Case No. **B219366**

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

DENNIS H. WOODARD and MYRA J. WOODARD,

Plaintiffs and Appellants,

vs.

CRANE CO.,

Defendant and Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY, CASE NO. BC387774, HON. JANE JOHNSON, JUDGE

AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANT AND RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Articles, Texts and Miscellaneous

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INTRODUCTION

A. Importance of Issue

The Civil Justice Association of California ("CJAC" or "amicus") welcomes the opportunity to address the important legal issue this case presents[1] – *viz.*, Should component parts manufacturers be liable for failure to warn when the component is not inherently dangerous and the manufacturer had no role in its end design, even if it was foreseeable the component could, once outside the manufacturer's control, be combined with other products that are defective and cause consumer injury?

This general query as to the scope and application of the "component parts" defense in products liability law is occasioned by a specific and recurring litigation fact pattern: a plaintiff contracts mesothelioma from working many years ago in the Navy on ships whose boiler systems contained valves or pumps (i.e., "component parts")

[1] By separate application accompanying the lodging of this brief, CJAC asks the court's permission that the brief be accepted for filing.

manufactured by private companies pursuant to the Navy's specifications. These valves and pumps required periodic packing and replacement of gaskets supplied by others that could conceivably, but not necessarily, contain asbestos, a raw material causing injury to plaintiffs exposed to it. Those servicemen or private contractors who contract mesothelioma from exposure to asbestos when repairing, removing or replacing packing or gaskets connected to the valves cannot sue the Navy or Department of Defense as the designer of the ship's boiler systems because of sovereign immunity, so they turn their sights on component part manufacturers – those who made or supplied parts to the Navy pursuant to its specifications. Though some of the component parts, especially valves and pumps, may have originally contained asbestos packing or gaskets per the Navy's specifications, by the time plaintiffs were exposed to asbestos dust from working on or around the valves that were being repaired or refitted with new asbestos packing or gaskets, the original asbestos materials were long since replaced by material from other manufacturers.

Not surprisingly, courts nationally and in California have split over whether the manufacturers of the component part valves and pumps should be liable in damages to those who got mesothelioma from breathing asbestos dust from materials supplied by manufacturers other than the makers of the valves and pumps. Our state supreme court has granted review in a pending case, *O'Neil v. Crane Co.*, S177401, that may provide useful, if not definitive, future guidance to courts and litigants in California. *O'Neil* stands in stark contrast to *Taylor v. Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564, 571, which holds that "California law impose[s] no duty on [manufacturers] to warn of the hazards inherent in defective products manufactured

or supplied by third parties." *Taylor* is the lynch-pin of the trial court's judgment notwithstanding the verdict in this case, and is consistent with three other directly on point appellate opinions – *Merill v. Leslie Controls, Inc.* (2009) 179 Cal.App.4th 262, review granted February 3, 2010, S178957; *Walton v. William Powell* (2010) 183 Cal.App.4th 1470; review granted June 30, 2010; and *Hall v. Warren Pumps, LLC*, 2010 WL 528489, not officially published.

The importance of the issue animating all these opinions cannot be gainsaid. As one commentator remarked,

> Resolution of this issue of products liability law is important for several reasons. Most notably, the holding of *Taylor* closes off an entire theory of liability for asbestos plaintiffs, while the holding of *O'Neil* provides plaintiffs with an expanded theory of liability. Resolution of this conflict, therefore, is not merely an intellectual exercise. It will have a significant effect on asbestos cases in California.
>
> Furthermore, the legal issues considered by *Taylor* and *O'Neil* extend beyond pump-and-valve cases. The rule that is ultimately established will apply to all cases in which plaintiffs allege exposure to asbestos through the handling of replacement parts. In particular, the rule will cover the category of asbestos matters known as friction cases, in which the claimed exposure relates to the removal and replacement of brake pads and clutch pads on vehicles. If the reasoning and holding of *Taylor* prevail, no longer will plaintiffs be able

> to argue that vehicle manufacturers are strictly liable for injuries caused by asbestos-containing brake pads and clutch pads that were installed on vehicles long after the vehicles were manufactured. By contrast, plaintiffs will vigorously pursue such a theory if the ruling set forth in *O'Neil* carries the day.[2]

B. Interest of Amicus

CJAC is a non-profit organization whose members are businesses, local government groups and professional associations. Our principal purpose is to educate the public about ways to make our civil justice system more fair, certain, and economical. Toward this end, CJAC regularly petitions the government for redress when it comes to the scope and application of laws determining who gets paid, how much and by whom when certain conduct occasions injury to others.[3] This is just that kind of case.

