S177401

IN THE SUPREME COURT OF CALIFORNIA

BARBARA J. O'NEIL et al.,
Plaintiffs and Appellants,

v.

CRANE CO. et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FIVE
CASE NO. B208225

OPENING BRIEF ON THE MERITS

HORVITZ & LEVY LLP
DAVID M. AXELRAD (BAR NO. 75731)
JASON R. LITT (BAR NO. 163743)
CURT CUTTING (BAR NO. 199906)
15760 VENTURA BOULEVARD, 18TH FLOOR
ENCINO, CALIFORNIA 91436-3000
(818) 995-0800 • FAX: (818) 995-3157
DAXELRAD@HORVITZLEVY.COM
JLITT@HORVITZLEVY.COM
CCUTTING@HORVITZLEVY.COM

K&L GATES LLP
RAYMOND L. GILL (BAR NO. 153529)
ROBERT E. FEYDER (BAR NO. 130688)
10100 SANTA MONICA BLVD., 7TH FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 552-5000 • FAX: (310) 552-5001
RAY.GILL@KLGATES.COM
ROBERT.FEYDER@KLGATES.COM

OF COUNSEL:
PAUL J. LAWRENCE
NICHOLAS P. VARI
K&L Gates llp

ATTORNEYS FOR DEFENDANT AND RESPONDENT
CRANE CO.

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ISSUE PRESENTED

Whether a defendant product manufacturer owes a legal duty with respect to asbestos-containing materials manufactured and supplied by third parties that the defendant did not place into the stream of commerce when the asbestos-containing materials were used with or near the defendant's product decades post-sale.

INTRODUCTION

This Court created California's strict products liability cause of action almost 50 years ago. Since then, California courts have limited the reach of strict liability—which imposes

liability without fault—to those entities that have a significant role in placing an injury-producing product into the stream of commerce, such as manufacturers, retailers, and distributors. The Court of Appeal, however, departed from this limiting principle, and held valve maker Crane Co. responsible for asbestos released from insulating and sealing products that were not manufactured, sold, or distributed by Crane Co. Because the Court of Appeal's opinion represents an unwarranted departure from the long-standing stream-of-commerce rule consistently applied not only throughout California but in the vast majority of other jurisdictions, this Court should reverse the Court of Appeal and reinstate the trial court's nonsuit and defense judgment.

For over 150 years, Crane Co. has been a manufacturer and supplier of valves and other fluid-handling equipment. During World War II, Crane Co. sold valves to the United States Navy, some of which included asbestos-containing internal seals made by third parties, in compliance with then-existing military product requirements. The Navy used those valves to build ships in support of the war effort, and it insulated some of those valves with asbestos-containing material that it purchased from third parties. Those ships included the USS *Oriskany*.

The *Oriskany* was constructed in the 1940's and was in service for over 20 years before Lt. Patrick O'Neil boarded it in 1965. Another 40 years after he boarded the ship, Lt. O'Neil's family sued Crane Co. for wrongful death resulting from Lt. O'Neil's exposure to asbestos during his stint on the *Oriskany*.

Crane Co., however, did not manufacture or supply any of the miles of asbestos-containing material that the Navy used to insulate the piping and the valves connected to the *Oriskany*'s steam propulsion system. Crane Co. also did not manufacture or supply any of the asbestos-containing gaskets used to connect its valves to the ship's pipes. And although Crane Co. may have supplied valves with asbestos-containing seals to the Navy when the *Oriskany* was built in the 1940's, it did not manufacture or supply *any replacement* sealing material the Navy obtained from third parties long before Lt. O'Neil boarded the *Oriskany*.

At the conclusion of the evidence, the trial court granted defendants' motion for nonsuit. While plaintiffs' appeal was pending, the First Appellate District, Division Five, decided *Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564 (*Taylor*), a case involving the same factual scenario and the same legal issues presented here. The Court of Appeal in *Taylor* acknowledged the long-standing principle of California law limiting a product manufacturer's potential liability for harm caused by products the defendant-manufacturer placed into the stream of commerce. The *Taylor* court then observed that, as here, the manufacturer defendants in that case (which included Crane Co.) did not manufacture or supply the asbestos-containing insulation or sealing materials to which the plaintiff was exposed, and therefore were not legally responsible for injuries caused by those products.

The Court of Appeal in this case, however, rejected *Taylor* along with the numerous authorities from California and

elsewhere upon which *Taylor* was based. The Court of Appeal concluded that Crane Co. can be held liable for asbestos-containing products placed in the steam of commerce by others, because the court believed those products were necessarily and foreseeably used with the valves Crane Co. supplied to the Navy decades earlier.

The Court of Appeal's rejection of the stream-of-commerce test is neither grounded on any decision of this Court nor good policy. This Court has consistently declined to expand the scope of strict liability when to do so would not serve the underlying policy of fixing liability on the marketing enterprise behind the injury-causing product. That approach is sound, because the entities in the chain of distribution of an injury-causing product are the entities that can best avoid the product's risks, insure against them, and bear the costs associated with them. The approach is also sound because it limits strict liability to those who actually make and market the products, instead of expanding liability to any entity foreseeably connected to an injury-producing product. For these reasons, the stream of commerce approach has been applied consistently in California and elsewhere, including in cases involving exactly the same facts presented here.

The Court of Appeal's contrary approach represents a recurring phenomenon in asbestos litigation—expanding the reach of strict products liability to find a source of recovery to substitute for the actual manufacturers and suppliers of the materials that released the asbestos fibers to which individuals

like Lt. O'Neil were exposed, entities that are now bankrupt and pay asbestos-related personal injury claims through a trust compensation system. The abandonment of established legal principles, however, is not justified by the search for a solvent defendant. This Court should reverse the judgment of the Court of Appeal and reinstate the trial court's nonsuit ruling in favor of Crane Co.

STATEMENT OF THE CASE

A. The U.S. Navy embarks on a massive ship-building campaign to fight World War II.

From the beginning to the end of World War II, the United States Navy quintupled in size, going from about 1,000 ships to about 5,000 ships. (15 RT 2773; see also 11 RT 1761.) The warships built during that war effort are among "the most complex machine[s] that man has ever designed and put together," needing to be light, fast, and self-supporting. (15 RT 2687-2690.)

Steam is the lifeblood of a World War II era warship. (7 RT 896.) A complex series of pipes connected to massive boilers creates the steam that not only powers the engines, but provides energy to operate other onboard systems. (14 RT 2483-2484; see also 14 RT 2481.) To control the flow of steam and liquid running through the pipes, the steam system incorporated thousands of valves. (7 RT 900.)

Broadly defined, a valve is a mechanical device used to control the flow of liquid or gases from one point to another. (See 7 RT 913.) Valves usually include gaskets and packing materials as sealants to prevent the material flowing through the valve from leaking. (7 RT 907-909.) For the valves used by the Navy during the World War II era, these seals were sometimes made of materials that contained asbestos as part of their chemical composition. (7 RT 908, 915, 969-971; 8 RT 1210-1211.)

Given the heat of the steam flowing through the pipes (850 degrees Fahrenheit), the Navy insulated the piping and attached components to keep the crew from burning themselves and to prevent heat loss. (6 RT 677-678; 7 RT 898; 10 RT 1689; 11 RT 1761.) Among the various insulation options available to it, the Navy preferred asbestos-containing insulation materials because those materials were inexpensive, effective, and lightweight. (6 RT 779; 7 RT 1013; 11 RT 1761; 14 RT 2488-2490.) Indeed, President Franklin D. Roosevelt signed an order directing the conservation of asbestos for military use. (7 RT 1012; 11 RT 1762.)

B. Crane Co. supplies valves to the Navy.

Crane Co. has been making valves for over 150 years. (12 RT 2072-2073.) Crane Co. manufactured and supplied many valves used on Navy ships built during World War II. (7 RT 967-968; see also *Taylor*, *supra*, 171 Cal.App.4th at p. 596

[Crane Co. valves were "essential to powering . . . aircraft carrier[s] that [were] used to defend the United States during the greatest armed conflict of the 20th century"].)

