

**S 183059**

Case No.

**S**

**SUPREME COURT  
FILED**

**MAY 28 2010**

Frederick K. Ohlrich Clerk  
~~Deputy~~

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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EDWARD WALTON et al.,

Plaintiffs and Appellants,

v.

THE WILLIAM POWELL COMPANY,

Defendant and Appellant.

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**PETITION FOR REVIEW**

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Review Sought From a Judgment of the Court of Appeal,  
Second Appellate District, Division Four (No. B208214)  
(Los Angeles Super. Ct. No. BC361382)

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SIMON, EDDINS & GREENSTONE LLP  
Brian P. Barrow (State Bar No. 177906)  
301 Ocean Boulevard, Suite 1950  
Long Beach, California 90802  
Telephone: (562) 590-3400  
Telefax: (562) 590-3412  
E-Mail: bbarrow@seglaw.com

Attorneys for Petitioners  
EDWARD and CAROL WALTON

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## INTRODUCTION and STATEMENT OF ISSUES

This is an asbestos product liability action presenting almost identical facts and issues as three other cases pending before this court: *O'Neil v. Crane Company*, review granted December 23, 2009, S177401; *Merrill v. Leslie Controls, Inc.*, review granted February 5, 2010, S178957; and, *Hall v. Warren Pumps LLC*, review granted May 12, 2010, S181357. In this case, plaintiff and respondent Edward Walton was exposed to asbestos while working on valves manufactured by defendant and appellant The William Powell Company. After hearing the evidence, the jury decided that Powell's valves were defective because of their design and Powell's failure to warn. The jury found Powell both strictly liable and negligent, and based on that verdict, the trial court entered a judgment against Powell.

In a published opinion issued on April 22, the Court of Appeal (Second Appellate District, Division Four) reversed that judgment by relying on *Taylor v. Elliott Turbomachinery Co.* (2009) 171 Cal.App.4th 564. Division Four first found that Powell "had no duty to provide a warning about products from other sources." (Typed Opn., p. 18.) The court also extended *Taylor* to find that Powell's valves were not defectively designed because they were subject to a "component parts" defense that Powell itself never raised. (*Id.* at pp. 14-15.) Just as in *O'Neil*, *Merrill*, and *Hall*, review is necessary to secure uniformity of decision and to settle the following important issues:

1. Powell manufactured and sold valves that required asbestos gaskets, packing, and insulation to operate. Powell knew that those parts would wear out and have to be replaced with identical asbestos parts that it specified and sold, and that the repair and maintenance to replace those parts would expose users to asbestos. Did Powell's failure to warn about the known asbestos hazards created during the repair and maintenance of its valves render them defective?

2. Powell designed its valves to require asbestos gaskets, packing, and insulation to operate. The intended and foreseeable operation of Powell's valves, particularly during repair and maintenance, caused the asbestos components to become dangerous to ordinary users. Did Powell's design of its valves, which exposed users to asbestos during routine maintenance and repair, render them defective?

This case presents virtually identical facts and legal issues as *O'Neil, Merrill, and Hall*. The Waltons therefore request this court to grant review of this case on its merits or, alternatively, pursuant to the "grant and hold" procedure set forth in Rule 8.512, subdivision (d) of the California Rules of Court.

#### STATEMENT OF FACTS

The recitation of facts in Division Four's published opinion is largely correct but for a few key omissions. There was no dispute that Powell's valves were used with asbestos gaskets, packing, and insulation. Indeed, Powell sold its valves with internal asbestos gaskets and packing already installed. {7 RT 1306} Powell also admitted that it designed its valves so that the asbestos packing could be accessed, removed, and/or replaced. {7 RT 1301} Likewise, Powell admitted that it manufactured and sold valves that were designed to use, and included from the factory, asbestos gaskets. {7 RT 1296, 1306} The asbestos gaskets were not only used to connect Powell's valves to a ship's piping, but also internally to seal the valve's bonnet. {7 RT 1304} There was also no dispute that Powell sold replacement asbestos packing for use with its valves. {7 RT 1297, 8 RT 1571} Likewise, Powell sold asbestos replacement gaskets for its valves. {8 RT 1571}

Powell not only knew that replacement parts would be necessary for its valves, but also specified and directed the types to be used. For packing, Powell explained in its catalog that "very high grade packing is furnished to

give long performance on high pressure super heat, steam, or oil and gas services.” {7 RT 1316} Unless the customer had a preference, Powell chose the particular brand of packing used with its valve: “If a customer has a preference for any particular packing, we should be notified before the order is placed in production due to difference in angles for which packing is designed.” {*Ibid.*}

Division Four applied the “component parts defense,” but Powell never attempted to assert that its own valves were themselves “components” for purposes of that doctrine. Powell did not plead the defense in its answer, did not move for summary judgment on it, did not argue it at trial, and did not request the jury to be instructed on it. {1 AA 35; 5 AA 1246} Moreover, Powell’s only reference to “components” in the Court of Appeal was with regard to the gaskets and packing within its own valves. {AOB 19} The Waltons’ petition for rehearing was denied. This petition follows.

## ARGUMENT

### I.

#### **This Court Already Granted Review In Order to Resolve the Identical Issues Presented By this Case.**

The *O’Neil* and *Merrill* courts came to opposite conclusions as to whether manufacturers of asbestos-containing equipment may be held liable for failing to warn. Presented with identical facts, the *O’Neil* court criticized *Taylor*, found it to be wrongly decided, and refused to follow it. The *Merrill* court adopted *Taylor* without further analysis, assuming it to be correct. In this case, Division Four adopted *Taylor* and extended its rationale to the design defect areas of product liability. But neither *Taylor* nor the opinion in this case can be reconciled with basic principles of product liability law and well-established authority that manufacturers are liable for injuries caused by foreseeable uses of their products. As explained, *Taylor* was incorrectly decided and should not be allowed to

stand. Division Three's summary adoption of *Taylor* in this case suffers from the same flaws. This court granted review in *O'Neil, Merrill, and Hall* to address these issues. Review should also be granted in this case.

A. **Taylor and This Case Conflict With Basic Principles of Product Liability Law Holding Manufacturers Liable for Injuries Caused By Foreseeable Uses of Their Products.**

It is well-established in California that a product manufacturer is strictly liable for an injury caused by the foreseeable use of its product. (*Daly v. General Motors Corp.* (1978) 20 Cal.3d 725, 733.) “[A] manufacturer or supplier of a product is required to give warnings of any dangerous propensities in its product, *or in its use*, of which he knows or should know, and which the user of the product would not ordinarily discover.” (*Groll v. Shell Oil* (1983) 148 Cal.App.3d 444, 448.) Product manufacturers may also be liable for negligently failing to warn about hazards. (*Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 1002.)

