frictional characteristics of the non-***asbestos*** pads and shoes do not match those of the original parts. This could significantly increase the cost of brake repairs to these older vehicles and cause an adverse effect on vehicle safety due to the postponement of needed repairs."

Jongkind testified the design of Honda's brake assembly system in the 1970s was "designed to work with ***asbestos***-friction components": "it's a system, and so a system relies on components within the system that work together to achieve . . . their objective or their purpose." Beginning in the 1980s, Honda began redesigning its brake system to use non-***asbestos*** friction components; initially, the redesign work focused on "semimetallic" components before turning to components using "organic" materials. Jongkind explained that while the brakes themselves are designed by "third[ ]party suppliers[and] outside

presentation of evidence by the party calling the witness." (Evid. Code, § 776, subd. (a).)

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companies," the brake system as a whole was developed by Honda ("the components of a brake system are designed concurrently as you're developing that brake [system]"). **[*8]**

Jongkind additionally explained the redesign of the brake system was part of a larger process: "[U]sually, every four or five years, a model goes through a generation; so it's a complete revamp. So it's going to have . . . different body, different frame, different engine, [and] different brakes." When Plaintiffs' counsel asked whether the brake system in the 1980s "had to be redesigned to use the non[-]***asbestos***-friction component parts,"

Jongkind replied, "No, because a new model would be a different brake." When the trial court asked him to clarify whether Honda's brake system was redesigned to use non-***asbestos***-friction component parts, Jongkind stated the premise underlying the question was "possibly faulty" because it assumed the brake system was "redesign[ed] . . . and put . . . into the new vehicle"; in reality, Honda was "designing a new brake system" to go into a new model and "brake systems . . . get changed when a new model is developed," a process that takes "years." When

Plaintiffs' counsel inquired further and asked, "You have to design a new brake system to work with a non[-]***asbestos*** brake.

Fair?" Jongkind replied, "In some cases, yeah." On cross-examination, Jongkind testified **[*9]** Honda vehicles would "still operate safely and correctly if non-OEM aftermarket parts, such as brakes, [were] used instead of genuine Honda replacement parts."

At the conclusion of Jongkind's testimony, Plaintiffs rested without presenting expert testimony about the design or manufacture of Honda vehicles.

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C. Special Jury Instruction, Verdict, and Motion for New

Trial

As the trial neared its conclusion, Honda proposed the following special instruction: "[Honda] is not liable for

[Estrada's] exposure to ***asbestos*** from other companies' brake products used on Honda brand vehicles that [Honda] did not distribute or sell. This means that you cannot hold [Honda] responsible for any harm allegedly caused by replacement brake . . . products which [Honda] did not distribute or sell."

Plaintiffs objected to the instruction, the parties briefed the issue of liability for aftermarket replacements parts, and the trial court heard oral argument on the matter. Ultimately, the court instructed the jury as follows: "[Honda] is not liable for

[Estrada's] exposure to ***asbestos*** from other companies' brake products used on Honda brand vehicles that [Honda] did not distribute or sell."

After deliberating, the jury returned a defense verdict for Honda. By special verdict, the jury found Honda's vehicles were defectively designed; Honda failed to warn, did not retrofit the vehicles, and was otherwise negligent; but Honda's conduct was not a substantial factor in causing harm to Estrada.

Plaintiffs then moved for **[*10]** a new trial. In the main, they argued the trial court erred in giving the special instruction limiting Honda's liability to brake repair involving Honda OEM parts because the jury should have been allowed to consider

Estrada's exposure to ***asbestos*** from *all* brake work on Honda vehicles. Although Plaintiffs conceded there was "no smoking-gun statement," they maintained the evidence, particularly Honda's 1986 comment on the EPA's proposal and Jongkind's related testimony, "clearly" established that the braking systems

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on older Honda vehicles were *designed* to use ***asbestos*** parts and *required* ***asbestos*** replacements in order to function as intended.

Honda opposed the new trial motion. It argued there was no error because Jongkind did not testify that Honda had to redesign its brake systems to accommodate ***asbestos***-free components; rather, he "repeatedly explained that [Honda] did not retrofit the

old vehicles and simply developed new designs for new cars taking into account how best to make the entire braking system function while incorporating the new, non-***asbestos*** materials." After hearing oral argument on the matter, the trial court denied the motion.