The valves Crane Co. supplied to the Navy complied with then-existing military specifications. (7 RT 1058-1059; 15 RT 2700-2709, 2692; see also 8 RT 1208-1209; 15 RT 2692; 16 RT 3008 [trial court noting "the United States Navy was the party responsible for preparing the specifications and making approval of the actual drawings"].) The Navy determined what equipment would go on its ships and what parts that equipment would contain; the equipment manufacturers had to supply products conforming to the Navy's decisions. (7 RT 1058-1060, 1064-1066, 1087; 15 RT 2692, 2702.)

Where the Navy specified use of an asbestos-containing component, a valve manufacturer like Crane Co. was required to use the specified component. (7 RT 1059.)[1] Crane Co., however, did not manufacture any asbestos-containing products included with its valves, but purchased asbestos packing and gaskets from vendors approved by the Navy. (11 RT 1906-1907; 12 RT 2065, 2072; 15 RT 2707-2709.) The Navy replaced the original asbestos-containing packing and gaskets during periodic

[1] Crane Co.'s valves interchangeably used both asbestos and metal internal gaskets. (7 RT 915; 8 RT 1210; 12 RT 2072.) However, plaintiffs' expert acknowledged that the design drawings of the valves used on the *Oriskany* indicate that the internal gaskets on that ship were made of metal. (8 RT 1207-1208, 1211.)

maintenance. (12 RT 2066-2067.)[2] There is no evidence suggesting the Navy obtained the replacement packing and gaskets from Crane Co. (See *Taylor*, *supra*, 171 Cal. App. 4th at p. 572.)

Once the valves were obtained from Crane Co., the Navy connected them to the piping of the steam propulsion system by flanges, usually sealed by an asbestos-containing gasket in between the connection. (7 RT 908-909, 954, 965; 8 RT 1204.) The Navy then covered the valve, as it did with the piping and other equipment, often with asbestos-containing insulation materials. (8 RT 1206-1207.) Crane Co. neither manufactured nor supplied any flange gaskets or external insulation to which Lt. O'Neil may have been exposed, nor did its valves need asbestos-containing gaskets or insulation to function. (7 RT 968; 8 RT 1205-1207 [plaintiffs' expert noting that the metal valves when supplied were uninsulated and could do their job without

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[2] The Court of Appeal and plaintiffs have asserted that the valves "required" asbestos. (Typed opn., 3, 18.) Crane Co.'s valves, however, can operate in naval applications with internal seals of many different materials. (See 7 RT 915; *Braaten v. Saberhagen Holdings* (2008) 165 Wash.2d 373, 380, 394-395 [198 P.3d 493, 495-496, 503] (*Braaten*) [noting that "more than 60 types of packing had been approved for naval use," and Crane Co.'s catalog "list[ed] non-asbestos-containing packing and gasket material"]; *Taylor*, *supra*, 171 Cal.App.4th at pp. 590-591 [noting that "'other types of materials could have been used'" instead of asbestos].) Thus, to the extent asbestos was "required" it was a result of the need for inexpensive, lightweight, and heat-resistant material to be included within the steam propulsion system and the Navy's preference for asbestos-containing materials to serve those ends, not the physical requirements of the valves.

insulation]; see also 7 RT 1066; 8 RT 1142-1143; 14 RT 2512-2516.)[3]

C. Lt. O'Neil is exposed to asbestos on the USS *Oriskany* in the 1960's, long after the Navy had replaced the asbestos-containing components supplied with Crane Co.'s valves.

Plaintiff Patrick O'Neil was a Navy officer who served aboard the USS *Oriskany* between 1965 and 1967. (10 RT 1651-1652.) The *Oriskany* was an "Essex-class" aircraft carrier, with a population equal to the size of a small city. (7 RT 1098; 15 RT 2751.)

During his time aboard the *Oriskany*, Lt. O'Neil's job duties included, among other things, supervising Navy seamen performing equipment repairs in the engine and boiler rooms. (10 RT 1652-1656.) These repairs included work with valves, pumps, boilers, and other components of the steam propulsion system. (10 RT 1711-1718.) When a piece of equipment required repair, a Navy seaman would remove the external insulation, disconnect it from the flange, remove the internal

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[3] Asbestos-containing insulation, gaskets, and packing were not just used with valves. Rather, the Navy often used one or more of these materials in connection with a wide variety of products and equipment, including boilers, turbines, pipes, valves, pumps, flanges, fittings, evaporators, forced draft blowers, compressors, condensers, fuel oil heaters, distillers, and generators, among other things. (See 8 RT 1119-1123; 11 RT 1881, 1893-1895.)

seals, repair the item, replace the seals and gaskets, and reconnect it. (10 RT 1706-1715.)

Removal of the external insulation could be a dusty process that released asbestos fibers in concentrations that far exceeded any asbestos exposure that might occur from working with asbestos-containing gaskets or packing materials. (10 RT 1709-1711; see 13 RT 2327-2334.) The Navy did not warn the seamen who performed this work about the dangers of working with asbestos-containing insulation materials. (10 RT 1671, 1675, 1737-1738.) The Navy conducted studies in the 1940's and 1960's, and concluded that the amount of asbestos released from the work routinely done on Navy ships was not harmful. (8 RT 1149-1152.)[4] Crane Co.—a company whose valves sometimes incorporated asbestos-containing sealing components manufactured by other companies—could not have told the Navy anything it did not know about the potential harmful effects of asbestos. (7 RT 1097; 11 RT 1776-1777.) Indeed, at the time Crane Co. supplied the valves to the Navy and through the late

[4] The 1940's study concluded that pipe covering operations in Navy shipyards were safe. (6 RT 788-790.) That turned out to be wrong in hindsight; by the 1960's—decades after the Crane Co. valves at issue in this case were sold to the Navy—many believed that pipe coverers were at risk of contracting asbestos-related diseases. (6 RT 797; 8 RT 1151-1152; 11 RT 1806-1087, 1860-1861, 1870.) The number of asbestos fibers released from work with asbestos gaskets and packing, however, is thousands of times less than the pipe-covering work that the Navy studied, and is considered by some experts to be less than even the *current* threshold exposure level considered to be harmful. (13 RT 2327-2334.)

1960's when Lt. O'Neil was stationed on the *Oriskany*, *nobody* in the country believed that asbestos at levels released from working with gaskets or packing was harmful. (6 RT 807-809; 9 RT 1541-1542; 11 RT 1856.)

To the extent there is evidence that Lt. O'Neil was exposed to asbestos dust from work performed on Crane Co. valves, there is *no evidence* that any of the asbestos dust to which he was exposed came from a product manufactured, supplied, or designed by Crane Co. Crane Co. did not manufacture, supply, or design external insulation or flange gaskets to which Lt. O'Neil may have been exposed. (8 RT 1205-1206.) And at the time Lt. O'Neil boarded the *Oriskany*, the asbestos-containing internal gaskets and packing that were included with the Crane Co. valves originally had long ago been replaced with materials manufactured and supplied by others. (8 RT 1211-1212; 11 RT 1902; see also typed opn., 15 & fn. 8.)

D. Lt. O'Neil contracts mesothelioma and his wife and children sue several entities that manufactured or supplied asbestos to the Navy. After a trial against the non-settling defendants, the court grants nonsuit. The Court of Appeal reverses.

Decades after he completed his service on the *Oriskany*, Lt. O'Neil contracted mesothelioma. (6 RT 715.)[5] He died in

[5] Mesothelioma is a cancer of the lung lining, often associated with exposure to asbestos. (6 RT 688.)

2005. (12 RT 1970.) His wife and children then sued more than a dozen entities who allegedly manufactured or supplied asbestos-containing materials to the Navy under negligence and product liability theories. (1 AA 1-34.) By the time of trial, only a few of these entities remained, including Crane Co. and Warren Pumps.

At the conclusion of a 12-week trial, Crane Co. sought nonsuit on all theories of liability. Crane Co. argued primarily that it was not responsible as a matter of law for injuries caused by asbestos products it did not manufacture, supply, or design. (16 RT 2947-2948, 2953-2955.)

The trial court granted nonsuit in favor of Crane Co., because, inter alia, Crane Co. did not manufacture or supply any asbestos-containing material to which Lt. O'Neil was exposed. In so doing, the Court explained that the Navy was knowledgeable regarding the use of the asbestos-containing materials and it—not Crane Co.—was responsible for the integration of the asbestos-containing materials to which Lt. O'Neil was exposed into the completed steam propulsion system for the *Oriskany*. (16 RT 3007-3013.)