Powell made no showing that Walton's exposure to the asbestos used with its valves – regardless of who manufactured or supplied that asbestos – was somehow unforeseeable. In fact, Powell did not have to foresee or predict that its valves might be used with asbestos materials; it already *knew* that they would be. Powell, having intentionally designed and manufactured its valves to require asbestos parts cannot validly claim that exposure to asbestos from the use of them – regardless of who manufactured or supplied the asbestos, or when any replacement asbestos became necessary – was unforeseeable. This is not a situation of foreseeable misuse, or where Powell designed its valves to use other materials besides asbestos, i.e., rubber gaskets or fiberglass insulation, and then those materials were subsequently replaced with asbestos. To the contrary, the use of asbestos was by Powell's design, that design was

carried out and maintained, and the failure to warn of the asbestos then led to Walton's injury. Under such circumstances, Powell should not escape liability by claiming that it did not manufacture or supply the asbestos that it knew would become dangerous in the ordinary use of its valves.

**B. Taylor's Attempt to Distinguish Key Cases Rests On a "Misunderstanding of the Facts."**

Again, it was undisputed that Powell originally incorporated asbestos-containing gaskets and packing into its valves, and that the valves required those asbestos-containing items in order to function. Even if Walton was never exposed to original gaskets or packing supplied by Powell, his injury was caused by the operation of Powell's valves with replacement products that had the same dangerous propensities as the original parts. Numerous well-established California cases support a rule – as set forth in *O'Neil* – holding manufacturers liable for failing to warn of hazards that arise in the ordinary and intended use of their products.

For example, in *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.* (2004) 129 Cal.App.4th 577, the defendant's tools were designed and intended to be used with attachments such as grinding wheels, and were useless without them. In seeking to avoid liability, the defendant tool manufacturer made the same argument that Powell makes in this case, which is that it did not make or supply the toxic grinding wheel. The court of appeal rejected the tool manufacturer's argument that it had no duty to warn about the toxic metal fibers released from the grinding wheel during its use, even though the defendant itself did not manufacture the attachments and the defendant's tools did not themselves release fibers. In doing so, the court explained that the tool manufacturer was not "asked to warn of defects in a final product over which they had no control, but of defects which occur when their products are used as intended . . ." (*Id.* at p. 583.)

*Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218 is also applicable. In *Wright*, the defendant manufactured a nozzle, or deck gun, that was only useful when attached to a fire truck. The nozzle itself functioned safely, but it was not designed to accommodate a safe system for attaching it to the truck. But because the nozzle manufacturer “knew that the fire department intended to attach the deck gun to a threaded riser pipe” on a truck made by another company, it had a duty to warn of the hazards posed by the combination of its nozzle with the truck’s inadequate riser pipe. (*Id.* at p. 1234-1235.) In imposing liability against the nozzle manufacturer, the reviewing court again rejected the argument that a manufacturer was not responsible for warning defects that arose during the use of its product with another product that it did not make or supply.

In *DeLeon v. Commercial Manufacturing & Supply Co.* (1983) 148 Cal.App.3d 336, the defendant manufactured a bin that foreseeably had to be cleaned. The plaintiff was injured while cleaning the bin, not by the bin itself, but by an overhead line shaft manufactured by another entity. Cleaning the bin put the plaintiff in danger of being injured by the overhead line shaft, and the court found triable issues of fact on plaintiff’s failure to warn and design defect claims. (*Id.* at p. 344.) “[T]he important factor is whether it is foreseeable that someone would climb onto the belt [for cleaning] . . . .” (*Ibid*; see also *Gonzalez v. Carmenita Ford Truck Sales, Inc.* (1987) 192 Cal.App.3d 1143, 1151 [manufacturer must warn of foreseeable hazards that arise during regular repair and maintenance].)

Both Division Four and *Taylor* attempted to distinguish this line of cases. But these attempts both rest on a misunderstanding of the facts. The *Taylor* court wrote that “in *Tellez-Cordova*, the plaintiff alleged that it was the action of respondent’s tools themselves that created the injury-causing dust. Here, in contrast, Mr. Taylor’s injuries were caused not by any action of respondents’ products, but rather by the release of asbestos from products

produced by others. This is a key difference because before strict liability will attach, the defendant's product must 'cause or create the risk of harm.' [Citation.] Second, unlike the abrasive wheels and discs in *Tellez-Cordova*, which were not dangerous without the power of the defendants' tools, the asbestos-containing products at issue in our case were themselves inherently dangerous. It was their asbestos content – not any feature of respondents' equipment – that made them hazardous." (*Taylor, supra*, 171 Cal.App.4th at pp. 587-589, emphasis in original.)

*Taylor* reflects a misunderstanding of the facts of *Tellez-Cordova*, an opinion also authored by Division Five. Contrary to *Taylor*, *Tellez-Cordova* held a manufacturer could be liable "when its product is necessarily used in conjunction with another product, and when danger results from the use of the two products together." (*Tellez-Cordova, supra*, 129 Cal.App.4th at p.p. 582-583.) In *Tellez-Cordova*, it was irrelevant that the respirable dust emanated from the attached grinding wheels, and not the tools themselves, because it was the use of the tools – and not just the attached wheels – that created the harm. (*Ibid.*) In such circumstances, *Taylor* too acknowledges that there are circumstances in which a manufacturer must warn of dangerous combinations of a manufacturer's product and products supplied by others: "Although a manufacturer *may* owe a duty to warn when the use of its product in combination with another creates a potential hazard, that duty arises *only* when the manufacturer's own product causes or creates the risk of harm." (*Taylor, supra*, 171 Cal.App.4th at p. 579-580, italics in original.)

Just as in *Tellez-Cordova*, the evidence in this case showed that the regular maintenance and repair of Powell's valves, the conditions in which they were designed and intended to operate, the drying and baking effect the valves had on the asbestos gaskets and packing, and the normal methods used to remove the insulation, gaskets, and packing all caused and created

the injurious risk of harm presented by respirable asbestos dust. Division Four did not address this critical point. If the asbestos gaskets had not been baked onto Powell's valves, and the asbestos packing not dried out and friable, Walton would not have had to use scrapers, wire brushes, compressed air, and other tools to remove and replace them, thereby creating and distributing asbestos dust. Likewise, it was the high operating temperatures that created the need for asbestos insulation on and around the valves, leading to even more respirable asbestos dust that caused Walton's injury. As set forth above, Powell not only designed its valves to require asbestos insulation, gaskets, and packing, it *knew* that such dangerous items would have to be removed and replaced in the valves' ordinary and intended use. It follows that Powell is, and should be, legally responsible for failing to warn about the asbestos that was intentionally and, by design, used with its valves.

