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No. _____

(Court of Appeals Case No. 57011-1-I)

SUPREME COURT OF THE STATE OF WASHINGTON

VERNON BRAATEN,

Appellants/Plaintiff,

v.

BUFFALO PUMPS, INC., et al.

Respondents/Defendants.

**PETITION FOR REVIEW
to the
WASHINGTON SUPREME COURT**

2007 APR 30 PM 4:15
COURT OF APPEALS
STATE OF WASHINGTON
ajf

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ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. IDENTITY OF PETITIONER.....1

II. CITATION TO COURT OF APPEALS DECISION.....1

III. SUMMARY OF ARGUMENT THAT REVIEW SHOULD BE GRANTED1

IV. ISSUES PRESENTED FOR REVIEW4

 A. Did DeLaval have a legal duty, under negligence or strict products liability principles, to warn Plaintiff of hazards of asbestos thermal insulation and packing that were not part of the pumps sold by DeLaval, but instead were separately sold and supplied by third parties and were applied to or removed from pumps and other equipment by the Navy at the Puget Sound Naval Shipyard? 4-5

 B. Should discretionary review be granted under RAP 13.4(b)(2) because the decision of the Court of Appeals finding such a duty on the part of DeLaval conflicts with prior decisions of the Court of Appeals, including *Sepulveda-Esquivel v. Central Machine Works*, 120 Wn. App. 12, 84 P.3d 895 (Div. II, 2004), and *Bich v. General Electric Co.*, 27 Wn. App. 25, 614 P.2d 1323 (Div. III, 1980)?5

 C. Should discretionary review be granted under RAP 3.4(b)(4) because the issue of whether equipment manufacturers such as DeLaval have a duty to warn of the dangers of asbestos supplied by others in external thermal insulation or replacement packing is one of substantial public interest, and should be decided by the Supreme Court?.....5

V. STATEMENT OF THE CASE6

VI. ARGUMENT.....9

 A. Standard of Review9

 B. The Court of Appeals Decision Conflicts with Prior
 Opinions of Divisions II and III and Call for Review
 Pursuant to RAP 13.4(b)(2).....10

 C. The Issues Presented by this Appeal Are of Substantial
 Public Interest and Importance and Should be Addressed by
 the Supreme Court Pursuant to RAP 13.4(b)(4).....16

VII. CONCLUSION.....20

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>Bich v. General Electric Co.</i> , 27 Wn. App. 25 614 P.2d 1323 (Div. III, 1980)	5, 11, 12, 13, 15
<i>Braaten v. Saberhagen Holdings</i> , 137 Wn. App. 32, 151 P.3d 1010 (2007)	1, 16
<i>Daley v. Allstate Ins. Co.</i> , 135 Wn.2d 777, 782, 958 P.2d 990 (1998)	9
<i>Hutchins v. 1001 Fourth Ave. Assoc.</i> , 116 Wn.2d 217, 220, 802 P.2d 1360 (1991)	9
<i>Korslund v. Dyncorp Tri-Cities Servs.</i> , 156 Wn.2d 168, 177, 125 P.3d 119 (2005)	9
<i>Lockwood v. AC&S, Inc.</i> , 109 Wn.2d 235, 245, 744 P.2d 605 (1987)	14
<i>Seattle-First Nat'l Bank v. Tabert</i> , 86 Wn.2d 145, 148, 542 P.2d 774 (1975)	14
<i>Sepulveda-Esquivel v. Central Machine Works, Inc.</i> , 120 Wn. App. 12, 19, 84 P.3d 895 (Div. II, 2004).....	5, 10, 11, 13, 15
<i>Simonetta v. Viad Corp.</i> , 137 Wn. App. 15, 25, 151 P.3d 1019 (2007)	2, 9, 11, 19
<i>Snyder v. Medical Service Corp.</i> , 145 Wn.2d 233, 243, 35 P.3d 1158 (2001)	10

OTHER CASES

Firestone Steel Products Co. v. Barajas,
927 S.W.2d 608, 614 (Tex. 1996)12

Ford Motor Co. v. Wood,
Md. App. 1, 703 A.2d 1315, 1332 (1998)12

Fricke v. Owens-Corning Fiberglas Corp.,
618 So.2d 473, 475 (La. App. 1993)13

Kealoha v. E.I. DuPont De Nemours & Co.,
844 F. Supp. 590, 594 (D. Haw. 1994)13

Lindstrom v. A-C Products Liability Trust,
424 F.3d 488 (6th Cir. 2005)13

Newton v. Kaiser Foundation Hospitals,
184 Cal. App. 3d 386, 228 Cal. Rptr. 890, 893 (1986)20

Rastelli v. Goodyear Tire & Rubber Co.,
79 N.Y.2d 289, 297, 591 N.E. 2d 222 (1992)12, 13

Stapleton v. Kawasaki Heavy Industries, Ltd.,
608 F.2d 571 (5th Cir. 1979)15, 16

STATUTES AND COURT RULES

RAP 13.4(b)1, 20

RAP 13.4(b)(2)4, 5

RAP 13.4(b)(4)4, 5, 16

OTHER AUTHORITIES

Katherine M. Anand, *Demanding Due Process: The Constitutionality of the Section 524 Channeling Injunction and Trust Mechanisms that Effectively Discharge Asbestos Claims in Chapter 11 Reorganizations*
80 Notre Dame L. Rev. 1187, 1190 (2005)6

Insurance Information Institute, *Asbestos Liabilities*,
www.ii.org/media/hottopics/insurance/asbestos (4/25/2007)17, 18

Restatement (Second) of Torts, Section 402(a)11

Restatement (Third) of Torts11

I. IDENTITY OF PETITIONER

This Petition for Review is filed by IMO Industries, Inc. (“IMO”), for itself and as successor to DeLaval Turbine Company (“DeLaval”).

II. CITATION TO COURT OF APPEALS DECISION

IMO seeks discretionary review under RAP 13.4(b) of the opinion of Division I of the Court of Appeals filed January 29, 2007, reported at 137 Wn. App. 32, 151 P.3d 1010 (2007), and attached as Appendix A.

Motions for reconsideration were filed by IMO and separately by co-respondents Buffalo Pumps, Inc., Crane Co., and Yarway Corp., and were denied by orders entered March 30, 2007, attached hereto as Appendices B, C, D, and E, respectively.

III. SUMMARY OF ARGUMENT THAT REVIEW SHOULD BE GRANTED

Plaintiff Vernon Braaten argued that IMO and other product manufacturers had a duty to warn him of dangers presented, not by defendants’ own products, but by products manufactured and supplied by others used in conjunction with defendants’ products. The Court of Appeals characterized the issue as one of first impression, and decided that it was appropriate that a manufacturer’s tort and products liability duty to warn be “extended” to create a duty to warn in such circumstances.

IMO is the successor to DeLaval, which manufactured pumps. Plaintiff claimed that IMO is liable to him for asbestos injuries because DeLaval provided no warnings about asbestos thermal insulation applied to piping and equipment – including pumps – aboard steam-powered U. S. Navy vessels, or about asbestos-containing packing used by the Navy during pump maintenance. The Superior Court granted summary judgment, dismissing these claims against IMO. The Court of Appeals found that DeLaval had a duty to warn about the hazards of asbestos thermal insulation, and remanded the case to the trial court for a determination of whether Plaintiff could prevail on such a claim.