Plaintiffs appealed the judgment following the dismissal of their claims. Pending appeal, the First Appellate District, Division Five, decided *Taylor*, *supra*, 171 Cal.App.4th 564, supporting the trial court's ruling. On facts comparable to the facts here, the *Taylor* court relied on this Court's strict liability jurisprudence, as well as authority in other jurisdictions deciding the same issue, and concluded that valve makers are

not responsible as a matter of law for injuries to Navy workers exposed to asbestos-containing materials manufactured or supplied by third parties. The *Taylor* court cited three reasons for its holding: (1) the valve manufacturer is not part of the chain of distribution of insulation and replacement gaskets and packing that the valve maker does not manufacture or sell; (2) the valve manufacturer has no duty to warn of the dangers of products manufactured and sold by others; and, as the trial court held here; (3) the valve manufacturer is not responsible under the "component parts doctrine" for dangers created by the use of its valves and pumps when integrated into the steam propulsion systems on Navy ships. (*Taylor*, *supra*, 171 Cal.App.4th at pp. 575-592; see also *Braaten*, *supra,* 198 P.3d 493; *Lindstrom v. A-C Product Liability Trust* (6th Cir. 2005) 424 F.3d 488 (*Lindstrom*).)

The Second Appellate District, Division Five, rejected the opinions in *Taylor* and *Braaten* and reversed the trial court's nonsuit ruling.[6] This Court granted review.

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[6] Since the Court of Appeal's decision here, the Second District, Division Three decided *Merrill v. Leslie Controls, Inc.* (2009) 179 Cal.App.4th 262, and Division Two issued an unpublished opinion in *Hall v. Warren Pumps LLC* (Feb. 16, 2010, B208275) 2010 WL 528489 [nonpub opn.], both of which agreed with *Taylor*. This Court then granted review in *Merrill*, deferring briefing until the conclusion of this case.

LEGAL DISCUSSION

I. CRANE CO. IS NOT STRICTLY LIABLE FOR INJURIES CAUSED BY EXPOSURE TO ASBESTOS-CONTAINING PRODUCTS IT DID NOT MANUFACTURE OR SUPPLY.

A. This Court has imposed strict liability on only those entities that place defective products into the stream of commerce.

The strict liability doctrine permits a plaintiff to prevail simply by establishing that the defendant manufactured or supplied a defective product that caused the plaintiff's injury. To prevail, the plaintiff does not have to establish any fault on the defendant's part, and the defendant cannot defend the action by showing that it acted reasonably. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 478-479.)[7]

The application of the doctrine of strict liability has been, and should continue to be, "determined to a large extent by the fundamental policies which underlie it." (*Anderson*, *supra*, 53 Cal.3d at p. 995.) Although the adoption of strict liability was a departure from traditional tort law principles—Justice Cardozo

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[7] Strict liability claims may be based on "three types of defects—manufacturing defects, design defects, and 'warning defects,' i.e., inadequate warnings or failures to warn." (*Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 995 (*Anderson*); *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 426.)

characterized it as an "'assault upon the citadel of privity'"[8]—this Court has never expanded the doctrine so far as to make a defendant liable for an injury-causing product that the defendant did not place into the stream of commerce. The core policy underlying the doctrine is to fix liability "wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market." (*Escola v. Coca Cola Bottling Co.* (1944) 24 Cal.2d 453, 462 (*Escola*) (conc. opn. of Traynor, J.).) Indeed, the "purpose" of strict liability has been, and continues to be, insuring "that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market." (*Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 63 (*Greenman*).)

This Court has fulfilled these policy goals by applying strict liability to only those entities that put the injury-causing product into the stream of commerce. (See *Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1191 (*Peterson*), citing *Greenman*, *supra*, 59 Cal.2d 57; *Price v. Shell Oil Co.* (1970) 2 Cal.3d 245, 252; see also *Escola*, *supra*, 24 Cal.2d at p. 462 (conc. opn. of Traynor, J.) [strict liability applies to the entities "responsib[le] for" the defective product "reaching the market"]; accord, *Daly v. General Motors Corp.* (1978) 20 Cal.3d 725, 739 (*Daly*) [noting that the "basis" for imposing strict liability on an entity is that it "marketed or distributed a defective product"]; *Bostick v. Flex*

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[8] See Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)* (1960) 69 Yale L.J. 1099, 1099 & fn. 1, citing *Ultramares Corp. v. Touche* (1931) 255 N.Y. 170, 180 [174 N.E. 441, 445].

Equipment Co., Inc. (2007) 147 Cal.App.4th 80, 88 ["The doctrine of strict products liability imposes strict liability in tort on all of the participants in the chain of distribution of a defective product"].) The entities in the chain of distribution of an injury-causing product are the entities that can best avoid the product's risks, insure against them, and bear (and spread) the costs associated with them. (*Escola*, *supra*, 24 Cal.2d at p. 462.)

In addition to furthering policy goals, the stream of commerce principle is, in a word, fair, in imposing liability on only the "responsible" parties. The notion that the imposition of liability should "depend[] upon a showing by the plaintiff that his or her injuries were caused by the act of the defendant or by an instrumentality under the defendant's control" is a basic building block of tort law that predates strict liability. (*Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588, 597.)

Consistent with this stream of commerce/chain of distribution rule and the policy underlying it, this Court has expanded the scope of strict liability when to do so would impose liability upon those that profit from, and can influence, the marketing of the injury-causing product. (See *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256, 262-263 (*Vandermark*).) In *Vandermark*, the court expanded strict liability to intermediate product retailers because such entities "may be the only member of [the marketing] enterprise reasonably available to the injured plaintiff . . . [and] may play a substantial part in insuring that the product is safe or may be in a position to exert pressure on the manufacturer to that end." (*Id.* at p. 262) The retailer's

strict liability thus "serves as an added incentive to safety" and works no injustice on the retailer since it can presumably adjust for liability costs in its business relationship with the manufacturer. (*Ibid.*)[9]

On the other hand, this Court has declined to expand the scope of strict liability when to do so would not serve the underlying policy of fixing liability on the marketing enterprise behind the injury-causing product. For instance, in *Peterson*, the court ruled that a hotel owner may not be held strictly liable for injuries caused by a bathtub installed in the hotel. (*Peterson*, *supra*, 10 Cal.4th at pp. 1198-1199.) The same considerations that favored imposing liability in *Vandermark* militated against liability in *Peterson*, where the defendant hotel owner was not in a position to "exert pressure upon the manufacturer to make the product safe" or "share with the manufacturer the costs of insuring the safety of the tenant" through a cost adjustment in a continuing business relationship. (*Ibid.*)

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[9] Courts apply the following criteria to determine whether an entity is part of the stream of commerce: (1) whether the entity received a direct financial benefit from the sale of the product, (2) whether the entity's conduct was "a necessary factor in bringing the product to the initial consumer market," and (3) whether the entity had "control over, or a substantial ability to influence, the manufacturing or distribution process." (*Bay Summit Community Assn. v. Shell Oil Co.* (1996) 51 Cal.App.4th 762, 776 (*Bay Summit*).)

B. The *Taylor* court correctly recognized that the stream of commerce rule prohibits courts from imposing liability on valve manufacturers for asbestos products manufactured and supplied by others.

In *Taylor*, the First Appellate District applied the "stream of commerce" rule and determined that valve manufacturers who sold valves to the Navy during World War II were not responsible as a matter of law for asbestos exposure caused by external insulation, flange gaskets, or *replacement* seals (packing and gaskets) used by the Navy in conjunction with the valves.