CJAC is interested in this case, not only because it can help resolve the conflict between *O'Neil* and the four opinions that disagree with it on the ambit of the component parts doctrine, but because "[a]s products liability doctrine has developed, the primary defenses available to component part and raw materials suppliers have

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[2] Daniel L. Martens, *The Court of Appeal Splits on Asbestos Liability Issues* (November 2009) 32 *LOS ANGELES LAWYER* 10, 13-14.

[3] See, e.g., opinions addressing issues of product liability and asbestos, some of which are cited by the parties in their analyses of this case: *McCann v. Foster Wheeler LLC* (2010) 48 Cal.4th 68; *Guimei v. General Elec. Co.* (2009) 172 Cal.App.4th 689; *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655; *Wilson v. John Crane, Inc.* (2000) 81 Cal.App.4th 847; *Carlin v. Superior Court* (1996) 13 Cal.4th 1104; *Peterson v. Superior Court* (1995) 10 Cal.4th 1185; and *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539.

been the 'component part' and 'sophisticated purchaser' doctrines."[4] Narrowly defining the "component parts" doctrine to render it inapplicable in many if not most situations, as the *O'Neil* opinion does and appellants would have this court do, cannot help but foster more litigation over who must pay for asbestos-related injuries with all its accompanying detriment to the administration of justice:

> In contrast to those states that have worked to improve the asbestos and toxic tort litigation climate, . . . asbestos litigation appears to be increasing in a few jurisdictions. California is perhaps the best example. Judges in California have acknowledged the ever-increasing burden placed on the judicial system by the state's asbestos docket. For example, in 2004 one San Francisco Superior Court judge stated that asbestos cases take up twenty-five percent of the court's docket. Another judge noted that asbestos cases were a "growing percentage" of the court's ever-increasing caseload and that they take up a large share of the court's scarce resources.[5]

Nationally, what the Supreme Court not so long ago recognized as an "elephantine mass of asbestos cases"[6] has since mushroomed to further burden businesses sued and courts that must decide the cases. According to the Rand Institute for Civil Justice, a decade ago more than 600,000 people had filed asbestos-

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[4] James D. Kerouac, *A Critical Analyses of the Biomaterials Access Assurance Act of 1998 as Federal Tort Reform Policy* (2001) 7 *B.U.J. SCI. & TECH. L.*327, 343.

[5] Mark A. Behrens, *What's New in Asbestos Litigation*? (2009) 28 *REV. LITIG.* 501, 549 [internal citations omitted].

[6] *Ortiz v. Fibreboard Corp.* (1999) 527 U.S. 815, 821.

related injury claims, with annual filings rising sharply near the end of that period.[7] At that time, more than 6,000 companies had been named as defendants and close to 60 (now estimated to have grown to 85)[8] had filed for bankruptcy due to the lawsuits. (Caroll, *supra* at vii.) "Estimates of the number of people who will file claims in the future—and the costs of those claims—vary widely, but they are all extremely high. All accounts agree that, at best, only about half the final number of claimants have come forward. At worst, only one-fifth of all claimants have filed claims to date. Estimates of the total costs of all claims range from $200 to $265 billion." (*Id.*)

The discrepancy in estimates about ultimate total costs is attributable to uncertainty about the state of the law concerning compensation for asbestos-related injuries, including whether defenses like the "components part" doctrine at play in this case are available to provide useful guidance to businesses and their insurers about how to make and sell products without incurring liability to those injured by them. Thus, when it comes to asbestos litigation, "[t]he uncertainty of how remaining claims may be resolved, how many more may ultimately be filed, what companies may be targeted, and at what cost, casts a pall over the finances of thousands and possibly tens of thousands of American businesses. The cost of this unbridled litigation diverts capital from productive purposes, cutting investment and jobs. Uncertainty about how future claims may impact their finances has made it more difficult for affected companies to raise capital and attract new investment, driving stock prices

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[7] Stephen J. Caroll, Deborah R. Hensler, et al., *ASBESTOS LITIGATION COSTS AND COMPENSATION: AN INTERIM REPORT* (Rand Institute for Civil Justice, 2002), p. vi.

