No. S162435

IN THE SUPREME COURT OF CALIFORNIA

TERRY McCANN, et al.,
Plaintiffs-Appellants,

v.

FOSTER WHEELER, LLC,
Defendant-Respondent.

After a Decision of the Court of Appeal,
Second Appellate District, Division Eight
Case No. B189898
(Los Angeles Superior Court, Case No. BC 336869)
Honorable Jon M. Mayeda, Judge

AMICI CURIAE BRIEF OF AMERICAN TORT REFORM ASSOCIATION, COALITION FOR LITIGATION JUSTICE, INC., CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN CHEMISTRY COUNCIL, AMERICAN INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS AND THE STATE CHAMBER OF OKLAHOMA IN SUPPORT OF RESPONDENT FOSTER WHEELER, LLC

Robin S. Conrad (*pro hac pending*)
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, NW
Washington, DC 20062
(202) 463-5337
Of Counsel

Patrick J. Gregory (SBN 206121)
SHOOK, HARDY & BACON L.L.P.
333 Bush Street, Suite 600
San Francisco, CA 94104-2828
(415) 544-1900
Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES AND RULES

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*

Amici represent California and Oklahoma companies that are frequently named as defendants in tort cases and their insurers. *Amici* submit this brief in support of Respondent's request that the Court reverse the decision of the Court of Appeal and reinstate the ruling of the Superior Court. *Amici* have an interest in this case because the decision of the Court of Appeal, if permitted to stand, will undercut tort law policy choices by other states, violate the principle of comity, undermine predictability and certainty in the law, encourage forum shopping, and augment the increasing migration of asbestos and other tort claims into California by plaintiffs seeking to take advantage of favorable California law.

FACTS AND PROCEDURAL HISTORY

Amici adopt Respondents' statement of facts and procedural history.

SUMMARY OF THE ARGUMENT

The issue here is whether California law will trump the law of another state, even when all of the conduct giving rise to the claim occurred decades ago in that foreign state, simply because the plaintiff, years later, became a California resident. Here, the alleged conduct giving rise to plaintiff's alleged asbestos-related mesothelioma occurred in Oklahoma approximately fifty years ago. The only link between the claim and California is the mere fact that plaintiff happened to live in California when he was diagnosed. Nevertheless, the Court of Appeal held that California's statute of limitations should govern rather than Oklahoma's ten-year statute of repose for improvements to real property, Okla. Stat. tit. 12.

State legislatures have adopted a wide range of laws governing civil liability, such as statutes of repose and limits on punitive or noneconomic damages. Legislatures adopt these reforms to draw a balance between (1) the interests of the minority of consumers who suffer an injury caused by another, (2) the need for all consumers to have access to affordable goods and services; (3) the need for businesses to operate under fair and predictable liability law rules, and (4) the state's interest in stimulating investment and economic growth.

Here, the Court of Appeal's ruling disregards Oklahoma's interest in drawing such a balance and having its law applied to conduct that occurred within Oklahoma. The Court of Appeal's ruling also undercuts the predictability and certainty of a law that defendant presumably relied upon when making business decisions, such as how to price its product and how much insurance to purchase.

The Court of Appeal's decision pays little deference to these reliance interests or to the legitimate policy choice of another state. Instead, the court reached the misguided conclusion that states like Oklahoma only have a true interest in regulating conduct by local businesses, not foreign corporations doing business within their boundaries. The court's reasoning ignores Oklahoma's interest in attracting out-of-state investment as well as Oklahoma's interest in lowering the "tort tax" its citizens pay for goods and services.

The Court of Appeal's choice of law ruling does not provide sufficient weight to the law of the state where the events giving rise to plaintiff's injury occurred (i.e., Oklahoma). Clearly, at the time of plaintiff's alleged exposure to

asbestos in Oklahoma, the parties in this case would have reasonably expected that any injury arising in Oklahoma would be governed by Oklahoma law. None of the parties at the time of exposure could possibly have foreseen the potential application of wholly foreign California law many years later.