As described in *Taylor*, Crane Co. sold valves to the Navy, the Navy installed the valves on one of its ships, the Navy used the Crane Co valves with various asbestos-containing products that it purchased from others, and an individual alleged injurious exposure to those asbestos-containing products. (See *Taylor*, *supra*, 171 Cal.App.4th at pp. 570-572 & fn. 2). The *Taylor* court analyzed the plaintiff's strict liability claims pursuant to the stream of commerce/chain of distribution principle and concluded that Crane Co. was not liable as a matter of law because it simply was "'not a part of the manufacturing or marketing enterprise of the allegedly defective

product[s] that caused the injury in question.'" (*Id.* at p. 579, quoting *Peterson*, *supra*, 10 Cal.4th at p. 1188.)[10]

The *Taylor* court based its holding on the precedent of this Court. (See *Taylor*, *supra*, 171 Cal.App.4th at pp. 575-579 [detailing at length the decisions of this court and how those decisions, and the stream of commerce principle developed in them, govern the set of facts presented in *Taylor*].) The *Taylor* court found further support in a number of California lower court opinions that stand for the general proposition that one manufacturer is not strictly liable for injuries caused by the product of another. (See generally *id.* at pp. 580-583 [collecting California Court of Appeal decisions that "uniformly" support the stream of commerce principle]; see also *id.* at pp. 582-583, citing *In re Deep Vein Thrombosis* (N.D.Cal. 2005) 356 F.Supp.2d 1055 [applying California law and concluding that airplane manufacturer cannot be liable for injuries caused by seats installed on its airplanes post-sale if it did not design, manufacture, purchase or select the seats].)

C. *Taylor* follows the trend of decisions nationwide addressing the same issue.

Outside of California, courts addressing the potential liability of manufacturers for injuries caused by other parties'

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[10] The *Taylor* court expressly addressed claims of a failure-to-warn variety (see *Taylor*, *supra*, 171 Cal.App.4th at p. 571), but its stream of commerce analysis applies equally to all species of strict liability claims.

products have consistently followed the same approach as *Taylor*.

The Supreme Court of Washington issued companion decisions in 2008 addressing the identical question presented in *Taylor* and this case, and concluded that equipment manufacturers are not legally responsible for asbestos-containing insulation, gasket, or packing materials used with their equipment on Navy ships post-sale. (See *Braaten*, *supra*, 198 P.3d 493 [valve and pump makers not responsible for insulation manufactured by third parties or for asbestos contained in replacement packing and gaskets not manufactured or sold by defendant]; *Simonetta v. Viad Corp*. (2008) 165 Wash.2d 341 [197 P.3d 127] (*Simonetta*) [evaporator manufacturer has no duty to warn of danger posed by asbestos insulation that it did not manufacture, sell, or supply].)

Although *Simonetta* focused on external insulation and *Braaten* focused on replacement gaskets and packing, the two opinions reached one conclusion—an equipment manufacturer is not liable for ancillary asbestos products manufactured and supplied by others. The principle of decision underlying *Braaten* and *Simonetta* is the same principle stated for over 40 years by this Court—an entity is strictly liable for injuries caused by the products it places into the stream of commerce, but not for injuries caused by products falling beyond its distribution chain. (*Braaten*, *supra*, 198 P.3d at p. 498.) In this analysis, "[i]t makes no difference whether the manufacturer knew its products would be used in conjunction with asbestos [products]." (*Ibid*.)

The United States Court of Appeals for the Sixth Circuit adopted the same approach in *Lindstrom*, *supra*, 424 F.3d at pp. 493-497, rejecting the plaintiff's effort to impose liability on the manufacturers of valves and pumps for injuries caused by asbestos-containing insulation, gaskets, and packing manufactured and supplied by others.

In *Ford Motor Co. v. Wood* (Ct.Spec.App. 1998) 119 Md.App. 1, 34-40 [703 A.2d 1315, 1330-1333] (*Wood*), abrogated on other grounds in *John Crane, Inc. v. Scribner* (2002) 369 Md. 369 [800 A.2d 727], the court addressed a very similar issue, namely, whether an auto manufacturer could be held liable for injuries the plaintiff allegedly suffered from working with asbestos-containing brake and clutch components. Plaintiffs argued that Ford could be liable for injuries caused by components manufactured and supplied by a third party, because those materials were used to replace asbestos-containing components that were supplied originally by Ford, and similar to replacement components that Ford offered for sale. (*Id.* at pp. 1330-1331.) The court rejected plaintiffs' claim as a matter of law based on the chain-of-distribution principle, noting that "limiting liability to those in the chain of distribution . . . preserves a bright line in the law of strict liability" and is equitable as well. (*Ibid.*; accord, *Taylor*, *supra*, 171 Cal.App.4th at p. 576.)

Outside the asbestos context, courts in other jurisdictions have consistently applied the stream-of-commerce/chain-of-distribution principle to hold that a manufacturer should not

bear liability for injuries caused by a product it did not manufacture, sell, or distribute. See:

- *Dreyer v. Exel Industries, S.A.* (6th Cir. May 4, 2009, No. 08-1854) 2009 WL 1184846 (*Dreyer*) [relying on *Taylor* and holding that the maker of a paint sprayer had no duty to warn of injuries caused when a solvent used to clean the sprayer ignited, even though the use of the solvent in question was clearly foreseeable to the sprayer's maker];

- *Baughman v. General Motors Corp.* (4th Cir. 1986) 780 F.2d 1131, 1133 (*Baughman*) [manufacturer cannot be liable for injuries caused by replacement component parts used with its product that it neither manufactured nor supplied];

- *Exxon Shipping Co. v. Pacific Resources, Inc.* (D.Hawaii 1991) 789 F.Supp. 1521, 1523, 1527 [maker of mooring terminal not responsible for defective "chafe chain" because there was no evidence the defendant "designed, manufactured, distributed, sold or otherwise supplied the specific chafe chain which failed"];

- *Niemann v. McDonnell Douglas Corp.* (S.D.Ill. 1989) 721 F.Supp. 1019, 1028-1030 [rejecting strict liability claims against the manufacturer of an aircraft for exposure to asbestos "chafing strips" on the aircraft engine, when plaintiff was exposed only to replacement chafing strips provided by others];

- *Cleary v. Reliance Fuel Oil Associates, Inc.* (N.Y.App.Div. 2005) 17 A.D.3d 503, 505-506 [manufacturer of water heater had no duty to warn of dangers of misplacing a temperature control device it did not manufacture];

- *Rastelli v. Goodyear Tire & Rubber Co.* (1992) 79 N.Y.2d 289, 298 [591 N.E.2d 222, 226] (*Rastelli*) [tire manufacturer not responsible for defective rim it did not place in the stream of commerce because there is no duty to warn when a manufacturer "produces a sound product which is compatible for use with a defective product of another manufacturer"];

- *Brown v. Drake-Willock International, Ltd.* (1995) 209 Mich.App. 136, 145 [530 N.W.2d 510, 515] ["The law does not impose upon manufacturers a duty to warn of the hazards of using products manufactured by someone else"];

- *Toth v. Economy Forms Corp.* (1990) 391 Pa.Super. 383, 388-389 [571 A.2d 420, 423] ["Once again, we emphasize appellee [manufacturer] did not supply the 'defective' product. Appellants' theory would have us impose liability on the supplier of metal forming equipment to warn of dangers inherent in wood planking that it did not supply. Pennsylvania law does not permit such a result"];

- *Walton v. Harnischfeger* (Tex.App. 1990) 796 S.W.2d 225, 227-228 [crane manufacturer had no duty to warn or instruct about rigging it did not place into the stream of commerce];

- *Newman v. General Motors Corp.* (La.Ct.App. 1988) 524 So.2d 207, 209 ["A manufacturer cannot be liable in a product liability claim where it shows that it did not manufacture or install the component of the product alleged to be defective"].

In sum, the vast weight of authority both in and outside California establishes that Crane Co. is potentially liable *only* for injuries caused by products it placed into the stream of commerce. As we now explain, if this Court applies that rules here, it must reverse the opinion of the Court of Appeal.

D. Crane Co. was entitled to nonsuit because it did not manufacture or supply the asbestos-containing products to which Lt. O'Neil was exposed.

1. Crane Co. is not liable for injuries allegedly caused by external insulation or flange gaskets that Crane Co. had no part in placing into the stream of commerce.