As noted above, the Court of Appeals itself characterizes the issue as one of first impression. Also, in a decision in a similar case administratively “linked” to this one, *Simonetta v. Viad Corp*, 137 Wn. App. 15, 25, 151 P.3d 1019 (2007), the Court of Appeals forthrightly declared that such a holding represents “another logical extension” of a product manufacturer’s duty to warn. As further explained below, regardless of whether this decision ultimately should be upheld or reversed, it holds tremendous significance for asbestos litigants: As a practical matter, it is determinative of whether equipment manufacturers such as IMO will continue to be subjected to potential liability for asbestos

claims, an issue that in and of itself is of substantial public interest and importance and warrants review by the Washington Supreme Court. The issue is of direct importance in the hundreds of asbestos cases now pending in Washington courts. Public interest and importance separately can be gleaned from the fact that dozens of companies who faced similar asbestos liabilities have been bankrupted as a result.

The “extension” of liability posited by the Court of Appeals also will affect product liability claims generally, by making foreseeability a factor triggering a legal duty. As a result, in any situation where a claimant can argue that a product manufacturer knew or should have foreseen that, as a practical matter, another product would be used with its own and that this separate product posed particular dangers, the claimant can now argue that the product manufacturer has a duty to warn of the dangers posed by the separate product. For instance, manufacturers of wood products that normally are painted would face liability for failure to warn of lead or other toxic paint ingredients. Auto manufacturers would have a duty to warn of gasoline fumes, or any other dangers arising from the use of that fuel. Do jelly manufacturers now have a duty to warn about peanut allergies? Given the impact of the decision below on tort law

generally, review should be accepted under RAP 13.4(b)(4) because the issues are of substantial public interest.

Review also should be granted because the decision of the Court of Appeals conflicts with decisions from both Divisions II and III that conclude that a product manufacturer is not under a duty to warn of dangers posed by products it did not manufacture. It likewise cannot be reconciled with more general products liability case law, which justifies making manufacturers liable for hazards of the products they introduce into the stream of commerce because they can exercise design and manufacturing control over such products, can include product liability insurance in the cost of production, and can seek indemnity from the suppliers of materials and components that created such hazards. Those rationales fail here, where the hazard was not the defendants' own products but the asbestos materials later applied by others. The Court of Appeals' unique approach in this case, and its adoption of an "extension" of products liability law in conflict with prior case law, warrants review by the Supreme Court under RAP 13.4(b)(2).

IV. ISSUES PRESENTED FOR REVIEW

A. DeLaval manufactured pumps and sold them to the United States Navy. Plaintiff alleges he was exposed to asbestos contained in

thermal insulation and packing that were applied to or removed from equipment, including DeLaval pumps, during ship construction and maintenance at the Puget Sound Naval Shipyard in Bremerton, Washington, where Plaintiff worked as a pipefitter. Did DeLaval have a legal duty, under negligence or strict products liability principles, to warn Plaintiff of hazards of asbestos thermal insulation and packing that were not part of the pumps sold by DeLaval, but instead were separately sold and supplied by third parties and were applied to or removed from pumps and other equipment by the Navy at the Puget Sound Naval Shipyard?

B. Should discretionary review be granted under RAP 13.4(b)(2) because the decision of the Court of Appeals finding such a duty on the part of DeLaval conflicts with prior decisions of the Court of Appeals, including *Sepulveda-Esquivel v. Central Machine Works*, 120 Wn. App. 12, 84 P.3d 895 (Div. II, 2004), and *Bich v. General Electric Co.*, 27 Wn. App. 25, 614 P.2d 1323 (Div. III, 1980)?

C. Should discretionary review be granted under RAP 13.4(b)(4) because the issue of whether equipment manufacturers such as DeLaval have a duty to warn of the dangers of asbestos supplied by others in external thermal insulation or replacement packing is one of substantial public interest, and should be decided by the Supreme Court?

V. STATEMENT OF THE CASE

Plaintiff Vernon Braaten commenced this action, seeking damages from DeLaval and others as a result of an asbestos disease. Plaintiff was employed as a pipefitter at Puget Sound Naval Shipyard, where asbestos was used in thermal insulation applied to the exterior of steam pipes and related equipment. Asbestos also could be found in packing used in pumps. Such materials were applied to equipment and machinery during maintenance work on U. S. Navy ships at Puget Sound Naval Shipyard.

The actual manufacturers of such asbestos-containing products are not available as viable defendants in claims such as Plaintiff's, as most are already bankrupt. *See, e.g., Katherine M. Anand, Demanding Due Process: The Constitutionality of the Section 524 Channeling Injunction and Trust Mechanisms that Effectively Discharge Asbestos Claims in Chapter 11 Reorganizations*, 80 Notre Dame L. Rev. 1187, 1190 (2005), cited at Appendix A (Court of Appeals Opinion) at 11, n. 43. Because he could not as a practical matter pursue the manufacturers of the asbestos products that injured him, Plaintiff instead sought to hold equipment manufacturers – including pump manufacturer DeLaval – responsible for his asbestos exposure because, for example, exterior asbestos insulation was applied to pumps. His theory is that such equipment manufacturers

had a duty to warn him because it was foreseeable that asbestos products would be used in conjunction with their equipment. Plaintiff contended that foreseeability of harm created a duty to warn of the dangers of asbestos, and that it was irrelevant that DeLaval did not manufacture or sell the asbestos products that injured him.

Plaintiff first made such claims in two lawsuits he filed in Texas, one in Brazoria County and one in Dallas County. CP 337-365; 5478. These lawsuits were dismissed after another defendant equipment manufacturer, Goulds Pumps, obtained a ruling that such an equipment manufacturer owes no duty to warn of the dangers associated with another company's asbestos-containing insulation that was applied to the equipment by an end user. CP 385; 5481; 5510.

Plaintiff then commenced this action in King County Superior Court. CP 1-6. IMO presented the same issue to the trial court as had been at issue before the Texas court – whether DeLaval owed a legal duty to warn Plaintiff about asbestos thermal insulation and packing, when DeLaval had not supplied such materials for its equipment. CP 5452-5467. The trial court agreed with DeLaval, that foreseeability itself did not create a legal duty, but only circumscribed a duty that otherwise arises because of the relationship between the parties. Absent a product

manufacturer relationship between DeLaval and the asbestos that injured Plaintiff, a legal duty to warn does not arise. The trial court's order stated:

That there is no evidence that plaintiff was exposed to any asbestos-containing product that was manufactured, sold or delivered by IMO INDUSTRIES, INC. or its predecessor-in-interest, DeLaval Turbine, Inc.; and

That IMO Industries, Inc. and/or its predecessor-in-interest, DeLaval Turbine, Inc., owed no duty to plaintiff to warn of the dangers of products that it did not manufacture or otherwise place into the stream of commerce

CP 7269.

Plaintiff sought review before Division I of the Court of Appeals, again arguing that the foreseeability of the risk entitled him to present his case to a jury. Appellant's Opening Brief at 21. The Court of Appeals began by noting, with reference to Plaintiff's duty arguments, that "This is an issue of first impression in Washington." Appendix A (Court of Appeals Opinion) at 7. It also discussed the extensive citations by the parties to case law in other jurisdictions, but found that "none is dispositive." *Id.*

In a companion case administratively "linked" to this one, Division I of the Court of Appeals conceded that a manufacturer's duty to warn

regarding its products “has not traditionally applied to products manufactured by another.” *Simonetta v. Viad Corp*, supra, 137 Wn. App. at 25. It nonetheless found in that case “a set of facts that compels another logical extension of the common law,” *Id.*, and reversed summary judgment that had been granted defendant Viad.