Finally, the Court of Appeal's ruling will adversely impact California courts. A broad reading of the decision could allow any individual to obtain application of favorable California law simply by moving into California or permit any current California resident to seek application of California law even when the conduct giving rise to that claim occurred wholly in another state. While the plaintiff in the case at bar lived in California for years prior to his diagnosis, the language of the Court of Appeal's ruling would appear to apply California law even if the plaintiff lived in California for a day, a week, or a month, regardless of whether the exposure occurred over the course of many years in another state.

Particularly in the area of asbestos litigation, this Court should be careful to avoid a ruling that would further augment the rising number of claims filed in California courts. Asbestos claims in California have risen in recent years as plaintiffs seek to take advantage of aspects of California law that are generally more favorable to them than the laws of other jurisdictions, including Oklahoma and states such as Texas and Mississippi, that have adopted civil justice reforms.

It may seem far-fetched that residents of other states would move to California just to file a claim, but the specter of many new claims becomes clearer when, as here, the choice is between no claim and a potentially large award.

This Court should render a ruling in this case that does not create a further incentive for forum shopping. The Court should require application of the law of the state where the injury occurred, if a single traumatic event, such as a car crash, is involved. In latent injury cases, the Court should apply the law of the state where the most substantial exposures giving rise to the alleged injury occurred. At a minimum, the Court should make clear that a plaintiff must have established California residency prior to his or her diagnosis before California law will apply.

ARGUMENT

The issue here is whether, when all the activity giving rise to a claim occurred decades ago in another state (in this case, Oklahoma), the state's interest in having its law applied and the reasonable expectation of the parties at the time will be trumped simply because the plaintiff has, years later, become a California resident. The Court of Appeal answered, yes. This result shows lack of comity and respect for the policy decision of another state. The Court of Appeal's ruling also undermines predictability in the law. For these reasons, we believe the Court of Appeal's decision should be reversed.

I. THE COURT OF APPEAL'S RULING DISREGARDS THE PUBLIC POLICY CHOICES OF OTHER STATES

The Court of Appeal's ruling shows a lack of respect for Oklahoma's public policy determination. States such as Oklahoma have legitimate interests in limiting liability for conduct that occurs within their boundaries - interests that are undercut by the decision of the Court of Appeal.

State legislatures have enacted various reforms tailored to limit liability. For example, some states have chosen not to allow punitive damages, *see, e.g.*, La. Civ. Code art. 3546, or to provide statutory limits to guard against excessive punitive awards. *See, e.g.*, Idaho Code Ann. § 6-1604 (limiting punitive damages to the greater of $250,000 or three times compensatory damages). Some states place specific requirements on filing claims, such as requiring professional liability claims to include a certificate of merit. *See, e.g.*, Pa. R. Civ. Proc. 1042.3. Laws such as these represent policy choices. They stem liability as a matter of fairness, provide predictability and certainty as to liability exposure for businesses, and may encourage commerce in the state. *See generally* Steven B. Hantler et al., *Is the Crisis in the Civil Justice System Real or Imagined?*, 38 Loy. L.A. L. Rev. 1113 (2005).

Other states, such as Oklahoma, have chosen to place an outer time limit on liability, known as a statute of repose, for improvements to real property or for product liability claims. The Oklahoma Supreme Court has said that Oklahoma's statute of repose is "related to the legitimate government objectives of providing for a measure of security for building professionals whose liability could otherwise extend indefinitely" and "of avoiding the difficulties in proof which arise from the passage of time." *St. Paul Fire & Marine Ins. Co. v. Getty Oil Co.* (Okla. 1989) 782 P. 2d 915, 921. The Oklahoma law strikes "a reasonable balance between the public's right to a remedy and the need to place an outer limit on the tort liability of those involved in construction." *Id.* at 923 (quotation omitted).

