

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S177401

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

v.

CRANE CO., et al.,
Defendants and Respondents.

SUPREME COURT
FILED

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After a Decision by the Court of Appeal,
Second Appellate District, Division Five
(Case No. B208225)

**BRIEF AMICUS CURIAE OF PACIFIC
LEGAL FOUNDATION IN SUPPORT OF
DEFENDANTS AND RESPONDENTS CRANE CO., ET AL.**

DEBORAH J. LA FETRA, No. 148875
TIMOTHY SANDEFUR, No. 224436
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Attorneys for Amicus Curiae
Pacific Legal Foundation

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INTRODUCTION AND SUMMARY OF ARGUMENT

In the most famous negligence case of all time, *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928), Judge Benjamin Cardozo held that defendants owe a duty of reasonable care only to those persons who are within a class of foreseeable victims of negligence. Tort duty can be based only on the foreseeability of harm to the person in fact injured, and not on an abstract duty to the entire world, as dissenting Judge Andrews contended. 248 N.Y. at 350, 162 N.E. at 103 (Andrews, J., dissenting). In that case, a railroad passenger being helped onto a train dropped a package of explosives; they went off, producing vibrations which caused a scale to fall on Mrs. Palsgraf, injuring her. Judge Cardozo found that because the railroad employees could not have anticipated injury to Mrs. Palsgraf, they owed her no duty and, therefore, could not be liable to her for negligence. *Palsgraf*, 248 N.Y. at 343, 162 N.E. at 100. While every act of every person conceivably can be traced to positive or negative effects on others, imposing legal liability for such attenuated results would have serious negative effects on worthwhile economic enterprises.

Although the merits of both Cardozo's and Andrews' approaches have been extensively debated through the years, one conclusion is clear: in tort law, the concept of duty is one in which considerations of public policy should be primary. "In short, the *Palsgraf* case balanced the 'justice' of

Mrs. Palsgraf's position as an innocent passenger injured by the carelessness of a solvent enterprise against the threats to the future financial solvency of that enterprise posed by too extensive an ambit of tort liability." G. Edward White, *Tort Law In America: An Intellectual History* 99 (1985); see *Kane v. Hartford Accident & Indemnity Co.*, 98 Cal. App. 3d 350, 356 (1979) (relying on *Palsgraf*, holding that a plaintiff raped on hospital premises by an employee of an independent contractor had no claim against the insurer that bonded the employee).

Like *Palsgraf*, this case presents a question about when duty is owed by a defendant to a victim whose injury is so distant from the defendant's involvement that imposing liability on the defendant could have seriously harmful consequences for a valuable, socially productive industry. The specific question is whether a manufacturer has a duty to warn the eventual user of the dangers presented by the use or maintenance of another product if it is foreseeable that the two products will be used in tandem. Liability costs are a serious burden on business, and impose unnecessary liability risks over-detering economic activity. Over-deterrence imposes significant costs on consumers, resulting in fewer goods and services being made available to the public, and stifles investment, economic growth, and job creation. Allowing negligence liability to attach here would expand the duty of care too

far, with potentially dangerous consequences to California's already fragile economy.

ARGUMENT

I

LIABILITY SHOULD NOT ATTACH TO MANUFACTURERS FOR FAILING TO WARN OF THE DANGERS RESULTING FROM A SAFE PRODUCT USED WITH OTHER DANGEROUS PRODUCTS

While it is entirely consistent with California tort doctrines that manufacturers have a duty to warn about maintenance procedures regarding their own products, no decision other than that of the court below has held that manufacturers have had a duty to warn about dangers of other products manufactured by other companies that, when disturbed in general maintenance procedures, result in potential hazards.

The court below failed to consider the important public policies that justify line-drawing when it comes to imposition of a duty. There was nothing about the maintenance of the pumps, valves, and turbines themselves that necessitated a warning about its safety. It was only because the insulation for the machinery the Navy chose to use was asbestos insulation, that O'Neil was exposed to asbestos fibers. It is perfectly consistent to hold that manufacturers or suppliers have a duty to warn ultimate users of the hazards inherent in their own products, but not when the missing warning is regarding a product that is not manufactured or distributed by the defendants.

