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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DORIS SILVESTRO et al.,

Plaintiffs and Respondents,

v.

KAISER GYPSUM COMPANY, INC.,

Defendant and Appellant.

B196906

(Los Angeles County
Super. Ct. Nos. BC253974 &
BC275516)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Judith C. Chirlin, Judge. Affirmed in part, reversed in part.

Horvitz & Levy, Lisa Perrochet, Wendy S. Albers; Jackson & Wallace, Mark D. Sayre and Jessica A. Stepp for Defendant and Appellant.

Waters & Kraus, Gary M. Paul, Paul C. Cook and Michael B. Gurien for Plaintiffs and Respondents.

This is a wrongful death case in which a jury found that Kaiser Gypsum Company, Inc., and Kelly-Moore Paint Company failed to give adequate warning that their products had potential risks due to the asbestos contained in those products, and that the lack of an adequate warning was a substantial factor in causing the decedent's death. The jury further found that plaintiffs' economic damages were \$250,000, and that their noneconomic damages were \$15 million, and allocated fault in the following measures: 30 percent to Kaiser Gypsum, 30 percent to Kelly-Moore, and the remaining 40 percent divided among 10 others. After offsetting settlements, the trial court entered a judgment providing that plaintiffs take \$4.6 million from Kelly-Moore and \$4.6 million from Kaiser Gypsum. Kelly-Moore thereafter settled with plaintiffs; Kaiser Gypsum filed this appeal. We affirm the jury's finding that Kaiser Gypsum substantially contributed to causing the decedent's death, but reverse its finding that Kaiser Gypsum's measure of fault for causing his death amounts to 30 percent.

FACTS

A. Asbestos and Mesotheliomas

The body is divided into three cavities: the abdominal cavity and the chest cavity, separated by the diaphragm, and the heart cavity. Each of these cavities is lined with thin membranes, which are composed of different layers of cells. Mesotheliomas are tumors that develop in the membranes lining the different body cavities. Most types of cancer cells form solid tumors, but mesothelioma tumors grow in a "diffuse" manner, spreading along the surface of the lung, chest or abdominal cavity, and forming a "rind" of tumor that encases the organs in the cavity where the disease develops. Pleural mesothelioma occurs in the chest cavity, the most common site for the disease. Mesothelioma is always fatal.

Mesothelioma is caused by inhaling asbestos fibers. There are various types of asbestos, divided into two primary groups — serpentine and amphibole. "Chrysotile" asbestos is in the serpentine group, and is the least potent or pathogenic form of asbestos for causing mesothelioma. "Amosite" asbestos is in the amphibole group, and is more potent or pathogenic for causing mesothelioma. Mesothelioma is a "dose-

response” and “cumulative” disease, meaning that, where a person has contracted the disease, all of his or her exposures to asbestos are considered to have contributed to causing the disease to develop, but the risk of developing the disease increases with each additional exposure and increases with exposure to the more potent or pathogenic type of asbestos.

B. Joint Compound

Joint compound is a material used in construction. It generally comes in a powder form, which is mixed with water to create a paste. Workers use the joint compound paste on walls to cover spaces/cracks where pieces of sheetrock or drywall join together, and to cover screw holes and nail holes in sheetrock or drywall. After the joint compound paste dries, workers sand it to create a smooth surface.

From the mid-1950’s through the mid-1970’s, Kaiser Gypsum manufactured joint compound that contained chrysotile asbestos. In the 1970’s, Kaiser Gypsum developed asbestos-free joint compound, and, by 1975, the company stopped selling joint compound which contained asbestos. In 1978, Kaiser Gypsum ceased operating altogether.

C. The Decedent’s Exposure to Asbestos

Salvatore Silvestro was born in January 1927 and died from pleural mesothelioma in November 2001.