The statute "evinces in clear language legislative intent that persons who own, lease, or possess property which has been structurally enhanced not be liable for design and construction defects in the built improvement more than ten years after 'substantial completion' of the same." *Gorton v. Mashburn* (Okla. 1999) 995 P.2d 1114, 1116. The Oklahoma legislature "has given [individuals] a 'wrong' against the builder only in the first ten years of a building's construction." *Rollings v. Thermodyne Indus.* (Okla. 1996) 910 P.2d 1030, 1036. If California now permits that state's interest to be undermined based on the residency of the plaintiff years later, then Oklahoma's policy decision would be substantially impaired.

California courts have recognized that sister states have a legitimate interest in limiting liability and in having those laws applied. For example, in *Offshore Rental Co. v. Continental Oil Co.* (1978) 22 Cal.3d 157, this Court applied Louisiana law to bar a claim by a California corporation after it lost a corporate officer's services because of a personal injury sustained at a foreign corporation's premises in Louisiana. The Court found that Louisiana had an interest in protecting those acting within its own borders from the financial hardships caused by the assessment of excessive legal liability or exaggerated claims resulting from the loss of services of a key employee. *See id.* at 163. This Court recognized, "At the heart" of Louisiana's denial of liability "lies the vital interest in promoting freedom of investment and enterprise" within Louisiana's borders, among investors incorporated both in Louisiana and elsewhere. *Id.* at 168.

Likewise, in a case arising from a car accident in Mexico between a Mexican national and California resident, the Court of Appeal in *Hernandez v. Burger* (4th Dist. 1980) 102 Cal.App.3d 795, 802, applied a Mexican law limiting damages to $2,000 because Mexico had a legitimate interest in having its law applied in order to protect nonresident motorists and promote tourism.

The Court of Appeal's decision in *Castro v. Budget Rent-A-Car System, Inc.* (2d Dist. 2007) 154 Cal.App.4th 1162, provides another example. In *Castro*, where a California plaintiff was injured in a traffic collision in Alabama, the court was faced with a choice between applying Alabama law, which precluded liability against vehicle owners for torts committed by permissive users, and California law, which did not bar such claims. In that instance, this Court recognized that Alabama had a significant interest in shielding non-culpable vehicle owners from the financial burdens caused by actively negligent drivers.

Moreover, in determining the proper choice of law in this case, the Court of Appeal did not provide sufficient weight to the site of the injury, Oklahoma. Instead, the court's ruling subjects the defendant to a "financial hazard" that the tort and employment laws of Oklahoma had not created. *Offshore Rental Co.*, 22 Cal.3d at 169. Imposing liability despite a rule of the host state to the contrary, may "strike at the essence of a compelling [foreign] law." *Id.* This Court should provide greater deference to the public policy choices of legislatures and rules of law developed by the courts of sister states.

II. THE COURT OF APPEAL'S RULING DAMAGES PREDICTABILITY IN DETERMINING LIABILITY EXPOSURE

Amici believe that the law that should apply in a particular case should not change based on a plaintiff's decision to take up residency in another state subsequent to the events giving rise to the claim. If the law to be applied were allowed to move with a plaintiff all predictability in the law relating to latent disease claims would be destroyed.

Here, when the plaintiff worked in Oklahoma and the defendant sold its product for installation in Oklahoma, there was a reasonable expectation on the part of both litigants that Oklahoma law would govern an injury arising out of activity in the state. At the time, neither party could have predicted that the law of California would apply to an alleged work-related exposure that allegedly resulted in harm years later. A choice-of-law analysis which essentially changes the rules long after the fact is unfair to defendants and represents unsound public policy.

Businesses price their goods and services based on what they reasonably expect to be the costs of doing business, including their tort liability. If liability can be imposed after the fact, then the defendant may be unjustly harmed because it cannot go back in time and choose not to offer the particular good or service at issue and it cannot charge more after the fact to reflect a greater than expected liability risk. Moreover, the defendant cannot make a retroactive decision to purchase insurance, or more insurance, to guard against that unexpected risk.