The court below held that the valves “were used as they were designed to be used,” that Crane “had the ability to warn the users of their products” and that the lack of a warning was a design defect insofar as it related to “the product’s fitness for use with another, necessary, product.” *O’Neil v. Crane Co.*, 177 Cal. App. 4th 1019, 1030, 1037 (2009). Taken to its logical conclusion, and ignoring public policy, this holding would require all manufactures to warn against *any* possible materials that, when used in conjunction with theirs, could result in malfunction. Public policy would never countenance such a result, however, because it places the onus on the defendant who has no control to prevent the harm from occurring and offers the warning from a place where the user is neither expecting to see it nor likely to notice it.¹ *See, e.g., Sperry v. Bauermeister, Inc.*, 4 F.3d 596, 598 (8th Cir. 1993) (holding supplier of spice grinding and dust control component parts of milling system not liable because no evidence existed of defects in the

¹ Courts that generously impose liability on manufacturers for failure to warn provide “an incentive to sellers to overwarn about product risks, which undermines the effectiveness of product warnings to the ultimate detriment of consumers.” Mark Geistfeld, *Inadequate Product Warnings and Causation*, 30 U. Mich. J.L. Ref. 309, 310 (1997). This incentive is heightened because “companies are penalized for underwarning but not for overwarning.” W. Kip Viscusi, *Individual Rationality, Hazard Warnings, and the Foundations of Tort Law*, 48 Rutgers L. Rev. 625, 666 (1996). If the manufacturers put the warning on the pumps, valves, and turbines, the warning would be seen only after the insulation had been removed for servicing, which presumably would be too late to prevent exposure, requiring a warning that borders on the ridiculous: “If you can read this, you have been exposed to asbestos.”

component part); *Kealoha v. E.I. du Pont de Nemours & Co.*, 82 F.3d 894, 900-01 (9th Cir. 1996) (holding that a supplier of raw materials cannot be liable for defects in the ultimate product); *Koonce v. Quaker Safety Prods. & Mfg. Co.*, 798 F.2d 700, 715 (5th Cir. 1986) (holding that a supplier of nondefective component part was not liable when incorporated into larger system); *Crossfield v. Quality Control Equip. Co.*, 1 F.3d 701, 704 (8th Cir. 1993) (“Mere suppliers [are not] expected to guarantee the safety of other manufacturers’ machinery.”).

The law of torts is about line-drawing. It is achieved by formulating rules that take into account public policy and balance those policies against the interests of freedom and of injured plaintiffs. *See, e.g., Koehrer v. Superior Court*, 181 Cal. App. 3d 1155, 1165 (1986) (“[T]ort actions are created to protect the interest in freedom from various kinds of harm. The duties of conduct which give rise to them are imposed by law, and are based primarily upon social policy.”) (quoting William Lloyd Prosser, *et al.*, *Law of Torts* 613 (4th ed. 1971)). Courts have long understood that the line of potential liability must be drawn somewhere. *See, e.g., Romito v. Red Plastic Co.*, 38 Cal. App. 4th 59, 67 (1995) (holding that manufacturer owed no duty to protect against unforeseeable and accidental misuse of a product: “Any product is potentially dangerous if accidentally misused or abused, and predicting the different ways

in which accidents can occur is a task limited only by the scope of one's imagination.”).

In drawing that line, courts rely on the concepts of duty, foreseeability, and proximate cause. The duty to use care to avoid injury to others arises from the foreseeability of the risk created. *Lugtu v. Cal. Highway Patrol*, 26 Cal. 4th 703, 716 (2001). But in each case, public policy considerations—not the single factor of foreseeability—are paramount. *Parsons v. Crown Disposal Co.*, 15 Cal. 4th 456, 472 (1997) (“[D]uty’ is not an immutable fact of nature ‘but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.’”) (citations omitted). The importance of foreseeability does not permit a court to abdicate its responsibility to consider the public policy implications should tort liability be expanded. *Id.* at 474, 492 (declining to impose “an expansive duty to guard against frightening horses” on the policy grounds that it would have “obvious and detrimental consequences stifling to the community”).