Likewise, in the present case, Division I of the Court of Appeals reversed the several summary judgments dismissing Plaintiff’s claims, finding a record “sufficient to survive summary judgment” and that a trier of fact “could conclude” that the defendant manufacturers knew or should have known that asbestos exposure was a hazard they were obligated to provide warnings for. Appendix A (Court of Appeals Opinion) at 15.

VI. ARGUMENT

A. Standard of Review

Summary judgment rulings are reviewed by this Court *de novo*. *Korslund v. Dyncorp Tri-Cities Servs.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005); *Daley v. Allstate Ins. Co.*, 135 Wn.2d 777, 782, 958 P.2d 990 (1998). This issues presented by this petition are particular amenable to review, as they revolve around questions of legal duty. The existence of a duty is a question of law to be decided by the court. *Hutchins v. 1001 Fourth Ave. Associates*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991).

Whether a duty exists depends on mixed considerations of logic, common sense, justice, policy, and precedent. *Snyder v. Medical Service Corp.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001).

B. The Court of Appeals Decision Conflicts with Prior Opinions of Divisions II and III and Call for Review Pursuant to RAP 13.4(b)(2)

The decision of the Court of Appeals cannot be reconciled with *Sepulveda-Esquivel v. Central Machine Works, Inc.*, 120 Wn. App. 12, 19, 84 P.3d 895 (Div. II, 2004). There, the plaintiff sued the seller and manufacturer of an industrial hook for injuries sustained when he was injured by a load that fell from the hook. The plaintiff's employer attached a "mouse" to the hook, the purpose of which was to close the opening of the hook when moving a load. Division II concluded that the seller and manufacturer of the hook had no duty with respect to the finished hook assembly (which included the "mouse") because they made and sold only the hook – not the hook in conjunction with the "mouse" – and the hook itself did not fail. The court characterized the "determinative" issue as whether the device made by the defendants was the "relevant product" within the meaning of the Washington Product Liability Act ("WPLA"). 12 Wn. App. at 20, n. 2.¹ "The 'relevant

¹ While *Sepulveda-Esquivel* was decided under the WPLA rather than the common law,

product' under [the WPLA] is that product or its component part or parts that *gave rise to the product liability claim.*" *Id.* at 18 (emphasis added). Although *Sepulveda-Esquivel* received extensive citation and discussion in the briefs of the parties, the Court of Appeals did not discuss or mention it.² The Court of Appeals decision cannot be reconciled with *Sepulveda-Esquivel*, given that in each case, a critical issue was the extent to which a manufacturer would be responsible for hazards found in materials or devices applied to its product, and the dangers associated with the latter.

Likewise, the Court of Appeals opinion cannot be reconciled with *Bich v. General Electric Co.*, 27 Wn. App. 25 614 P.2d 1323 (Div. III, 1980), which it also does not discuss in the context of creation of a duty.³ *Bich* involved a claim by an electrician who was injured when he attempted to install Westinghouse fuses in a GE transformer. The transformer emitted electrical arcing, and an explosion and fire resulted, severely burning the plaintiff. The cause apparently was electrical

the court drew from the latter, including the RESTATEMENT (THIRD) OF TORTS, for its analysis. 120 Wn. App. at 19. Its reasoning therefore would also apply to this case, decided under common law principles including RESTATEMENT (2D) TORTS § 402A.

² *Simonetta* noted *Sepulveda-Esquivel* arose under the WPLA rather than common law, but, as noted above (at footnote 1), the latter's reasoning was based on RESTATEMENT (THIRD) OF TORTS and other common law, not anything specific to the WPLA.

³ The Court of Appeals opinion, at p. 13 n. 46, does cite *Bich* for factors to consider under the common law test of whether a product is "defective."

characteristics of the Westinghouse fuses that differed from those originally provided by transformer maker GE.

One issue in *Bich* was whether transformer manufacturer GE could be liable for failing to warn of the dangerous characteristics of the Westinghouse fuses used as a replacement part. *Bich* rejected plaintiff's argument that transformer manufacturer GE was liable for failing to warn about the dangerous characteristics of a replacement fuse that might be used with its transformer. "GE had no duty to warn in 1969 of a fuse Westinghouse manufactured in 1973." 27 Wn. App. at 33.⁴

Not surprisingly, the decision of the Court of Appeals also is at odds with cases from various other jurisdictions that would refuse to find liability on the part of IMO or the other defendants in these circumstances. For instance, *Firestone Steel Products Co. v. Barajas*, 927 S.W.2d 608, 614 (Tex. 1996), held that "[a] manufacturer does not have a duty to warn or instruct about another manufacturer's products, though those products might be used in connection with the manufacturer's own products." *Rastelli v. Goodyear Tire & Rubber Co.*, 79 N.Y.2d 289, 297, 591 N.E. 2d

⁴ While GE had no duty to warn about the Westinghouse fuse, judgment against GE was affirmed because it had failed to warn of the dangerous propensities of its own transformer, which caused plaintiff's injury when it exploded. As observed by a Maryland court, in *Bich*, "the plaintiff was injured by the manufacturer's product, not by a replacement component part manufactured by another many years later." *Ford Motor Co. v. Wood*, 119 Md. App. 1, 703 A.2d 1315, 1332 (1998).

222 (1992), declined “to hold that one manufacturer has a duty to warn about another manufacturer’s product.” In *Kealoha v. E.I. DuPont De Nemours & Co.*, 844 F. Supp. 590, 594 (D. Haw. 1994) summary judgment was awarded a defendant component part manufacturer because, under products liability law, it could not be liable for later-added parts. In *Fricke v. Owens-Corning Fiberglas Corp.*, 618 So.2d 473, 475 (La. App. 1993), the court declined to hold a manufacturer responsible for alleged inadequate warnings about a product it neither manufactured nor sold.

Lindstrom v. A-C Products Liability Trust, 424 F.3d 488 (6th Cir. 2005), could not be more on point. There, the court dismissed strict liability and negligence claims against a manufacturer for alleged asbestos exposure from replacement packing provided by other manufacturers.⁵

Sepulveda-Esquivel, Bich, and the non-Washington authorities

⁵ The Court of Appeals opinion, at page 8, states that the issue in *Lindstrom* was causation, not duty. However, the Sixth Circuit clearly found that a manufacturer could only be held liable for its own equipment, including the original packing or gaskets it contained, and not any materials later supplied by others, even if used with its equipment:

Lindstrom almost certainly could not have handled *the original packing or gasket material*, and this fact compels the conclusion that any asbestos that he may have been exposed to in connection with a Henry Vogt product would be attributable to some other manufacturer. [Cite omitted] *Henry Vogt cannot be held responsible for material “attached or connected” to its product on a claim of a manufacturing defect.*

424 F.3d at 495 (emphasis added).

discussed above are in accord with the basic products liability law tenet that a plaintiff must show that the defendant was the particular manufacturer of the product that caused injury:

Generally, under traditional product liability theory, the plaintiff must establish a reasonable connection between the injury, the product causing the injury, and the manufacturer of that product. *In order to have a cause of action, the plaintiff must identify the particular manufacturer of the product that caused the injury.*

Lockwood v. AC&S, Inc., 109 Wn.2d 235, 245, 744 P.2d 605 (1987) (emphasis added). *Lockwood* declined to consider a “market share” theory of liability for asbestos injuries. *Id.*

Such a result is in accord with the public policy principles underlying modern products liability law: Those in the chain of distribution may be held liable for injuries caused by product defects, as they should stand by their products and can treat the expense resulting from liability as a cost of production, or shift it to a responsible supplier. *See, e.g.*, Comment c, RESTATEMENT (2D) OF TORTS § 402A; *Seattle-First Nat'l Bank v. Tabert*, 86 Wn.2d 145, 148, 542 P.2d 774 (1975). Conversely, such justifications for imposing liability do not apply to a defendant who is not the seller or supplier of a product creating hazards or causing injury but who instead has only the tenuous connection found in

the present case, of having its products used in conjunction with others.

