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# IN THE SUPREME COURT OF CALIFORNIA

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Deputy

**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

# REPLY TO ANSWER BRIEF ON THE MERITS

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# REPLY TO ANSWER BRIEF ON THE MERITS

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## INTRODUCTION

Plaintiffs' 82-page answer brief tries in vain to reconcile the Court of Appeal's opinion with the rule that a product manufacturer is not strictly liable for injuries caused by a product that the manufacturer did not place into the stream of commerce. Plaintiffs also try unsuccessfully to critique the other opinions that have addressed the same factual scenario and concluded—both under the stream of commerce rule and the component parts doctrine—that no liability can be imposed on manufacturers that supplied pumps and valves to the Navy for World War II-era ships.

Plaintiffs' arguments lack merit. This Court should follow the majority of courts to address these issues, and should hold that

Crane Co. is not liable for Lt. O'Neil's exposure to asbestos-containing products that Crane Co. did not manufacture or supply.

## 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 only on entities that place defective products into the stream of commerce. Plaintiffs misconstrue that law by attempting to draw distinctions between "active" and "passive" entities.

As Crane Co. explained in its opening brief, the purpose of strict liability is to place responsibility for injuries caused by a defective product on the entities that can best avoid the product's risks, insure against them, and bear the costs associated with them. (OBOM 15-16.) Accordingly, this Court has been careful not to expand the scope of strict liability beyond those entities that directly make and/or sell the injury-causing product. (See, e.g., *Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1188 (*Peterson*) [hotel owner not strictly liable for injuries caused by a defective bathtub in the hotel since the hotel owner was "not a part of the manufacturing or marketing enterprise of the allegedly defective product that caused the injury in question"]; see also *Escola v. Coca Cola Bottling Co.* (1944) 24 Cal.2d 453, 462 (*Escola*) (conc. opn. of

Traynor, J.) [strict liability should be limited to those "responsible for" the defective product "reaching the market"].)[1]

Plaintiffs argue that Crane Co. misapplies the stream of commerce rule, which they claim is meant only to protect entities that are not engaged in manufacturing products, like "passive retailers or distributors passing on goods they have had no opportunity to design or inspect," and therefore does not apply to a manufacturer like Crane Co. (ABOM 51)

Plaintiffs misunderstand the rationale behind the stream of commerce doctrine. The label attached to the defendant, whether "manufacturer," "supplier," "retailer," etc., does not determine whether it is within the stream of commerce. (*Bay Summit Community Assn. v. Shell Oil Co.* (1996) 51 Cal.App.4th 762, 774-776 (*Bay Summit*).) Even "*passive*" retailers or distributors in the chain of distribution of a product are considered to be within the stream of commerce. (See *id.* at p. 773.) By contrast, courts have held that manufacturers are not part of the stream of commerce when they are outside the chain of distribution for the product that actually caused the injury. (See, e.g., *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 524-525 (*Cadlo*) [holding manufacturer of asbestos insulation material not sufficiently connected to another

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[1] This rule is so well-established in California that a court in another jurisdiction recently referred to California as a "chain-of-distribution liability state." (*In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation* (S.D.Ill., May 14, 2010, Nos. 3:09-md-02100, 3:10-cv-20095) 2010 WL 1963202, at p. *4 [nonpub. opn.].)

entity's marketing of the same insulation material several years later to bear strict liability for it].)

As this Court stated in *Peterson*, the "risk-reduction" goal of strict liability is not advanced by imposing liability on entities "entirely outside the original chain of distribution" of the injury-causing product. (*Peterson*, *supra*, 10 Cal.4th at p. 1202.) Here, Crane Co. was not involved in the sale or marketing of *any* of the asbestos products to which Lt. O'Neil was exposed (insulation, flange gaskets, and replacement gaskets and packing). All of those products were placed into the stream of commerce by third parties, decades after Crane Co. first supplied its valves to the Navy in the 1940's. Because Lt. O'Neil was not exposed to a single asbestos fiber from a product manufactured, distributed, or supplied by Crane Co., Crane Co. is not liable for his injuries as a matter of law.

### B. Foreseeability is not (and should not be) a basis for imposing strict liability on a defendant who is not part of the stream of commerce for the injury-causing product.