Here, this issue is whether or not the defendants had a duty to warn. Beyond foreseeability, many factors interplay in finding this duty, including the degree of certainty that the plaintiff suffered injury; the closeness of the connection between the defendants’ conduct and the plaintiff’s injury; the moral blame attached to the defendants’ conduct; the policy goal of preventing

future harm; the burden to the defendants and consequences to the community of imposing a duty of care; and broader consequences including the availability, cost, and prevalence of insurance for the risk involved. See *Rowland v. Christian*, 69 Cal. 2d 108, 113 (1968). Thus, the essential duty of a court to define duty is to “balanc[e] the interest of the injured party to compensation against the view that a negligent act should have some end to its legal consequences.” *Hunsley v. Giard*, 553 P.2d 1096, 1102 (Wash. 1976).

Public policies are drawn from two main functions of tort law. The first is compensation. Negligence law seeks to make whole those who have been injured by people who fail to live up to their social and personal responsibilities. *Kizer v. County of San Mateo*, 53 Cal. 3d 139, 146-47 (1991) (“In tort actions, damages are normally awarded for the purpose of compensating the plaintiff for injury suffered, i.e., restoring the plaintiff as nearly as possible to his or her former position, or giving the plaintiff some pecuniary equivalent.” (citation omitted)).

In addition to compensation, tort law also imposes liability so as to deter conduct that creates an unreasonable risk of injury to others. *Hunter v. Up-Right, Inc.*, 6 Cal. 4th 1174, 1191 (1993). Michael S. Jacobs, *Toward a Process-Based Approach to Failure-to-Warn Law*, 71 N.C. L. Rev. 121, 180-81 (1992) (“To the extent that tort law seeks to deter personal injury, a doctrine that encourages manufacturers to spend their dollars and energy

effectively to avoid product-related harms is far better suited to consumer interests than one which compensates some consumers generously after the fact, but which does little beforehand to reduce product risk for all consumers.”).

Every act has a potentially infinite number of consequences, so that if a defendant were required to pay for every potential wrong resulting from an action, economic enterprise simply could not go on. “At some point,” therefore, “it is generally agreed that the defendant’s act cannot fairly be singled out from the multitude of other events that combine to cause loss.” Harvey S. Perlman, *Interference with Contract and Other Economic Expectancies: A Clash of Tort and Contract Doctrine*, 49 U. Chi. L. Rev. 61, 70 (1982). Thus, there is a point at which imposing liability has negative consequences—where there is a serious risk of discouraging worthwhile conduct. As Justice Breyer explained, courts must take care to strike an effective balance, because “[s]maller damages would not sufficiently discourage firms from engaging in the harmful conduct, while larger damages would ‘over-deter’ by leading potential defendants to spend more to prevent the activity that causes the economic harm . . . than the cost of the harm itself.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 593 (1996) (Breyer, J., concurring).

The theory adopted by the court of appeal contains no logical stopping point. Saucepan manufacturers will have to warn of the dangers of grease fires. Jelly manufacturers will have to warn of the danger of peanut allergies. Manufacturers of champagne flutes would be required to warn their ultimate users that consuming alcohol can be dangerous, particularly when combined with the use of other products, such as automobiles. Such duties would cause disproportionate economic impacts. As the Eighth Circuit explained in a case involving a component part of a medical device used in the jaw:

("The cost to a manufacturer of an inherently safe raw material to insure against all conceivable misuse of his product would be prohibitively expensive."). As another panel of this Court has determined in a previous TMJ case, "[i]t would be unreasonable and impractical to place the burden of testing and developing all devices that incorporate Teflon as a component on Du Pont." *Rynders [v. E.I. Du Pont de Nemours & Co., 21 F.3d 835,] 842* (8th Cir. 1994). Suppliers of versatile materials like chains, valves, sand, gravel, etc., cannot be expected to become experts in the infinite number of finished products that might conceivably incorporate their multi-use raw materials or components. *Kealoha [v. E.I. Du Pont de Nemours & Co., 844 F. Supp. 590,] 594* (D. Haw. 1994) [*aff'd*, 82 F.3d 894, 901 (9th Cir. 1996)] ("There would be no end to potential liability if every manufacturer of nuts, bolts and screws could be held liable when their hardware was used in a defective product.").