II. DISCUSSION

Reversal is not required because **[*11]** the special jury instruction at issue was consistent with established law and the evidence at trial. Our Supreme Court held over a decade ago in *O'Neil v. Crane Co. (2012) 53 Cal.4th 335* that a defendant is liable only for the harm caused by ***asbestos***-containing products it puts in the stream of commerce; in other words, a defendant such as Honda is not liable for ***asbestos***-containing replacement products manufactured by others unless it required such products. Because the evidence here did not show that Honda required ***asbestos***-containing replacement products for its braking system, Honda was entitled to a special instruction limiting its liability to its OEM brake products containing ***asbestos***.

A. Standard of Review

"A party is entitled upon request to correct, nonargumentative instructions on every theory of the case

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advanced by him which is supported by substantial evidence."

(*Soule v. General Motors Corp. (1994) 8 Cal.4th 548, 572*.) It is

"improper to give an instruction which lacks support in the evidence, even if the instruction correctly states the law."

(*LeMons v. Regents of University of California (1978) 21 Cal.3d 869, 875*.) "The trial court's 'duty to instruct the jury is discharged if its instructions embrace all points of law necessary to a decision.' [Citation.] 'A party is not entitled to have the jury instructed in any particular fashion **[*12]** or phraseology, and may not complain if the court correctly gives the substance of the applicable law.' [Citation.]" (*Cristler v. Express MessengerSystems, Inc. (2009) 171 Cal.App.4th 72, 82*.) "The propriety of jury instructions is a question of law that we review de novo."

(*Ibid.*; accord, *Ruckman v. Ag-Wise Enterprises, Inc. (2025) 117 Cal.App.5th 571, 585*.)

B. The Special Jury Instruction Was Appropriately Given

O'Neil,supra, 53 Cal.4th 335 decided when a product manufacturer was "liable for injuries caused by . . . replacement parts that were made by others and used in conjunction with the defendant's product." (*Id. at 342*.) The Supreme Court held "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." (*Ibid*.)

Importantly for our purposes, the plaintiffs in *O'Neil* had argued the "defendants' products were defective because they

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were 'designed to be used' with ***asbestos***-containing components." **5**

(*O'Neil, supra, 53 Cal.4th at 350*.) Our highest court rejected that argument and explained that "strict products liability in California has always been premised on harm caused by deficiencies in the defendant's own product." (*Id. at 348*; see also *id. at 342-343* ["California law has long **[*13]** provided that manufacturers, distributors, and retailers have a duty to ensure the safety of their products and will be held strictly liable for injuries caused by a defect in their products. Yet, we have never held that these responsibilities extend to preventing injuries caused by other products that might foreseeably be used in conjunction with a defendant's product. Nor have we[ ]held that manufacturers must warn about potential hazards in

5 The defendants in *O'Neil* manufactured valves and pumps

used in Navy warships. (*O'Neil, supra, 53 Cal.4th at 342*.) The evidence was that "Navy specifications required the use of ***asbestos***-containing insulation on all external surfaces of the steam propulsion systems. ***Asbestos*** insulation was also used as an internal sealant within gaskets and other components of the propulsion system. The Navy preferred ***asbestos*** over other types of insulating materials because it was lightweight, strong, and effective." (*Id. at 343*.) Although the defendants' "products were designed to meet the Navy's specifications" there was "no evidence that defendants' products required ***asbestos***-containing gaskets or packing in order to function. [The p]laintiffs' assertion to the contrary [wa]s belied by evidence that defendants **[*14]** made some pumps and valves without ***asbestos***-containing parts." (*Id. at 350*.)

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replacement parts made by others when, as here, the dangerous feature of these parts was not integral to the product's design"].)

The *O'Neil* court did observe in a footnote, however, that 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." (*O'Neil, supra, 53 Cal.4th at 350, fn. 6*.) But this stronger (though not dispositive) argument, was not available based on the facts. The *O'Neil* court explained "there was no evidence that defendants' products *required* ***asbestos***-containing gaskets or packing in order to function" and "[a]part from the Navy's specifications, no evidence showed that the design of defendants' products required the **[*15]** use of ***asbestos*** components, and their mere compatibility for use with such components is not enough to render them defective." (*Id. at 350*, fn. omitted.)

With the *O'Neil* court's guidance in mind, the trial court here did not err in giving the special jury instruction it did. Even understanding *O'Neil*'s "stronger argument . . . might be made" observations as a qualification of its holding that would allow for liability, the instruction given here was still appropriate because it did not misstate the law or foreclose a viable theory of liability given the evidence presented at trial. There was no substantial

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evidence Honda vehicles "required" ***asbestos***-containing brake materials in order to function properly.