[8] Martha Neil, *Backing Away from the Abyss*, *A.B.A. J.*, Sept. 2006, pp. 26, 29.

down and borrowing costs up."[9]

It is in the context of this asbestos-related litigation "crisis" that the "component parts" defense compels the court's attention and considered judgment. *Amicus* believes this case presents an opportunity to clarify the contours of the "component parts" defense, and do so in a way that furthers fairness, certainty and economy. We confine our brief to a discussion of the "law,"[10] relying only on facts that appear from the briefs of the parties to be undisputed.

SUMMARY OF ARGUMENT

The component manufacturer of a nondefective part made to the specification of the assembler should not be liable for injuries occasioned by the final product when the claim of the injured party is failure to warn. It is unfair and inefficient to impose liability upon a component part maker for defects in the final product over which it has no control. Component parts makers cannot be expected to determine the relative dangers of various products they do not have a chance to inspect or evaluate and over which they have no control as to the future combining of their components with defective materials made by others.

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[9] Mark A. Behrens, *supra,* 28 *REV. LITIG.* at 549, fn. 253, citing George Scott Christian & Dale Craymer, *Texas Asbestos Litigation Reform: A Model for the States* (2003) 44 *S. TEX. L. REV.* 981, 998.

[10] "The prophesies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Oliver Wendell Holmes, *The Path of the Law* (1897) in *THE MIND AND FAITH OF JUSTICE HOLMES* (Max Lerner ed. 1943), p. 75.

California should adopt section 5 of the *RESTATEMENT (THIRD) PRODUCTS LIABILITY*, which states that the manufacturer of a component part is not liable unless the component part "is defective in itself" or the seller or distributor of the component "substantially participates in the integration of the component into the design of the product." To hold otherwise and impose liability on the component parts manufacturer when its product is combined by others, over which it has no control, with defective material causing consumer injury is senseless and unsound public policy. Component part makers would be forced to retain private experts to review an assembler's plans and evaluate the soundness of the proposed use of the manufacturer's parts. The added cost of such a procedure, both financially and in terms of stifled innovation, outweighs the public benefit of giving plaintiffs an additional pocket to look to for recovery. It's best to leave the liability for design defects where it belongs – with the originator and implementer of the design –the assembler of the finished product.

ANALYSIS

I. THE COMPONENT MANUFACTURER OF A NONDEFECTIVE PART MADE TO THE SPECIFICATION OF THE ASSEMBLER SHOULD NOT BE LIABLE FOR INJURIES OCCASIONED BY THE FINAL PRODUCT WHEN THE CLAIM OF THE INJURED PARTY IS "FAILURE TO WARN" ABOUT DANGERS FROM USE OF THE COMPONENT WITH THE PRODUCT OF ANOTHER.

A. Defendant's "Component Part" Valves are not Defective for Lack of Warning.

"[T]he manufacturer of a product component . . . is not liable for injuries caused by the finished product unless it appears that the component itself was 'defective' when it left the manufacturer." (*Tellez–Cordova v. Campbell–Hausfeld/Scott*

Fetzger Co. (2004) 129 Cal.App.4th 577, 581.) That doctrine, known as the "component parts" defense, "rests on a line of cases holding an entity supplying a . . . component part is not strictly liable for defects in the final product over which it had no control." (See, e.g., *Bay Summit Community Assn. v. Shell Oil Co.* (1996) 51 Cal.App.4th 762, 772.) That is the situation here. Defendant Crane made its valves according to design specifications of the Navy. According to *THE RESTATEMENT THIRD TORTS, PRODUCTS LIABILITY*: "A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable within the meaning of Subsection (b)." (*REST.3D TORTS, PRODUCTS LIABILITY*, § 5, com. e, p. 135.) The mere fact that respondents followed Navy specifications when producing their products does not preclude them from invoking the component parts doctrine.

Policy reasons supporting the component parts defense are well-recognized and well-grounded. First, to hold otherwise would require suppliers "to retain experts in a huge variety of areas in order to determine the possible risks associated with each potential use" of the component part. Second, "finished product manufacturers know exactly what they intend to do with a component . . . and therefore are in a better position to guarantee that the component . . . is suitable for their particular applications." (*Springmeyer v. Ford Motor Co.* (1998) 60 Cal.App.4th 1541, 1554.)