At the heart of plaintiffs' argument for affirmance lies a foreseeability theory. (See ABOM 2 ["[p]roduct manufacturers owe a duty to warn of foreseeable hazards involved in the use of their products"], 29 ["the doctrine of foreseeable modifications and alterations"], 35 ["the design of Manufacturers' products made exposure to asbestos a foreseeable risk"].) Plaintiffs comment that the "Navy's use of asbestos was generally known," that the "primary

type of insulation" used by the Navy during the relevant timeframe was asbestos-containing, that the "vast majority of the packing" the Navy used contained asbestos, and that "[a]sbestos was also used in gaskets." (ABOM 9.) Plaintiffs seem to suggest that a product manufacturer or supplier is liable if injury occurs during any foreseeable use of its product, whether or not the *source* of the injury is the manufacturer's own product or some other product used with or near it.

Plaintiffs' analysis skips a critical step. Foreseeability enters the strict liability analysis only *after* it is determined that the defendant is in the stream of commerce for the injury-causing product, and is therefore subject to strict liability. Then, the question becomes whether the defendant's product was being used in a foreseeable way when the injury occurred. (See *Daly v. General Motors Corp.* (1978) 20 Cal.3d 725, 733 ["[T]he manufacturer is not deemed responsible when injury results from an unforeseeable use of its product"].) Unlike the legal question of whether strict liability can apply against a particular defendant, this latter question of foreseeability of use or misuse is typically one for the factfinder. (*Thompson v. Package Machinery Co.* (1971) 22 Cal.App.3d 188, 196.)

The pertinent considerations in the stream of commerce analysis are generally whether an entity received a direct financial benefit from the sale of the injury-producing product, was a necessary factor in bringing the product to the initial consumer market, and had control over, or substantial influence with, the manufacturing or distribution process. (*Bay Summit, supra,* 51

Cal.App.4th at p. 776.) Foreseeability has no logical place in the analysis.

The application of strict liability is "determined to a large extent by the fundamental policies which underlie it. . . ." (*Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 995.) Plaintiffs' "foreseeable use" test would have the doctrine apply without reference to the policies underlying it. Pursuant to that test, a product manufacturer or supplier would be strictly liable for any injury "foreseeably" connected to the use of its product, even if imposing liability in the case would serve none of the traditional policy objectives strict liability seeks to serve (i.e., imposing liability on an entity positioned to minimize product risks, insure against those risks, and bear the costs of product-related injuries).

Whether Crane Co. could or could not foresee the Navy's future use of asbestos products with its valves, the rule should remain that strict liability applies only to those entities "responsible for" the defective product "reaching the market" (*Escola, supra*, 24 Cal.2d at p. 462 (conc. opn. of Traynor, J.)), not to other companies that can foresee the defective product reaching the market (see *Dreyer v. Exel Industries, S.A.* (6th Cir., May 4, 2009, No. 08-1854) 2009 WL 1184846, at p. *4 (*Dreyer*) [nonpub. opn.] [finding that courts "have declined to impose liability on a manufacturer for [a] product it did not manufacture" "even when it is foreseeable" that the two products will be used in combination]; see also *Elden v. Sheldon* (1988) 46 Cal.3d 267, 274 ["[P]olicy considerations may dictate a cause of action should not be sanctioned no matter how foreseeable the risk"]).

In any event, plaintiffs' foreseeability-based theory is particularly inappropriate in this case, in which their own expert acknowledged that at the time of Lt. O'Neil's service, nobody in the country believed work with gaskets and packing to be harmful. (See 6 RT 807-808; see also 9 RT 1541-1542; 11 RT 1856.)

### C. This Court should reject plaintiffs' claim that a manufacturer is responsible for injuries caused by the combined use of its product with defective products manufactured and sold by others.

#### 1. This Court should follow the majority of courts nationwide and in California that have rejected the theory that a manufacturer is responsible for the dangerous products of another.