Plaintiffs contended at trial that Crane Co. was responsible for injuries caused by the release of asbestos fibers from asbestos-containing materials used by the Navy to insulate valves and to connect the valves to the *Oriskany*'s steam system. As previously noted, the *Oriskany* contained miles of piping that the Navy insulated with miles of asbestos-containing insulation. (7 RT 1014-1015.) The Navy also insulated much of the equipment in the *Oriskany*'s steam system, such as boilers, turbines, valves, pumps, flanges, fittings, and evaporators, among other things. (See typed opn., 3; 11 RT 1881, 1893-1895; see also 7 RT 1061-1062 [plaintiffs' trial expert, Captain Lowell,

testifying that *every* piece of equipment in the *Oriskany*'s steam system was likely insulated].)

However, as confirmed by plaintiffs' expert Captain Lowell, there is no evidence Crane Co. ever made any asbestos-containing insulation products (7 RT 1017) or supplied any of the insulation the Navy may have affixed to the Crane Co. valves aboard the *Oriskany* (8 RT 1205-1206). Crane Co. valves were shipped by Crane Co. and received by the Navy without insulation of any type. (8 RT 1206.) Sailors and shipyard personnel applied insulation to ship surfaces at the direction of the Navy, not Crane Co. (*Ibid*.)

The same is true with respect to the asbestos-containing gaskets used with the flanges that connected the valves to the ship's pipes. There is no evidence Crane Co. supplied any of the flange gaskets on the *Oriskany*. (8 RT 1205.) According to Lt. O'Neil's shipmate, entities such as Flexitallic and Garlock, not Crane Co., manufactured and supplied the gasket and packing materials used aboard ship. (See 11 RT 1897, 1906-1907; see also 14 RT 2513.)

Thus, Crane Co. was not in the chain of distribution of the asbestos-containing external insulation or flange gaskets present on the *Oriskany* during Lt. O'Neil's service. Unlike the manufacturers and suppliers of this insulation, Crane Co. was not in a position to avoid the product's risks, insure against them, or bear (and spread) the costs associated with them. (See *Escola*, *supra*, 24 Cal.2d at p. 462 (conc. opn. of Traynor, J.).) Rather, like the hotel owner in *Peterson*, Crane Co. had no

ongoing business relationship with the manufacturers of the injury-causing products and no demonstrable ability to exert pressure on them. The observation made by the *Peterson* court applies equally here—the "risk reduction" goal of strict liability is not advanced by imposing liability on entities """entirely outside the original chain of distribution""" in light of their inability to influence the decision-making that occurs within the chain. (*Peterson*, *supra*, 10 Cal. 4th at p. 1202.)[11]

2. Crane Co. is not liable for injuries allegedly caused by internal replacement seals (internal gaskets and packing) that Crane Co. did not place into the stream of commerce.

Plaintiffs produced evidence that Crane Co. supplied internal gaskets and packing (some of which may have contained asbestos and some of which did not) within the bodies of its valves when they were sold to the Navy in the 1940's. (See typed opn., 3 & fn. 3.) Plaintiffs produced no evidence, however, that any of the sealing materials supplied by Crane Co. were present on the *Oriskany* when Lt. O'Neil served decades later, or that Crane Co. supplied any of the replacement gaskets and packing used with those valves. Indeed, plaintiffs' expert Captain Lowell

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[11] The Court of Appeal stated that Crane Co. could be strictly liable for replacement *internal* seals (internal gaskets and packing), but did not articulate any theory under which Crane Co. could be liable for *external* materials, i.e., insulation and flange gaskets. (See typed opn., 17.)

confirmed that, although Crane Co. valves may have contained internal asbestos-containing gaskets or packing when shipped to the Navy in the 1940's, any such original parts would have been replaced long before Lt. O'Neil boarded ship in 1965. (8 RT 1211-1212; see also 11 RT 1902 [Lt. O'Neil's shipmate testifying that it was "[g]uaranteed" that any gaskets contained in the equipment on the *Oriskany* when it was first constructed had been removed prior to Lt. O'Neil's service].)

Although Crane Co. may have been part of the chain of distribution of the original seals contained in its valves, it was not part of the chain of distribution of the asbestos-containing materials to which Lt. O'Neil was exposed. Thus, Crane Co. has no legal duty with respect to any of the asbestos-containing materials plaintiffs contend were responsible for Lt. O'Neil's injuries. Instead, the duty to answer in strict liability for these replacement parts should "properly fall upon the manufacturer of the replacement component part." (*Baughman*, *supra*, 780 F.2d at p. 1133 [declining to impose liability on an automobile manufacturer for injuries caused by a defective replacement wheel].)

For this very reason, the courts in *Taylor* and *Braaten* dismissed claims by plaintiffs seeking damages from valve makers such as Crane Co. for injuries caused by asbestos exposure on Navy ships. The Supreme Court of Washington summed up the reasons for rejecting plaintiffs' claims against equipment makers as follows: "The harm in this case is a result of exposure to asbestos. These manufacturers, who did not

manufacture, sell, or otherwise distribute the replacement packing and gaskets containing asbestos to which Mr. Braaten was exposed, did not market the product causing the harm and could not treat the burden of accidental injury caused by asbestos in the replacement products as a cost of production against which liability insurance could be obtained. Thus, the policies that support imposition of strict liability are inapplicable in this case." (*Braaten*, *supra*, 198 P.3d at p. 501; see also *Taylor*, *supra*, 171 Cal.App.4th at pp. 571-572.) These observations are equally accurate when applied to the comparable factual situation presented here.

The reasoning of *Taylor* and *Braaten* is also consistent with principles of proximate causation. Under California law, a product liability plaintiff must establish not only that a product had a defect, but "that such defect was a proximate cause of his injuries." (*Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 427.) "[P]roximate cause 'is ordinarily concerned, not with the fact of causation, but with the various considerations of *policy* that limit an actor's responsibility for the consequences of his conduct.'" (*PPG Industries, Inc. v. Transamerica Ins. Co.* (1999) 20 Cal.4th 310, 316, emphasis added; accord, *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1045; *Mosley v. Arden Farms Co.* (1945) 26 Cal.2d 213, 221 (conc. opn. of Traynor, J.) ["'What we do mean by the word "proximate" is, that because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point'" (quoting *Palsgraf v. Long Island R. Co.*

(1928) 248 N.Y. 339, 352 [162 N.E. 99, 103] (dis. opn. of Andrews, J.))].)

Thus, this Court has authorized courts to invoke the doctrine of proximate cause to avoid imposing liability on a defendant whose connection to the plaintiff's injury is simply too far removed for the defendant to be considered responsible for the plaintiff's injury, which was caused more directly by others. (See *People v. Cervantes* (2001) 26 Cal.4th 860, 866-874; see also *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 464.)

Applying those principles here leads to the conclusion that Crane Co. should not be liable for replacement seals. Even assuming arguendo that product manufacturers have a duty relating to others' defective products, a company that never manufactured a single asbestos-containing product and did no more than supply valves to the Navy during World War II is not sufficiently connected to injuries allegedly caused by replacement parts used with the valves decades later to be legally responsible for those injuries.

Taylor noted that the truly responsible parties are the "manufacturers and suppliers of the asbestos-containing materials" that actually contributed to the plaintiffs' injury. (*Taylor*, *supra*, 171 Cal.App.4th at p. 595.) "Although there can be no question that Mr. Taylor suffered harm, the connection between respondents' conduct and Mr. Taylor's injury is remote. Respondents sold equipment to the Navy in the early 1940's, and it is undisputed that they were not the manufacturers or

suppliers of the injury-causing products that Mr. Taylor encountered during his military service some 20 years later. Respondents' allegedly culpable conduct is the failure to warn of a danger arising from *other* manufacturers' products *two decades* after respondents delivered their products to the Navy. Any connection between respondents' conduct and Mr. Taylor's injury is thus highly attenuated." (*Id*. at pp. 594-595.)

Taylor, like this case, arose in an environment where "most of the former asbestos industry manufacturers and suppliers are bankrupt." (Riehle et al., *Products Liability for Third Party Replacement or Connected Parts: Changing Tides from the West* (2009) 44 U.S.F. L. Rev. 33, 38.) As a result of this reality, plaintiffs have shifted their focus from the entities that actually supplied and manufactured asbestos-containing insulation products to "ancillary sources of recovery" in the form of "'ever-more peripheral defendants'" whose products are in any way connected to asbestos. (*Ibid*. [noting one plaintiffs' attorney who "candidly described asbestos litigation as an 'endless search for a solvent bystander'" and further noting that such "litigation has ensnared as defendants at least 8400 entities across seventy-five industries"].) "These new classes of defendants contributed very little to the asbestos crisis, and they have a minimal connection to the now defunct industry that mined, milled, processed, and sold asbestos products to the public." (*Ibid*.)