Under California law, strict products liability has been invoked for three types of product defects: (1) manufacturing defects, (2) design defects, and (3) "warning defects." (*Anderson v. Owens–Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 995; (*Anderson*).) In this case, only "warning defects" are at issue: plaintiffs contend a

warning was required to accompany defendant's component part valves because it was reasonably foreseeable it would be necessary for the Navy in the repair of its boiler steamship systems to "pack" or "repack" these component parts with harmful asbestos and occasionally replace sealing gaskets for them with ones containing asbestos.[11]

The "warning defect" theory is "actually rooted in negligence" to a greater degree than are the manufacturing and design defect theories. Whereas "manufacturing" and "design" defects are evaluated solely with reference to the product, "warning" defects are measured by the product defendant's *conduct* – the "defect" relates to a "failure extraneous to the product itself." (*Anderson, supra*, 53 Cal.3d at 1002; see *Carlin v. Superior Court*, *supra*, 13 Cal.4th 1104, 1112-1113.)

But it is undisputed in this case that defendant did not require its valves to be packed with, nor replacement gaskets for them to be made of, asbestos. The uncontradicted testimony at trial was that neither the Navy nor Crane required use of asbestos in gaskets or packing, but in fact allowed "metal on metal" by way of gaskets or materials, other than asbestos, to be used for packing.[12] Though some valves made

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[11] Appellants' Opening Brief (AOB), p. 25-34.

[12] AOB, p. 18 ("Captain Moore testified that the Navy had specifications to "guide the procurement of material . . . [and] that in many cases . . . there were multiple specifications that provided manufacturers with a range of materials and . . . the manufacturer could select the materials it wanted to use."). Respondent's Brief (RB), p. 12 ("The evidence at trial was clear the Crane Co. valves at issue were 'asbestos-neutral' in design: They did not need to be insulated at all. To the extent they were, asbestos-containing or non-asbestos-containing materials could have been used." ¶ "Although some valves require gasket or packing sealing devices, those products did not need to be asbestos-containing. Some gaskets contained asbestos; some did not. Gaskets were also made from rubber, vegetable fibers, cotton, and metal, among other things."). *Id.* at 13.

by defendants may have originally contained asbestos gaskets or packing as specified by the Navy, by the time plaintiff was exposed to any asbestos from working on them that original asbestos was long gone and had been replaced by other asbestos suppliers or gasket makers. Hence it cannot credibly be claimed defendant's valves inherently possessed "warning defects."

Other sound reasons militate against imposing liability on defendant for failure to warn that use of asbestos materials supplied by others in the packing or replacement of gaskets for its valves would render them harmful to persons exposed to asbestos dust as a result: (1) "foreseeability" is not in itself a sensible standard for invoking the duty to warn; and (2) the defendant component parts maker cannot in fairness be said to fit within the "stream of commerce" or "chain of distribution" rationale for which strict product liability attaches.

B. A Duty to Warn Should Not Be Imposed Merely Because it Is "Foreseeable" That the Intended Use of a Product Will Expose Users or Consumers to a Risk Created Solely by its Combined Use with Another's Product.

A component part manufacturer who has no role in designing the finished product and who supplies a nondefective component part should not and, under California law, is not liable for the defective product. (*Lee v. Electric Motor Division* (1985) 169 Cal.App.3d 375, 385–387.) Here, of course, the finished product is the Navy's boiler system constructed on the ship pursuant to the Navy's design specifications where plaintiff served to repair and clean component valves manufactured by defendant for use in the overall boiler system. "A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the

product, is not liable. . ..." (*Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 841, quoting *REST.3D TORTS*, § 5, com. e, p. 135.) Thus, for instance, the manufacturer of silicon could not be held liable for a design defect in silicon breast implants. (*Artiglio, supra,* 61 Cal.App.4th at 841.); and the manufacturer of a motor could not be liable when a meat grinding machine containing the component motor injured the plaintiff. (*Lee, supra,* 169 Cal.App.3d at 387.)

"[T]he alleged foreseeability of the risk of the finished product is irrelevant to determining the liability of the component part manufacturer because imposing such a duty would force the supplier to retain an expert in every finished product manufacturer's line of business and second-guess the finished product manufacturer whenever any of its employees received any information about any potential problems." (*Artiglio, supra,* 61 Cal.App.4th at 838–839, quoting *Kealoha v. E.I. Du Pont de Nemours & Co.* (D.Hawai'i 1994) 844 F.Supp. 590, 594.)