Numerous courts have already rejected plaintiffs' argument in the same context presented here. The overwhelming majority of California appellate courts, as well as the Supreme Court of Washington and the Sixth Circuit, have specifically concluded that manufacturers of valves supplied to the Navy are not responsible for exposure to asbestos-containing products obtained by the Navy and placed in or upon the valves after their sale. (See *Taylor v. Elliott Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564 (*Taylor*); *Walton v. The William Powell Co.* (2010) 183 Cal.App.4th 1470 (*Walton*); *Braaten v. Saberhagen Holdings* (2008) 165 Wash.2d 373 [198 P.3d 493] (*Braaten*); *Simonetta v. Viad Corp.* (2008) 165

Wash.2d 341 [197 P.3d 127] (*Simonetta*); *Lindstrom v. A-C Product Liability Trust* (6th Cir. 2005) 424 F.3d 488; see also ABOM 22 [plaintiffs acknowledging that four of five California appellate courts considering the issue have found in favor of defendant equipment makers].)

The trend of courts throughout the country is to hold that "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." (OBOM 38, quoting *Dreyer*, *supra*, 2009 WL 1184846, at p. *4.)

Plaintiffs try unsuccessfully to distinguish or criticize the case law mounting against them. For example, plaintiffs argue that the Supreme Court of Washington's comprehensive and thoughtful analysis in the *Braaten* and *Simonetta* decisions should be ignored because it "expressly disagrees with California law, rejecting application of the *Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218 (*Wright*) decision which found liability for combined dangerous uses of a defendant's products. . . ." (ABOM 58.) However, the Washington Supreme Court applied the same strict liability standard (Rest.2d Torts, §402A) as this Court did in *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 61. The fact that the Supreme Court of Washington distinguished and/or disagreed with portions of a single California appellate opinion does not mean that it was rejecting California law or that a California court would be unwise for considering its analysis.

The same is true for the substantial body of case law Crane Co. presented in its opening brief, all concluding for good reasons

that the manufacturer of one product should not normally have a duty to answer in tort for injuries caused by the product of another. There is no escaping the fact that the plaintiffs are asking this Court to make a sharp departure from the clear trend in the law in California and elsewhere.

### 2. The three California Court of Appeal decisions purportedly establishing a manufacturer's liability for the combined use of its product with the dangerous product of another are distinguishable and unpersuasive.

Plaintiffs spend more than 10 pages of the answer brief arguing that three Court of Appeal opinions establish that Crane Co. is responsible for the foreseeable use of its product with dangerous products supplied by other parties. (ABOM 35-41, 45-51, citing *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co.* (2004) 129 Cal.App.4th 577 (*Tellez-Cordova*); *Wright*, *supra*, 54 Cal.App.4th 1218; *DeLeon v. Commercial Manufacturing & Supply Co.* (1983) 148 Cal.App.3d 336 (*DeLeon*).)

As explained in the opening brief (OBOM 36-37), as well as by the *Taylor* and *Walton* courts (*Taylor*, *supra*, 171 Cal.App.4th at pp. 586-590; *Walton*, *supra*, 183 Cal.App.4th at pp. 1482-1484), the three Court of Appeal cases are distinguishable because they involve circumstances in which defendants affirmatively designed or directed the use of the injury-causing products, e.g., the defendant's product was specifically designed to grind and release

harmful metal dust (*Tellez-Cordova*, *supra*, 129 Cal.App.4th at p. 580), the defendant's own product was alleged to be defective and actually struck the plaintiff and caused the injury (*Wright*, *supra*, 54 Cal.App.4th at p. 1222), or the defendant was involved in choosing the location of its own product in dangerous proximity to another party's product (*DeLeon*, *supra*, 148 Cal.App.3d at p. 340).

More importantly, the theory of liability that plaintiffs attempt to tease out of these three appellate court cases—that a product manufacturer is responsible for other defective products foreseeably used with its own product—is fundamentally flawed and at odds with the opinions of this Court. As noted, this Court has repeatedly held that when a manufacturer places a product into stream of commerce, it is responsible only for foreseeable uses and modifications of that product; it has never held that a product manufacturer is potentially liable because its product foreseeably touches the defective product of another. (See OBOM 32-38.)

### 3. Plaintiffs' out-of-state authorities are also unpersuasive.

Plaintiffs cite a few cases, mostly trial court rulings and unpublished opinions, purporting to support their expansive view of liability for the combined use of products. (ABOM 41-45.) None is persuasive.