Applying California law in this case also undermines the goal of predictability in the law. Parties must be allowed to rely on the law of the state where the activity occurred. If courts allow the applicable law to change based on the plaintiff's residency, then defendants could face potential unanticipated claims in states like California. The only way to carry out the interests of a state like Oklahoma in fostering economic development and ensuring that those who do business in that state can rely upon that state's law in making business decisions is to generally recognize that the law of the state where the activity takes place shall govern. *See, e.g., Tucci v. Club Mediterranee* (2001) 89 Cal.App.4th 180, 190-93 (Dominican Republic law governed claim of California resident injured in the Dominican Republic); *Offshore Rental*, 22 Cal.3d at 168-69 (Louisiana law governed where plaintiff was a California resident, but the tort occurred in Louisiana); *see also Arno v. Club Med Inc.* (9th Cir. 1994) 22 F.3d 1464, 1467-69 (French law governed employment discrimination and contract claims arising out of employment of California resident in France); *McGhee v. Arabian American Oil Co.* (9th Cir. 1989) 871 F.2d 1412, 1426 (California's connection was insufficient to justify application of California law where a California resident sued his Saudi employer for injuries suffered in Saudi Arabia). Such a rule should hold unless California itself has a direct interest for reasons other than the plaintiff's current residency status.

III. THE RULING HAS THE POTENTIAL TO SEND MORE CLAIMS INTO CALIFORNIA COURTS

The rule that plaintiff seeks here will promote forum shopping unless the Court were to limit the application of California law only to those persons who had already established residency in California by the time of a diagnosis that would trigger the running of California's statute of limitations. Otherwise, California may expect a migration of plaintiffs from other states that receive diagnoses elsewhere and anticipate that their recoveries may be barred or otherwise restricted. These plaintiffs might be expected to move to California within the time in which they may file a claim under California's statute of limitations. C.C.P. § 335.1. This is not an exaggerated concern as it is clear that California has been a favored forum for the filing of asbestos claims for many years. In fact, nonresident asbestos claimants are now pouring into California because the state has rules that make it attractive to sue, such as lenient standards on causation and a reputation for large verdicts.

A. An Overview of Asbestos Litigation and its Rise in California

"One of the greatest challenges facing both state and federal courts is the crush of tort suits arising from the extensive use of asbestos" throughout much of the last century. *Malcolm v. National Gypsum Co.* (2d Cir. 1993) 995 F.2d 346; 348; *see also In re Combustion Eng'g, Inc.* (3d Cir. 2005) 391 F.3d 190, 200 ("For decades, the state and federal judicial systems have struggled with an avalanche of asbestos lawsuits."); Christopher F. Edley, Jr. & Paul C. Weiler, *Asbestos: A*

Multi-Billion-Dollar Crisis, 30 Harv. J. on Legis. 383 (1993). The United States Supreme Court in *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 597, described the litigation as a "crisis."[1]

Through 2002, approximately 730,000 claims had been filed nationally. *See* Stephen J. Carroll *et al., Asbestos Litigation* xxiv (RAND Inst. for Civil Justice 2005), *at* http://rand.org/pubs/monographs/MG162/. In August 2006, the Congressional Budget Office estimated that there were about 322,000 asbestos bodily injury cases in state and federal courts. *See* American Academy of Actuaries Mass Torts Subcomm., *Current Issues in Asbestos Litigation* 5 (Aug. 2007), *at* http://www.actuary.org/pdf/casualty/asbestos_aug07.pdf. So far, the litigation has forced an estimated eighty-five employers into bankruptcy, *see* Martha Neil, *Backing Away from the Abyss*, ABA J., Sept. 2006, at 26, 29, and has had devastating impacts on defendant corporations, employees, retirees, affected communities, and the economy.[2] Over 8,500 defendants have been named. *See* Deborah R. Hensler, *California Asbestos Litigation – The Big Picture*, HarrisMartin's Columns: Asbestos, Aug. 2004, at 5.