Honda's 1986 letter to the EPA, for instance, did not state that the brake system for in-use Honda vehicles required ***asbestos***-containing parts or that a shift to non-***asbestos*** containing parts would reduce performance for in-use vehicles and thereby pose a safety risk. Honda stated only that safety might be compromised by the increased cost of non-***asbestos*** brake parts, which might cause owners to "postpon[e] . . . needed repairs." Similarly, Jongkind never stated brake systems on older model Honda vehicles **[*16]** had to be redesigned to accommodate non-***asbestos***-containing parts. To the contrary, he testified that

Honda's brake system in the 1980s did not have to be redesigned to use non-***asbestos*** parts. In addition, he testified Honda vehicles were not redesigned or retrofitted to use non-***asbestos*** brake linings; rather, he testified repeatedly that Honda brake systems were redesigned as a matter of course every four or five years when it was time to introduce a new model. Based on this evidentiary record, it was therefore accurate to inform the jury that Honda was not liable for Estrada's exposure to ***asbestos*** "from other companies' brake products used on Honda brand vehicles that [Honda] did not distribute or sell."

Our holding in this case is consistent with the holding in an analogous case: *Petitpas v. Ford Motor Co. (2017) 13 Cal.App.5th 261*. In that case, the plaintiffs Marline and Joseph Petitpas claimed Marline, who was diagnosed with mesothelioma, was directly exposed to ***asbestos***-containing dust when she visited Joseph at his job at a service station working on Ford vehicles and indirectly exposed at home by ***asbestos***-containing dust from Joseph's work-clothes. (*Id. at 267*.) At Ford's request, the trial

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court gave a special instruction based on *O'Neil* that **[*17]** stated:

"'Ford Motor Company is not liable for Marline Petitpas' exposure to ***asbestos*** that comes from other companies' brakes, clutches[,] or gasket products installed on Ford vehicles by parties other than Ford.'" (*Id*. at 291.) The jury found Marline was

exposed to ***asbestos*** from Ford original brakes, gaskets, or clutches, but that exposure was not a substantial factor in contributing to her risk of mesothelioma. (*Id*. at 284.)

On appeal, the plaintiffs argued the special instruction in that case was erroneous because Ford cars were designed with braking systems intended to be used with ***asbestos*** brake linings, and, accordingly, Ford was liable for any injuries caused by Marline's exposure to ***asbestos*** replacement parts. (*Petitpas, supra, 13 Cal.App.5th at 292 & fn. 14*.) The Court of Appeal rejected that argument because "Plaintiffs did not present any evidence to show that cars originally equipped with ***asbestos***-containing brakes were unable to use non[-]***asbestos*** brake parts. No evidence suggested that Ford-designed brake drums or disks were incompatible with lining materials that did not contain ***asbestos***. Although the evidence indicated that in the 1960's and much of the 1970's replaceable brake linings almost universally contained **[*18]** ***asbestos***, and therefore the available replacement brake linings contained ***asbestos***, mere compatibility with such parts does not render a product defective. Other than presenting evidence that replacement brake linings typically contained ***asbestos*** at the time, plaintiffs presented no evidence that the very design of Ford cars from that time period *required* brakes that contained ***asbestos***. Plaintiffs therefore have not demonstrated that Ford's design falls outside the scope of *O'Neil*'s central holding that a manufacturer cannot be held liable for

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harm caused by another manufacturer's product." (*Id. at 294-295*; see also *Johnson v. ArvinMeritor, Inc. (2017) 9 Cal.App.5th 234, 248* ["As with the products in *O'Neil*, there is no evidence that the brake assemblies *required* ***asbestos***-containing materials in order to function generally. [Citation.] There is no evidence that any alternatives to ***asbestos***-containing friction materials were even available for automotive use at the relevant

times. . . . [¶] . . . Were we to accept Johnson's argument, by logical extension every vehicle produced by any manufacturer during the period before non[-]***asbestos*** friction materials became generally available would be considered a defective product simply by virtue of incorporation of, or specification **[*19]** of, ***asbestos***-containing materials in third party component parts"].) The factual scenario that led to the holding in *Petitpas* is analogous to the evidentiary record here and leads to the same place. There was no error in giving the special instruction.

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DISPOSITION

The judgment is affirmed. Honda is awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

HOFFSTADT, P. J.

MOOR, J.

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