

K&LNG Alert

MARCH 2006

Toxic Tort

Hoeffler v. Rockwell Automation: Plaintiffs' Burden of Proving Causation in California Asbestos Cases

By Chris Michael Temple and James B. Insko¹

INTRODUCTION

The California Court of Appeal recently issued its unreported opinion in *Hoeffler v. Rockwell Automation, Inc.*² In affirming a nearly \$3 million jury award to a deceased mesothelioma claimant, the *Hoeffler* decision may be read to lighten plaintiff's burden to prove that asbestos actually released from a defendant's product was a substantial factor in causing a risk of plaintiff's disease. As such, the *Hoeffler* decision would be a departure from long-standing California law requiring fundamental proof of legal causation.

With the evolving treatment of, or perhaps more appropriately the potential disregard for, the plaintiffs' burden of proving causation, defendants embroiled in mass asbestos litigation must remain as vigilant as ever in all aspects of asbestos claims management and litigation in California.

THE HOFFLER CASE: MODIFYING THE RUTHERFORD TEST FOR CAUSATION

In *Hoeffler*, the Court of Appeal interpreted the two-part test for legal causation set forth in *Rutherford v. Owens-Illinois*,³ the seminal California Supreme

Court decision on proof of legal causation in asbestos bodily injury cases. Nearly ten years ago, the state supreme court laid out its two-part test for causation, holding:

In the context of a cause of action for asbestos-related latent injuries, the plaintiff must first establish some *threshold exposure* to the defendant's defective asbestos-containing products, and must further establish in reasonable medical probability that a particular exposure or series of exposures was a "legal cause" of his injury, i.e., a *substantial factor* in bringing about the injury.⁴

In *Hoeffler*, a mesothelioma claimant alleged exposure to asbestos from the use and handling of numerous products manufactured by several defendants, including among others, entities for which Rockwell Automation, Inc. ("Rockwell") was responsible. Plaintiff claimed that his disease was caused by his exposure to remnants of Rockwell's electrical equipment products and plastic molded parts, which were completely pulverized as a result of extraordinary catastrophic events.⁵ Rockwell

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² *Hoeffler v. Rockwell Automation, Inc.*, Nos. A107353, A107964, 2006 WL 185479 (Cal. App., 1st Dist., Jan. 26, 2006); 2006 Cal. App. Unpub. LEXIS 701 (Cal. App., 1st Dist., Jan. 26, 2006). Pursuant to California Rule of Court 977(a), courts and parties are prohibited from citing or relying on opinions not certified for publication or ordered published as binding authority. Nonetheless, this paper examines this recent opinion as it may ultimately be relied upon to reflect a modification of the way California law deals with proof of causation in asbestos cases.

³ *Rutherford v. Owens-Illinois, Inc.*, 16 Cal.4th 953, 941 P.2d 1203 (CA 1997).

⁴ *Rutherford*, 16 Cal.4th at 982. (*emphasis added*) (*fn. omitted*).

was the only defendant remaining at trial and the jury awarded plaintiff approximately \$3 million in damages, including \$2.4 million in non-economic damages.

For purposes of the *Hoeffler* case, Rockwell conceded that its products at issue would have included plastic-like components engineered from asbestos-reinforced phenolic molding compounds.⁶ Accordingly, Rockwell only challenged, and the *Hoeffler* court only narrowly considered, the sufficiency of the evidence under *Rutherford*, that is, whether exposure to asbestos from defendant's product was, in reasonable medical probability, a substantial factor in bringing about Mr. Hoeffler's risk of mesothelioma. Rockwell argued that the plaintiff could not, as a matter of law, satisfy the substantial factor requirement because the plaintiff did not present any expert testimony quantifying or characterizing the plaintiff's exposure to asbestos from its products at issue. As such, Rockwell argued that plaintiff could not meet his burden by a "reasonable medical probability" or otherwise.

The *Rutherford* court contemplated the "wide variation in form and toxicity of asbestos products,"⁷ and further suggested that in evaluating the limits of a substantial factor, courts should consider the length, frequency, proximity and intensity of a claimant's exposure, the peculiar properties of the

individual product, and any alternative sources of a claimant's asbestos exposure.⁸ While the plaintiff in *Hoeffler* did present evidence with respect to Mr. Hoeffler's exposure to defendant's asbestos-containing products, Rockwell argued that there was no competent evidence of plaintiff's actual exposure to respirable asbestos generated from such products.