In re Temporomandibular Joint Implants Prods., 97 F.3d 1050, 1057 (8th Cir. 1996) (citation omitted). Modern industrial society is full of potential hazards, and imposing severe costs on parties with only tenuous connections to the harm runs the risk of stifling important economic activity. See James A. Henderson, Jr., *Sellers of Safe Products Should Not Be Required To Rescue*

Users from Risks Presented by Other, More Dangerous Products, 37 Sw. U. L. Rev. 595, 616 (2008) (If a court holds that a seller of a safe product is strictly liable for injuries caused entirely by other, more dangerous, products, the users and consumers of the safe product “end up compensating (and thereby subsidizing) the users and consumers of the dangerous products, thereby generally discouraging use and consumption of relatively safe products and encouraging use and consumption of relatively dangerous ones.”).

Policy considerations counsel against finding liability in a case like this. As Nobel Laureate Friedrich Hayek noted, liability rules “will normally raise the cost of production, or, what amounts to the same thing, reduce over-all productivity.” Friedrich A. Hayek, *The Constitution of Liberty* 224 (1960). A presumption against imposing liability is justified because the “over-all cost is almost always underestimated.” *Id.* at 225. This underestimation is due to the fact that tort law has the potential of stifling entrepreneurial activity, driving away investors, and depriving society of jobs, as well as goods and services, that otherwise might have existed.

The concern for unseen costs is especially acute in a case like this, where the connection between the alleged wrong and the injury suffered is so distant. In one Georgia asbestos case, the court explained there was a “responsibility to consider the larger social consequences of the notion of duty and to correspondingly tailor that notion so that the illegal consequences of

wrongs are limited to a controllable degree.” *CSX Transp., Inc. v. Williams*, 278 Ga. 888, 890, 608 S.E.2d 208, 209 (Ga. 2005) (“The recognition of a common-law cause of action under the circumstances of this case would . . . expand traditional tort concepts beyond manageable bounds and create an almost infinite universe of potential plaintiffs.”).

Tort liability typically displays a one-way ratchet—it expands but rarely retracts. If the Court were to find liability in this case, it is difficult to imagine where such liability would stop. *See In re New York City Asbestos Litig.*, 5 N.Y.3d 486, 498, 840 N.E.2d 115, 122, 806 N.Y.S.2d 146, 153 (N.Y. 2005) (refusing to find liability in case where wife was injured by laundering husband’s asbestos-covered clothing because “the ‘specter of limitless liability’ is banished only when the ‘class of potential plaintiffs to whom the duty is owed is circumscribed by the relationship’” and there was no relationship between the employer and the wife). Here, the Navy as the employer had a duty to warn its employees of the hazards of asbestos, but there was no relationship between O’Neil and the pump and valve manufacturers.

Finally, there is little to be gained by finding liability against defendants that have such attenuated connections to a plaintiff’s injury. As the RAND Institute for Civil Justice points out, “[i]f business leaders believe that tort outcomes have little to do with their own behavior, then there is no reason for them to shape their behavior so as to minimize tort exposure.” Stephen J.