The only appellate-level decision in the asbestos context plaintiffs offer the court, *Berkowitz v. A.C. and S., Inc.* (App.Div. 2001) 733 N.Y.S.2d 410, is a one-paragraph opinion denying a pump

manufacturer's motion for summary judgment because the defendant possibly had knowledge of the use of asbestos insulation. The decision contains no legal reasoning and is inconsistent with the controlling decision of the New York Court of Appeals in *Rastelli v. Goodyear Tire & Rubber Co.* (1992) 79 N.Y.2d 289, 298 [591 N.E.2d 222, 226]. (See OBOM 23.)

The non-asbestos cases cited by plaintiff are no more persuasive. For instance, in *Ilosky v. Michelin Tire Corp.* (1983) 172 W.Va. 435 [307 S.E.2d 603], Michelin was found potentially liable for failing to warn that the mixture of radial and conventional tires could present a danger. However, whether a manufacturer has a duty to warn that the combined use *of its own products* could present an unknown danger has nothing to do with determining whether a manufacturer has a duty to warn of the potential use of its product with the defective product of another.

In *Hooker v. Super Products Corp.* (La.Ct.App. 1999) 751 So.2d 889 (*Hooker*), the manufacturer of a sewer hose was found to have a duty to warn about the proper repair of the hose to prevent a rupture of the hose, which caused the plaintiff's injury. There, the injury was caused by the failure to warn of danger in the manufacturer's own hose.

Here, unlike *Hooker*, Lt. O'Neil's asbestos exposure was caused solely by asbestos-containing products manufactured and sold by third parties. Those third parties, not Crane Co., should bear the liability for injuries caused by their products.

## II. PLAINTIFFS' DESIGN DEFECT ARGUMENTS ARE FACTUALLY AND LEGALLY FLAWED.

### A. Plaintiffs presented no evidence that the design of Crane Co. valves required ancillary asbestos products to function.

Plaintiffs attempt to sidestep the stream of commerce doctrine by arguing that Lt. O'Neil's injuries were caused by the design of Crane Co.'s valves, in the sense that Crane Co.'s valves required the use of asbestos gaskets, packing, and insulation. (See, e.g., ABOM 2, 23, 50-51.) That argument fails at the outset because no evidence supports the assertion that Crane Co's valves were designed to *require* asbestos.

Crane Co. valves were, and are, "asbestos-neutral" in design. First, they can operate with internal gasket and packing seals, and flange gaskets, of many different materials. (See 7 RT 915, 1066; 8 RT 1142-1143; typed opn., 3, fn. 3 [finding certain of the Crane Co. valves on the *Oriskany* were shipped with metal, non-asbestos internal gaskets]; *Braaten, supra*, 198 P.3d at pp. 502-503 [finding "more than 60 types of packing had been approved for naval use," and Crane Co.'s catalog "list[ed] nonasbestos-containing packing and gasket material"].)

Second, Crane Co.'s valves do not come equipped with external insulation of any type. To the extent a purchaser chooses to use insulation with the valve, it can use an asbestos-containing or non-asbestos-containing form, as expert witnesses for both plaintiffs

and defendants confirmed. (See, e.g., 8 RT 1206-1207 [plaintiffs' Navy expert confirming that Crane Co. supplied uninsulated metal valves capable of functioning without insulation]; 14 RT 2488-2490 [defense Navy expert testifying that the Navy always had available to it substitute, non-asbestos insulation materials, including ones made of fiberglass and rubber, among other things].)

Plaintiffs concede that non-asbestos insulation, gasket, and packing materials were available and in use by the Navy during Lt. O'Neil's service.[2] (See ABOM 9, 14). Indeed, plaintiffs' own trial expert and the Court of Appeal determined that Crane Co. valves on the *Oriskany* were supplied with non-asbestos, metal gaskets. (Typed opn., 3, fn. 3.) Thus, the record in this case simply does not present one of the questions plaintiffs ask the Court to answer—whether a manufacturer is liable if its product must inevitably be used with a potentially dangerous material.[3]

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[2] The notion that naval equipment cannot function in the absence of asbestos is also clearly refuted by the fact that Navy ships continue to exist and operate, though the Navy ceased using asbestos many years ago. (See, e.g., *Metal Trades, Inc. v. U.S.* (D.S.C. 1992) 810 F.Supp. 689, 692 [finding that "[t]he Navy generally stopped using asbestos on its vessels in 1978"]; see also *ACandS, Inc. v. Godwin* (1995) 340 Md. 334, 376 [667 A.2d 116, 136] [noting that in 1970, the Navy notified an asbestos insulation maker of its intention to cease purchasing the relevant insulation product due to its "high asbestos content"].)