From 1946 to 1966, Silvestro worked as a union cement mason on small and large residential and commercial construction projects. His duties included doing such work as pouring and finishing cement floors. Silvestro did not personally perform drywall tasks while working as a cement mason, but did work in areas where joint compound was used, and he inhaled dust created by the mixing and sanding of joint compound. Apart from his work as a union cement mason, Silvestro also took on “side” construction jobs, some of which included hanging drywall and the concomitant use of joint compound. Silvestro also remodeled his home during the 1960’s, a project which included installing drywall. During the course of his work in construction, both as a union cement mason and on his side jobs, and on his home remodeling project,

Silvestro worked around and/or personally used joint compound from several different manufacturers, including Kaiser Gypsum, Georgia-Pacific Corp. (Bestwall), Flintkote Company, Kelly-Moore (Paco), Bondex International, Inc., Proko Industries (Triko), and Synkoloid Company.

From 1966 to 1971, Silvestro worked as a boiler repairman in engine rooms on ships where “everything” contained asbestos. The air onboard the ships where Silvestro worked was often “very dense” with dust which he inhaled, and he also worked directly with a variety of products which contained asbestos, including pipe coverings, insulation, gaskets, blankets, and gloves. Silvestro worked with pipe coverings and insulation from Armstrong, Unibestos, Kaylo, and Johns Manville; asbestos-containing gaskets made by Flexitallic and Garlock; asbestos cloth manufactured by Asbeston; and asbestos gloves from Guard-Line. In addition, Silvestro worked on boilers which had asbestos, including boilers made by Fraser’s Boiler Service, Inc., Foster Wheeler, and Babcock & Wilcox (B&W).

From 1971 until he retired, Silvestro returned to work in construction. During this time, he worked for a paving company, and he would also do jobs for people “who would call him.”

D. The Litigation

In April 2001, Silvestro learned that he had contracted pleural mesothelioma, and, in July 2001, he filed a complaint for personal injury against a number of manufacturers (and their alternate entities) who had produced products containing asbestos, including Kaiser Gypsum, Kelly-Moore, Bondex International, Inc., and CertainTeed Corporation (a plaster manufacturer), among others. Silvestro died in November 2001. In May 2002, his surviving wife and adult daughter, Doris Silvestro and Joyce Gold, filed an amended complaint to assert claims for Silvestro’s wrongful death.

The cause was tried to a jury in summer 2006. By that time, only four defendants remained in the case — Kaiser Gypsum, Kelly-Moore, Bondex, and CertainTeed. During trial, plaintiffs settled with Bondex and CertainTeed.

On September 6, 2006, the jury returned a multiquestion special verdict, which included the following findings: Kaiser Gypsum and Kelly-Moore had failed to warn the end users of their products of the potential risks posed by the asbestos in those products. The failure to provide adequate warning by Kaiser Gypsum and Kelly-Moore was a substantial factor in causing Silvestro’s death. Kaiser Gypsum and Kelly-Moore had been negligent. The negligence of Kaiser Gypsum and Kelly-Moore was a substantial factor in causing Silvestro’s death. The jury awarded \$250,000 to plaintiffs for economic damages (stipulated), and \$15 million for noneconomic damages. The jury’s special verdict also included the following allocation of fault:

“Joint Compound

. . . Kaiser Gypsum Company, Inc.	30%
. . . Kelly-Moore Paint Company	30%
Bondex International, Inc.	5%
Flintkote Company	0%
Georgia-Pacific Corp.	0%
Proko Industries	0%
Synkoloid Company	0%
Triko	0%

Plaster

Tex A Lite	0%
CertainTeed Corp.	5%

Pipe Covering/Block Insulation

Armstrong, Inc.	0%
Owens-Illinois	0%
Pittsburg Corning	0%
Johns Manville	20%
JT Thorpe and Son, Inc.	0%
Metalclad Insulation Corp.	0%

Refractories/Castables

AP Green	0%
Harbison & Walker	0%
Kaiser Aluminum & Chemical Co.	0%
Quigley Company, Inc.	0%

<u>Gaskets</u>	
Garlock, Inc.	1%
Flexitallic	1%
<u>Asbestos Cloth</u>	
Asbeston, Inc.	2%
<u>Gloves</u>	
Guard-Line	2%
<u>Boilers</u>	
[B&W]	0%
Combustion Engineering	0%
Foster Wheeler	0%
Fraser's Boiler Service, Inc.	1%
<u>Others</u>	
Cape Asbestos	0%
[Silvestro]'s employers	2%
All others	1%''
(Capitalization omitted.)	