Without discussing or reconciling its decision with *Sepulveda-Esquivel*, *Bich*, or many of the other cases discussed above, the Court of Appeals instead heavily relied upon *Stapleton v. Kawasaki Heavy Industries, Ltd.*, 608 F.2d 571 (5th Cir. 1979).⁶ Appendix A (Court of Appeals Opinion) at 10. *Stapleton* was not cited by either Respondents or Appellant below, and does not bear up well under the weight the Court of Appeals opinion would assign to it. *Stapleton* involved a motorcycle that fell over while its ignition switch was open, which allowed gasoline to leak from the motorcycle's tank and a fire to result. Claims for both negligence and strict products liability were put to the jury, which simultaneously found no defect in the motorcycle but that the defendants had negligently failed to warn of the danger presented by leaving the ignition switch open. The *Stapleton* opinion did not focus on whether the motorcycle manufacturer had a duty to warn about the dangers of its product, but whether – as the defendant there was arguing – the jury finding of a breach of such a duty was inconsistent with the separate jury interrogatory finding that the motorcycle was not defective. Moreover, the opinion characterized the claim against Kawasaki as alleging a “breach of duty to warn about the *dangerous nature of the fuel switch* on the

⁶ The case predates the Eleventh Circuit's formation out of the Fifth Circuit.

motorcycle.” 608 F.2d at 572 (emphasis added). The purpose of such a fuel switch, and of the fuel tank itself, presumably was to contain the gasoline within the motorcycle’s fuel tank. Simply put, the case does not present the parallel the Court of Appeals hoped to find, of a duty to warn about dangerous properties of gasoline, on the one hand, or of asbestos, on the other. In the present case, there is no allegation that DeLaval equipment was dangerous except to the extent that the Navy had placed exterior thermal insulation containing asbestos over it,⁷ or, likewise, that replacement packing containing asbestos had been applied to it. The analogy to *Stapleton* fails, which only highlights the fact that the opinion of the Court of Appeals lacks support in case law elsewhere and cannot be reconciled with existing precedent found in the decisions of Divisions II and III of the Court of Appeals discussed above.

C. The Issues Presented by this Appeal Are of Substantial Public Interest and Importance and Should Be Addressed by the Supreme Court Pursuant to RAP 13.4(b)(4)

The scope of an equipment manufacturer’s potential liabilities for injuries resulting from asbestos thermal insulation and other materials applied to its products following installation of the equipment by the final, end user (here, the U.S. Navy) is not only a matter of first impression, it

⁷ In contrast, the Court of Appeal opinion states, at pages 9-10, that “This case involves the release of a hazardous substance *from* a product.” (Emphasis added).

presents an issue of tremendous importance to asbestos litigants, and to the public more generally.

According to statistical reports maintained by the King County Superior Court, as of October 2005, nearly five hundred cases alleging asbestos injuries were pending before that court alone. Other counties obviously have their own asbestos case loads. While the number or percentage involving one or more equipment manufacturer defendants is not known, it is thought to be significant.

This is because, as explained above, equipment manufacturers and other non-traditional defendants have become targets in asbestos litigation, now that the companies that actually manufactured and supplied asbestos insulation and other products no longer are viable defendants. See Appendix A (Court of Appeals opinion) at 11. See also Insurance Information Institute, *Asbestos Liabilities*, available at www.iii.org/media/hottopics/insurance/asbestos (4/25/2007) (since 1976 more than seventy companies have been bankrupted by asbestos liabilities).

Absent a determination that they indeed are not responsible to warn of the dangers of asbestos thermal insulation and other materials supplied by and separately applied to their equipment by others, some equipment manufacturers presumably risk a fate similar to asbestos

manufacturers. That is of obvious importance to equipment manufacturers themselves, and also is important to asbestos plaintiffs for converse reasons: They need to know the extent to which claims against equipment manufacturers will be viable. Lastly, the general public will be impacted by the sheer economic impact arising from the scope of, and allocation/assignment of, these asbestos liabilities:

A RAND Institute for Civil Justice study, released in May 2005, described asbestos litigation as the longest-running mass tort litigation in the United States and found that the number of asbestos claims continues to rise sharply. As of the end of 2002, over 730,000 people had filed asbestos-related claims, costing businesses and insurers more than \$70 billion.

Insurance Information Institute, *Asbestos Liabilities*, available at www.iii.org/media/hottopics/insurance/asbestos (4/25/2007).

The issues presented in the case below will largely determine whether or not equipment manufacturers such as IMO will continue to be named as defendants in asbestos litigation, and the concomitant effect on their economic viability and existence. These issues are of obvious and substantial importance to equipment manufacturers, to plaintiffs, to the courts of this state, and to the public at large.

The issues in this case also are of substantial public interest because of the manner in which the Court of Appeals extended product liability, and, in particular, the reliance upon foreseeability as the justification for doing so. Appellant indeed contended that foreseeability alone could justify the imposition of a duty. Appellant's Opening Brief at 21. The Court of Appeals seemingly disagreed with this fallacious proposition, instead finding that, "The manufacturers had a general duty to warn Braaten, because he was a user of their valves and pumps." Appendix A (Court of Appeals Decision) at 14. Moreover, In *Simonetta*, the Court of Appeals expressly recognized that "Foreseeability does not create a duty but sets limits once a duty is established." 137 Wash. App. at 23, n. 2. Here, however, the Court of Appeals nonetheless then resorted to foreseeability, not as a limit on the scope of such a duty, but to justify creating one in the first place: "*As a matter of policy*, it is logical and sensible to place some duty to warn on the manufacturer who is in the best position to foresee the specific danger involved in the use of a product." *Id.* at 15. Foreseeability is a problematic factor in these circumstances because "the quest for foreseeability is endless because foreseeability, like light, travels indefinitely in a vacuum." *Newton v. Kaiser Foundation Hospitals*, 184 Cal. App. 3d 386, 228 Cal. Rptr. 890, 893 (1986). The

Court of Appeals adoption of foreseeability as the test by which to initially impose a tort duty (rather than limit the scope of one) is a fundamental shift in tort law, and thus represents a matter of substantial public interest warranting review by the Supreme Court.

VII. CONCLUSION

For the reasons set forth herein, Petitioner IMO Industries, Inc. respectfully requests that this Court accept review of the issues set forth herein under RAP 13.4(b).

DATED this 30th day of April, 2007.

KINGMAN, PEABODY, FITZHARRIS &
RINGER, P.S.

A handwritten signature in black ink, appearing to read "Michael E. Ricketts", is written over a horizontal line.

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DeLaval Turbine, Inc.