[3] This conclusion is also supported by the factual records of the substantially similar cases in which this Court has granted review. Indeed, in *Hall v. Warren Pump, et al.* (Case No. S181357), the trial court after a bench trial made a factual finding that the Navy had the option of using Crane Co.'s valves with asbestos-containing or non-asbestos-containing flange gaskets, internal gaskets, packing,

(continued...)

Moreover, the trial evidence was clear that the Navy, not Crane Co., was responsible for designing Navy ships, their systems, and their subsystems and for selecting the various component parts to go in them. (7 RT 1057-1058.) This evidence is fundamentally at odds with plaintiffs' suggestion that Crane Co. "specified" asbestos-containing products for use with the Crane Co. valves on the *Oriskany*, or otherwise controlled the Navy's use of the equipment.

Plaintiffs introduced testimony through their Navy expert that schematic drawings of Crane Co. valves demonstrated that the valves were supplied by Crane Co. with metal internal gaskets and asbestos-containing packing pursuant to Navy specifications. (See 7 RT 969-971; 8 RT 1207-1212.) However, that witness did not suggest that anyone affiliated with the Navy looked at these drawings when choosing the packing used on the *Oriskany* years later. (See 7 RT 969-971; 8 RT 1207-1212.) Moreover, plaintiffs' term, "specified," connotes conduct directing the Navy to use its valves in a certain way. Although there is no evidence that this occurred, it is not clear what relevance such conduct evidence would have in a strict liability claim even if it were in the record. (See *Brown v. Superior Court* (1988) 44 Cal.3d 1049, 1056 [noting that strict liability focuses "not on the conduct of the manufacturer but on the product itself"].)

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(...continued)
and insulation and chose which varieties to use. (See *Hall*, 3 Appellants' Appendix 566-570 [statement of decision in the Hall matter setting forth the noted findings].)

Plaintiffs' claim that "Crane . . . provided manuals that instructed sailors" how to operate, maintain, and repair Crane Co. valves is likewise unsupported. (ABOM 12.) Plaintiffs cite to testimony from their Navy expert generally describing the submission of product manuals to the Navy (*ibid.*), but they fail to note that this same expert qualified his general testimony by stating that the types of valves Crane Co. supplied would *not* have come with manuals, and that he was not aware of any manuals pertaining to any of the Crane Co. valves on the *Oriskany* (8 RT 1212-1213).

Plaintiffs also contend that Crane Co.'s valves were defectively designed because Crane Co. "planned" for the Navy to use those products alongside asbestos-containing products. (ABOM 33.) That argument is merely a restatement of the plaintiffs' flawed foreseeability theory, discussed above.

Plaintiffs further contend the valves could be defective under the "consumer expectation test." (ABOM 9, fn. 2, 25, 34.) This Court has explained that the consumer expectations test "is reserved for cases in which the *everyday experience* of the product's users permits a conclusion that the product's design violated *minimum* safety assumptions, and is thus defective *regardless of expert opinion about the merits of the design.*" (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 567 (*Soule*).) The question whether Crane Co.'s valves met minimum safety assumptions

cannot be considered without taking into account the Navy's need for asbestos components on World War II ships.[4]

Finally, plaintiffs' contention that Crane Co. could have prevented Lt. O'Neil's injury simply by attaching a warning tag to its valve is inaccurate. (ABOM 32.) Plaintiffs presented no evidence that the Navy would have accepted such a warning in the 1940's and then taken steps to ensure that it remained on the valve (and visible) until Lt. O'Neil boarded the *Oriskany* approximately two decades later. Further, plaintiffs presented no evidence that any such warning, which would have necessarily concerned the asbestos-containing internal gasket and/or packing originally supplied with the valve,[5] would have had continuing relevance