On the issue of exposure to dangerous asbestos fibers – as opposed to mere product exposure – plaintiff relied on two essential facts: first, that some unidentified quantity or form of asbestos fiber could, under the unusual circumstances of the case, be liberated from the defendant's products; and second, that exposure to only one single asbestos fiber from a defendant's product is a sufficient legal cause of his injury.⁹

Applying the *Rutherford* tests, the *Hoeffler* court focused extensively on the length, frequency, proximity and intensity of *Hoeffler's* exposures to the defendant's products. As for alleged exposure to harmful asbestos fibers from those products, the court references only two bits of evidence: (1) that plaintiff's expert testified that "crushed or pulverized electrical components would emit asbestos fibers," and (2) defendant's expert "agreed that pulverized electrical components would emit fibers."¹⁰ The court cited no evidence of the amount of fibers, the size of the fibers, whether the fibers

⁵ The *Hoeffler* decision is based primarily on a highly unusual set of circumstances where a Navy ship's gyroscope spinning at tremendous speeds accidentally loosened from its mooring and caromed pinball-style from wall-to-wall in a small cabin and pulverized everything in its path, including electrical equipment manufactured by defendants. It is rare, indeed, for electrical equipment to be "pulverized" in such unusual circumstances.

⁶ *Hoeffler*, 2006 WL 185479 at *2, 2006 Cal. App. Unpub. LEXIS 701 at *7. It should be noted that only certain—not all—phenolic molding compound formulas included asbestos fibers as a reinforcing material in electrical distribution products. It is unfair to suggest that asbestos can generally be found in all electrical products or types of electrical equipment manufactured by a wide range of companies in any given time frame. Moreover, asbestos fibers in the finished products molded from those limited formulas are physically and chemically bound in the plastic-like molded product and generally do not release asbestos fibers of a harmful or hazardous nature. See, e.g., Fiona Mowat, et al., *Occupational Exposure to Airborne Asbestos from Phenolic Molding Material (Bakelite) During Sanding, Drilling, and Related Activities*, J. OCCUPATIONAL AND ENVTL. HYGIENE, Oct. 2005 at 2:497-507.

⁷ *Rutherford*, 16 Cal.4th at 972.

⁸ *Rutherford*, 16 Cal.4th at 975.

⁹ *Hoeffler*, 2006 WL 185479 at *6, 2006 Cal. App. Unpub. LEXIS 701 at *19. Inexplicably, the *Hoeffler* court did not address or decide whether plaintiff's "single asbestos fiber theory" ran afoul of the *Rutherford* court's admonition that a substantial factor should not include exposures that are "infinitesimal" or "theoretical." See *Rutherford*, 16 Cal.4th at 969 (citing *People v. Caldwell*, 36 Cal.3d 210, 220, 681 P.2d 274 (1984)).

¹⁰ *Hoeffler*, 2006 WL 185479 at *6, 2006 Cal. App. Unpub. LEXIS 701 at *18-19.

were of a nature that they could possibly be inhaled by plaintiff, or the potential hazards or risks posed by the fibers. Certainly, nothing in the court's opinion refutes Rockwell's core contention that plaintiff utterly failed to quantify or to characterize the nature of the alleged asbestos fiber from defendant's product.¹¹

Notwithstanding the dearth of evidence demonstrating any potential hazard or risk of injury associated with actual "fibers" that "would have been released" from defendant's products under the unusual circumstances of the *Hoefler* case, the court ultimately held "there was substantial evidence from which the jury could conclude that exposure to Rockwell's asbestos-containing products was a substantial factor in contribution to the aggregate dose of asbestos...."¹²

LESSONS LEARNED: HOLD PLAINTIFFS TO THE RUTHERFORD REQUIREMENTS

Perhaps unintentionally, the *Hoefler* court overlooked *Rutherford's* focus on the frequency, duration, intensity, or fiber type of the exposure to harmful airborne asbestos and focused instead on mere exposure to an asbestos-containing product. If the *Hoefler* court's alteration of the *Rutherford* result was intended, the second prong of the *Rutherford* test was erroneously disregarded.

Defendants that manufactured, sold or supplied products that contained any asbestos, regardless of quantity or scientific improbability of fiber release, should heed the potential consequences of the court's approach in *Hoefler*. The plaintiffs' bar is increasingly targeting what have historically been peripheral defendants whose products are encapsulated and any asbestos constituent is inextricably bound in a physical and chemical matrix that suppresses the release of hazardous fibers in all but the most extreme circumstances.

Opinions like *Hoefler* may aid plaintiffs' counsel in their efforts to obtain verdicts against companies — merely because their products contained asbestos — not because their products released respirable asbestos fibers or because injured plaintiffs actually breathed asbestos fibers released from those products. Such a conclusion, however, would be inconsistent with California law and the fundamental causation requirements supporting product liability claims in the United States.

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¹¹ In contrast, in *Jones v. John Crane, Inc.*, 132 Cal. App. 4th 990 (1995), the California Court of Appeal at least referenced plaintiff's presentation of evidence quantifying and characterizing the nature of the alleged asbestos fiber released from John Crane's packing and gasket materials.

¹² *Hoefler*, 2006 WL 185479 at *6, 2006 Cal. App. Unpub. LEXIS 701 at *17 (citing *Rutherford*, 16 Cal.4th at 976-977).

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