Under these circumstances—whether analyzed under a duty/chain-of-distribution analysis or a proximate cause

analysis—liability cannot and should not be imposed on Crane Co. for replacement internal seals that were manufactured, sold, and distributed by others.[12]

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[12] Asbestos claims in California have for many years focused on the manufacturers of insulation, gasket, and packing materials. (See, e.g., *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 960 & fn. 3 [lung cancer claim focusing on asbestos-containing insulation products supplied by Owens-Illinois, Johns-Manville, and Unarco, among others]; *Hackett v. John Crane, Inc.* (2002) 98 Cal.App.4th 1233, 1236-1237 [mesothelioma claim focusing on asbestos-containing insulation, gasket, and packing products supplied by Garlock, Johns-Manville, and Owens-Corning, among others].) As is the case here, however, plaintiffs often do not present claims in the tort system against many of the entities that manufactured and supplied asbestos-containing insulation, gaskets, and packing material. Rather, claims against those entities are addressed through a network of settlement trusts that resulted from bankruptcy proceedings. It has been estimated recently that the average mesothelioma plaintiff in one California county would stand to recover $1.2 million from such trusts. (See Bates et al., *The Claiming Game* (Feb. 3, 2010) 25 Mealey's Litig. Rep.: Asbestos 19, 27.) To date, California law has not addressed the impact of the bankruptcy trust recoveries upon claims asserted in the tort system, and defendants like Crane Co., who, even if held responsible for a de minimus amount of a plaintiff's asbestos exposure, are at risk of being held jointly and severally liable for all of plaintiffs' economic damages, without ever having manufactured or supplied a product that actually released the asbestos fibers to which the injured plaintiff was exposed. (Cal. Civ. Code, §§ 1431, 1431.2.)

3. The Court of Appeal erroneously held that Crane Co. is liable for replacement internal seals.

The ultimate holding of the Court of Appeal is that Crane Co. "can be held strictly liable for injury caused by dust emanating from replacement asbestos." (Typed opn., 17.) In reaching this holding, the Court of Appeal disregarded the stream of commerce/chain of distribution principle discussed above. (See typed opn., 18 ["We can see *no relevance* to the fact that the injury was caused by the operation of its product in conjunction with a replacement part which is no different than the original" (emphasis added)][13].) The Court of Appeal concluded that Crane Co. is liable for injuries caused by the replacement gaskets and packing because these products were necessarily and foreseeably used with Crane Co.'s valves. (Typed opn., 16-18.)

The Court of Appeal's analysis is factually and legally flawed. As a factual matter, no evidence supports the inference that Crane Co. valves would not function without asbestos-containing gaskets or packing. (See *ante*, p. 7, fn. 2.) Even the Court of Appeal recognized that "[t]he evidence was that some

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[13] The evidence does not support the conclusion that the replacement components were exactly the same as the original components. The potential differences between the original and replacement components—even if both contained asbestos—militate against the imposition of liability upon a product manufacturer for third-party replacement components. (See *Wood*, *supra*, 703 A.2d at pp. 1330-1333.)

Crane valves involved bonnet gaskets which did not use asbestos, but that other Crane valves had different gaskets, which did include asbestos." (Typed opn., 3, fn. 3.) Further, Captain Lowell could not refute the assertion that non-asbestos-containing packing materials were available in the 1940's, when the valves in question were made. (8 RT 1180; see also *Braaten*, *supra*, 198 P.3d at pp. 495-496 [noting the availability of non-asbestos materials]; *Taylor*, *supra*, 171 Cal.App.4th at pp. 590-591 [same].)

The Court of Appeal's analysis is legally flawed as well, replacing the well-established steam-of-commerce doctrine with a simplistic, boundless foreseeability standard. The court's reasoning represents an unworkable and unwarranted expansion of products liability well beyond the limits of the stream-of-commerce/chain-of-distribution test, leaving the ultimate limits of strict liability undefined and unknowable.

"[F]oreseeability alone is not sufficient to create an independent tort duty." (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 552; see also *Thing v. La Chusa* (1989) 48 Cal.3d 644, 668 ["[T]here 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"].) In the strict liability context, this Court has used foreseeability to limit, not to expand, the scope of liability. In other words, the Court has held that foreseeability is a necessary but not sufficient basis for imposing liability. (See *Soule v. General Motors Corp.* (1994) 8

Cal.4th 548, 560 (*Soule*) [defendant is strictly liable only "if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way"]; accord, *Cronin v. J.B.E. Olson Corp.* (1972) 8 Cal.3d 121, 126; see also *Simonetta*, *supra*, 197 P.3d at p. 131, fn. 4 [holding that "'[f]oreseeability does not create a duty but sets limits once a duty is established'"].) Thus, a court should not even reach the question of "foreseeability" unless it first concludes that the stream-of-commerce/chain-of-distribution test is satisfied, in which case the concept of foreseeability serves to limit—not expand—the potential tort duty.

Under the Court of Appeal's analysis, however, foreseeability no longer works to limit the bounds of strict liability; instead, it expands the traditional strict liability cause of action to embrace any injury that was foreseeable in hindsight, whether caused by a defendant's product or by another product used with it decades after the sale. In order to avoid limitless liability to those who share any connection to a dangerous product—even products that are deemed to be potentially dangerous only in hindsight—this court should reaffirm its commitment to the stream of commerce rule, which sensibly and fairly limits the scope of those responsible under the doctrine of strict liability to those entities in the stream of commerce. (See *Taylor*, *supra*, 171 Cal.App.4th at p. 576.)

The Court of Appeal cited the decision in *Daly*, for the proposition that a manufacturer "is liable in strict liability for an injury caused by the foreseeable use" of its product. (Typed opn.,

16.) *Daly*, however, did not adopt or imply any such expansive rule of liability, and its analysis supports no such rule. The *Daly* court wrote that the "basis" for imposing strict liability on an entity is that it "has marketed or distributed a defective product." (*Daly*, *supra*, 20 Cal.3d at p. 739.) The *Daly* court then noted, as an exception to this rule, that "the manufacturer is not deemed responsible when injury results from an unforeseeable use of its product." (*Id*. at p. 733.) Thus, the formulation of the strict liability cause of action in *Daly* mirrors the formulation in *Soule*, *Escola*, and virtually all other decisions of this Court on the issue—the scope of liability is determined in the first instance by the scope of the chain of distribution, not by a foreseeability analysis.

The Court of Appeal likewise cited to the decision in *Vandermark*, to support its holding, noting in particular the language that a "'manufacturer of a completed product cannot escape liability by tracing the defect to a component part supplied by another.'" (Typed opn., 16, quoting *Vandermark*, *supra*, 61 Cal.2d at p. 261.) Although that statement is inarguably a legally accurate one, it has no application here. The question in *Vandermark* was whether Ford Motor Company could be strictly liable for injuries caused by one of its automobiles where the defect in the automobile stemmed not from the direct actions of Ford but from the actions of one of its authorized dealers taken on Ford's behalf prior to the sale of the automobile. (*Vandermark*, *supra*, 61 Cal.2d at pp. 260, 261.) The answer, which flows directly from the chain-of-

distribution/stream-of-commerce principle, was, of course, yes. (*Id*. at p. 261.) This case presents a very different situation. Here, Crane Co. did not supply the allegedly defective, harm-causing materials to which Lt. O'Neil was exposed. Rather, those materials were placed into the valves by the valves' purchaser decades after the sale.

The Court of Appeal also supported its foreseeability analysis by citing *DeLeon v. Commercial Manufacturing & Supply Co*. (1983) 148 Cal.App.3d 336 (*DeLeon*). (Typed opn., 18.) There, the manufacturer of a sorting bin was held potentially responsible for an injury caused by plaintiff's contact with an adjacent, dangerous line shaft. (*DeLeon*, at pp. 342-343.) The court found summary judgment inappropriate because there were issues of fact as to whether the bin maker was actively responsible for choosing the location of the sorting bin on the premises at which the accident occurred. (*Id*. at pp. 345-346.) The sort of "designer liability" at issue in *DeLeon* was not at issue here. Plaintiffs produced no evidence that Crane Co. participated in the design of the system into which the Navy incorporated its valves or the steam system of the *Oriskany*. (See 7 RT 1058-1060.)