Carroll, *et al.*, RAND Institute for Civil Justice, *Asbestos Litigation* 129 (2005).² The tort system is supposed to create an incentive mechanism that allows businesses to predict, on the basis of anticipated costs and benefits, what sort of risks and practices are legitimate in their pursuit of customer satisfaction. See Howard A. Latin, *Problem-Solving Behavior and Theories of Tort Liability*, 73 Cal. L. Rev. 677, 678 (1985) (describing cost-benefit analysis expectations and limitations). But that mechanism is disrupted when a damages verdict is irrationally large or is not based on some clear principle of fault. In those cases, businesses will disregard the confusing signals that tort liability sends them, and will simply consider the cost of tort liability as a general cost of doing business. “When [tort] awards are arbitrary, it becomes impossible to discern any relevant incentives from the pattern of damage awards, leaving businesses only to guess at what business practices will not instigate damage claims.” C. Boyden Gray, *Damage Control*, Wall St. J., Dec. 11, 2002, at A18.

II

ASBESTOS LITIGATION IMPOSES SERIOUS ECONOMIC HARMS ON THE NATION

Asbestos exposure has become one of the primary targets for abusive and exploitative mass tort litigation. Such litigation harms citizens of

² Available at <http://www.rand.org/pubs/monographs/MG162/index.html> (last visited July 20, 2010).

California by deterring economic investment and job creation and curbing the availability of goods and services on the market—thus increasing the cost of living. Worse, asbestos litigation has created serious injustices in the tort system, by changing the rules and extending liability beyond the traditional limits of tort law. It is important to consider the ramifications of the expansion of liability sought by the Plaintiffs in this case in the context and history of asbestos litigation as a whole.

Asbestos litigation is widely recognized as the epicenter of a massive breakdown in American tort law. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597-98 (1997). According to a 2005 report by the RAND Institute, \$54 billion has already been spent on litigation over asbestos-related injuries, more than half of which has gone to “transaction costs,” such as attorneys’ fees. Carroll, *Asbestos Litigation*, at 81. After 30 years, this litigation

has spread well beyond the asbestos-related manufacturing and installation industries . . . to touch almost every form of economic activity that takes place in the United States. [The study] found that 75 out of a total of 83 different types of industries . . . included at least one firm that had been named as an asbestos litigation defendant.

Id. Because virtually all manufacturers of products containing asbestos are bankrupt, the plaintiffs’ bar has sought out other defendants with peripheral connections to the asbestos industry. Steven B. Hantler, *et al.*, *Is the “Crisis” in the Civil Justice System Real or Imagined?*, 38 Loy. L.A. L.

Rev. 1121, 1151-52 (2005) (These “peripheral defendants” have only an attenuated connection to asbestos, but are now named in asbestos litigation because of their “deep pockets”; “the net has spread . . . to companies far removed from the scene of any putative wrongdoing.”). But

the absence of blameworthy solvent defendants does not justify the imposition of expanded theories of liability to those parties who could not prevent the harm. From both compensation and deterrence perspectives, the issue is not whether asbestos victims should receive compensation from some entity, but rather which entity can fairly be called upon to shoulder the financial burden.

Paul J. Riehle, *et al.*, *Products Liability for Third Party Replacement or Connected Parts: Changing Tides from the West*, 44 U.S.F. L. Rev. 33, 61 (2009). Of course, some asbestos cases are justified on the merits. There is no doubt that industrial exposure to dangerous chemicals is properly the subject of tort law. The problem is that damages awards have become so vast, and courts have become so willing to bend the rules of tort law in favor of plaintiffs and against “deep pockets” defendants, that asbestos litigation has created an entire industry within the legal profession. *See* James L. Stengel, *The Asbestos End-Game*, 62 N.Y.U. Ann. Surv. Am. L. 223, 233 (2006) (identifying two “fundamental phenomena” that combine to create the asbestos litigation crisis: “claimant elasticity,” defined as “the essentially inexhaustible supply of claimants,” and “defendant elasticity,” defined as “the correspondingly unbounded source of defendants,” which stem from “the

inability of the asbestos litigation system to discriminate both between those with real asbestos-related injuries and those without, and between defendants who are in fact culpable and those more appropriately viewed as ‘solvent bystanders’” (footnotes and citations omitted)).