Appendix A

Petition for Review

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

VERNON BRAATEN,)	
	)	DIVISION ONE
Appellant,)	
	)	No. 57011-1-I
vs.	)	(Linked with
	)	No. 56614-8-I)
SABERHAGEN HOLDINGS, a)	
Washington Corporation, BARTELLS)	
ASBESTOS SETTLEMENT TRUST, a)	
Washington Corporation; BUFFALO)	
PUMPS, INC. (sued individually and as)	
successor-in-interest to BUFFALO)	
FORGE COMPANY); CRANE CO;)	
GENERAL ELECTRIC COMPANY;)	
GEORGIA-PACIFIC CORPORATION)	
(sued individually and as successor-in-	)	PUBLISHED OPINION
interest to BESTWALL GYPSUM)	
COMPANY); GOULDS PUMPS,)	
INCORPORATED; GUARD-LINE, INC.;)	
IMO INDUSTRIES, INC. (sued)	
individually and as successor-in-interest)	
to DE LAVAL TURBINE, INC. and)	
WARREN PUMPS, INC.); INGERSOLL-)	
RAND COMPANY; JOHN CRANE,)	
INC.; KAISER GYPSUM COMPANY,)	
INC.; SEPCO CORPORATION;)	
TUTHILL CORPORATION (sued)	
individually and as successor-in-interest)	
to CORPUS ENGINEERING CORP.);)	
UNION CARBIDE CORPORATION; and))	
YARWAY CORPORATION,)	
)	
Respondents.	)	FILED: January 29, 2007
)	

BAKER, J. — Vernon Braaten spent his career as a pipe fitter at the Puget Sound Naval Shipyard, where he was often exposed to asbestos. His job involved

tearing into, removing and replacing asbestos insulation used in and on the pumps, valves, and turbines he maintained. He sued the machine manufacturers, claiming that they should have warned about the danger of asbestos inhalation involved with using their products. Braaten first sued in Texas state court where, two weeks before trial, the court entered summary judgment in favor of one of the defendants. Braaten took a nonsuit against the remaining defendants and sued in Washington.

The Washington case raised the same issue with respect to all five manufacturers, and all five won their summary judgment motions. Braaten appealed. General Electric (GE) argued on appeal that collateral estoppel precludes Braaten's claim; the other manufacturers responded only on the merits. We affirm summary judgment for GE on the alternate ground of collateral estoppel. We hold that the other four manufacturers did have a duty to warn, and reverse and remand for further proceedings.

I.

Vernon Braaten worked for 35 years as a pipe fitter at the Puget Sound Naval Shipyard (PSNS). His job was to maintain ship valves, pumps, and turbines, some of which were manufactured by Crane Co. (valves), General Electric (turbines), IMO Industries, Inc. (pumps),¹ Yarway Corp. (valves) and Buffalo Pumps (pumps). Regular maintenance of all these machines required the removal of exterior asbestos mud insulation that had to be sawn or hammered off. Regular maintenance of the valves and pumps also required replacement of interior asbestos gaskets and packing, which

¹ IMO is the successor in interest to DeLaval Turbine, Inc.

usually had to be ground, scraped, or chipped off. Braaten could not service the valves, pumps, and turbines without disturbing the asbestos.

The use of asbestos in and on Navy valves, pumps, and turbines was not by chance, but by design. GE's medical and Navy expert Lawrence Betts declared that the use of asbestos was "based on military necessity." Asbestos insulated the valves, turbines, fittings, and flanges on almost all combat vessels built between World War I and the mid-1980s, because it was lighter and withstood higher temperatures than other products.

All five manufacturers either sold products containing asbestos gaskets and packing, or were aware that asbestos insulation was regularly used in and around their machines when they were installed on a Navy ship. Buffalo Pumps sold pumps with asbestos packing and gaskets for use in Navy ships from 1943 to 1989. Crane's bronze, iron, and steel valves all included asbestos packing and gaskets; asbestos sheet packing was described in the Crane catalog as "superior." Yarway acknowledged that asbestos was the "only insulation product available to withstand temperature" on Navy ships. Although some of their machines could operate using no insulation or non-asbestos insulation, it was highly likely that a valve, pump, or turbine sold to the Navy would contain or be used in conjunction with asbestos.

During the maintenance process, asbestos dust was released into the air, and Braaten breathed it in. Until 1980 he wore no breathing protection. Then, he was told to wear a paper dust mask. No one in his division wore respirators until the mid-1980s. In 2003, Braaten was diagnosed with mesothelioma, a disease caused by his inhalation

of asbestos dust.

Braaten sued 30 machine manufacturers in Texas, alleging strict liability and negligence for failure to warn of the dangers of exposure to asbestos. One manufacturer, Goulds Pumps,² filed a no evidence motion. The motion maintained there was no evidence that Goulds had a legal duty to Braaten. The Texas court agreed. Braaten quickly took a nonsuit against the remaining parties, and filed a new suit here in Washington State. He did not appeal the Texas order.

The court below granted summary judgment to all defendants, ruling that these manufacturers had no duty to warn about asbestos products manufactured and installed by others. GE argued that the Texas summary judgment order collaterally estopped Braaten's Washington claims, but the trial court concluded that it did not. Braaten appealed.

II.

When reviewing a summary judgment motion and order, we engage in the same inquiry as the trial court.³ We consider the facts in the light most favorable to the nonmoving party. Summary judgment is appropriate if the pleadings, affidavits, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.⁴

Collateral Estoppel

² Goulds is not a party to this appeal.

³ Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

⁴ CR 56(c).

GE argues that collateral estoppel bars relitigation of the duty to warn issue. The doctrine of collateral estoppel promotes finality and judicial economy by preventing parties from raising identical issues after they receive a full and fair opportunity to present their claims.⁵ The doctrine applies if: (1) the issue raised is identical to the issue previously ruled upon; (2) the prior adjudication ended in a final judgment on the merits of the issue; (3) the party against whom collateral estoppel is asserted was a party, or was in privity with a party, in the prior adjudication; and (4) application of the doctrine does not work an injustice.⁶ Injustice in the collateral estoppel context does not refer to a substantive injustice, but to whether the party was afforded a full and fair hearing.⁷ Even if the prior legal conclusion was erroneous, collateral estoppel does not work an injustice if the party had the opportunity to attack the error directly.⁸

Collateral estoppel precludes relitigation of the duty to warn issue against GE. The legal issue is identical between Goulds and GE; it is irrelevant that the two manufacturers produced different products, because both products were to be installed on Navy ships and used with asbestos. The Texas summary judgment was a final adjudication on the merits with the same preclusive effect as a full trial.⁹ It is immaterial that GE is a different defendant. Finally, Braaten does not dispute GE's contention that, procedurally, he had an opportunity to challenge the Texas ruling but declined to do so.

⁵ Hanson v. Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993).

⁶ Hanson, 121 Wn.2d at 562.

⁷ Lee v. Ferryman, 88 Wn. App. 613, 625, 945 P.2d 1159 (1997).

⁸ Thompson v. Dep't of Licensing, 138 Wn.2d 783, 799-800, 982 P.2d 601 (1999).

⁹ DeYoung v. Cenex Ltd., 100 Wn. App. 885, 892, 1 P.3d 587 (2000).

Although the trial court concluded that collateral estoppel did not bar the claims, this court can affirm on alternate grounds, as long as those grounds were properly presented and developed below.¹⁰ They were, and summary judgment in favor of GE is affirmed.