C. **Division Four's Reliance On Cases Where Products Are Combined By "Happenstance" Or By Someone Other Than the Defendant Are Inapplicable.**

Relying again on *Taylor*, Division Four cited a series of cases for the proposition that Powell could not be held liable for asbestos that it did not supply. (Typed Opn. at pp. 12-14.) None of those cases involved a manufacturer's liability for the components of its own products, or for replacement parts, or the kind of interdependent products presented by these circumstances. None of them involved intended or foreseeable incidents caused by the use of the defendant manufacturer's product. Rather, they all involved circumstances where two products were connected either by happenstance out of the defendant manufacturer's control, or by some actor other than the defendant. Because of their facts, these cases do nothing to support the *Taylor* court's conclusion, or to limit Powell's responsibility for injury sustained while Walton performing maintenance of Powell's valves.

For example, the *Garman* case involved a propane stove manufacturer sued when the gas supply line to an unrelated water heater exploded. (*Garman v. Magic Chef, Inc.* (1981) 117 Cal.App.3d 634.) In *Blackwell v. Phelps Dodge Corp.* (1984) 157 Cal.App.3d 372, a supplier of bulk sulfuric acid filled a customer's tank car with that product, and the plaintiffs were injured attempting to unload the tank car. They sued the acid supplier, alleging that it should have instructed its customer concerning safe transportation of the acid, and provided warnings on unloading procedures. The reviewing court held that the acid supplier could not be held liable because the dangerous product was the tank car, not the acid. (*Id.* at p. 378.) Similarly, *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, was an attempt to hold an asbestos insulation manufacturer liable based on its historic role in the design, manufacture and marketing of its product, even though the manufacturer had sold the product line before the plaintiff's exposure, and there was no evidence that it had any connection to the actual insulation to which plaintiff was exposed. (*Id.* at p. 516.) *In re Deep Vein Thrombosis* (N.D. Cal. 2005) 356 F.Supp.2d 1055, involved a defendant that sold an incomplete airplane without seats, and the injury was caused by seats that the defendant did not design, manufacture, or even choose.

Powell cannot analogize itself to the stove manufacturer in *Garman*, whose only connection to the leaky water heater supply line was a choice made by someone else. Likewise, Powell is not like the sulfuric acid supplier, who merely shipped a product in its customer's own choice of transportation, or the insulation manufacturer in *Cadlo*, whose only "connection" was that it supposedly sold similar insulation. Powell is also not comparable to the *Deep Vein Thrombosis* airplane manufacturer, which was only associated with the alleged defective product by a subsequent choice made by its customer. These types of cases involve products that were combined with another by some actor other than the defendant

manufacturer, or by time and happenstance, outside the control of the defendant. They are therefore distinct from *Tellez-Cordova*, *DeLeon*, and the line of cases involving intended combinations of products.

They are also distinct from this case. Here, Powell admitted that it intentionally incorporated asbestos gaskets and packing into its own valves, and that its valves required those asbestos-containing products in order to function. Powell also knew and intended its valves to be insulated with asbestos. Walton's injury was therefore caused by the operation of Powell's valves with products that Powell itself designed, specified, and/or supplied, or by identical replacement parts that had the same dangerous propensities as the originals. None of the cases cited by Division Four, nor those cited in *Taylor*, serve to limit Powell's liability in such circumstances.

**D. Both *Taylor* and Division Four Misapplied the Component Parts Doctrine.**

Citing *Taylor*, Division Four adopted the component parts doctrine, finding that it relieved Powell of liability for both warning and design defects because "Powell 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." (Typed Opn. at p. 15.) Powell did not assert the so-called component parts doctrine in either the trial court or on appeal, and never presented any evidence below suggesting that it was a "component part" manufacturer or bulk supplier that could avail itself of such defense. Regardless, Division Four's conclusion is contrary to the holding of the under-review decision in *O'Neil*, where the court found that the component parts doctrine did not apply in these circumstances. Division Four's opinion, which followed *Taylor*, is flawed for the same reasons.

“Components” are typically defined as “raw materials, bulk products, and other constituent products sold for integration into other products.” (Rest.3d Torts, Products Liability, § 5, com. a.) “[T]he manufacturer of a product component or ingredient is not liable for injuries caused by the finished product unless it appears that the component itself was ‘defective’ when it left the manufacturer.” (*Tellez-Cordova, supra*, 129 Cal.App.4th at p. 581.) An example of a typical component part is sand, gravel, nails, or the bulk liquid silicone supplied by GE to the manufacturer of breast implants. (*Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830.) In that case, GE had no control over the process in which its bulk silicone was used to manufacture the implants, and had no ability to warn the ultimate consumers.

Here, Powell’s valves were not raw material, nor were they bulk, fungible, or multi-use products meant to be subsequently altered by the customer. Rather, they were used as they were designed to be used, with asbestos insulation, gaskets, and packing that had to be removed and replaced during routine repair and maintenance. Importantly, unlike a true component manufacturer, who has no interaction with the user of the finished product, and no ability to warn, Powell made design choices for the use of asbestos materials, and supplied instruction manuals regarding the maintenance procedures that led to Walton’s exposures. (Typed Opn., p. 13.) Powell therefore had the means and opportunity for interaction with sailors like Walton, and was in a position to warn them.

Regardless, any component part defense that Powell may have attempted to assert would not have been valid because the valves themselves were defective. (*Tellez-Cordova, supra*, 129 Cal.App.4th at p. 581.) Here, Walton showed that Powell’s valves were designed to use asbestos-containing insulation, gaskets, and packing that would become dangerous during ordinary and foreseeable repair and maintenance.

Division Four did not address this, even though the *Taylor* court acknowledged that such asbestos items are “inherently dangerous.” (*Taylor, supra*, 171 Cal.App.4th at p. 588.) Between the lack of evidence demonstrating that Powell was a “component” manufacturer, and the undisputed evidence that Powell designed its valves to require inherently dangerous asbestos materials, Division Four improperly relied on the *Taylor* court’s misapplication of the component parts doctrine.