On November 27, 2006, after offsetting prior settlements, the trial court entered a judgment providing that plaintiffs shall take \$4,689,392.54 from Kaiser Gypsum and \$4,689,392.54 from Kelly-Moore. Kaiser Gypsum and Kelly-Moore filed motions for new trial and judgment notwithstanding the verdict. Before those motions were heard, Kelly-Moore settled. The trial court denied Kaiser Gypsum's motions on January 22, 2007.

On February 16, 2007, Kaiser Gypsum filed a notice of appeal.

DISCUSSION

I. Substantial Evidence Supports the Jury's Finding of Causation.

Kaiser Gypsum contends the jury's finding on the element of causation is not supported by substantial evidence. To be more specific, Kaiser Gypsum contends the evidence does not support the jury's finding that Silvestro's exposure to Kaiser Gypsum's joint compound substantially contributed to causing his mesothelioma. We disagree.

A. The Standard of Review

At trial, California's asbestos jurisprudence placed on Silvestro the burden of persuading the jury that there was a reasonable medical probability that his exposure to Kaiser Gypsum's joint compound was a substantial contributing factor in causing him to develop mesothelioma. (See *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968-982 (*Rutherford*)). On appeal, however, Silvestro does not carry the burden of persuading our court that Kaiser Gypsum's joint compound substantially contributed to causing his cancer, but rather, it has become Kaiser Gypsum's burden to persuade us that the record is devoid of substantial evidence — i.e., evidence that is reasonable, credible, and of solid value — supporting the jury's causation finding. (See generally *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; *Greathouse v. Amcord, Inc.* (1995) 35 Cal.App.4th 831, 836-837; *In re Marriage of Murray* (2002) 101 Cal.App.5th 581, 601-604 [a reviewing court applies the substantial evidence standard of review to factual findings, "regardless of the burden of proof" in the trial court].) In short, our power of review over a jury's factual finding on the issue of causation begins and ends with a determination as to whether there is any substantial evidence in the record, contradicted or uncontradicted, which the jury could have accepted as probative on that issue. (See *Greathouse v. Amcord, Inc., supra*, 35 Cal.App.4th at pp. 836-837.)

B. The Evidence

After examining the respective references to the trial record set forth in the parties' briefs on appeal, we are not satisfied that the record contains reasonable, credible evidence supporting the jury's finding that Silvestro's exposure to Kaiser Gypsum's joint compound substantially contributed to causing his mesothelioma. Stated another way, we are satisfied that the testimony given by Silvestro (through his

predeath deposition), and by his experts, amounts to substantial evidence in support of the jury's causation finding against Kaiser Gypsum.¹

Silvestro's testimony established the following facts: during the course of his employment in the construction field, he "constantly" worked in and around areas where other employees installed drywall, sheetrock, plaster, and used joint compound. The mixing and sanding of joint compound created dust that would be in the air and on floors where he worked. Silvestro breathed the dust from the joint compound. Silvestro personally installed drywall and used joint compounds while working on "side jobs" and when he remodeled his home.

Silvestro worked with and/or around joint compound from a number of different manufacturers while working in construction. Kaiser Gypsum joint compound was the "most common" joint compound on some jobs and "was used . . . on an awful lot of jobs [he] was on, especially home construction." He personally used Kaiser Gypsum joint compound when he remodeled and installed drywall in his home in the 1960's. Silvestro was "[a]bsolutely" certain that he breathed dust from the mixing and sanding of Kaiser Gypsum joint compound.

Samuel Hammar, M.D., testified as an expert pathologist on Silvestro's behalf. Dr. Hammar's testimony elicited the following expert opinions: Asbestos is the primary cause of mesothelioma. Although amosite asbestos is far more pathogenic for causing mesothelioma, all types of asbestos cause the disease, including the chrysotile type of asbestos contained in Kaiser Gypsum's joint compound. Chrysotile asbestos alone can cause mesothelioma, and can do so even at "low level" exposures. There is no uniformly recognized "safe level" of exposure to chrysotile asbestos amongst experts, below which exposure will not cause mesothelioma.

¹ The testimony of Silvestro's experts, Drs. Hammer and Brody, is extensively and accurately summarized in the respondents' brief at pages 11 through 19.