As other jurisdictions have responded to this crisis by restoring the more traditional balance between rules favoring both plaintiffs and defendants, California has emerged as a magnet for asbestos litigation. Mark A. Behrens, *What’s New in Asbestos Litigation?*, 28 Rev. Litig. 501, 539 (2009) (noting that asbestos cases represent a growing percentage of California courts’ increasing caseload); and *id.* at 539 n.200 (citing Steven Weller, *et al.*, Policy Studies, Inc., *Report on the California Three Track Civil Litigation Study* 28 (2002)³ (“The San Francisco Superior Court seems to be a magnet court for the filing of asbestos cases.”) and Dominica C. Anderson & Kathryn L. Martin, *The Asbestos Litigation System in the San Francisco Bay Area: A Paradigm of the National Asbestos Litigation Crisis*, 45 Santa Clara L. Rev. 1, 2 (2004) (“The sheer number of cases pending at any given time results in a virtually unmanageable asbestos docket.”)). This would be cause for concern if all these asbestos plaintiffs were California residents, but the concern magnifies with the realization that up to a third of the plaintiffs have no personal

³ Available at <http://www.clrc.ca.gov/pub/BKST/BKST-3TrackCivJur.pdf> (last visited July 20, 2010).

connection with the state. Behrens, *What's New in Asbestos Litigation* at 540, (citing Victor E. Schwartz, *et al.*, *Litigation Tourism Hurts Californians*, Mealey's Litig. Rep.: Asbestos, at 41 (Nov. 2006) ("In a 2006 sample of 1,047 asbestos plaintiffs for whom address information was available, over 300—or an astonishing thirty percent—had addresses outside of the state.")).

This industry is economically wasteful, in that it puts resources into unproductive litigation, drives businesses that do produce social benefits into bankruptcy, and over-deters legitimate enterprises. James Stengel identified 32 bankruptcies related to asbestos litigation just from 2000-2005. Stengel, *The Asbestos End-Game* at 265 (listing each bankrupt company and the year it filed for bankruptcy). Moreover, the financial windfalls produced by verdicts in these cases often fail to effect any reparation or justice. "Plaintiffs' attorneys collect an estimated \$30 billion annually in legal fees—money that could otherwise help prevent or compensate injuries [I]n mass tort litigation involving asbestos, two-thirds of insurance expenditures have gone to lawyers and experts." Deborah L. Rhode, *Frivolous Litigation and Civil Justice Reform: Miscasting the Problem, Recasting the Solution*, 54 *Duke L.J.* 447, 464 (2004).

Asbestos litigation creates genuine injustices in the name of placing the burden of risk onto those parties that are wealthiest rather than parties that genuinely deserve the blame. So many businesses are at risk for such

potentially devastating damages awards with regard to asbestos that some defense lawyers warn their clients that

[t]he turbulent waters of asbestos litigation have seeped into virtually every type of economic activity in our country. Defense attorneys are striving to protect their clients from the perils attendant to the most enduring mass tort litigation recorded in the annals of American jurisprudence—a marathon that has yet to reach full stride.

Kenneth R. Meyer, *et al.*, *Emerging Trends in Asbestos Premises Liability Claims*, 72 Def. Couns. J. 241, 241 (2005). Changing the rules of tort liability, or easing the burden on plaintiffs to prove causation and foreseeability so as to allow plaintiffs to recover, is to transform the system from one of justice to one which redistributes wealth on the basis of a jury's subjective feelings of compassion. It is unjust for the courts to treat litigants differently, or to presume their guilt, simply on the basis of their relative wealth or to find defendants liable where their connection to the plaintiff's injury is weak.

CONCLUSION

Allowed to stand, the ruling below imposes upon defendants the role of social insurer, which is not the function of tort law in this state. *See, e.g., Hartline v. Kaiser Found. Hospitals*, 132 Cal. App. 4th 458, 468-69 (2005) (noting distinction between social insurance function that inspires workers' compensation statutes but does not animate common law causes of action). Pennsylvania Supreme Court Justice Flaherty eloquently described the need for

balancing the social benefits and burdens which result from an expansion of tort liability:

As it is with everything, a *balance* must be struck—certain limits drawn. We are, in the end, dealing with money, and that money must come from somewhere—from someone: the public pays for the very most part by increased insurance premiums, taxation, prices paid for consumer goods, medical services, and in loss of jobs when the manufacturing industry is too adversely affected. A sound and viable tort system—generally what we now have—is a valuable incident of our free society, but we must protect it from excess lest it becomes unworkable and alas, we find it replaced with something far less desirable.