The Court of Appeal also relied on *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co*. (2004) 129 Cal.App.4th 577 (*Tellez-Cordova*), another case involving dissimilar facts. *Tellez-Cordova*, unlike this case, is an example of a "case where the combination of one sound product with another sound product creates a dangerous condition about which the

manufacturer of each product has a duty to warn." (*Rastelli*, *supra*, 591 N.E.2d at p. 226.) In *Tellez-Cordova*, the court held that a strict liability cause of action could be brought against the maker of a grinding tool because the tool could *only* be used in a manner that produced injury-causing dust. (*Tellez-Cordova*, at pp. 580, 582.) The same cannot be said of Crane Co.'s valves. Unlike the power tool in *Tellez-Cordova*, which was designed for the very purpose of driving abrasive wheels to grind metals and thereby to release the ground metal in the form of dust, Crane Co.'s valves were like faucets, designed to control the flow of water and steam through a ship's pipes. In order to create a proper seal and prevent leaks, the valves used packing and gaskets, which could or could not contain asbestos; the choice of whether to use asbestos-containing materials post-sale rested with the Navy not with Crane Co. (See *ante*, pp. 6, 7-8 & fn. 2.) The valves' function was not aided by or designed to cause asbestos fibers to be released from these components. (See *Taylor*, *supra*, 171 Cal.App.4th at p. 585 [there is no evidence defendant's "equipment released the asbestos that caused [plaintiff's] injuries"].)

In any event, to the extent *DeLeon* and *Tellez-Cordova* can be viewed as support for the proposition that foreseeability trumps the well-established stream-of-commerce/chain-of-distribution principle, those opinions are out of step with California law. Consistent with the stream-of-commerce/chain-of-distribution principle, other California courts have refused to hold product manufacturers responsible for products they did

not introduce into the stream of commerce, even where the product manufacturer's own product is foreseeably connected to another defective, injury-producing product. (See, e.g., *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 516, 524 [insulation manufacturer not responsible for insulation that was based on manufacturer's design, but was sold and marketed by another company]; *Garman v. Magic Chef, Inc.* (1981) 117 Cal.App.3d 634, 636-637 [manufacturer of a gas stove and water heater was not responsible for a leaking pipe manufactured by another entity]; *Blackwell v. Phelps Dodge Corp.* (1984) 157 Cal.App.3d 372, 378 [manufacturer of sulfuric acid not liable when a tank car in which the acid was being transported permitted the acid to leak]; see also *Dreyer, supra,* 2009 WL 1184846 at p. *4 ["even when it is foreseeable that a product will be used in combination with another, courts [will decline] to impose liability on a manufacturer for the product it did not manufacture"]; *Wood*, *supra*, 703 A.2d at p. 1331 ["Ms. Wood's phrasing of the issue, that Ford had a duty to warn of the dangers associated with the foreseeable uses of its vehicles, obscures the fact that she really is attempting to hold Ford liable for unreasonably dangerous replacement component parts that it neither manufactured nor placed into the stream of commerce"].)

II. CRANE CO. IS NOT STRICTLY LIABLE FOR "COMPONENT PARTS" INTEGRATED INTO THE *ORISKANY*'S STEAM PROPULSION SYSTEM.

A. The component parts doctrine limits liability of those who sell or distribute component parts for injuries caused by the purchaser's integration of the component into a finished product.

Under the component parts doctrine a defendant who manufactures, sells or distributes component parts is generally not liable for injuries that result when the purchaser integrates the component parts into a finished product. (See Rest.3d Torts, Products Liability, §5; *Taylor*, *supra*, 171 Cal.App.4th at pp. 584-585.) The rule applies to components "such as raw materials, valves, or switches, [which] have no functional capabilities unless integrated into other products." (Rest.3d Torts, Products Liability, §5, com. a, pp. 130-131.) The purpose of the rule is that "component sellers who do not participate in the integration of the component into the design of the product should not be liable merely because the integration of the component causes the product to become dangerously defective." (*Id*. at p. 131.) Thus, those who sell, distribute, or manufacture components are not liable for injuries caused by the finished product into which the component is incorporated unless (1) the component itself was defective *and* such defect caused the injury or (2) the seller or distributor of the component substantially participated in the

integration of the component into the design of the finished product. (Rest.3d Torts, Products Liability, §5; *Taylor*, *supra*, 171 Cal.App.4th at pp. 584-585; *Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 839-840 (*Artiglio*).)

B. The trial court, as did *Taylor*, correctly applied the component parts doctrine to find Crane Co. is not liable for injuries allegedly caused by valves incorporated into the Navy's steam propulsion system.

The trial court granted nonsuit based on the component parts doctrine, because it concluded that Crane Co.'s valves were not inherently dangerous or defective, but became dangerous only when integrated into the *Oriskany*'s steam propulsion system and maintained under the Navy's supervision. (16 RT 3001-3007.) The court also concluded that Crane Co. "did not substantially participate in the integration" of the valves into the "steam systems of the naval vessel." (16 RT 3009.) After the trial court's ruling, the First District reached the same conclusion in *Taylor*, holding that Crane Co. was entitled to the protection of the component parts doctrine for claims based on alleged exposure from work with valves on Navy ships. (*Taylor*, *supra*, 171 Cal.App.4th at pp. 584-586.) The trial court and *Taylor* were correct: none of the criteria for imposing liability applied under the component parts doctrine exists here.

The valves did their job of opening and closing to allow or impede the flow of liquid or steam. Plaintiffs nevertheless claim the valves were defective because the Navy chose to use asbestos-containing materials manufactured and supplied by third parties within or near the valves. But to the extent asbestos fibers were released when the valves were maintained, the fibers were not released as a result of any defect in the valves' design, but as a result of the way they were integrated and maintained by the Navy. (See typed opn., 20 [plaintiffs claimed that the asbestos packing and gaskets were not dangerous until they were "baked on" by the heat of the steam used by the Navy].) The evidence at trial demonstrated that the gaskets and packing when delivered by Crane Co. could be removed intact without releasing any asbestos fibers. (7 RT 910-912; 12 RT 2019-2020.)

Moreover, even if it could be said that a valve was defective because it included asbestos-containing materials when sold to the Navy originally, there is no evidence Lt. O'Neil was exposed to any such asbestos-containing material. Therefore, no alleged defect in a valve caused Lt. O'Neil's injuries. As explained in *Taylor*, Crane Co. is not liable where "it is undisputed that [Crane Co's] injuries were caused by his exposure to asbestos fibers released from gaskets, packing, and insulation manufactured by other companies, and installed long after the respondents' products were supplied to the Navy." (*Taylor*, *supra*, 171 Cal.App.4th at p. 585; see also 8 RT 1211 [plaintiffs' trial expert conceding that by the time Lt. O'Neil

boarded the *Oriskany*, any asbestos-containing gaskets or packing supplied with Crane Co.'s valves were no longer around]; 11 RT 1902.)

Fully, Crane Co. did not substantially participate in the integration of its valves into the steam propulsion system of Navy ships in general or of the *Oriskany*. To the contrary, the evidence established that the Navy was solely responsible for determining what equipment would go on its ships and how they would be integrated into the ship's design. (7 RT 1058-1060; see also *ante*, p. 7.)

For all of these reasons, the trial court and *Taylor* correctly found plaintiffs' claims against Crane Co. are barred by the component parts doctrine.

C. The Court of Appeal's reason for refusing to apply the component parts doctrine is flawed.

The Court of Appeal reversed the trial court's grant of nonsuit because it disagreed with both the trial court's nonsuit ruling and with the reasoning of *Taylor*. The Court of Appeal offered several reasons for its conclusions, none of which has merit.