**E. There Is a Split of Authority As To Whether Powell Is Liable Under a Design Defect Theory.**

A design defect exists when a product is built in accordance with its intended specifications, but the design itself is inherently defective. (*Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 429.) A product is defectively designed if it “failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.” (*Ibid.*) A product’s design is therefore a separate basis for liability than that occasioned by a manufacturer’s failure to warn. Indeed, the *Taylor* court acknowledged the separate categories of product defects and limited its holding to only those involving failure to warn: “[w]e are here concerned solely with the third category . . . ,” warning defects. (*Taylor, supra*, 171 Cal.App.4th at p. 423.) The *Taylor* decision was therefore limited to defects caused by a failure to warn.

Here, Powell designed and intended its valves to be used with asbestos insulation, gaskets, and packing, and designed them in such a way that ordinary maintenance and repair posed an unreasonable risk of injury from asbestos exposure. Powell’s valves were therefore – as the jury concluded – defective not only because of Powell’s failure to warn, but also because of flaws in Powell’s design. Powell never specifically challenged that finding, but Division Four nevertheless expanded *Taylor*’s use of the component parts defense in order to reverse: “In our view, the theory that

the valves suffered from a design defect fails under the components parts doctrine.” (Typed Opn. at p. 14.)

The opposite result was reached in the *O’Neil* case pending before this court. Contrary to *Taylor*, Justice Armstrong explained in *O’Neil* that “[Plaintiffs’] design defect case was that [defendants’] valves . . . were defective because they were designed to be used with asbestos-containing insulation and packing which would become dangerous during the ordinary and foreseeable use of the products. That is a perfectly acceptable theory. The performance of a product during ordinary, expected and routine maintenance and repair is a part of the functionality of that product. A car which only exploded when the oil was changed or the tires rotated could not be deemed non-defective.” (*O’Neil, supra*, 171 Cal.App.4th at p. 1032.)

Because Walton asserted the same design defect claim, this case raises the same issues as *O’Neil* with regard to whether Powell may be held liable on a design defect theory. Setting aside Powell’s failure to challenge the design defect aspect of the judgment, or to raise the component parts defense on its own behalf, review is necessary to resolve the conflicts created by Division Four’s decision in light of not just *Taylor*’s limitation of its rationale to failure to warn claims, but also the *O’Neil* court’s conclusion that a design defect claim is a “perfectly acceptable” theory of liability under these circumstances.

## CONCLUSION

The Waltons request this court to grant review because there is conflicting authority created by the decisions in this case, *Taylor*, *O'Neil*, *Merrill*, and *Hall*, the last three of which are currently under review in this court. Review is necessary to secure uniformity of decision and to settle important questions of law, and should be granted pursuant to the "grant and hold" procedures of rule 8.512, subdivision (d)(2).

Respectfully submitted,

SIMON, EDDINS & GREENSTONE LLP  
Brian P. Barrow

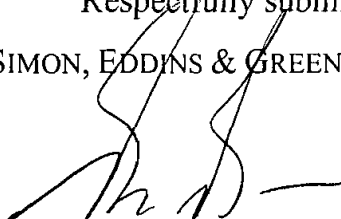
Attorneys for Petitioners  
EDWARD and CAROL WALTON

**WORD COUNT CERTIFICATION [CRC 8.204(c)(1)]**

Counsel for appellants hereby certify that this brief contains 4901 words as measured by Microsoft Office Word 2007 word processing software.

Respectfully submitted,

SIMON, EDDINS & GREENSTONE LLP



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By: Brian P. Barrow

Attorneys for Petitioners  
EDWARD and CAROL WALTON



**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

EDWARD WALTON et al.,

Plaintiffs and Respondents,

v.

THE WILLIAM POWELL COMPANY,

Defendant and Appellant.

B208214

(Los Angeles County  
Super. Ct. No. BC361382)

COURT OF APPEAL - SECOND DIST.

**FILED**

APR 22 2010

JOSEPH A. DAVE

Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Ralph W. Dau, Judge. Reversed and remanded with directions.

Horvitz & Levy, Lisa Perrochet and Jason R. Litt; Foley & Mansfield,  
Douglas G. Wah and Khaled Taqi-Eddin for Defendant and Appellant.

Simon, Eddins & Greenstone and Brian P. Barrow for Plaintiffs and  
Respondents.

Respondents Edward and Carol Walton asserted claims for negligence and strict liability against appellant The William Powell Company (Powell), alleging that asbestos-laden materials associated with valves made by Powell injured Edward Walton. After the jury returned a verdict in the Waltons' favor, a judgment was entered awarding them \$5,660,624.39 in damages. We conclude that because Edward Walton's injuries stemmed entirely from exposure to asbestos-laden products for which Powell is not liable, we must reverse.

## **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

### *A. Pretrial Proceedings*

Beginning in the late 1940's, Powell sold metal valves, together with asbestos gaskets and packing, to the United States Navy. Edward Walton served in the United States Navy from 1946 to 1968. During two periods of his service Walton repaired shipboard propulsion and heating systems, which used valves in conjunction with asbestos insulation and other asbestos-laden items. After leaving the Navy, Walton operated a painting business that brought him into contact with products containing asbestos. In November 2005, Walton was diagnosed as suffering from lung cancer.

On November 2, 2006, the Waltons filed their complaint for negligence and strict liability against Powell and approximately 45 other defendants.<sup>1</sup> The complaint alleged that Edward Walton's lung cancer and related medical conditions resulted from his exposure to asbestos in connection with the defendants' products. The Waltons sought compensatory and punitive damages.

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<sup>1</sup> The complaint also asserted a claim for conspiracy and a claim by Carol Walton for loss of consortium.

Several defendants other than Powell sought summary judgment on the Waltons' claims, contending that the pumps, valves, and other items they had provided to the Navy did not, in fact, cause Edward Walton's injuries. These motions relied in part on the so-called component parts doctrine, which in some circumstances shields a component manufacturer from strict liability for a finished product that incorporates its component. (*Taylor v. Elliot Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564, 576 (*Taylor*)). In addition, Powell and other defendants joined in a motion in limine to exclude the Waltons' evidence on the basis of the doctrine. The trial court denied all but one of the motions for summary judgment and the in limine motion.<sup>2</sup>

#### B. *Trial*

On February 20, 2008, at the commencement of jury selection, six defendants remained in the action, including Powell. The next day, when the Waltons made their opening statement to the jury, Powell and a pump manufacturer were the only defendants in the action. By midtrial, Powell was the sole defendant in the action.