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[4] Plaintiffs argue "there was no way to build a Navy ship without asbestos." (ABOM 9.) Under plaintiffs' view of the consumer expectations test, every manufacturer who supplied equipment to the Navy for World War II-era ships is strictly liable—not because they failed to design their equipment as safely as reasonably possible, but because the Navy's needs defied the expectations of the seamen, who never expected to become sick from asbestos exposure. (Plaintiffs could not possibly claim that the products failed to meet the expectations of the Navy.) Plaintiffs' argument is precisely what this Court sought to avoid in *Soule* when it emphasized that "the jury may not be left free to find a violation of ordinary consumer expectations whenever it chooses." (*Soule, supra,* 8 Cal.4th at p. 568.)

[5] When Crane Co. supplied valves to the *Oriskany*, it supplied three distinct products—a valve, an internal gasket, and packing that were then integrated into a single larger component. The products that may have arguably had a "dangerous propensit[y]" sufficient to require a warning (see *Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1208), and on which the warning would had to have focused, were the gasket and packing, not the valve. While a product manufacturer may be responsible for subparts of an (continued...)

years later. As noted, even plaintiffs concede that the Navy had available to it and used a large variety of asbestos and non-asbestos gasket and packing sealing products. (See ABOM 9, 14.) The type of sealing product used by the Navy years after it purchased the valve, a decision inarguably beyond Crane Co.'s control, would determine the relevance of any warning focusing on the gasket and packing originally supplied.

## B. Plaintiffs presented no evidence that Crane Co.'s valves caused Lt. O'Neil's injury.

Plaintiffs argue that Crane Co.'s valves were defectively designed because they somehow caused the release of asbestos fibers from the third-party products. (See, e.g., ABOM 25 ["The use of Manufacturers' products caused the release of asbestos fibers and Plaintiffs' injury"].) Factually, this claim is incorrect. Legally, it is not pertinent to the analysis.

Plaintiffs argue that the "high-temperature operation of the equipment" caused asbestos products to adhere to equipment surfaces; the removal of the products with "scrapers and other

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(...continued)
integrated component that it places into stream of commerce (see *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256), it is not responsible for warning of the dangers of replacement parts manufactured, sold and later integrated by other parties (*Taylor, supra*, 171 Cal.App.4th at p. 579, *Braaten, supra*, 198 P.3d at p. 498; *Ford Motor Co v. Wood* (Ct.Spec.App. 1998) 119 Md.App. 1, 337 (*Wood*) [703 A.2d 1315], abrogated on another ground in *John Crane, Inc. v. Scribner* (2002) 369 Md. 369 [800 A2d 727].)

implements" then caused the release of asbestos fibers. (ABOM 34.) Plaintiffs do not explain why the equipment maker, and not the source of the heat—boilers and their fuel—or the makers of the "scrapers and implements," should bear liability in this equation. Massive steam-generating boilers powered the *Oriskany*. (14 RT 2483-2484; see also 14 RT 2481.) Pipes, valves, pumps, and other pieces of equipment acted as a conduit, allowing this steam to travel throughout the ship and power various systems.[6] (7 RT 896-898.) Valves are simply mechanical devices used to control the flow of liquids or gases from one point to another. (7 RT 912-913.) Plaintiffs do not, and cannot, argue that the Crane Co. valves on the *Oriskany* created steam, created heat, or for that matter, created asbestos exposure.

Thus, plaintiffs' assertion that valves and pumps "caused" Lt. O'Neil's injury has no more meaning than the observation that asbestos-containing products may have been used on or near valves and pumps on the *Oriskany*. The latter point is not disputed, and it is not legally dispositive. It may be true that without valves, pumps, and equipment, there would have been no *Oriskany* and no call to use asbestos-containing (or non-asbestos-containing) sealing and insulating materials. But "[t]o simply say . . . that the defendant's conduct was a necessary antecedent of the injury does not resolve the question of whether the defendant should be liable.

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[6] Or, as plaintiffs note, "These valves and pumps, manufactured by Crane and Warren and sold to the Navy, were designed to move and control the flow of water and steam within the steam-propulsion plant of the *Oriskany*." (ABOM 7.) There is no evidence that they failed to carry out this task.