---

[1] *See generally* David C. Landin et al., *Lessons Learned from the Front Lines: A Trial Court Checklist for Promoting Order and Sound Public Policy in Asbestos Litigation*, 16 Brook. J.L. & Pol'y 589 (2008); Mark A. Behrens, *Some Proposals for Courts Interested in Helping Sick Claimants and Solving Serious Problems in Asbestos Litigation*, 54 Baylor L. Rev. 331 (2002); Paul F. Rothstein, *What Courts Can Do in the Face of the Never-Ending Asbestos Crisis*, 71 Miss. L.J. 1 (2001).

[2] *See* Joseph E. Stiglitz *et al.*, *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms*, 12 J. Bankr. L. & Prac. 51 (2003).

As long ago as 1996, the Court of Appeal stated that California courts were "already overburdened with asbestos litigation . . . ." *Hansen v. Owens-Corning Fiberglas Corp.* (1st Dist. 1996) 51 Cal.App.4th 753, 760. Much of the surge in asbestos case filings nationwide has happened since that time, and California courts have not been spared. *See Asbestos Claims Facility v. Berry & Berry* (1st Dist. 1990) 219 Cal.App.3d 9, 23 (noting "the burdens placed on the judicial system by [asbestos] litigation"); Steven Weller *et al.*, *Report on the California Three Track Civil Litigation Study* 28 (Pol'y Stud. Inc. July 31, 2002) ("The San Francisco Superior Court seems to be a magnet court for the filing of asbestos cases."), *at* www.clrc.ca.gov/pub/BKST/BKST-3TrackCivJur.pdf.

In fact, the litigation in California appears to be worsening. *See* Alfred Chiantelli, *Judicial Efficiency in Asbestos Litigation*, 31 Pepp. L. Rev. 171, 171 (2003) (former San Francisco Superior Court Judge stating, "Lately, we have seen a lot more mesothelioma and other cancer cases than in the past."). In 2004, one San Francisco Superior Court judge stated at a University of San Francisco Law School symposium that asbestos cases take up twenty-five percent of the court's docket. *See Judges Roundtable: Where is California Litigation Heading?*, HarrisMartin's Columns: Asbestos, July 2004, at 3. Another San Francisco Superior Court judge noted that asbestos cases are a "growing percentage" of the court's ever increasing caseload and that they take up a large share of the court's scarce resources. *See id.*

B. California Law Applicable to Asbestos Claims is More Favorable to Plaintiffs Than the Law of Most Other States.

Aside from avoiding applicability of Oklahoma's statute of repose in favor of California's more lenient statute of limitations in this case, there is a strong incentive to file claims in California and seek application of California law rather than the state in which the alleged conduct leading to the injury occurred. California law is generally considered more favorable to asbestos plaintiffs than that of most other states. This is particularly evident in California's relatively low threshold of evidence necessary to show causation and the state's reputation for substantial awards in asbestos cases, particularly in the Bay Area.

In California, legal causation requires the defendant's conduct to be a "substantial factor" leading to the plaintiff's injury, which, in asbestos cases, considers the "length, frequency, proximity and intensity of the exposure." *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052. "[A] force which plays only an 'infinitesimal' or 'theoretical' part in bringing about injury, damage, or loss is not a substantial factor." *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 969. Yet, some California courts have permitted even *de minimis* or low dose exposure to pass the "substantial factor" threshold. *See, e.g., Jones v. John Crane, Inc.* (1st Dist. 2005) 132 Cal.App.4th 990, 1000 (finding that "a level of exposure that is equivalent of that which one might be exposed in the ambient air over a lifetime is not necessarily insignificant" and that the "mere fact that comparable levels could be found in ambient air does not render the exposure 'negligible or

theoretical'") (internal citation omitted). In contrast, over the past three years, more than a dozen courts in other jurisdictions have excluded or criticized *any exposure* causation testimony. *See, e.g., Borg-Warner Corp. v. Flores,* (Tex. 2007) 232 S.W.3d 765, *reh'g denied* (Oct. 12, 2007); *Gregg v. V.J. Autoparts* (Pa. 2007) 943 A.2d 216; *Bartel v. John Crane, Inc.* (N.D. Ohio 2004) 316 F. Supp. 2d 603, *aff'd sub nom. Lindstrom v. A-C Prod. Liab. Trust* (6th Cir. 2005) 424 F.3d 488.