While important, "foreseeability alone is not sufficient to create an independent tort duty." (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 552.) "[F]oreseeability is not synonymous with duty; nor is it a substitute." (*Ibid.*) Instead, whether a defendant may be held to owe a duty of care depends not only upon the foreseeability of the risk, but also upon a weighing of the policy considerations that favor or oppose imposition of liability. (*Ibid.*) Even if an injury is foreseeable, "policy reasons may dictate a cause of action should not be sanctioned no matter how foreseeable the risk." (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 274, fn. omitted; see also *Thing v. La Chusa* (1989) 48 Cal.3d 644, 668 ["there are clear judicial days on which a court can foresee forever and thus determine liability but none on which that foresight alone provides

a socially and judicially acceptable limit on recovery of damages for that injury"].) Moreover, in determining the existence of duty, the court's task "is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 572–573, fn. 6; emphasis original.)

A growing number of jurisdictions, consistent with the reasoning of *Taylor* and its cognates, reject foreseeability as the test for imposing liability on a component part manufacturer when the component is combined with the product of another manufacturer (outside the control of the component part manufacturer) to cause consumer injury. In *Childress v. Gresen Manufacturing Co.* (6th Cir.1989) 888 F.2d 45 (applying Michigan law), for example, the district court determined that, where a component part became "potentially dangerous in its ultimate use," the mere fact that the manufacturer of the component part had knowledge of the design of the final product was not a sufficient reason to assign responsibility to the manufacturer of the component part. *Id.* at 49; *see* RESTATEMENT (SECOND) OF TORTS § 402A, cmt. p (1965) ("[T]he manufacturer of pigiron, which is capable of a wide variety of uses, is not so likely to be held to strict liability when it turns out to be unsuitable for the child's tricycle into which it is finally made by a remote buyer."); *Crossfield v. Quality Control Equip. Co.* (8th Cir.1993) 1 F.3d 701, 703-04 (finding no liability under Missouri law on part of supplier of non-defective chain used by manufacturer as component of machine that malfunctioned); *see, e.g., Lee, supra,* 169 Cal.App.3d 375.

Further, in *Petrucelli v. Bohringer and Ratzinger* (3rd Cir. 1995) 46 F.3d 1298, the appellate court was faced with deciding whether a worker injured by a discharge conveyor while using a recycling machine could recover in strict liability against the manufacturer of the machine and the manufacturer of a rotor crusher that was a component part of the machine. In common-sense language pertinent to the issue presented here, the opinion explained:

> [T]he question before us is whether it is reasonably *foreseeable* to a component manufacturer that failure to affix warning devices to its product would lead to an injury caused by another component part, manufactured by another company, and assembled into a completed product by someone other than the initial component manufacturer. We conclude that [defendant] could not be expected to foresee that failure to affix alarms or bells on the rotor crusher would lead to someone being injured by the discharge conveyor, another component part of the recycling machine. Thus, we do not accept [plaintiff's] argument that [defendant] had a duty to warn about the dangers of rotor crusher. Therefore, [plaintiff] has failed to prove the rotor crusher was defective for failure to warn of possible injury.

(46 F.3d at 1309; emphasis added.) See also *Woods v. Graham Engineering Corp.* (Ill. 1989) 539 N.E.2d 316, 319 ("The obligation that generates the duty to avoid injury to another which is reasonably foreseeable does not . . . extend to the anticipation of how manufactured components not in and of themselves dangerous or defective can

become potentially dangerous dependent upon the nature of their integration into a unit designed, assembled, installed, and sold by another."); and *Loos v. American Energy Savers, Inc.* (Ill. 1988) 522 N.E.2d 841, 845 ("A component part manufacturer is not obligated to anticipate how a nondangerous part may become unreasonably dangerous as used in the final assembly.").

C. Defendant Should Not be Strictly Liable for "Failure to Warn" Because it Was Not Part of the Chain of Distribution of the Injury–Causing Asbestos Products.

California follows a "stream of commerce" approach extending strict liability to those who are an "integral part of the overall producing and marketing enterprise that should bear the cost of injury from defective products." Thus, strict product liability covers a broad range of potential defendants beyond the obvious manufacturer. (*Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256, 262; see *Peterson v. Superior Court*, *supra*, 10 Cal.4th at 1191, 1198.) But strict liability does not mean absolute liability. "Strict liability . . . was never intended to make the manufacturer or distributor of a product its insurer. 'From its inception, . . . strict liability has never been, and is not now, *absolute* liability . . .'" (*Carlin, supra*, 13 Cal.4th at 1110; emphasis origianl.)