Every exposure to asbestos above “background” levels commonly found in the air in major cities (prior to the mid-1970’s when asbestos became more regulated) constitutes a substantial factor in increasing the risk of developing mesothelioma. Exposure levels from the mixing, sanding, and cleanup of joint compound, which contains asbestos, are significantly higher than background levels of asbestos.

Based on his review of Silvestro’s history and deposition testimony, Dr. Hammar opined that Silvestro had developed mesothelioma caused by exposure to both chrysotile and amosite asbestos. Silvestro’s exposure to chrysotile asbestos during roughly 25 years working in the construction field had been “heavy,” and his exposure to asbestos from joint compounds, including during his home remodeling work, was a substantial factor contributing to him developing mesothelioma, and, specifically, his exposure to asbestos from Kaiser Gypsum joint compound was a substantial factor in causing him to develop mesothelioma.

Arnold Brody, Ph.D., testified on Silvestro’s behalf as an expert in lung and cell biology. Dr. Brody’s testimony was largely consistent with Dr. Hammar’s testimony, and elicited the following expert opinions: mesothelioma is caused by exposure to asbestos, and all types of asbestos, including chrysotile asbestos, cause the disease. Chrysotile asbestos alone can cause the disease. There is a “dose-response” relationship between exposure to asbestos and mesothelioma, meaning that mesothelioma is a “cumulative disease” for which all exposures to asbestos contribute to its development. Even low level exposures to chrysotile asbestos contribute to causing mesothelioma.²

² The trial was mostly a battle of experts. Kaiser Gypsum’s defense at trial consisted largely of a challenge to the opinions offered by Drs. Hammar and Brody, both through cross-examination and the use of countering experts. Drs. Hammar and Brody both acknowledged the existence of materials that took the position that chrysotile asbestos does not cause mesothelioma, and/or does not cause the disease at low exposure levels, but both explained why they (and other experts) had reached the different opinion that chrysotile does cause mesothelioma, and can do so at low level exposures. Drs. Hammar and Brody both agreed that amosite asbestos is far more

We are satisfied that the evidence summarized above is sufficient to support the jury's causation finding, and we reject Kaiser Gypsum's assertion that the evidence is not sufficient because Silvestro failed to show the "frequency, regularity, and intensity of [his] exposure" to Kaiser Gypsum's joint compound. As the Supreme Court explained in *Rutherford, supra*, 16 Cal.4th 953, proof of causation in an asbestos case does not require a particular type of evidence, or a prescribed quantum of a particular type of evidence, or a specified combination of different types of evidence:

"Ultimately, the sufficiency of the evidence of causation will depend on the factual circumstances of each case. Although the plaintiff must, in accordance with traditional tort principles, demonstrate [at trial] to a reasonable medical probability that a product or products supplied by the defendant, to which he was exposed, were a substantial factor in causing his disease . . . , he is free to further establish that his . . . asbestos disease is cumulative in nature, with many separate exposures each having constituted a 'substantial factor' [citation] that contributed to his risk of injury. . . . [A] defendant cannot escape *liability* simply because it cannot be determined with medical exactitude the precise contribution that exposure to fibers from defendant's products made to plaintiff's ultimate contraction of asbestos-related disease, [but] joint tortfeasors found liable . . . will remain entitled to limit *damages* ultimately assessed against them in accordance with established comparative fault and apportionment principles." (*Rutherford, supra*, 16 Cal.4th at p. 958.)

We reject Kaiser Gypsum's contention that Silvestro presented a causation theory which "does not satisfy the legal criteria for establishing causation." Silvestro did not, as Kaiser Gypsum suggests, present a case based on "mere evidence of exposure" to asbestos, with nothing more. The trial that we see reflected in the record consisted of a showing by Silvestro that he had a long-term history of regular exposure

pathogenic for causing mesothelioma than chrysotile asbestos. For example, Dr. Hammar testified that, on a "fiber per fiber basis," the most potent type of asbestos would be "crocidolite," with amosite "second," and "third would be chrysotile." Dr. Hammar acknowledged one study which concluded that the "relative potencies on a fiber-to-fiber basis is 500 to 100 to 1 for crocidolite to amosite to chrysotile."

to Kaiser Gypsum's joint compound, and to other manufacturers' products, and expert opinion making a connection between that history of exposure to asbestos as a causative factor in his contracting mesothelioma. In short, we see no support in the record for Kaiser Gypsum's assertion that Silvestro based his case on a theory that "any exposure" to asbestos was sufficient to establish the element of causation.