For a discussion of other elements of California law that are particularly favorable to plaintiffs, including the failure of the courts to address unimpaired claimant filings, see Dominica C. Anderson & Kathryn L. Martin, *The Asbestos Litigation System in the San Francisco Bay Area: A Paradigm of the National Asbestos Litigation Crisis*, 45 Santa Clara L. Rev. 1 (2004); Steven D. Wasserman et al., *Asbestos Litigation in California: Can it Change for the Better?,* 34 Pepp. L. Rev. 883, 885 (2007).

As a result, California is known for its multi-million dollar awards in asbestos cases – a reputation that encourages the filing of claims in California courts. In the past year alone, there have been several California verdicts that exceed those in similar cases in other states. *See, e.g., Mesothelioma Victim, Wife Win $9.7 Million in California Case*, 30:16 Andrews Asbestos Litig. Rep. 4, May 30, 2008 (discussing *Brewer v. Alfa Laval*); *Bystander Exposure Merits $9.9 Million Meso Verdict in L.A.*, 30:12 Andrews Asbestos Litig. Rep. 3, Apr. 4, 2008 (discussing *Rollin v. American Standard*); *San Francisco Jury Awards $20 Million*

to Worker With Mesothelioma, 30:11 Andrews Asbestos Litig. Rep. 3, Mar. 21, 2008 (discussing *Mahoney v. Advocate Mines*); *$12.4 Million Verdict in California Mesothelioma Case*, HarrisMartin's Columns- Asbestos, Dec. 2007 (discussing *Pelley v. Afton Pumps, Inc.*); *Calif. Jury Awards $35.1 Million in Navy Meso Case*, 30:1 Andrews Asbestos Litig. Rep. 2, Nov. 2, 2007 (discussing *Davis v. American Standard*); *Calif. Supreme Court Rejects Review of $7M Meso Judgment*, 29:25 Andrews Asbestos Litig. Rep. 2, Oct. 5, 2007 (discussing *Cadlo v. John Crane Inc.*).

Plaintiffs around the country have taken notice. Recently, an influx of filings – many by out-of-state plaintiffs – has significantly increased the burden on California courts. Observers have noted that "plaintiffs' firms are steering cases to California, partly to the San Francisco-Oakland area, which is traditionally a challenging venue for defendants, but also Los Angeles, which was an important asbestos venue in the 1980s but is only recently seeing an upsurge in asbestos cases." Patrick M. Hanlon & Anne Smetak, *Asbestos Changes*, 62 N.Y.U. Ann. Surv. Am. L. 525, 599 (2007).

Many of these plaintiffs lack any meaningful connection to California, having lived most of their lives outside of the State and alleging asbestos exposure that ostensibly occurred elsewhere. In a 2006 sample of 1,047 asbestos plaintiffs for whom address information was available, over three hundred – or an astonishing *thirty percent* – had addresses outside California. *See* Victor E. Schwartz et al., *Litigation Tourism Hurts Californians*, 21:20 Mealey's Litig.

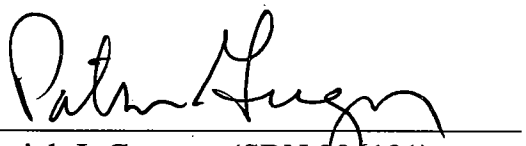
Rep.: Asbestos 41 (Nov. 15, 2006). Unsurprisingly, the firms that manage these claims are moving to California. *See* Wasserman et al., 34 Pepp. L. Rev. at 885 ("With plaintiff firms from Texas and elsewhere opening offices in California, there is no doubt that even more asbestos cases are on their way to the state."). "California is positioned to become a front in the ongoing asbestos litigation war." Emily Bryson York, *More Asbestos Cases Heading to Courthouses Across Region*, 28:9 L.A. Bus. J. 8 (Feb. 27, 2006), *available at* 2006 WLNR 4514441.