When it comes to component parts manufacturers like defendant this means that, as a matter of law, they should not be liable even on a "warning defect" theory if the component is not itself defective, even if the finished product (i.e., the ship's boiler system) has unreasonably dangerous propensities when the component parts are in need of repair or refurbishing and defective asbestos containing packing or gaskets made by another are used in connection therewith. "The rules of products

liability 'focus responsibility for defects . . . on the manufacturer of the completed product[,]' " not the component parts manufacturer. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 478–479.) This is because, as *Taylor* recognizes, component parts makers "cannot be expected to determine the relative dangers of various products they do not produce or sell and certainly do not have a chance to inspect or evaluate. This legal distinction acknowledges that over-extending the level of responsibility could potentially lead to commercial as well as legal nightmares in product distribution." (*Taylor*, *supra*, 171 Cal.App.4th at 576.)[13]

Taylor rightly bolstered its conclusion exempting a component parts manufacturer from strict liability of valves that originally contained asbestos by reference to *Peterson, supra*, 10 Cal.4th at 1188 and *Cadlo v. Owens–Illinois, Inc.* (2004) 125 Cal.App.4th 513, 523 (*Cadlo*). Both opinions declined to impose strict liability on defendants who were not in the "chain of distribution" because they lacked a continuing business relationship with the manufacturer, and thus could not exert pressure upon the manufacturer of the defective product to make the product safe. In *Peterson*, the defendant found exempt from strict products liability was a hotel owner sued for injuries sustained by a guest who slipped and fell in the hotel's defective bathtub purchased from a manufacturer. *Peterson* explained that holding the

[13] The "component parts" defense is a product of the same reasonableness analysis provided by the Learned Hand calculus that balances the predictability of the risk and the seriousness of risk against the burden on a party to prevent a risk. That burden should fall on the party who can best handle it both in terms of cost and predictability. It is readily seen that the cheapest cost avoider leads us to the conclusion that the component parts supplier is not ordinarily the entity that can best detect risks posed by a completed product, or reduce such risks to a reasonable level. M. Stuart Madden, *Component Parts and Raw Materials Sellers: from the Titanic to the New Restatement* (1999) 26 *N. KY. L. REV.* 535, 563.

hotel proprietor strictly liable for the guest's injury from the defective bathtub was improper because the owner was not part of "the chain of distribution" of the bathtub. (*Peterson*, *supra*, 10 Cal.4th at 1199.) Even more on point, *Cadlo* holds that defendant Owens–Illinois could not be strictly liable for Kaylo, an asbestos containing product that it developed and marketed for 15 years, because the company had ceased the manufacture, sale, and distribution of this product several years before [the plaintiff] was exposed to it. Accordingly, "[e]ven if [defendant] were part of the chain of distribution of these original [asbestos containing] materials, they were certainly not part of the chain of distribution for the asbestos-containing materials to which [plaintiff] was exposed." (*Taylor, supra*, 171 Cal.App.4th at 579, citing to *Cadlo, supra*, 125 Cal.App.4th at 525.)

CONCLUSION

For all the aforementioned reasons, judgment notwithstanding the verdict should be affirmed.

Dated: June 21, 2011

Respectfully submitted,

By_____
Fred J. Hiestand
The Civil Justice Association of California

Counsel for *Amicus Curiae*

CERTIFICATE OF WORD COUNT

I certify that the WordPerfect® software program used to compose and print this document contains, exclusive of the caption, tables, certificate and proof of service, approximately 5,000 words.

Date: June 21, 2011

Fred J. Hiestand

PROOF OF SERVICE

I, David Cooper, am employed in the city of Sacramento, Sacramento County, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2001 P Street, Suite 110, Sacramento, CA 95811.

On June 21, 2011, I served the foregoing document(s) described as: Amicus Curiae Brief of the Civil Justice Association of California in Support of Defendant/Respondent in *Woodard v. Crane Co.,* B219366 on all interested parties in this action by placing a true copy thereof in a sealed envelope(s) addressed as follows:

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Executed this 21st day of June 2011 at Sacramento, California.

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