Finally, we reject Kaiser Gypsum's assertion that the testimony from Silvestro's experts failed to establish that his exposure to Kaiser Gypsum's joint compound was a substantial contributing cause of his disease. Kaiser Gypsum's argument simply ignores the experts' testimony, which we highlighted above. Dr. Hammar specifically testified that Silvestro's exposure to asbestos emanating from Kaiser Gypsum's joint compound substantially contributed to his mesothelioma, as did his exposure to asbestos emanating from other manufacturer's products. Kaiser Gypsum's arguments have not persuaded us that more evidence is needed to sustain the jury's causation finding.

II. Substantial Evidence Does Not Support the Jury's Allocation of Fault.

Kaiser Gypsum contends the evidence does not support the jury's allocation of 30 percent fault to Kaiser Gypsum. We agree.

A. The Standard of Review

The allocation of fault amongst tortfeasors is a question of fact and is reviewed on appeal under the substantial evidence test. (See *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 147.) As we noted above, this standard of review requires Kaiser Gypsum to convince our court that the record is devoid of evidence to support the jury's finding that Kaiser Gypsum, by failing to provide warnings that its asbestos-formulated joint compound had known risks, was 30 percent at fault for causing Silvestro's mesothelioma. Although we disagree with Kaiser Gypsum that the evidence did not support the jury's finding on causation (i.e., liability), we agree with the company that the jury's allocation of fault (i.e., damages) is not built on a sufficient evidentiary foundation. (*Rutherford, supra*, 16 Cal.4th at p. 958.)

B. The Evidence

As noted above, the evidence at trial established that Silvestro had been exposed to chrysotile asbestos and amosite asbestos during his lifetime, largely reducible to two time frames. His exposure to chrysotile asbestos occurred primarily between 1946 and 1966, and again during the first half of the 1970's, when he worked on construction projects, a period spanning roughly 25 years, and his exposure to amosite asbestos occurred between 1966 and 1971, when he worked as a shipboard boiler repairman, a period of five years.³ All other factors being equal, the jury reasonably could have, as a first step, allocated fault between Silvestro's exposure during his work in the construction field and his exposure from his work with boilers, and then allocated fault amongst the various manufacturers whose products were associated with those two main facets of Silvestro's work career.

But the evidence showed, without any dispute, that all factors were not equal. The evidence, including the testimony from Silvestro's own experts, showed that the amosite asbestos to which Silvestro was exposed while working as a boiler repair person was far more pathogenic for causing mesothelioma than the chrysotile asbestos to which he was exposed while working in construction, perhaps as much as 100 times more potent. For example, Dr. Brody agreed that, if the type of asbestos fiber is more potent, versus a fiber that is less potent, and there is a relatively equal dose of the two, then the more potent fiber would be a greater contributor to a person's disease, than the less potent fiber, even though they both contributed to the disease. Dr. Brody acknowledged that the insulation products to which Silvestro was exposed while working on boilers onboard ships were particularly dangerous because they were made with amosite asbestos and released more fibers into the air. Dr. Hammar testified that a single day's exposure to amosite asbestos was sufficient to cause mesothelioma.

³ Although Silvestro again worked in construction after his career as boiler repairman, the evidence showed that use of asbestos in construction materials (and in general) was being curtailed by the 1970's, and, in particular, showed that Kaiser Gypsum did not make joint compound with asbestos after 1975.

More specifically, Dr. Hammar expressly testified that Silvestro's mesothelioma was caused by his exposure to a number of products that he encountered during his work with boilers, including asbestos cloth, Guard-Line gloves, Flexitallic gaskets, Garlock gaskets, Fraser boilers, Foster Wheeler boilers, B&W boilers, Unibestos pipe covering (from Pittsburg Corning), Kaylo pipe covering (from Owens-Illinois), Armstrong pipe covering, and Johns Manville pipe covering. As Dr. Hammar put it, "Anything, everything; anything and everything that released the fibers into the air that he breathed [contributed to causing his disease]."