In contrast, the asbestos litigation climate in other states has dramatically improved in recent years because of reforms adopted by courts and legislatures. *See* Hanlon & Smetak, 62 N.Y.U. Ann. Surv. Am. L. at 594; Mark Behrens & Phil Goldberg, *The Asbestos Litigation Crisis: The Tide Appears to Be Turning*, 12 Conn. Ins. L.J. 447 (2006); James A. Henderson, Jr., *Asbestos Litigation Madness: Have the States Turned a Corner?*, 3:6 Mealey's Tort Reform Update 23, Jan. 18, 2006; Patti Waldmeir, *Asbestos Litigation Declines in Face of US Legal Reforms*, Fin. Times, July 24, 2006, at 2, *available at* 2006 WLNR 12719566; *see also* David Maron & Walker W. (Bill) Jones, *Taming an Elephant: A Closer Look at Mass Tort Screening and The Impact of Mississippi Tort Reforms*, 26 Miss. C.L. REV. 253 (2007); George S. Christian & Dale Craymer, *Texas Asbestos Litigation Reform: A Model for the States*, 44 S. Tex. L. Rev. 981 (2003); Kevin Risley, *S.B. 15: A New Day for Asbestos and Silica Litigation in Texas*, 68 Tex. B.J. 696 (Sept. 2005).

If this Court creates a rule that encourages broad application of California law to asbestos cases or other toxic tort claims based on mere residency, then the California courts may expect more claims to flow into the state, worsening the state's deteriorating asbestos litigation climate.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reverse the decision of the Court of Appeal and reinstate the ruling of the Superior Court.



Patrick J. Gregory (SBN 206121)
SHOOK, HARDY & BACON L.L.P.
333 Bush Street, Suite 600
San Francisco, CA 94104-2828
(415) 544-1900

Counsel for Amici Curiae

Robin S. Conrad (*pro hac pending*)
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Of Counsel

Dated: September 12, 2008

CERTIFICATE OF COMPLIANCE

I, Patrick J. Gregory, an attorney duly admitted to practice before all courts of the State of California and a member of the law firm of Shook, Hardy & Bacon L.L.P., attorneys of record for *amici curiae* hereby certify that the attached brief complies with the form, size and length requirements of Rule 8.520 and 8.204 of the California Rules of Court in that it was prepared in proportionally spaced type in Times Roman 13-point, double spaced, and contains less than 11,000 words as measured by using the word count function of "Word 2000."

Patrick J. Gregory (SBN 206121)
SHOOK, HARDY & BACON L.L.P.
333 Bush Street, Suite 600
San Francisco, CA 94104-2828
(415) 544-1900

Counsel for Amici Curiae

Dated: September 12, 2008

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

I certify that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is SHOOK, HARDY & BACON, L.L.P., 333 Bush Street, Suite 600, San Francisco, CA 94104-2828. I also certify that on September 12, 2008, I caused an original and fourteen copies of the foregoing Brief to be manually filed with the clerk of the Supreme Court:

Clerk, Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

In addition, I caused a copy of the Brief to be served on the interested parties in this action by placing true and correct copies therefore in sealed envelopes sent by U.S. Mail in first-class postage-prepaid envelopes addressed to the following:

C. Andrew Waters, Esq.
Michael L. Armitage, Esq.
Jennifer L. Bartlett, Esq.
WATERS & KRAUS LLP
222 North Sepulveda Blvd.
Suite 1900
El Segundo, CA 90245

Counsel for Plaintiff

Frederick D. Baker, Esq.
SEDGWICK DETERT MORAN & ARNOLD LLP
1 Market Plaza, 8th Floor
San Francisco, CA 94105

Counsel for Defendant