Strict Liability – Duty to Warn

Although this claim would normally be governed by the Washington Products Liability Act (WPLA),¹¹ Braaten was exposed to asbestos before its adoption, so WPLA does not apply.¹² Therefore, the common law as articulated in Restatement (Second) of Torts section 402A controls:

Special Liability of Seller of Product for Physical Harm to User or Consumer

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.^[13]

Under section 402A, manufacturers are strictly liable for failing to give adequate

¹⁰ State v. Sondergaard, 86 Wn. App. 656, 657-58, 938 P.2d 351 (1997).

¹¹ Ch. 7.72 RCW. WPLA was adopted in 1981 as part of the Tort Reform Act. Brewer v. Fibreboard Corp., 127 Wn.2d 512, 520, 901 P.2d 297 (1995).

¹² Koker v. Armstrong Cork, Inc., 60 Wn. App. 466, 472, 804 P.2d 659 (1991).

¹³ Restatement (Second) Torts § 402A (1965).

warnings.¹⁴ The duty extends to foreseeable users of the manufacturer's product.¹⁵ Braaten was a foreseeable user of the products sold by the manufacturers because he performed maintenance work on the products.¹⁶ As a user of the manufacturers' products, Braaten must make a prima facie showing of the following elements to sustain his strict liability claim:

(1) that there was a defect in the product which existed when it left the manufacturer's hands; (2) that the defect was not known to the user; (3) that the defect rendered the product unreasonably dangerous; and (4) that the defect was the proximate cause of the injury.¹⁷

A faultless product may be nonetheless "defective" if it is unreasonably dangerous when placed in the hands of the end user "without giving adequate warnings concerning the manner in which to safely use it."¹⁸ Unlike in a negligence claim, the focus here is on the product and its dangers, not on what the manufacturer knew or should have known.

Braaten argues that the valves and pumps were defective because there were no warnings about how to safely avoid asbestos exposure during their maintenance. This is an issue of first impression in Washington. The parties cite extensively to other asbestos cases, but none is dispositive. Lindstrom v. A-C Product Liability Trust,¹⁹

¹⁴ Van Hout v. Celotex Corp., 121 Wn.2d 697, 704, 853 P.2d 908 (1993).

¹⁵ Lunsford v. Saberhagen Holdings, Inc., 125 Wn. App. 784, 793, 106 P.3d 808 (2005). It is important to distinguish foreseeability of who will use the product from foreseeability of the harm. Foreseeability of the harm is not an element of a strict liability failure to warn claim. Ayers v. Johnson & Johnson Baby Products Co., 117 Wn.2d 747, 762-63, 818 P.2d 1337 (1991). Foreseeability of the harm is relevant to Braaten's negligence claim, but not to his strict liability claim.

¹⁶ See Restatement (Second) Torts § 402A cmt. *l*.

¹⁷ Novak v. Piggly Wiggly Puget Sound Co., 22 Wn. App. 407, 410, 591 P.2d 791 (1979).

¹⁸ Novak, 22 Wn. App. at 412.

cited by the manufacturers, has facts identical to this case.²⁰ However the issue in Lindstrom was causation, not duty.²¹ Olivo v. Owens-Illinois, Inc.,²² cited by Braaten, also has similar facts, but the defendant was a landowner, not a machine manufacturer.²³ Chicano v. General Electric Co.²⁴ is almost identical to this case and denies summary judgment, but it is an unpublished decision, and it applies a different test.²⁵ Berkowitz v. A.C. & S., Inc.²⁶ also favors Braaten's argument, but simply affirms denial of a summary judgment motion with almost no analysis.²⁷

The case of Teagle v. Fischer & Porter Co.²⁸ is of some aid to our duty analysis. In Teagle, a manufacturer sold a device called a "flowrater" to Teagle's employer.²⁹ The flowrater measured liquid chemicals, including ammonia, and was designed to hold chemicals pressurized up to 440 pounds per square inch (p.s.i.).³⁰ The ammonia would enter the flowrater from one end, Teagle would check a glass tube on the flowrater to see how much ammonia was inside, and then release it from the other end of the flowrater.³¹ To seal the ends of the glass tube, Teagle's employer used rings

¹⁹ 424 F.3d 488 (6th Cir. 2005).

²⁰ Lindstrom, 424 F.3d at 491.

²¹ Lindstrom, 424 F.3d at 492-93. It is worth noting that although duty is not mentioned, as a matter of law the Lindstrom case would not have reached the causation issue without a presumption of duty.

²² 895 A.2d 1143 (N.J. 2006).

²³ Olivo, 895 A.2d at 1146.

²⁴ 2004 U.S. Dist. LEXIS 20330 (E.D. Pa. 2004).

²⁵ 2004 U.S. Dist. LEXIS 20330 at 40. Chicano's in-depth analysis of the duty to warn issue applies Pennsylvania's component manufacturer liability test, which is not applicable in Washington.

²⁶ 288 A.D.2d 148 (N.Y. App. 2001).

²⁷ Berkowitz, 288 A.D.2d at 149.

²⁸ 89 Wn.2d 149, 570 P.2d 438 (1977).

²⁹ Teagle, 89 Wn.2d at 150-51.

³⁰ Teagle, 89 Wn.2d at 151-52.

manufactured by a third party and made of a material called Viton. The defendant manufacturer knew that Viton was not compatible with ammonia and might disintegrate, causing the glass tube to break.³² It also knew that if the flowrater broke while holding chemicals pressurized above 50 p.s.i., the operator could be harmed.³³ Teagle was measuring ammonia pressurized at 175 p.s.i. when the rings failed, the glass tube broke, and ammonia sprayed in his eyes.³⁴ Despite the fact that the use of Viton rings and ammonia in the flowrater was entirely the choice of Teagle's employer, the court held the flowrater manufacturer liable for not warning that the use of those products in conjunction with the flowrater made it dangerous.³⁵ Without proper warnings, the product was defective when used as intended, regardless of the fact that a third-party's product used in conjunction with the flowrater was the precipitating cause of the malfunction and resulting injury.³⁶

However, there is an important factual distinction between Teagle and the present case. In Teagle, there was an actual failure of the manufacturer's product: the flowrater exploded. Here, there is no allegation that the pumps or valves failed. For that matter, there is no allegation that the asbestos "failed." Products containing hazardous, injury-causing substances that can be released during normal use are unlike traditional defective products. There is nothing "wrong" with such products; they do not "malfunction." They are simply dangerous in ordinary use. This case involves

³¹ Teagle, 89 Wn.2d at 150-51.

³² Teagle, 89 Wn.2d at 153-54.

³³ Teagle, 89 Wn.2d at 151-52.

³⁴ Teagle, 89 Wn.2d at 151-52.

³⁵ Teagle, 89 Wn.2d at 156-57.

³⁶ Teagle, 89 Wn.2d at 155.

the release of a hazardous substance from a product. In that way, it is more analogous to products liability cases involving gasoline or other hazardous substances.