In the words of Prosser and Keaton: '[T]he consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond.'" (*PPG Industries, Inc. v. Transamerica Ins. Co.* (1999) 20 Cal.4th 310, 315 (*PPG Industries*) quoting Prosser & Keaton, Torts (5th ed. 1984) § 41, p. 264.)

"[T]he law must impose limitations on liability other than simple causality." (*PPG Industries*, *supra*, 20 Cal.4th at pp. 315-316.) As the *Taylor* and *Walton* courts held, one of those limitations applies to this factual scenario—the stream of commerce/chain of distribution principle.

## C. The fact that Crane Co. may have supplied the original gaskets and packing does not make the valves defective.

Plaintiffs assert that Crane Co. may have, pursuant to Navy specifications, supplied asbestos-containing gaskets and packing with its valves. (ABOM 10.) They do not contend that Lt. O'Neil was exposed to any such products supplied by Crane Co., but they argue that inclusion of such products at the time of the initial sale made the valves themselves defective. (ABOM 25-27.)

Plaintiffs' contention is, in effect, that Crane Co. sold products *similar to* those to which Lt. O'Neil was exposed. But that is not enough. As the *Taylor* court recognized, the question is whether the defendant substantially participated in placing into the stream of commerce the particular injury-causing product, not a product of the same form. (See *Taylor*, *supra*, 171 Cal.App.4th at p. 579.)

To the extent Crane Co. bears potential liability for the gaskets and packing it sold to the Navy, it is because Crane Co. placed such products into the stream of commerce. Crane Co. had no such role with respect to replacement parts, and this difference has legal significance, as many courts have recognized. In addition to the cases establishing no liability for replacement parts in the Navy context, courts addressing the liability of automobile manufacturers for replacement parts have similarly held that such manufacturers are not liable for replacement asbestos-containing brake pads or wheels supplied to the customer by other parties after the initial sale. (*Wood, supra,* 703 A.2d 1315, 1330-1333.) The same rule should control here—the duty to answer in strict liability for replacement parts should "properly fall upon the manufacturer of the replacement component part." (*Baughman v. General Motors Corp.* (4th Cir. 1986) 780 F.2d 1131, 1133 [declining to impose liability on an automobile manufacturer for injuries caused by a defective replacement wheel].)

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

### A. The component parts doctrine applies to valves incorporated into the steam propulsion system of Navy ships.

As Crane Co. explained in its opening brief, the component parts doctrine limits the liability of manufacturers who make a component part that is integrated into a finished product. (OBOM 39-45; see also Rest.3d Torts, Products Liability, § 5; *Taylor*, *supra*, 171 Cal.App.4th at pp. 584-585.) By definition, the doctrine applies to components "such as . . . valves" that "have no functional capabilities unless integrated into other products," such as the steam propulsion system of a Navy ship. (Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.)

Plaintiffs argue that the doctrine does not apply here because it "applies only to fungible 'building block' materials, not the specially designed pumps and valves at issue here." (ABOM 62.) Plaintiffs further claim that Crane Co. erroneously "likens its valves to a simple kitchen faucet, [but that] it cannot seriously compare a 2,400 pound valve designed to withstand temperatures of 850 degress Fahrenheit and pressures of 600 pounds per square inch (7 RT 898) to a common household valve that the Restatement authors must have had in mind." (ABOM 63.)

Plaintiffs misunderstand the Restatement, which does not limit the applicability of the component parts doctrine to small, "fungible" "building block" materials. The test for whether a product classifies as a component is not the size of the product but rather whether it has "no functional capabilities unless integrated into other products." (See Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.) Crane Co.'s valves meet that test; the valves used on Navy's ships, like any other type of valve, had no function other than to regulate the flow of steam and liquids within the ship's steam propulsion system. As the *Walton* court held: "[Defendant's] valves fall squarely within this rationale for the component parts doctrine. [Defendant] made only metal valves, which had no functional value until integrated into broader systems with pipes and other elements, such as the Navy's propulsion and heating systems." (*Walton, supra,* 183 Cal.App.4th at p. 1482.) Plaintiffs presented no evidence that Crane Co.'s valves are any different. The fact that some of them may be large and able to withstand high heat and pressure is of no consequence.