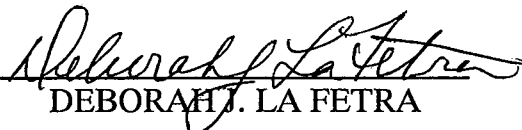
Mazzagatti v. Everingham by Everingham, 512 Pa. 266, 281, 516 A.2d 672, 680 (1986) (Flaherty, J., concurring). The expansion of duty sought by the Plaintiffs in this case would lead California tort law to excess, rendering an attenuated defendant liable to a distant plaintiff.

The decision below should be *reversed*.

DATED: July 23, 2010.

Respectfully submitted,

DEBORAH J. LA FETRA
TIMOTHY SANDEFUR

By 
DEBORAH J. LA FETRA

Attorneys for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS CRANE CO., ET AL., is proportionately spaced in Word Perfect 12, Times New Roman font, and has a typeface of 13 points or more, and contains 4,317 words.

DATED: July 23, 2010.


DEBORAH J. LA FETRA

DECLARATION OF SERVICE BY MAIL

I, Eileen L. Dutra, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 3900 Lennane Drive, Suite 200, Sacramento, California 95834.

On July 26th, 2010, true copies of BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS CRANE CO., ET AL., were placed in envelopes addressed to:

Raymond L. Gill
Robert E. Feyder
K&L Gates LLP
10100 Santa Monica Boulevard, 7th Floor
Los Angeles, CA 90067
Attorneys for Defendant and Respondent Crane Co.

David M. Axelrad
Jason R. Litt
Curt Cutting
Barry R. Levy
15760 Ventura Boulevard, 18th Floor
Encino, CA 91436-3000
Attorneys for Defendant and Respondent Crane Co.

Mark Behrens
Shook, Hardy & Bacon, LLP
1155 F Street, N.W., Suite 200
Washington, DC 20004
Attorney for Amicus Curiae Litigation Justice

Michael Kevin Underhill
Shook, Hardy & Bacon LLP
333 Bush Street, Suite 600
San Francisco, CA 94104
Attorney for Amicus Curiae

Laurie J. Hepler
James P. Cunningham
Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104
Attorneys for Defendant and Respondent Warren Pumps, LLC

Jeffrey Isaac Ehrlich
The Ehrlich Law Firm
411 Harvard Avenue
Claremont, CA 91711
Attorney for Plaintiff and Appellant Barbara J. O'Neil

Paul C. Cook
Waters & Kraus, LLP
222 North Sepulveda Boulevard, Suite 1900
El Segundo, CA 90245
Attorney for Plaintiff and Appellant Barbara J. O'Neil

Michael B. Gurien
Waters & Kraus, LLP
222 N. Sepulveda Boulevard, Suite 1900
El Segundo, CA 90245
Attorneys for Plaintiffs and Appellants Barbara J. O'Neil,
Michael P. O'Neil, and Regan K. Schneider

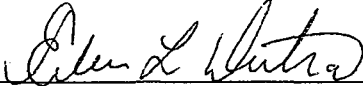
Don Willenburg
Gordon & Rees, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Attorneys for Ingersoll-Rand Company
Requesting Depublication

Clerk of the Court
California Court of Appeal
Second Appellate District, Division 5
300 Spring Street, 2nd Floor., North Tower
Los Angeles, CA 90013-1213
No. B 208255

Honorable Elihu M. Berle
Superior Court for the County of Los Angeles
Central District
Stanley Mosk Courthouse
111 N. Hill Street, Department 01
Los Angeles, CA 90012-3014
No. BC 360274

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 26th day of July, 2010, at Sacramento, California.



EILEEN L. DUTRA