At trial, evidence was presented that Powell manufactured metal valves for a large number of military and nonmilitary applications. The valves were of many types, and employed a variety of gaskets, some of which contained no asbestos. Although some of the valves used asbestos gaskets and packing, Powell made only the valves. The Navy was among Powell's customers for these valves. From the late 1940's to 1991, Powell provided asbestos gaskets and packing from other

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<sup>2</sup> The trial court granted summary judgment in favor of Cla-Val Co., concluding that it supplied no asbestos-laden items to the Navy, and that its valves were not designed for use in connection with such items.

manufacturers with its valves; in addition, Powell sold replacement asbestos gaskets and packing, but received relatively few orders because the "end users" preferred to order directly from gasket and packing manufacturers, who sold the same items at lower prices. No warnings about asbestos were placed on the valves. According to Powell, it first became aware of the hazards of asbestos in the mid-1980's, and began phasing out the use of asbestos in its products in 1987.

Edward Walton testified as follows: He enlisted in the Navy in 1946, and served as deckhand prior to 1953, when he began working as a welder and metal smith. From 1953 to 1959, and from 1966 to 1968, Walton repaired shipboard heating and propulsion systems. During these periods, he served aboard destroyer tenders, vessels that provided maintenance services for destroyers. The shipboard systems on the destroyers that he serviced used asbestos insulation and other asbestos-laden items. Among his tasks was the maintenance of valves and pumps below deck in the engine and fire rooms, where the boilers and turbines were located. The valves and pumps were supplied by several manufacturers. He first encountered a Powell valve after June 1956.

In working on a valve, Walton removed asbestos insulation from the valve's exterior, removed the asbestos gaskets (if any) that sealed the valve to adjoining pipes, extracted asbestos packing from the valve's interior, and installed new asbestos packing and gaskets, as needed. The gaskets were often cut from sheets of asbestos, and the packing was fashioned from rolls of replacement packing. Walton also encountered asbestos insulation and gaskets when he worked on pumps. During these activities, the air that Walton breathed became dirty and dusty. He removed asbestos insulation from Powell valves "numerous times, many, many times," but saw no warnings about asbestos on the valves.

Walton attributed none of the asbestos products he contacted to Powell. He testified that he often serviced valves in destroyers built during or before World War II, and worked only on old valves “with many coats of paint.” Walton believed that the valves’ original gaskets and packing had been replaced before he worked on them.<sup>3</sup> According to Walton, most of the replacement packing and gaskets came from a source other than Powell, and he otherwise could not specify their sources. He knew neither the manufacturer of the valves’ insulation nor the number of times that the insulation had been replaced.

Walton left the Navy in 1968 and operated a painting company until 1999. As a painter, he worked with asbestos-laden sheetrock, textured ceilings, and taping mud. In late 2005, he was diagnosed as suffering from lung cancer.

Dr. Edwin Crosby Holstein, a specialist in asbestos-related diseases, and Arnold R. Brody, a cell biologist and experimental pathologist, testified regarding Edward Walton’s medical condition and its causes. Holstein opined that Walton’s exposure to asbestos in connection with Powell valves was a significant contributing cause of Walton’s lung cancer.<sup>4</sup> Brody testified that Walton’s history

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<sup>3</sup> Regarding the valves’ packing and gaskets, Walton testified as follows:

“Q. So as far as you know, the packing on those valves would have been replaced many times?

“A. It might have been.

“Q. And same with the gaskets, as far as you know [the gaskets] would have been replaced many times?

“A. I would say it most likely had to have been.”

<sup>4</sup> Holstein also testified that asbestosis was identified as an asbestos-related disease no later than the 1930’s, and that at least 700 articles concerning the hazards of asbestos had been published by 1964.

of asbestos-related and medical conditions were sufficient to establish that asbestos caused his lung cancer.<sup>5</sup>

### *C. Verdict and Judgment*

The jury found that Edward Walton had suffered \$561,861 in economic damages and \$20,000,000 in noneconomic damages, and allocated Powell a 25 percent share of the responsibility for the causation of these damages.<sup>6</sup> In addition, the jury found that Powell had acted with malice, oppression, or fraud, but awarded no punitive damages. On March 6, 2008, a judgment was entered in favor of the Waltons awarding damages totaling \$5,660,624.39.<sup>7</sup> The trial court later denied Powell's motions for a new trial and judgment notwithstanding the verdict. This appeal followed.

## **DISCUSSION**

Powell contends that the Waltons' claims for strict liability and negligence fail because its valves were not defective and caused no injury to Edward Walton.<sup>8</sup>

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<sup>5</sup> The jury also heard excerpts from the deposition of Dr. Shigero Chino, a cardiothoracic surgeon, who began treating Edward Walton in December 2005, and soon determined that he suffered from lung cancer.

<sup>6</sup> The jury also awarded damages of \$500,000 to Carol Walton for her loss of consortium.

<sup>7</sup> The damage award reflects adjustments for settlements by defendants other than Powell.

<sup>8</sup> Powell also contends (1) that there is insufficient evidence that Edward Walton's exposure to asbestos in connection with its valves caused his lung cancer; (2) that the jury's allocation of fault to Powell fails for want of substantial evidence; (3) that the trial court erred in admitting an internal Powell memorandum dated December 4, 1987; (4) *(Fn. continued on next page.)*

We agree. As explained below, Powell supplied none of the asbestos products to which Edward Walton was exposed, and its valves had no defect rendering Powell liable for the injuries that Walton may have sustained through exposure to asbestos products from other sources.

Generally, in a products liability case, a plaintiff may seek recovery on theories of strict liability and negligence. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 478-479.) “[U]nder either a negligence or a strict liability theory of products liability, to recover from a manufacturer, a plaintiff must prove that a defect caused injury. [Citations.] Under a negligence theory, a plaintiff must also prove ‘an additional element, namely, that the defect in the product was due to negligence of the defendant.’” (*Id.* at p. 479, quoting Prosser, *Strict Liability to the Consumer* (1966) 18 Hastings L.J. 9, 50-51.) Here, the Waltons sought recovery on theories of strict liability and negligence, asserting that Powell’s valves lacked adequate warnings about the hazards of asbestos and were otherwise defective in their design.

### A. *Strict Liability*

#### 1. *Governing Principles*

We begin with the Waltons’ claims based on strict liability. California law “provides generally that manufacturers, retailers, and others in the marketing chain of a product are strictly liable in tort for personal injuries caused by a defective product.” (*Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1188.) However,

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that the trial court improperly denied Powell’s request for a continuance during the trial; and (5) that the award for noneconomic damage is excessive. As we conclude that the Waltons’ claims fail as a matter of law under the component parts doctrine, we do not address these contentions.

strict liability is not imposed on parties that are “not a part of the manufacturing or marketing enterprise of the allegedly defective product that caused the injury in question.” (*Ibid.*) The burden falls upon the plaintiff to produce adequate evidence “linking the injury-producing product with a particular entity in the stream of commerce of that product.” (*Taylor, supra*, 171 Cal.App.4th at p. 576.) Recovery is permitted in strict liability for three kinds 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.)