Plaintiffs additionally argue that the component parts doctrine does not apply because Crane Co.'s valves were "specially engineered" to be used on Navy ships. (ABOM 62-63.) Plaintiffs cite no evidence to support this position, and as noted in *Taylor*, the "mere fact that respondents followed Navy specifications when producing their products does not preclude them from invoking the component parts doctrine." (*Taylor, supra,* 171 Cal.App.4th at p. 585.)

## B. No defect in Crane Co.'s valves caused Lt. O'Neil's asbestos exposure, and Crane Co. was not substantially involved in the integration of its valves into the *Oriskany*'s steam propulsion system.

When a defendant manufactures a component part that is integrated into a larger system, the defendant is not liable for injuries caused by the finished product unless: (1) the component itself was defective *and* such defect caused the injury, or (2) the defendant 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.)

Plaintiffs' primary argument against application of the component parts doctrine is that Crane Co.'s valves were defective because they were designed to be used with asbestos-containing products. As explained above, however, plaintiffs' design defect theories are legally and factually flawed. (*Ante*, pp. 13-21.) The only allegedly defective, asbestos-containing products to which Lt. O'Neil may have been exposed in connection with Crane Co. valves were products Crane Co. did not supply. (See *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 480 [noting that strict liability applies against a component part manufacturer only if defects existed in the component when it "left the factory" *and* "these . . . defects caused the injuries"].)

There is no evidence that Crane Co. substantially participated in the integration of its valves into the Navy systems, and plaintiffs do not contend otherwise. Plaintiffs argue that Crane Co. "knew exactly how their products would be used, substantially participated in designing their products to be used in the application for which they were used, and were thus in a position to know the dangers posed by their specific application." (ABOM 63.) All of this is beside the point. Of course, Crane Co. participated in the design of its own products, but that is irrelevant under the component parts doctrine, which permits liability only where the defendant substantially participates in the *integration of the component* into the design of the larger product. (Rest.3d Torts, Products Liability, § 5; see also *id.*, com. b, illus. 4, pp. 133-134 [manufacturer's knowledge of the product's intended use is irrelevant].)

In applying the component parts doctrine to another valve maker similarly situated to Crane Co., the *Walton* court cogently answered plaintiff's attack:

> Because integration would have been impossible if the valves were not compatible with other products used in such systems, [the valve maker] designed metal valves that could be combined with gaskets, packing, and insulation from other sources, as [the valve maker] itself made none of these items. . . . To impose liability on [the valve maker] for the hazards associated with asbestos would have obliged it to scrutinize the development of several products—the gaskets, packing, and insulation made by others, and the Navy's shipboard systems—over which it had no control. This would have required [the valve maker] to acquire 'sufficient sophistication to review the decisions of the .

. . entit[ies]' directly responsible for the products in question."

(*Walton*, *supra*, 183 Cal.App.4th at p. 1482; see Rest.3d Torts, Products Liability, § 5, com. a, p. 131; see also *Cadlo*, *supra*, 125 Cal.App.4th at pp. 523-524 [former asbestos insulation manufacturer is not liable for injuries arising from exposure to asbestos insulation it neither designed nor marketed].)

This Court should adopt the same approach as *Walton* and *Taylor* and apply the component parts doctrine to the facts presented here.

## CONCLUSION

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

June 29, 2010

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## CERTIFICATE OF WORD COUNT

**(Cal. Rules of Court, rule 8.504(d)(1).)**

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Dated: June 29, 2010

Barry R. Levy

## 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 June 29, 2010, I served true copies of the following document(s) described as **REPLY BRIEF ON THE MERITS** on the interested parties in this action as follows:

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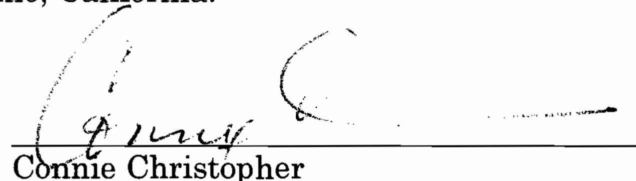
**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting 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 June 29, 2010, at Encino, California.



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**SERVICE LIST**
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**CASCT Case No.: S177401 • COA Case No.: B208225**
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