One such case from the Fifth Circuit provides an interesting comparison. In Stapleton v. Kawasaki Heavy Industries, Ltd.,³⁷ a motorcycle was tipped over when its fuel switch was in the “on” position. Gasoline leaked out, and was ignited by a nearby pilot light. Stapleton sued Kawasaki alleging negligence, strict liability, and breach of duty to warn about the fuel switch.³⁸ Although the jurors found that there was no design defect, they did find that Kawasaki breached its duty to warn about the specific danger of gasoline leaking from the motorcycle when the fuel switch was in the “on” position.³⁹ Kawasaki appealed, raising the issue that the jurors’ conclusions were inconsistent with each other.⁴⁰ But the Fifth Circuit affirmed, finding no contradiction in the jury’s conclusions:

The jury . . . could have meant that the motorcycle was not defective in the sense that there was something wrong with it that caused it to be unfit or unsuited for the purpose intended, but that the defendants should have made greater efforts to warn users of the potential danger in failing to turn the fuel switch to the off position. This failure to warn is sufficient to hold Kawasaki liable under both negligence and strict liability theories.^[41]

There is an important parallel with this case: the product at issue was dangerous not because it failed or malfunctioned, but because: (1) by design it contained a hazardous substance; (2) that hazardous substance was released from the product during normal use;⁴² and (3) the manufacturers did not warn users about that danger.

³⁷ 608 F.2d 571 (5th Cir. 1979).

³⁸ Stapleton, 608 F.2d at 572.

³⁹ Stapleton, 608 F.2d at 572.

⁴⁰ Stapleton, 608 F.2d at 572.

⁴¹ Stapleton, 608 F.2d at 572.

From a public policy standpoint, asbestos cases are different from gasoline or other hazardous substance cases because asbestos injuries are latent. If there is a gasoline explosion, the injuries are immediately actionable. If there are additional tortfeasors to be impleaded, or against whom indemnity can be sought, they can be ascertained and held liable. In modern asbestos litigation, the manufacturers of the hazardous substance are, for the most part, no longer amenable to judgment.⁴³ And there is no doubt that asbestos manufacturers are culpable for the injuries to Braaten.

But the Stapleton case does demonstrate that there is an independent duty to warn when a manufacturer's product design utilizes a hazardous substance that can be released during normal use. Few would argue that Kawasaki had no duty to warn about gasoline leaking from its motorcycles simply because someone else manufactured the gasoline. Its product contained gasoline during normal use. Here, the pumps and valves as designed contained asbestos during normal use. Also, the hazardous substance was released into the air as part of the regular operation and maintenance of pumps and valves, rather than by accident as in Stapleton. This distinction strengthens the argument for a duty to warn in the present case.

Public policy also supports a finding of duty. In Lunsford v. Saberhagen Holdings, Inc.,⁴⁴ we recently expanded the definition of "user" of an asbestos product to

⁴² The Stapleton decision does not explain why a fuel switch allows gas leakage when open, but it appears from the jury's findings that the feature was not considered a defect.

⁴³ Katherine M. Anand, Demanding Due Process: The Constitutionality of the § 524 Channeling Injunction and Trust Mechanisms that Effectively Discharge Asbestos Claims in Chapter 11 Reorganization, 80 Notre Dame L. Rev. 1187, 1190 (2005) ("[M]ost of the asbestos manufacturers responsible are already bankrupt.").

⁴⁴ 125 Wn. App. 784, 106 P.3d 808 (2005).

include the family member of a worker who was exposed to the fibers on that worker's clothing. In doing so, we acknowledged the public policy purpose behind strict liability:

“On whatever theory, the justification for the strict liability has been said to be that the seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it; that the public has the right to and does expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods; that public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them, and be treated as a cost of production against which liability insurance can be obtained; and that the consumer of such products is entitled to the maximum of protection at the hands of someone, and the proper person to afford it are those who market the products.”^[45]

These manufacturers did profit from the Navy's purchase of their products. They argue that they did not sell the specific asbestos that injured Braaten, but that is akin to saying that Kawasaki was not the relevant product seller because it did not sell the gasoline that leaked and ultimately injured Stapleton. Again, when a product's design utilizes a hazardous substance, and there is a danger of that substance being released from the product during normal use, the seller of the product containing the substance has an independent duty to warn.

A jury could determine that the pumps and valves were unreasonably dangerous when used as intended, without warnings about how to safely avoid asbestos exposure. Whether the product is unreasonably dangerous is based on the reasonable expectations of the ordinary consumer. Factors to be considered include the relative cost of the product, the gravity of the potential harm, and the cost and feasibility of

⁴⁵ Lunsford, 125 Wn. App. at 792-93 (quoting Restatement (Second) of Torts § 402A cmt. c. (1965)).

eliminating or minimizing the risk.⁴⁶ Given the high cost of this complex machinery, the deadly medical consequences of prolonged asbestos exposure and the relatively low cost of adding warnings to a technician's manual or to the exterior of the machinery itself, it appears that a jury could find that the products in this case were unreasonably dangerous.⁴⁷

If the pumps and valves were found to be unreasonably dangerous without warnings, they would be defective under products liability law: "If a product is unreasonably dangerous, it is necessarily defective."⁴⁸ The manufacturers had a duty to warn regarding the safe use of their products, and the trial court erred in concluding otherwise.

Negligence – Duty to Warn

Braaten also argues that the failure to warn was negligent. The elements of negligence are duty, breach, causation, and damages.⁴⁹ In this appeal, duty is the only element at issue. Braaten must show that the manufacturers had a duty to warn of "the hazards involved in the use of the product which are known, or in the exercise of reasonable care should have been known, to the manufacturer."⁵⁰ The duty to warn in the context of negligence is similar to the duty to warn in a strict liability claim, but the

⁴⁶ Bich v. General Electric Co., 27 Wn. App. 25, 32, 614 P.2d 1323 (1980) (citing Seattle-First Nat'l Bank v. Tabert, 86 Wn.2d 145, 154, 542 P.2d 774 (1975)).

⁴⁷ Although the issue of unreasonable danger is not discussed in the briefs, the manufacturers would no doubt argue that the asbestos, not their products, posed the danger. However, as discussed below, the pumps and valves are the correct products for this analysis.

⁴⁸ Seattle First Nat'l Bank v. Tabert, 86 Wn.2d 145, 154, 542 P.2d 774 (1975).

⁴⁹ Koker v. Armstrong Cork, 60 Wn. App. 466, 473, 804 P.2d 659 (1991).

⁵⁰ Novak v. Piggly Wiggly Puget Sound Co., 22 Wn. App. 407, 412, 591 P.2d 791 (1979).

focus is on the conduct and knowledge of the manufacturer instead of the dangerous propensities of the product itself.⁵¹

The manufacturers had a general duty to warn Braaten, because he was a user of their valves and pumps.⁵² The manufacturers argue that foreseeability is the only possible source of any duty to Braaten, and that foreseeability alone is not enough reason to hold them responsible. We disagree. A worker required to frequently service these products as a regular part of his job was a user of their products.

But as all parties and amici agree, this general duty is bounded by the foreseeability of the harm.⁵³ The test of foreseeability is “whether the actual harm fell within a general field of danger which should have been anticipated.”⁵⁴ In hindsight, asbestos exposure was undoubtedly a hazard involved in the use of the manufacturers’ products. But foreseeability of harm examines foresight, not hindsight: did the manufacturers know, or should they have known, about the hazards of asbestos involved in the use of their products at the time they were being sold and used? This question is not an appropriate one for summary judgment. Foreseeability of harm is generally a question of fact for the jury, not a question of law for the court, unless the circumstances of the injury “are so highly extraordinary or improbable as to be wholly beyond the range of expectability.”⁵⁵ That is not the situation here. Foreseeability of

⁵¹ Little v. PPG Indus., Inc., 92 Wn.2d 118, 120, 594 P.2d 911 (1979).