Pertinent to our inquiry is the component parts doctrine, which in some circumstances exempts a manufacturer from liability arising from a finished product that incorporates a component supplied by the manufacturer. (*Taylor, supra*, 171 Cal.App.4th at p. 576.) Generally, a component manufacturer is subject to liability only when the component itself has a defect that results in injury, or the manufacturer plays a material role in integrating the component into the finished product, whose defects cause injury. (Rest.3d Torts, Products Liability, § 5.9)

Two policy considerations underlie the component parts doctrine. “First, requiring suppliers of component parts to ensure the safety of their materials as

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<sup>9</sup> Section 5 of the Restatement Third of Torts: Products Liability states in pertinent part: “One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is subject to liability for harm to persons or property caused by a product into which the component is integrated if: (a) the component is defective in itself, . . . and the defect causes the harm; or [¶] (b)(1) the seller or distributor of the component substantially participates in the integration of the component into the design of the product; and [¶] [(b)](2) the integration of the component causes the product to be defective . . . and [¶] [(b)](3) the defect in the product causes the harm.”

used in other entities' finished products "would require suppliers to 'retain an expert in the client's field of business to determine whether the client intends to develop a safe product.'" [Citation.] Suppliers of "products that have multiple industrial uses" should not be forced 'to retain experts in a huge variety of areas in order to determine the possible risks associated with each potential use.' [Citation.] A second, related rationale is that "finished product manufacturers know exactly what they intend to do with a component or raw material and therefore are in a better position to guarantee that the component or raw material is suitable for their particular applications." [Citations.]" (*Taylor, supra*, 171 Cal.App.4th at p. 584, quoting (*Springmeyer v. Ford Moter Co.* (1998) 60 Cal.App.4th 1541, 1554.)<sup>10</sup>

## 2. *No Strict Liability*

The Waltons' strict liability claim relies on allegations that Powell's valves suffered from "warning" and design defects. For the reasons explained below, the claim fails under each theory.

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<sup>10</sup> The Restatement Third of Torts explains the rationale underlying the doctrine in the following terms: "As a general rule, component sellers should not be liable when the component itself is not defective . . . . If the component is not itself defective, it would be unjust and inefficient to impose liability solely on the ground that the manufacturer of the integrated product utilizes the component in a manner that renders the integrated product defective. Imposing liability would require the component seller to scrutinize another's product which the component seller has no role in developing. This would require the component seller to develop sufficient sophistication to review the decisions of the business entity that is already charged with responsibility for the integrated product." (Rest.3d Torts, Products Liability, § 5, com. a, p. 131.)

a. *No Duty to Warn*

At trial, the Waltons asserted that Powell's valves were defective because they incorporated no warning regarding the hazards of asbestos packing, gaskets, and insulation. "Generally speaking, manufacturers have a duty to warn consumers about the hazards inherent in their products. [Citation.] The requirement's purpose is to inform consumers about a product's hazards and faults of which they are unaware, so that they can refrain from using the product altogether or evade the danger by careful use." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) A product that is otherwise flawless in its design and manufacture "may nevertheless possess such risks to the user without a suitable warning that it becomes "defective" simply by the absence of a warning." (*Finn v. G. D. Searle & Co.* (1984) 35 Cal.3d 691, 699.)

In *Taylor*, on facts materially similar to those before us, the appellate court held that a strict liability claim predicated on a warning defect failed as a matter of law. (*Taylor; supra*, 171 Cal.App.4 at p. 571.) There, the widow of a Navy seaman sued several valve and pump manufacturers, alleging that they were responsible for her husband's asbestos-related injuries. (*Id.* at pp. 570-571.) The defendants had supplied valves and pumps, along with asbestos gaskets and packing, to the Navy in the 1940's. (*Ibid.*) The plaintiff asserted negligence and strict liability claims based on the theory that the defendants had a duty to issue a warning regarding the hazards of asbestos. (*Id.* at pp. 571, 593.) In seeking summary judgment on the claims, the defendants established that they had manufactured only the valves and pumps they had supplied the Navy; that the husband enlisted in 1964; and that he had repaired valves and pumps whose original packing and gaskets had been replaced by items from other manufacturers. (*Id.* at pp. 571-572.)

The appellate court affirmed the grant of summary judgment in the defendants' favor, concluding that the plaintiff's "duty to warn" strict liability claim failed for three reasons. (*Taylor, supra*, 171 Cal.App.4 at pp. 577-586.) First, as the court noted, the defendants were not part of the chain of distribution of the injury-causing products, as the husband had *no* contact with any asbestos-laden products that the defendants had provided. (*Id.* at pp. 577-579.) Second, following an examination of California law, the court determined that the defendants had no duty to issue warnings regarding the hazards of asbestos "released from products made or supplied by other manufacturers and used in conjunction with [the defendants'] equipment." (*Id.* at pp. 579-583.) Third, the court concluded that the component parts doctrine shielded the defendants from liability, as there was no evidence that their valves and pumps were themselves defective or that the defendants played a material role in the design of the shipboard systems. (*Id.* at p. 585.) Although the defendants had provided valves and pumps in accordance with the Navy's specifications, the court reasoned that this conduct was insufficient to support strict liability, pointing to the Restatement Third of Torts, which states: "A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable . . . ." (Rest. 3d Torts, Products Liability, § 5, com. e., p. 135.)

We conclude that the Waltons' strict liability claim based on the duty to warn fails for the same reasons. To begin, the Waltons did not establish that Powell was part of the chain of distribution of the asbestos products that

contributed to Edward Walton's injuries. Nothing before us supports the inference that Edward Walton had any contact with asbestos products supplied by Powell.<sup>11</sup>

There is no evidence that Powell ever provided the type of insulation covering the valves that Walton repaired. Nor does the record support a reasonable inference that Powell supplied either the packing and gaskets that Walton removed from the valves or their replacements. On these matters, Walton testified that he first worked on a Powell valve no earlier than June 1956; that many of the ships whose valves he serviced were built during or before World War II; that *all* the valves he encountered were old, as evidenced by their "many coats of paint;" and that the original packing and gaskets had probably been replaced -- perhaps many times -- before he worked on the valves. He also stated that a manufacturer other than Powell provided most of the new packing, and that he did not know whether Powell had supplied any of the replacement gaskets or packing. There is no evidence that the Navy ever bought replacements from Powell; the only evidence suggested that the Navy did not, as Powell received relatively few orders for replacements due to its high prices.