Despite the evidence from Silvestro's own experts, the jury's findings of fault to the manufacturers of pipe covering and insulation products (perhaps the most dangerous) included the following allocations — 0 percent to Armstrong, 0 percent to Pittsburg Corning, and 0 percent to Owens-Illinois. The jury's allocation of fault to the manufacturers of boilers included 0 percent to Foster Wheeler and 0 percent to B&W. For the manufacturers of other products that contained the far more potent amosite asbestos, the jury's findings of fault were similarly negligible — 1 percent fault to Guard-Line gloves, 1 percent to Garlock gaskets, and 1 percent to Flexitallic gaskets. Turning to Silvestro's exposure to chrysotile asbestos during his construction work, the jury allocated 0 percent fault to five of eight identified manufacturers, and allocated the lion's share of fault to Kaiser Gypsum and Kelly-Moore, 30 percent each. The record, in our view, permits only one conclusion — the jury largely allocated fault based upon the presence of Kaiser Gypsum and Kelly-Moore in the courtroom and not on a reasonable assessment of the evidence.

We candidly admit that a determination of respective fault amongst tortfeasors is highly problematic in an asbestos case involving exposures that are recalled years after the fact, and which are presented largely through anecdotal memories. Despite this difficulty, we are not inclined to leave alone a jury's allocation of fault that bears no reasonable relationship to the evidence. We find the allocation of nearly one-third of the fault (30 percent) for causing Silvestro's mesothelioma to a single manufacturer, Kaiser Gypsum, is, as the company phrases it, "irreconcilable" with the evidence,

notwithstanding the evidence showing that the company's product was the "most common" one used during Silvestro's construction career. Kaiser Gypsum was one company among many that supplied asbestos-tainted building materials to which Silvestro was exposed, and Kaiser Gypsum's product contained the least potent type of asbestos. We accept that Silvestro's disease was caused in some part by Kaiser Gypsum, but we cannot reasonably agree that the company bore the lion's share of fault.

Silvestro cannot have it both ways. His case was largely dependent on his theory and evidence that even low level exposures of the least potent type of asbestos contribute to causing mesothelioma, and the jury accepted his theory and evidence in fixing liability on Kaiser Gypsum. So be it. But we decline to follow Silvestro's implicit suggestion on appeal that his evidence may be accepted for purposes of liability, but disregarded when it comes to allocating a measure of damages to individual manufacturers.

We express no view on what measure of fault may reasonably be allocated to Kaiser Gypsum, based on the facts. We know only that an allocation of 30 percent is too large.

III. There Was No Abuse of Discretion by Failing to Identify Product Names on the Verdict Form.

Kaiser Gypsum contends the trial court's decision not to include specific product *names* on the special verdict form amounted to prejudicial error. According to Kaiser Gypsum, the failure to include product names contributed to the jury's failure to allocate fault to some of the manufacturers who were identified on the special verdict form. This issue may be revisited when allocation of fault is addressed anew. For guidance, we offer the following discussion.

The selection of the form and/or details of a special verdict are a matter within the trial court's discretion. (*Valentine v. Baxter Healthcare Corp.* (1999) 68 Cal.App.4th 1467, 1488.) A trial court abuses its discretion when its decision exceeds the bounds of reason, or, in other words, when there is no reasonable basis for

the trial court's decision. (*Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 355.)

Although we agree with Kaiser Gypsum that the trial court reasonably could have included product names on the special verdict form, it was not necessarily an abuse its discretion not doing so. The court delineated between the types of products, e.g., joint compound, pipe coverings and insulation, gaskets, and we are not convinced by Kaiser Gypsum's arguments that the court was required to include specific product names to avoid abusing its discretion. In any event, this issue, as we said, may be revisited after this case is returned to the trial court.

DISPOSITION

The judgment is reversed. The jury's findings regarding liability are affirmed; the jury's allocation of fault is reversed. The case is remanded to the trial court to proceed in a manner consistent with this opinion. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

FLIER, Acting P. J.

O'NEILL, J.*

* Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.