⁵² Restatement (Second) Torts § 402A cmt. *l.* (1965).

⁵³ See Lunsford v. Saberhagen Holdings, Inc., 125 Wn. App. 784, 793, 106 P.3d 808 (2005).

⁵⁴ Koker, 60 Wn. App. at 480 (quoting McLeod v. Grant Cy. Sch. Dist. 128, 42 Wn.2d 316, 321, 255 P.2d 360 (1953)).

⁵⁵ Seeberger v. Burlington N. R.R. Co., 138 Wn.2d 815, 823, 982 P.2d 1149 (1999) (quoting McLeod v. Grant Cy. Sch. Dist. 128, 42 Wn.2d 316, 323, 255 P.2d 360

the harm should be considered by the trier of fact.

As a matter of policy, it is logical and sensible to place some duty to warn on the manufacturer who is in the best position to foresee the specific danger involved in the use of a product. Here, the asbestos manufacturers had a duty to warn about the general dangers of inhaling asbestos fibers, but the manufacturers of the pumps, turbines, and valves also had a duty to warn about maintenance procedures for their products that would release those dangerous fibers into the air.

The record supports a duty to warn sufficient to survive summary judgment. A trier of fact could conclude that the manufacturers knew or should have known that exposure to released asbestos fibers was a hazard involved in the use of their products. Contrary to the manufacturers' framing of the issue, their duty was not to warn of dangers associated with a third party's product, but of dangerous aspects of their own product: namely, that using their products as intended would very likely result in asbestos exposure. The trial court erred in granting summary judgment for the manufacturers on the duty to warn element of the negligence claim.

III.

GE prevails in its collateral estoppel argument, and summary judgment is affirmed on that alternate basis. The trial court erred when it concluded that the other manufacturers had no duty to warn in strict liability and in negligence. The remaining summary judgment orders are reversed and remanded for further proceedings.

AFFIRMED IN PART AND REVERSED IN PART.

(1953)).

Baker, J

WE CONCUR:

Cappelwick, G.

Colman, J

Appendix B

Petition for Review

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

VERNON BRAATEN,)

Appellant,)

vs.)

SABERHAGEN HOLDINGS, a)

Washington Corporation, BARTELLS)

ASBESTOS SETTLEMENT TRUST, a)

Washington Corporation; BUFFALO)

PUMPS, INC. (sued individually and as)

successor-in-interest to BUFFALO)

FORGE COMPANY); CRANE CO;)

GENERAL ELECTRIC COMPANY;)

GEORGIA-PACIFIC CORPORATION)

(sued individually and as successor-in-)

interest to BESTWALL GYPSUM)

COMPANY); GOULDS PUMPS,)

INCORPORATED; GUARD-LINE, INC.;)

IMO INDUSTRIES, INC. (sued)

individually and as successor-in-interest)

to DE LAVAL TURBINE, INC. and)

WARREN PUMPS, INC.); INGERSOLL-)

RAND COMPANY; JOHN CRANE,)

INC.; KAISER GYPSUM COMPANY,)

INC.; SEPCO CORPORATION;)

TUTHILL CORPORATION (sued)

individually and as successor-in-interest)

to CORPUS ENGINEERING CORP.);)

UNION CARBIDE CORPORATION; and)

YARWAY CORPORATION,)

Respondents.)

DIVISION ONE

No. 57011-1-I

(Linked with

No. 56614-8-I)

ORDER DENYING MOTION
FOR RECONSIDERATION

The respondent, IMO Industries, Inc., having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 30th day of march, 2007.

FOR THE COURT:

Baker
Judge

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 MAR 30 PM 1:12

Appendix C

Petition for Review

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

VERNON BRAATEN,)
)
 Appellant,)
)
 vs.)
)
 SABERHAGEN HOLDINGS, a)
 Washington Corporation, BARTELLS)
 ASBESTOS SETTLEMENT TRUST, a)
 Washington Corporation; BUFFALO)
 PUMPS, INC. (sued individually and as)
 successor-in-interest to BUFFALO)
 FORGE COMPANY); CRANE CO;)
 GENERAL ELECTRIC COMPANY;)
 GEORGIA-PACIFIC CORPORATION)
 (sued individually and as successor-in-)
 interest to BESTWALL GYPSUM)
 COMPANY); GOULDS PUMPS,)
 INCORPORATED; GUARD-LINE, INC.;)
 IMO INDUSTRIES, INC. (sued)
 individually and as successor-in-interest)
 to DE LAVAL TURBINE, INC. and)
 WARREN PUMPS, INC.); INGERSOLL-)
 RAND COMPANY; JOHN CRANE,)
 INC.; KAISER GYPSUM COMPANY,)
 INC.; SEPCO CORPORATION;)
 TUTHILL CORPORATION (sued)
 individually and as successor-in-interest)
 to CORPUS ENGINEERING CORP.);)
 UNION CARBIDE CORPORATION; and)
 YARWAY CORPORATION,)
)
 Respondents.)
)

DIVISION ONE

No. 57011-1-I
(Linked with
No. 56614-8-I)

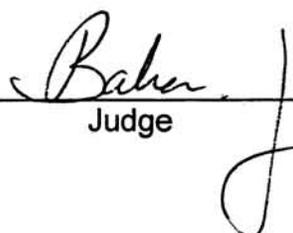
ORDER DENYING MOTION
FOR RECONSIDERATION

The respondent, Buffalo Pumps, Inc., having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 30th day of march, 2007.

FOR THE COURT:



Judge

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 MAR 30 PM 1:12

Appendix D

Petition for Review

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

VERNON BRAATEN,)	
	)	DIVISION ONE
Appellant,)	
	)	No. 57011-1-I
vs.	)	(Linked with
	)	No. 56614-8-I)
SABERHAGEN HOLDINGS, a)	
Washington Corporation, BARTELLS)	
ASBESTOS SETTLEMENT TRUST, a)	
Washington Corporation; BUFFALO)	
PUMPS, INC. (sued individually and as)	
successor-in-interest to BUFFALO)	
FORGE COMPANY); CRANE CO;)	
GENERAL ELECTRIC COMPANY;)	
GEORGIA-PACIFIC CORPORATION)	
(sued individually and as successor-in-	)	ORDER DENYING MOTION
interest to BESTWALL GYMPSUM	)	FOR RECONSIDERATION
COMPANY); GOULDS PUMPS,)	
INCORPORATED; GUARD-LINE, INC.;)	
IMO INDUSTRIES, INC. (sued)	
individually and as successor-in-interest)	
to DE LAVAL TURBINE, INC. and)	
WARREN PUMPS, INC.); INGERSOLL-)	
RAND COMPANY; JOHN CRANE,)	
INC.; KAISER GYPSUM COMPANY,)	
INC.; SEPCO CORPORATION;)	
TUTHILL CORPORATION (sued)	
individually and as successor-in-interest)	
to CORPUS ENGINEERING CORP.);)	
UNION CARBIDE CORPORATION; and)	
YARWAY CORPORATION,)	
)	
Respondents.)	
)	

The respondent, Crane Co., having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

57011-1-I (linked with 56614-8-I)/2

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 30th day of March, 2007.

FOR THE COURT:



Judge

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 MAR 30 PM 1:12

Appendix E

Petition for Review

57011-1-I (linked with 56614-8-I)/2

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 30th day of march, 2007.

FOR THE COURT:



Judge

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 MAR 30 PM 1:12