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<sup>11</sup> On appeal, we examine the record for substantial evidence concerning the requisite link between Powell's distribution activities and Edward Walton's asbestos-related injuries. In this regard, our inquiry "begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact] . . . ." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.) However, "substantial evidence" is not "synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value. . . ." [Citation.]" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) Finally, "in all cases, the determination whether there was substantial evidence to support a finding or judgment must be based on the whole record." (*Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.)

On this record, any inference that Walton was exposed to asbestos from products supplied by Powell is speculation. Because the Waltons failed to “link[] the injury-producing product with [Powell] in the stream of commerce of that product,” Powell’s original provision of asbestos packing and gaskets to the Navy did not render it strictly liable for Walton’s injuries. (*Taylor, supra*, 171 Cal.App.4th at pp. 577-579; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 523-524 [former supplier of asbestos insulation to Navy was not strictly liable for seaman’s injuries from exposure to asbestos insulation, as there was no evidence that former supplier had role in the design and marketing of asbestos insulation to which seaman was actually exposed].)

Nor was Powell subject to a duty to warn because its valves were used in combination with the asbestos-laden products to which Walton was exposed. As explained in *Taylor*, the employment of a nondefective component in an injury-causing shipboard propulsion or heating system is not, by itself, sufficient to trigger the duty to warn; the plaintiff must show that component manufacturer “participated in the integration of the[] component[] into the design of the [system].” (*Taylor, supra*, 171 Cal.App.4th at p. 585.) The Waltons made no such showing. The record discloses only that the Navy, in ordering the valves from Powell, specified that the valves must have a certain type of flange (or fitting for gaskets); that Powell provided valves with the specified flange; and that Powell also supplied the Navy with technical documents and instruction manuals regarding the valves they provided. As these facts do not show that Powell participated in the design of the Navy’s systems or the system components provided by other manufacturers, they do not establish a duty to warn. (*Id.* at pp. 584-586; see also *Blackwell v. Phelps Dodge Corp.* (1984) 157 Cal.App.3d 372, 377-378 [acid manufacturer had no duty to warn about dangers of pressure

formation from acid when manufacturer lacked control over shipping arrangements, and placed the acid as ordered in defective tank cars provided by other parties]; *Garman v. Magic Chef, Inc.* (1981) 117 Cal.App.3d 634, 637-638 [propane stove manufacturer had no duty to warn regarding hazards associated with pipe connecting stove to propane tank when it did not supply or install pipe].)

b. *No Design Defect*

At trial, the Waltons also asserted that Powell's valves were defective because they were designed for use in concert with asbestos gaskets, packing, and insulation. They presented evidence that Powell's valves were designed to permit the replacement of the packing and gaskets, and that Powell knew that insulation placed by others on its valves would have to be removed when the valves were repaired. On appeal, the Waltons contend that the valves were defective in their design even if none of the asbestos products with which Walton had contact were provided by Powell. The crux of their contention is that Powell intentionally designed their valves to be used with asbestos products from other manufacturers. In our view, the theory that the valves suffered from a design defect fails under the component parts doctrine.

Generally, the doctrine applies to items such as "raw materials, valves, [and] switches, [which] have no functional capabilities unless integrated into other products." (Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.) As explained in the Restatement Third of Torts, Products Liability, the doctrine encompasses such items -- provided that they are nondefective in themselves -- because "[i]mposing liability would require the component seller to scrutinize another's product which the component seller has no role in developing. This would require the component seller to develop sufficient sophistication to review

the decisions of the business entity that is already charged with responsibility for the integrated product.” (Rest.3d Torts, Products Liability, § 5, com. a, p. 131.)

Powell’s valves fall squarely within this rationale for the component parts doctrine. Powell 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. Because integration would have been impossible if the valves were not compatible with other products used in such systems, Powell designed metal valves that could be combined with gaskets, packing, and insulation from other sources, as Powell itself made none of these items. Nothing before us suggests that Powell had a role in designing the available gaskets, packing, and insulation or the shipboard systems into which its valves were integrated. To impose liability on Powell 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 Powell to acquire “sufficient sophistication to review the decisions of the . . . entit[ies]” directly responsible for the products in question. (Rest.3d Torts, Products Liability, § 5, com. a, p. 131; see also *Cadlo v. Owens-Illinois, Inc.*, *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].)

c. *The Waltons’ Contentions*

Pointing primarily to *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.* (2004) 129 Cal.App.4th 577, 579-581 (*Tellez-Cordova*), the Waltons contend that Powell is strictly liable for Edward Walton’s injuries, even if Powell did not

supply the asbestos-laden products that he encountered while working on Powell's valves. In *Tellez-Cordova*, the plaintiff asserted strict liability claims based on "warning" and design defects against manufacturers of grinding tools that the plaintiff had used. The plaintiff's complaint alleged that he had suffered injury as the result of exposure to toxic dust released from abrasive discs powered by the tools. (*Ibid.*) The defendants successfully demurred to the complaint on the basis of the component parts doctrine. (*Id.* at p. 581.) In reversing, the appellate court noted that the complaint alleged that the tools were specifically designed to be used with the abrasive discs for the purpose of grinding metals, and that toxic dust was created when the tools were used for their intended purpose. (*Id.* at pp. 582-583.) In view of the allegations, the court concluded that the component parts doctrine was inapplicable, as the defendants' grinding tools had only one intended purpose -- that is, to power abrasive wheels -- and there was no "finished product manufacturer" in a superior position to issue warnings about the "completed product." (*Ibid.*)

In our view, *Tellez-Cordova* stands for the proposition that the component parts doctrine is inapplicable when a manufacturer's product is uniquely designed to complete a system that is hazardous in its intended use. That is not the case here. Unlike *Tellez-Cordova*, in which the tools and discs formed a single system over which the tool manufacturers had significant control, the combination of Powell's valves with the packing, gaskets, and insulation formed no such system. Even when joined with the packing, gaskets, and insulation, the valves had no functional value until integrated into broader systems -- for example, the Navy's shipboard systems -- containing other components; moreover, there is no evidence Powell played a role in developing the shipboard systems in which its valves were placed.