First, the court found that Crane Co.'s valves were not "component parts" as defined by the doctrine because they were not multi-use or fungible products designed to be altered and incorporated into some other product. (Typed opn., 12.) The argument is curious given that on page 11 of its opinion, the

Court of Appeal acknowledged that a "component" is defined by the Restatement as including "'valves'" that "'have no functional capabilities unless integrated into other products.'" (Typed opn., 11, quoting Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.) Crane Co.'s valves undisputedly meet that definition, and the Court of Appeal offered no explanation how Crane Co.'s valves could have functioned without first being integrated into another product, such as the Navy's steam propulsion system.

Instead, the Court of Appeal concluded Crane Co's valves do not meet the definition of a component because the valves were specifically designed to be used with asbestos-containing insulation and packing that would have to be removed during routine repair and maintenance, and Crane Co. knew in advance how their products would be used by the Navy. (Typed opn., 12.) Neither argument makes sense. The valves were not designed for the purpose of integrating asbestos-containing gaskets and packing, but were designed to control the flow of liquid and steam within an integrated system. The fact that the valves contained internal components manufactured by others does not convert the fungible, multi-use valve into a standalone product that has a use independent of its integration into a larger product.

Nor does Crane Co.'s knowledge of the Navy's intended use of the valves take the valves outside of the ambit of the component parts doctrine. As noted in the Restatement, if an allergy-inducing foam made by a foam manufacturer is incorporated into disposable dishware by a dishware

manufacturer, the foam manufacturer has no duty to warn either the dishware maker or the consumer, even if it knows the dishware may adversely affect many consumers. (Rest.3d Torts, Products Liability, § 5, com. b, illus. 4, pp. 133-134; *Artiglio*, *supra*, 61 Cal.App.4th at pp. 837-840.) The Restatement notes that the foam manufacturer would be liable only if the foam itself were defective, or the foam manufacturer actually participated in the design of the dishes. (*Ibid*.) Thus, even if Crane Co. knew that asbestos fibers would be released when its valves were maintained, it could not be liable unless it substantially participated in the design of the steam propulsion system, or a defect in the valve caused an injury.

Second, the Court of Appeal asserted that even if the valves could be characterized as "components," the steam propulsion system cannot be considered a finished product because it would be unfair to require the plaintiffs to prove not only that Crane Co. was substantially involved in the design of its own valves, but also that Crane Co. was involved in "the design of the entire steam propulsion system, or the ship itself." (Typed opn., 13-14.) Here, the court misunderstood the component parts doctrine, which would not require plaintiffs to establish Crane Co.'s involvement in every part of the steam propulsion system, but would require plaintiffs to prove that Crane Co. "substantially participate[d] in the integration of" its components (the valves) into the design of the finished product (the ship's steam propulsion system). (Rest.3d Torts, Products Liability, § 5(b)(1).) The evidence, however, is that Crane Co.

supplied valves and the Navy decided where the valves would go, how the valves would be connected, and how the valves would be covered and maintained. (7 RT 1058-1060.)

Third and finally, the Court of Appeal concluded that even if the component parts doctrine potentially applies, it does not apply here because the valves were defective in the sense that they became dangerous when used during expected maintenance. (Typed opn., 14.) But as explained above, to the extent the valves became dangerous when used during routine maintenance, it was as a result of the Navy's decision to use asbestos-containing materials with the valves as part of the *Oriskany*'s steam propulsion system, not a defect in the valve itself. (See *ante*, pp. 7, fn. 2, 41.) The Court of Appeal, moreover, wholly ignores the point made in *Taylor* that Crane Co. did not manufacture or supply any of the asbestos-containing materials present on the *Oriskany* at the time of Lt. O'Neil's service. (*Ibid*.) Therefore, even if a valve could be considered dangerous because it was supplied originally with asbestos-containing components, those originally supplied materials did not cause Lt. O'Neil's injury.

III. CRANE CO. IS NOT LIABLE UNDER ANY NEGLIGENCE-BASED THEORY OF LIABILITY.

In *Taylor*, the court determined that Crane Co. owed no duty to the plaintiff under either a strict liability or negligence theory. (See *Taylor*, 171 Cal.App.4th at pp. 575-596.) In this

case, the Court of Appeal addressed *Taylor*'s duty analysis with regard to strict liability, but declined to address *Taylor*'s analysis of any potential negligence-based duty of care. (Typed opn., 19, fn. 9.)

Although Crane Co. does not separately argue the issues of negligence in this brief, Crane Co. believes this Court should address the negligence issues, and Crane Co. adopts and incorporates by reference the negligence arguments presented in Warren Pumps' opening brief on the merits. As explained by Warren, the *Taylor* court's conclusion that no negligence-based duty exists is sound and particularly appropriate on the record presented here, where plaintiffs' own expert conceded that nobody in the country believed, when Crane Co. supplied the valves to the Navy and when Lt. O'Neil served on the *Oriskany*, that the asbestos-containing sealing material used with Crane Co.'s valves posed any health risk. (6 RT 807-809.) It was thus not even minimally foreseeable that Crane Co.'s inclusion of asbestos-containing sealing material to the Navy in the 1940's could cause any potential injury to a Navy seaman who was exposed to replacement sealants decades later and then did not contract an asbestos-related injury for another 40 years.

CONCLUSION

For the foregoing reasons, the Court of Appeal's judgment that the trial court erred in entering a nonsuit in Crane Co.'s favor should be reversed.

March 8, 2010

HORVITZ & LEVY LLP
DAVID M. AXELRAD
JASON R. LITT
CURT CUTTING
K&L GATES LLP
RAYMOND L. GILL
ROBERT E. FEYDER
OF COUNSEL
PAUL J. LAWRENCE
NICHOLAS P. VARI
K&L GATES LLP

Attorneys for Defendant and Respondent
CRANE CO.

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1).)

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March 8, 2010

Jason R. Litt

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On March 8, 2010, I served true copies of the following document(s) described as **OPENING BRIEF ON THE MERITS** on the interested parties in this action as follows:

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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2010, at Encino, California.

Kathy Turner

Kathy Turner

SERVICE LIST
O'Neil et al. v. Crane Co. et al.
CASCT Case No.: S177401 • COA Case No.: B208225
Superior Court Case No.: BC360274

Individual / Counsel Served	Party Represented
Raymond L. Gill, Esq. Robert E. Feyder, Esq. K&L GATES LLP 10100 Santa Monica Boulevard, 7th Floor Los Angeles, California 90067 (310) 552-5000 •FAX: (310) 552-5001	Defendant and Respondent CRANE CO.
Laurie J. Hepler, Esq. James P. Cunningham, Esq. CARROLL, BURDICK & McDONOUGH LLP 44 Montgomery Street, Suite 400 San Francisco, California 94104 (415) 989-5900 • FAX (415) 989-0932	Defendant and Respondent WARREN PUMPS, LLC
Jeffrey Isaac Ehrlich THE EHRLICH LAW FIRM 411 Harvard Avenue Claremont, California 91711 (909) 625-5565 • FAX: (909) 625-5477	Plaintiff and Appellant BARBARA J. O'NEIL
Paul C. Cook, Esq. WATERS & KRAUS, LLP 222 North Sepulveda Boulevard, Suite 1900 El Segundo, California 90245 (310) 414-8146 • FAX: (310) 414-8156	Plaintiff and Appellant BARBARA J. O'NEIL
Michael B. Gurien, Esq. WATERS & KRAUS, LLP 222 North Sepulveda Boulevard, Suite 1900 El Segundo, California 90245 (310) 414-8146 • FAX: (310) 414-8156	Plaintiffs and Appellants BARBARA J. O'NEIL, MICHAEL P. O'NEIL, and REGAN K. SCHNEIDER
Don Willenburg, Esq. GORDON & REES, LLP 275 Battery Street, Suite 2000 San Francisco, California (415) 986-5900 • FAX: (415) 986-8054	Ingersoll-Rand Company – Request for Depublication filed 11/17/09

Individual / Counsel Served	Party Represented
Clerk of the Court California Court of Appeal Second Appellate District • Division 5 300 S. Spring Street, 2nd Floor • North Tower Los Angeles, California 90013 1213	Case Number: B208225
Hon. Elihu M. Berle Superior Court of the State of California County of Los Angeles • Central District Stanley Mosk Courthouse 111 N. Hill Street • Dept. 01 Los Angeles, California 90012-3014 (213) 893-1014	Case Number: BC360274