The remaining case authority upon which the Waltons rely is also distinguishable. In *Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218, 1222 (*Wright*), the defendant manufactured a water cannon that had been mounted on a fire engine. When the plaintiff, a firefighter, used the water cannon, it broke loose, threw him to the ground, and fell on him. (*Ibid.*) The defendant obtained summary judgment on the plaintiff's strict liability claim on the theory that the cannon's mount, rather than the cannon itself, was defective. (*Id.* at pp. 1222-1223.) In reversing the summary judgment, the appellate court concluded that there were triable issues whether the cannon suffered from a design defect because it was incompatible with a sufficiently strong mounting system; in addition, the court determined that there were triable issues whether the defendant had failed to warn about a potential mismatch between the cannon's water pressure and the strength of its mount. (*Id.* at p. 1236.)

In *Wright*, unlike here, the defendant's product itself injured the plaintiff. Moreover, the design and warning defects were directly tied to features of the product -- principally, the cannon's water pressure and incompatibility with safe mounting -- that its manufacturer was in the best position to identify as problematic. As explained above, Powell had no control over the development of the asbestos-laden products used in conjunction with its valves.

In *Deleon v. Commercial Manufacturing & Supply Co.* (1983) 148 Cal.App.3d 336, 340, the plaintiff, a worker in a fruit processing plant, was injured when her arm was caught in a rotating power shaft located three feet above a fruit bin she had been cleaning. She sued the bin's manufacturer, which obtained summary judgment on her strict liability claims. (*Id.* at pp. 340-342.) The appellate court reversed, concluding there were triable issues regarding the application of the component parts doctrine, as there was evidence the

manufacturer had participated in the design of the production line that incorporated the bin. (*Id.* at p. 345.) In contrast, here there was no evidence Powell contributed to the design of the asbestos products or the Navy's systems.

Finally, in *Gonzales v. Carmenita Ford Truck Sales, Inc.* (1987) 192 Cal.App.3d 1143, 1145-1146, the plaintiff was injured when the brakes of his truck failed. The plaintiff asserted claims for negligence and products liability against the defendant, which had sold and serviced the truck. (*Id.* at p. 1146.) At trial, the court declined to instruct the jury on the plaintiff's theory that the defendant had failed to give adequate warnings about the necessity for regular adjustments to the truck's air brakes. (*Id.* at pp. 1147-1152.) In determining that the denial was error, the appellate court stated that warnings are in order when necessary to prevent a product from becoming unreasonably dangerous. (*Id.* at p. 1551.) Here, unlike *Gonzales*, Powell did not provide the products that injured Walton. As explained above (see pt. A.2.a., *ante*), Powell had no duty to provide a warning about products from other sources.

The Waltons also suggest that Powell was strictly liable for Edward Walton's injuries because it was foreseeable to Powell that Walton would be exposed to asbestos while working on Powell's valves, even if none of the asbestos he encountered came from products supplied by Powell. We disagree. As explained in *Taylor*, foreseeability alone does not warrant imposition of strict liability when, as here, the upshot of the imposition would be to require the component manufacturer to retain "“an expert in every finished product manufacturer's line of business and second-guess the finished product manufacturer whenever any of its employees received any information about any potential problems.”” (*Taylor, supra*, 171 Cal.App.4th at pp. 585-586, quoting

*Artiglio v. General Electric. Co.* (1998) 61 Cal.App.4th 830, 838-839.) In sum, the Waltons' strict liability claims fail as a matter of law.

### B. *Negligence*

At trial, the Waltons asserted that Powell was liable for Edward Walton's injuries on a theory of negligence. We conclude that this theory also fails under *Taylor*. There, applying the multi-factored test stated in *Rowland v. Christian* (1968) 69 Cal.2d 108, the appellate court held that the defendants had no pertinent duty of care toward the plaintiff's husband.<sup>12</sup> (*Taylor, supra*, 171 Cal.App.4th at pp. 593-596.) In so concluding, the court placed special emphasis on the defendants' lack of responsibility for injury under the theory of strict liability, as well as the fact that the husband was exposed to asbestos from third party products more than 20 years after the defendants provided their valves and pumps to the Navy. (*Id.* at pp. 594-596.) Here, as in *Taylor*, Powell is not strictly liable for Walton's injuries, which arose from exposure to asbestos products from other sources long after Powell supplied the valves that Walton encountered. In view of *Taylor*, Powell had no duty of care toward him for purposes of a negligence claim. The Waltons therefore cannot state a claim for negligence.

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<sup>12</sup> Under the *Rowland* test, the existence of a duty of care is determined by reference to numerous policy factors, including "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. [Citations.]" (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 473, quoting *Rowland, supra*, 69 Cal.2d at p. 113.)

## DISPOSITION

The judgment is reversed, and the matter is remanded with directions to the trial court to vacate the judgment and enter a new judgment in favor of Powell on the Waltons' claims. Powell is awarded its costs on appeal.

## CERTIFIED FOR PUBLICATION

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.

**PROOF OF SERVICE**

(Code Civ. Proc., §§1011 and 1013a, subd. (3))

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 301 East Ocean Boulevard, Suite 1950, Long Beach, California, 90802.

On May 27, 2010, I served the Petition for Review on the interested parties in this action as follows:

Jason R. Litt  
HORVITZ & LEVY LLP  
15760 Ventura Boulevard, 18th Flr.  
Encino, California 91436-3000  
(Attorneys for The Wm. Powell Co.)

Douglas G. Wah  
FOLEY & MANSFIELD PLLP  
1111 Broadway, 10th Flr.  
Oakland, California 94607  
(Attorneys for The Wm. Powell Co.)

Kevin Underhill  
SHOOK, HARDY & BACON  
333 Bush Street, Suite 600  
San Francisco, California 94104  
(Attorneys for Amici Curiae)

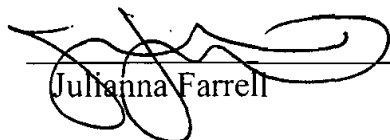
Mark Behrens  
SHOOK, HARDY & BACON  
1155 F. Street, NW, Suite 200  
Washington, D.C. 20004  
(Attorneys for Amici Curiae)

Hon. Ralph M. Dau  
Los Angeles County Superior Court  
111 N. Hill Street  
Los Angeles, California 90012-3014

Clerk, Court of Appeal  
Second District, Division Four  
300 S. Spring Street  
Los Angeles, California 90013-1213

**BY U.S. MAIL:** I am readily familiar with my firm's practice for collecting and processing correspondence for mailing. Under that practice, it would be deposited with the mail service carrier that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Long Beach, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed May 27, 2010, at Long Beach, California.

  
\_\_\_\_\_  
Julianna Farrell